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PANEL MULLS DENIAL OF LAW LICENSE

Julia Brunts
Law Bulletin Staff Writer

Self-avowed white supremacist Matthew Hale on Wednesday went before a panel of the 7th U.S. Circuit Court of Appeals, trying once again to convince a court that he is entitled to an Illinois law license.

New York lawyer Glenn Greenwald told the three-judge panel that U.S. District Judge John W. Darrah erred in dismissing Hale's case on a finding that it had already been adjudicated and that Hale has no further recourse.

"We have been attempting unsuccessfully to find a judicial forum to be heard," Greenwald said.

Hale graduated from Southern Illinois University School of Law in 1998 and passed the state bar exam that July. He was denied a law license, though, after failing to pass muster with the Committee on Character and Fitness for the Board of Admissions to the Bar.

Hale heads the World Church of the Creator, an East Peoria-based organization that advocates "racial holy war," and Hale has said he is dedicated to using the law to make the United States a whites-only country, via constitutional amendment and mass deportation.

Hale's application for admission to the bar was reviewed and rejected by a three-member and then a five-member panel of the committee. Each time, he was rejected because panel members found his racial segregationist views would prevent him from adhering to the state's Rules of Professional Conduct.

The Illinois Supreme Court declined to hear Hale's appeal in November 1999 after the five-member panel rejected his application and denied him a law license. The U.S. Supreme Court likewise rejected Hale's petition for a writ of certiorari in 2000.

Last year, Hale filed a federal civil rights lawsuit against the Committee on Character and Fitness, its members, the Board of Admissions and the state Supreme Court. Hale alleged that the state's high court refused to review his constitutional claims that his rights to freedom of expression, freedom of association and due process had been violated.

He also claimed that [Rule 8.4\(a\)\(5\) of the Illinois Rules of Professional Conduct](#) is facially unconstitutional. That rule prohibits lawyers from engaging "in adverse discriminatory treatment of litigants, jurors, witnesses, lawyers and others based on race, sex, religion or national origin."

Hale also challenged [Supreme Court Rule 708](#), which governs the Committee on Character and Fitness.

In March, Darrah dismissed Hale's case with prejudice, saying the federal court could not review the state's denial of his law license because the action was barred by the Rooker-Feldman doctrine.

That doctrine prohibits lower federal courts from reviewing claims that are "inextricably intertwined" with a state court determination. The prohibition applies even if the claims brought in federal court were not raised in state court.

The doctrine gets its name from the U.S. Supreme Court's rulings in [Rooker v. Fidelity Trust Co.](#), 263 U.S. 413, 68 L.Ed. 362, 44 S.Ct. 149 (1923), and [District of Columbia Court of Appeals v. Feldman](#), 460 U.S. 362, 75 L.Ed.2d 206, 103 S.Ct. 1303 (1983).

As for the constitutional claims, Darrah ruled they were barred by the doctrine of res judicata. According to that decision, the Illinois Supreme Court has final say on applications to the bar, and denial of petitions brought under [Rule 708](#) constitute adjudication.

Before the 7th Circuit Wednesday, Hale's attorney contended that neither Rooker-Feldman nor res judicata applies because his challenges were never evaluated on their merits.

Greenwald argued that it is contrary to common sense to assert that the state Supreme Court's declining to review the committee's decision in Hale's case constitutes a decision on the merits.

He pointed out that former Illinois Supreme Court Justice James D. Heiple dissented from the court's decision not to hear the case, saying that the issue should be addressed formally by the court.

Assistant Attorney General Mary E. Welsh, arguing for the Supreme Court, said petitions for review filed under [Rule 708](#) are different from petitions for leave to appeal. She said the Supreme Court may take one of two actions: grant the petition and reverse the committee's refusal, or deny the petition and let the committee's decision stand.

"The Illinois Supreme Court is the first and last judicial stop on this question" of qualification for admission to the bar, she said.

Judge Diane P. Wood, sitting with Judge William J. Bauer and Chief Judge Joel M. Flaum, expressed concern for a lack of transparency in the denial process and asked if Hale was refused because of potential behavior, would a radical Islamist be the next to be denied.

Welsh replied that due process does not require transparency but, rather, notice and the chance to be heard.

Marc W. Martin, representing the other defendants, said there was transparency throughout the process, culminating in a public hearing before a five-member panel at which Hale presented witnesses.

"It's very obvious he's seeking review of the decision to deny his application," Martin said. "I don't see how you get around Rooker-Feldman as to the committee and the board."

The case is *Matthew F. Hale v. Committee on Character and Fitness for the State of Illinois, et al.*, No. 02-1716.

---- INDEX REFERENCES ----

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WHITE SUPREMACIST NOT LAWYER MATERIAL, BAR TELLS JUSTICES

Molly McDonough
Law Bulletin staff writer

Admitting a white supremacist to the Illinois bar "would reduce the quality of the legal profession," the state bar association asserted Friday.

The Illinois State Bar Association's arguments against granting a law license to Matther F. Hale were set out in a brief filed with the Illinois Supreme Court, to which Hale turned after his request for admission was rejected on three occasions by the Committee on Character and Fitness.

Also on Friday, the Character and Fitness Committee filed a brief replying to Hale's petition to the justices, requesting oral argument in the case.

And the committee is attempting for the second time to supplement the record with public statements made by the leader of the Peoria-based World Church of the Creator in the wake of a fatal shooting spree by Benjamin N. Smith.

Smith, who over the Fourth of July weekend killed two people and wounded several others, all members of racial minorities, before committing suicide as police closed in, was an associate of Hale and had testified on his behalf as a character witness.

The ISBA's amicus curiae brief backs the finding of the Character and Fitness Committee that Hale is morally fit to practice law.

Hale, 28, a 1998 graduate of Southern Illinois University School of Law, claims that he is being denied a law license because of his racist views, asserting that the denial constitutes a violation of his constitutional rights to free speech.

Hale's World Church of the Creator advocates "racial holy war" and has the ultimate goal of

eliminating all "mud races" from American soil.

In his petition asking the high court to issue a law license, Hale also is requesting oral argument. In the matter of The Application for Admission to the Bar of Matthew F. Hale, No. MR 16075.

Asked about the ISBA's decision to enter the fray over Hale's petition, President Cheryl I. Niro said the association "feels an obligation to express what we believe is in the best interest of the profession."

In urging the Supreme Court to reject Hale's application, the ISBA argues that his First Amendment claim is meant to divert the court's attention from conduct "inconsistent with the ethical responsibilities of an attorney."

"The applicant seeks to wrap himself in the American flag while the applicant's goal is to remove all color from that flag," the brief states. "While the applicant seeks a white flag, the Illinois Supreme Court should not surrender its duty."

The committee's brief argues that Hale's petition should be rejected because he cannot prove he is of good moral character, could not abide by the Illinois Rules of Professional Conduct, would not be able to take his oath in good faith and has a "propensity for violence."

"This court need not turn a blind eye to the alarming 'rising tide of racially-motivated crimes against persons' in this county," the committee's brief states, adding that Hale's claim that he advocates nonviolence is not credible.

"His teachings are replete with fighting words," the brief argues. "When exposed to impressionable or unstable followers, Hale's doctrines and conduct are potentially lethal."

The ISBA also asserted that Hale violated the doctrine of his own organization by retaining lawyers who are Jewish or black to represent him in the licensing matter and in civil lawsuits pending against him in state court, seeking to hold him liable in Smith's murderous rampage.

Among the "commandments" of the World Church is a directive that members discontinue associations with Jews as soon as possible and not employ blacks.

"The applicant's propensity to selectively ignore or adhere to his 'religious' code of conduct and beliefs, as may be convenient, is symptomatic of the applicant's lack of character and fitness," the ISBA brief argues. "All Illinois attorneys must adhere to the Illinois Rules of Professional Conduct at all times, not only when it's convenient."

Both the ISBA and the Character and Fitness Committee argue in Friday's filings that the Supreme Court has the authority to delve into matters that took place subsequent to the last official hearing on Hale's fitness to practice. In this case that was an April 10 hearing convened in Joliet.

The Supreme Court in September rejected a motion by the committee to supplement the record via expedited discovery.

But the committee's brief, citing [In re Loss, 119 Ill.2d 186, 518 N.E.2d 981 \(1987\)](#), argues that "the court may initiate such review, sua sponte, or upon the basis of information regardless of its source. It may inquire into events subsequent to the certification or require additional information concerning events which occurred prior to the hearing before the committee."

The ISBA makes a similar argument, adding that the Supreme Court has the option to send the case back to the hearing panel for further review or to direct the Attorney Registration and Disciplinary Commission to conduct a supplemental investigation.

In a proffer to supplement the record, the committee argues that Smith's conduct and Hale's reaction to the shooting spree bear directly on Hale's "lack of moral character and unfitness to practice law" for several reasons:

- First, that Smith's testimony in Joliet can no longer be considered as supportive of Hale's good moral character in light of the shootings.

- Second, that Hale, while claiming he advocates nonviolence, is not credible. "The tacit endorsement of Smith's actions coupled with the violent thesis of Hale's publications and actions... paint a very clear picture of a very troubled advocate of violence -- indeed a manipulator of truth."

- Third, that "Hale is simply not a truthful person" and lacks integrity. The committee, which attached copies of several news reports, alleges Hale made numerous inconsistent statements to the media about his relationship with Smith.

The ISBA took pains in a footnote to its brief to distinguish itself from the Character and Fitness Committee, which is a division of the Board of Admissions to the Bar. The ISBA, a 30,000-member voluntary bar association, included the footnote after having been described incorrectly as having a role in the granting or withholding of law licenses.

That authority lies solely in the Supreme Court, and all Illinois attorneys are required to meet character and fitness requirements before being admitted to practice in Illinois.

Representing the Illinois Committee on Character and Fitness in the matter before the Supreme Court are George J. Murtaugh Jr., **Marc W. Martin** and Bickel & Brewer attorney Robert P. Cummins.

Lawyers for Hale are St. Louis attorney Robert Herman, of Schwartz, Herman & Davidson, and Chicago attorney Anita Rivkin-Carothers.

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