
2A

Information

Professional Practices Committee

Review and Designation of Discipline Precedential Decisions

Executive Summary: The Commission will discuss whether to designate published discipline decisions as precedential.

Recommended Action: For information only

Presenter: Mary Armstrong, Director, Division of Professional Practices

Strategic Plan Goal(s): 1

Promote educational excellence through the preparation and certification of professional educators

- ◆ Evaluate and monitor the moral fitness of credential applicants and holders and take appropriate action

April 2010

Review and Designation of Discipline Precedential Decisions

Introduction

Every applicant for a credential or holder of a credential who has received a recommendation from the Committee of Credentials (Committee) to deny an application or to impose discipline on a credential is entitled to request an administrative hearing with an independent administrative law judge (ALJ) who issues a proposed decision for the Commission's review, adoption and action. At the August 2009 and December 2009 meetings the Commission discussed whether to move forward with the concept of designating some of these decisions as precedent decisions to provide guidance, consistency and clarity from the Commission to ALJs as well as to school districts, credential holders and teacher preparation programs. At the December 2009 meeting, the Commission requested that staff provide examples of the types of decisions that could be designated as precedential and provide a procedure outlining how the Commission would designate decisions.

Background

Under current law (Government Code § 11425.60), "an agency may designate as a precedent decision a decision or part of a decision that contains a significant legal or policy determination of general application that is likely to recur. The agency is required to maintain an index of significant legal and policy determinations made in precedent decisions. The index shall be updated not less frequently than annually, unless no precedent decision has been designated since the last preceding update. The index shall be made available to the public by subscription, and its availability shall be publicized annually in the California Regulatory Notice Register."

Proposal to Designate Precedential Decisions

After a request is made for an administrative review of a Committee recommendation, an administrative hearing is held at which time both the respondent (applicant or credential holder) and the Commission are provided the opportunity to present evidence and testimony. The ALJ then makes findings based on the evidence and testimony presented and issues a proposed decision recommending the discipline to be imposed. In many cases the ALJ's decision is the same recommendation as the Committee's although because it is a *de novo* review, the discipline imposed can be more or less severe than the Committee's recommendation. The Commission reviews the proposed decision and can decide to adopt the decision or, if it disagrees with either the findings or the discipline imposed, it can choose to call for the transcript, review the transcript and issue a decision and order. On average, ten decisions become final each year and approximately nine are adopted from the proposed decisions issued by an ALJ. The Commission calls for the transcript on the average of one to two times per year.

Many agencies utilize the provisions of the Government Code § 11425.60 to provide guidance to both stakeholders and the ALJs assigned to credentialing cases. For example, precedent decisions could be instructive to an ALJ who is unfamiliar with accepted practices at school sites

as a way to become familiar with such practices and whether or not failure to adhere to such practices could result in a determination that misconduct occurred. Other decisions that staff could recommend as appropriate to be designated as precedent are those with a significant legal or policy determination of general application that is likely to recur. The cases chosen could involve unprofessional conduct, moral turpitude and immoral conduct.

One of the Commission's strategic goals is to improve customer service and consistency. School districts, credential holders, teacher preparation programs, all of which are external customers, seek guidance and consistency within the discipline process. Additionally, ALJs, the Attorney General's Office and credential holders and applicants' legal representatives also seek guidance and consistency throughout the discipline process. (See Attachment 1: Letter from Senior Supervising Deputy Attorney General Douglas Press dated November 12, 2009.) Publishing written precedential decisions would provide guidance and consistency as well as improve communication with all interested parties. Additionally, the Commission's precedential decisions become controlling authority which ALJs who deliberate over the Commission's discipline cases would follow in subsequent cases.

Legal Precedents and Precedent Decisions

The term legal precedent describes a legal principle, created by a court decision, which provides an example or authority for judges deciding similar issues later. Generally, decisions of higher courts (within a particular system of courts) are mandatory precedent on lower courts within that system--that is, the principle announced by a higher court must be followed in later cases. For example, the California Supreme Court decision that unmarried people who live together may enter into cohabitation agreements (Marvin v. Marvin), is binding on all appellate courts and trial courts in California (which are lower courts in relation to the California Supreme Court). Similarly, decisions of the U.S. Supreme Court (the highest court in the country) are generally binding on all other courts in the U.S. Decisions of lower courts are not binding on higher courts, although from time to time a higher court will adopt the reasoning and conclusion of a lower court. Decisions by courts of the same level (usually appellate courts) are considered persuasive authority. That is, they should always be carefully considered by the later court but need not be followed.

The precedent decisions authorized by Administrative Procedure Act are statutory legal precedents. Effective July 1, 1997, Senate Bill 523 (Chap.938, Stats.1995) took effect making substantial changes to the Administrative Procedure Act as it governs administrative disciplinary actions taken against professional and vocational licenses. One of the changes brought about by SB 523 was to allow a board or commission to designate an administrative disciplinary decision as precedential. This and other revisions to the Administrative Procedure Act was done after extensive study and public hearings conducted by the Law Revision Commission. [For a full discussion of the changes brought about by the Law Revision Commission's proposal to revise the Administrative Procedure Act see Asimow, *Toward a New California Administrative Procedure Act: Adjudication Fundamentals* 39 UCLA L. Rev. 1067 (1992).] The rationale offered for establishing precedent decisions was that in addition to the principle that agencies need the ability to make law and policy through adjudication, agencies have the responsibility to let the law and policy they make through their case law be generally known. The Law Revision Commission's recommendation was based, in part, on federal administrative law which has long

held that lawmaking through adjudication is acceptable and of equal dignity with lawmaking through rules. [See, e.g., *NLRB v. Bell Aerospace Co.*, 416 U.S. 267 (1974).] In support of the concept, Professor Asminow wrote in his background paper for the Law Revision Commission, the following:

“Every agency is confronted by vague statutory terms, such as “unprofessional conduct” or “moral turpitude” or “gross negligence.” Their decisions make law. They should be available and accessible to the public. In addition, agency Decisions generally establish a pattern of appropriate sanctions. This information should also be generally known. The reality is that although adjudicatory decisions of most California agencies are public records...nobody knows about them. There is no convenient way to access them. Of course, the staff has an institutional memory of these precedents and counsel who practice constantly before an agency know about them. But this knowledge is unavailable to everyone else. If precedent decisions were generally available, it would benefit everyone — counsel for both the agency and the parties and the ALJs and agency heads who make the final decisions.”

Examples of Possible Precedent Decisions

Two examples of decisions are provided as Attachment II. Both decisions discuss the concept of rehabilitation from past misconduct and the type of evidence necessary to clearly and convincingly establish rehabilitation. In the first decision (John Joseph Goddard) the applicant met the burden and the Decision explains in the findings why the burden was met. In the second decision (Steele Clarke Smith III) there is an excellent discussion of what types of evidence and testimony does not meet the burden. Both decisions provide useful guidance on an issue that is seen frequently by the Commission and Committee.

Proposed Procedure

The disciplinary responsibility is delegated for the most part to the Commission appointed Committee of Credentials. The members of the Committee review and recommend discipline prior to the administrative review which results in a Decision by an Administrative Law Judge. For this reason, it is recommended that any proposed procedure involve the Committee of Credentials. This could be accomplished with the following procedure:

- Staff would identify a precedential decision
- Submit to Committee of Credentials for Review and Recommendation
- Agendize recommended case at next scheduled Professional Practices Committee
- Commission will take action whether or not to designate the case as precedential

Next Steps

If the Commission chooses to designate and publish precedential decisions, the next steps would be to direct staff to identify decisions that would be appropriate for a designation as precedent and process the cases so identified in accordance with a procedure directed by the Commission.

ATTACHMENT I

EDMUND G. BROWN JR.
Attorney General

State of California
DEPARTMENT OF JUSTICE



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November 12, 2009

Mary Armstrong, Esq., Chief Counsel
Commission on Teacher Credentialing
1900 Capitol Avenue
Sacramento, CA 95814-4213

RE: **Precedential Decisions**

Dear Ms. Armstrong:

At your request, I am providing this letter that describes my observations of precedential decisions generally. This letter should not be construed as either an opinion letter from the Attorney General's Office or a recommendation as to whether the Commission on Teacher Credentialing should commence designating precedential decisions.

General Authority for the COTC to Designate Precedential Decisions

"A decision may not be expressly relied on as precedent unless it is designated as a precedent decision by the agency." (Government Code § 11425.60, subdivision (a).) Subdivision (b) authorizes an agency that renders decisions subject to the Administrative Procedure Act (APA) to "designate [its administrative adjudication] as a precedent decision a decision or a part of a decision that contains a significant legal or policy determination of general application that is likely to recur." Subdivision (b) also makes clear that such designations are "not rulemaking and need not be done under Chapter 3.5 (commencing with Section 11340)" of the APA.

Subdivision (c) further requires the agency to "maintain an index of significant legal and policy determinations made in precedent decisions. The index shall be updated not less frequently than annually, unless no precedent decision has been designated since the last preceding update. The index shall be made available to the public by subscription, and its availability shall be publicized annually in the California Regulatory Notice Register."

Once an administrative decision is designated as precedential, as the term would suggest, the decision should serve as precedent (to the extent that the rule and facts are applicable to another case) on other administrative proceedings for that agency. (See, e.g., Unemployment

Mary Armstrong, Esq., Chief Counsel
Commission on Teacher Credentialing
November 12, 2009
Page 2

Ins. Code, § 409 ["The director and the appeals board administrative law judges shall be controlled by those precedents except as modified by judicial review."].)

Other State Agencies That Designate Precedential Decisions

Based upon my experience and research, at least the following state entities have designated precedential decisions:

- 1) **The Board of Equalization** (*Citicorp North America v. Franchise Tax Board* (2000) 83 Cal.App.4th 1403, 1408-1409);
- 2) **CalPERS** (*Municipal Water Dist. v. Board of Admin.* 2006 WL 3012950)¹;
- 3) **The California Unemployment Insurance Appeals Board (CUIAB)** (*AFL-CIO v. UIAB* (1996) 13 Cal.4th 1017, 1028);
- 4) **The Department of Social Services** (*Megrabian v. Saenz* (2005) 130 Cal.App.4th 468, 476);
- 5) **The Fair Employment and Housing Commission** (*Green v. State* (2007) 42 Cal.4th 254, 272; and
- 6) **The State Personnel Board** (*Alameida v. State Personnel Board* (2004) 120 Cal.App.4th 46, 50 fn. 3).

How Courts Have Viewed an Agency's Precedential Decisions

A. Precedential Decisions May be Relied Upon as Evidence of Statutory Intent.

When a court is tasked with ascertaining the legislative intent of a statute, if there is some ambiguity in the statute's terms, the court may consult, among other sources, the precedential decisions from the agency responsible for administering the statute in question. (*Sara M. v. Superior Court* (2005) 36 Cal.4th 998, 1012-1014.) For example, in *Green v. State*, *supra*, the court noted that, to identify the agency's reasonably contemporaneous interpretation of one of the statutes the agency administers, the court may "defer[] to the [agency's] regulations and precedential decisions interpreting [the statute]." (*Id.* at pp. 271-272.) Precedential decisions can be consulted for this purpose even though they are not published judicial decisions. (*Styne v.*

¹ Some the decisions referenced in this letter are unpublished court decisions, which are discussed herein only for context.

Stevens (2001) 26 Cal.4th 42, 53, fn. 4 ["the rules of court do not bar our citation of such unpublished decisions to demonstrate administrative construction".])

Precedential decisions can also serve as indicia of legislative intent to confirm the agency's interpretation when the Legislature does not clarify or amend a statute *after* the agency renders its construction of the statute or regulation at issue in a precedential decision. The California Supreme Court explained this principle in *Robinson v. Fair Employment & Housing Com.* (1992) 2 Cal.4th 226, 235, at fn. 7:

The presumption that the Legislature is aware of an administrative construction of a statute should be applied only on a showing that the construction or practice of the agency had been made known to the Legislature (*Pacific Greyhound Lines v. Johnson* (1942) 54 Cal.App.2d 297, 303 [129 P.2d 32]), or is one of such long standing that the Legislature may be presumed to know of it. [¶] (*El Dorado Oil Works v. McColgan* (1950) 34 Cal.2d 731, 739 [215 P.2d 4].) Because the Legislature authorized the FEHC to establish the system of publication in which precedential decisions are printed (§ 12935, subd. (h); Labor Code, former § 1418, subd. (i)) the Legislature now is presumed to be aware of the two administrative decisions on which the Court of Appeal relied, and thus has reason to be aware of the construction the agency placed on its own regulation.

B. Courts Remain Free to Agree or Disagree with the Agency's Interpretation Set Forth in a Precedential Decision.

Because precedential decisions only offer *evidence* of legislative intent, courts treat precedential decisions as non-binding authority. As such, courts may or may not agree with the agency's construction. (*California Dept. of Corrections v. SPB* (2004) 121 Cal.App.4th 1601, 1618.) Thus, while courts must give careful consideration to the agency's interpretation of a statute, courts are not bound by the agency's interpretation, as the interpretation of a statute is ultimately a judicial function. (*City of Long Beach v. Department of Industrial Relations* (2004) 34 Cal.4th 942, 951 ["although we give the Department's interpretation great weight [citation], this court bears the ultimate responsibility for construing the statute"]; *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 7.)

Accordingly, courts can and have overturned such precedential designations. (See *Plumbers and Steamfitters, Local v. Duncan* (2007) 157 Cal.App.4th 1083, 1095-1096 [successful plaintiff awarded C.C.P. § 1021.5 attorneys fees for overturning Department of Industrial Relations' precedent decision]; *California Dept. of Corrections v. SPB*, *supra*, 121 Cal.App.4th at p. 1619 [in its precedential decision, in certain respects, the "SPB erred in applying the current statute"] and *Department of Transportation v. State Personnel Board* (2009) 178 Cal.App.4th 568, *4 [SPB designated as precedential its decision that the exclusionary rule applied to incriminating evidence used in a civil disciplinary proceeding; Court

reversed noting that "[t]his is a question of law, which we review independently . . ."; *Department of Youth Authority v. SPB* 2003 WL 21541155, *8-*9 [Court upheld trial court decision, but ruled that three bases of the SPB precedential decision could no longer "be considered as precedent".]

In addition, at least in the CUIAB context, if a precedent decision is modified on judicial review, the agency must "promptly" modify it to "conform in all respects to the judgment of the court." (Unemployment. Ins. Code, § 409.1.) There is no reason why this expectation should not apply to other agencies whose precedential decisions are overturned.

C. Even Within an Agency, a Precedential Decision Does Not Relieve the Agency of Proving its Case.

A precedential decision is nothing other than another manifestation of the basic doctrine of *stare decisis*, i.e., that like cases should be treated alike. This doctrine is essential to the judicial system because it guarantees predictability of the law and fairness of adjudication. (See R.W.M. Dias, *Jurisprudence* 164, 172 (Butterworth & Co. 1976)) [In discussing the factors that brought *stare decisis* into being and are keeping *stare decisis* alive, the author commented: "[I]t is essential to foster confidence in [stare decisis] impartiality and in the judges who administer it; and this has given rise to the fundamental principle that like cases should be treated alike [] Equality of treatment, consistency and impartiality are bound up with the need for certainty and predictability.".]

However, the existence of precedential decisions does not render moot any further, meaningful administrative adjudication by an agency. Precedential decisions are simply another source of binding authority *on the administrative agency that issued them*. But just as the existence of binding authority does not relieve a trial or other court from weighing evidence and determining to what extent, if any, the binding authority may apply or control the outcome in a particular case, a precedential decision does not relieve an administrative agency from carrying out its full adjudicatory function to consider on the merits, the unique case before it:

The strong respect for precedent which inheres in our legal system has its qualifications and limitations. It does not call for a blind, arbitrary and implicit following of precedent, but recognizes . . . that it is more important as to far reaching judicial principles that the court should be right than that it merely be in harmony with its previous decisions. Such a respect for precedent balks at the perpetuation of error; and the doctrine of *stare decisis* is, after all, subordinate to legal reason and is properly departed from if and when such departure is necessary to avoid the perpetuation of error.

(*United States v. Minnesota* (8th Cir. 1940) 113 F.2d 770, 774-775.)

Mary Armstrong, Esq., Chief Counsel
Commission on Teacher Credentialing
November 12, 2009
Page 5

Please feel free to contact me if you have any further questions about this topic. Thank
you.

Sincerely,



DOUGLAS M. PRESS
Senior Assistant Attorney General

For EDMUND G. BROWN JR.
Attorney General

DMP:sw:

ATTACHMENT II

BEFORE THE
CALIFORNIA COMMISSION ON TEACHER CREDENTIALING
STATE OF CALIFORNIA

In the Matter of the Denial of the
Application for a Certificate of Clearance
Submitted by:

JOHN JOSEPH GODDARD
aka ARTHUR R. OSBORN, JR.

Respondent.

No. 148

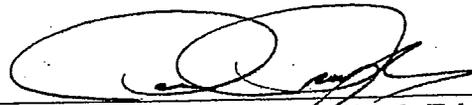
OAH No. L-2000050018

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Commission on Teacher Credentialing as its decision in the above-entitled matter.

This Decision shall become effective on the 11th day of November 2000.

IT IS SO ORDERED this 5th day of October 2000.



Sam W. Swofford, Ed.D.
Executive Director

BEFORE THE
CALIFORNIA COMMISSION ON TEACHER CREDENTIALING

In the Matter of the Denial of the
Application for a Certificate of Clearance
Submitted by:

JOHN JOSEPH GODDARD
aka ARTHUR R. OSBORN, JR.


Respondent.

NO. 148
OAH NO. L 2000050018

PROPOSED DECISION

John Thomas Montag, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Diego, California on July 10, 2000.

Robin Miller-Sloan, Deputy Attorney General, represented the California Commission on Teacher Credentialing.

Respondent, John Joseph Goddard, appeared on his own behalf.

Evidence was received. The record was left open until the close of business on Friday, August 25, 2000 to allow respondent to submit documentation of his attendance at Palomar College and a report from the psychologist from whom he commenced to receive counseling in January 2000.

On August 7, 2000 an Official Transcript was received from Palomar College. This document has been marked as Respondent's Exhibit S and has been received into evidence.

On Friday, August 25, 2000 a letter was received from John B. Mansdorfer, Ph.D. confirming that respondent has been a patient of his since January 2000. Dr. Mansdorfer stated that he could not provide the report which was requested by respondent because he had not done a formal psychological evaluation of the respondent. Dr. Mansdorfer's letter has been marked as Respondent's Exhibit T and has been admitted into evidence as administrative hearsay in support of respondent's testimony that he has received psychological counseling.

Closing comments from Deputy Attorney General Robin Miller Sloan were received on July 31, 2000. They have been marked as State's Exhibit 6. They are not evidence. They have been read and considered by the Court.

The record was closed and the matter was deemed submitted on Monday, August 28, 2000.

FACTUAL FINDINGS

1. Respondent, John Joseph Goddard, was born on June 10, 1958. He is presently forty-two (42) years of age. In May 1997 he received an Associate of Arts Degree, General Studies, from Palomar College, in San Marcos, California (Exhibit S). He received a grade of A in every class which he attempted at Palomar College. His Grade Point Average was 4.0.

Following the attainment of his AA Degree, respondent was accepted into the Teacher Education Program at California State University, San Marcos, California. In May 1998 he received a BA Degree in Liberal Studies from California State University San Marcos. He has completed all of his academic requirements for a teaching credential. He has not been allowed to complete his student teaching requirement.

2. Sections 44000, et sequitur, of the California Education Code and Sections 80000, et sequitur, of Title 5, California Code of Regulations, vest the Commission with responsibility for the credentialing of public school teachers. This responsibility includes the issuance and denial of Certificates of Clearance.

3. A Certificate of Clearance is a document which verifies that the holder thereof meets the requisite personal and health qualifications to obtain a regular California teaching or services credential. Section 44320(d) of the Education Code, and Section 800028 of Title 5, California Code of Regulations, provide that a person who is enrolled in a teacher preparation program must obtain a Certificate of Clearance from the Commission before he can be admitted to either a student teaching or a field experience program.

4. Section 44345(e) of the Education Code provides that the Commission may deny an application for the issuance of a credential (which includes a Certificate of Clearance) if the applicant has committed any act which involves moral turpitude.

5. On March 9, 1998 respondent filed an application for the issuance of a Certificate of Clearance. Sometime in late November 1998 the Commission denied respondent's application. Respondent timely appealed the Commission's denial of his application for issuance of a Certificate of Clearance.

6. On May 17, 1999, Sam W. Swofford, Ed.D., signed the Statement of Issues herein in his official capacity as the Executive Director, California Commission on Teacher Credentialing, seeking to deny respondent's application for issuance of a Certificate of Clearance. The ground for seeking denial of respondent's application is that respondent has committed acts involving moral turpitude, as evidenced by two criminal convictions incurred in 1987 and 1989, which conduct allegedly renders him unfit to teach.

7. The Statement of Issues was duly served on respondent. Respondent timely executed his Notice of Defense on April 4, 2000 and caused it to be appropriately filed with the Commission. The case was finally brought to hearing on July 10, 2000, which is more than two years after respondent first filed his application.

8. On July 28, 1987, in the Circuit Court of Clay County, Missouri, Seventh Judicial District, In Case Number CR385-1021F, respondent was convicted, upon his plea of guilty, of the misdemeanor offense of passing a bad check, in violation of Section 570.090 of the Revised Statutes of Missouri. He was required to make restitution in the amount of \$774.50, to serve one year in the County Jail and he was placed on probation for two years. He made restitution, paid the various minor fines imposed and was released from probation on July 5, 1989.

The circumstances of this offense are:

A relatively short time after respondent had left a Catholic Monastery, which will be discussed in more detail hereinafter, he was working for a man who ran a so-called non-profit organization in a questionable manner. In 1985 respondent was coerced into writing a false check and presenting it for payment for the benefit of the owner of this non-profit organization. He was so frightened of this man and of what he had been forced to do that he fled the state. Two years later he returned in a warrant and entered his guilty plea.

9. On November 1, 1989, in the United States District Court for the District of Vermont, in Case Number 88-00100-01, respondent was convicted, upon his plea of guilty, of Conspiracy to Defraud, in violation of Section 371 of Title 18, United States Code; Using a False Social Security Number, with Intent to Deceive, in violation of Section 408(g)(1) of Title 42, United States Code; and Making a False Statement on a Loan Application, in violation of Section 1014 of Title 18, United States Code. Respondent was ordered to make restitution to the U. S. Department of Education, in the amount of \$6,650.00; to the Bank of Vermont in the amount of \$1,835.41; and to the Vermont National Bank in the amount of \$687.50. He was sentenced to serve four (4) years in Federal Prison.

Respondent has made full payment of the restitution which was ordered (Exhibits J, K, L and M). He served twenty-one (21) months in a Federal Prison and three (3) months in a Half-Way House. By Thanksgiving of 1991, two years after his sentencing, he had completed his prison sentence. His parole was terminated on November 1, 1993. The acts which led to

respondent's Federal conviction were committed in 1986 and during the first six months of 1987. Thirteen years have passed since the occurrence of this criminal activity.

The circumstances of these offenses are:

When respondent fled from Missouri in 1985, as noted in Finding 8, he went to the State of Vermont. He had incurred some student loans in his own name prior to this flight and he did not have the means to re-pay them. He wanted to further his education so that he could earn a respectable living. He needed another student loan to do so. Accordingly, he assumed the identity of a deceased person and obtained a new Social Security number under the name of Arthur R. Osborn, Jr. He obtained a modest loan for a car from a bank under this new name, as well as a student loan. He lived under this assumed name for several years until he returned to Missouri to face the bad check charge described in Finding 8. This led to his federal prosecution in Vermont.

Respondent never defaulted on any of the loans which he had obtained under the name of Osborn. All of his payments thereon were timely made. As noted above, complete payment has been made on the three loans which he obtained under his assumed name.

10. How respondent became involved in these criminal acts can be better understood from a review of the unfortunate events in his life which took place during his formative years. Respondent is the fifth of twelve children who were born to his mother and father. His father was an alcoholic who, among other things, physically abused his family. At the age of fourteen, respondent entered a Catholic Monastery, ostensibly to train to become a monk. The real reason for respondent's entry into the monastery at such an early age was not the calling of a true vocation to the religious life, but, rather, an overwhelming desire to escape from the terrible home life which he was experiencing with an alcoholic father.

Respondent remained in the monastery for eight years. He obtained a High School education and he attended college type classes in the monastery. The monastery was not, however, an accredited educational institution. Eventually, respondent and his superiors at the monastery recognized the fact that he did not have a true vocation to the religious life. Accordingly, in 1980, when he was only twenty-two years of age, he left the sheltered life of the monastery. He had no valid education beyond high school and he had no recognized trade skills. He was extremely ill equipped to live and survive in the "real world."

Respondent first went to Texas where he obtained employment on oil rigs. He wanted to obtain an education so he enrolled in various small colleges. He could not afford the tuition at any of the major universities. He was also unsure as to exactly which field of higher education he should pursue. He joined one of his brothers in Kansas City, Missouri. He obtained employment with a person who managed real property. He soon became upset about the manner in which this person conducted his business. He sold homes to people who could not afford

them. The new home owners would improve the property but as soon as they missed their house payment, their home would be repossessed and then sold to someone else in similar financial circumstances.

When respondent left this employment, he found that his new employer was equally unethical in the manner in which he operated his so-called non-profit business, as described in Finding 8, above. Respondent then fled to Vermont and assumed the name of Osborn. While he fraudulently assumed another name and loans thereunder, as noted above, he made the required monthly loan payments and led an otherwise law abiding life under the assumed name. He was not the proverbial hardened criminal.

11. Respondent's actions following his release from prison in November 1991 should be the determining factor in this case. As to his past criminal actions, he has paid his debt to society. His worth as a person should be gauged by his actions since he completed his sentence.

When respondent was released from the Half-Way House in Columbus, Ohio, he obtained employment with a Angel Computer Service, Inc. as a data processor. Within a short period of time he became the manager, responsible for managing an office staff of sixty data entry employees. While working in Columbus, Ohio respondent met the woman who was to become his wife. When she obtained a teaching position at California State University, San Marcos, California, he accompanied her to California, properly transferring his parole to this state. Respondent obtained full-time employment in California.

In 1994 respondent decided that he would like to enter the teaching profession. He enrolled at Palomar College and ultimately obtained the degrees noted in Finding 1, above. He also maintained his employment. In October 1994, respondent obtained employment with Aldila, Inc., which manufacture graphite shafts for golf clubs. He was hired as the supervisor of the Quality Control Department, managing a staff of fifty employees who worked on the swing shift at the factory.

Respondent is married and he has a son by this marriage, who was born on June 4, 1997. He has an eleven year old son by a prior marriage. While this son resides in New Hampshire, respondent is actively involved in his life.

In January 2000, respondent sought psychological counseling. It appears that the stress occasioned by his failed attempt to be allowed to pursue a career in teaching, which has caused him to live, once again, the traumatic events of his past life, and his unfortunate entanglement with the law, caused him to seek such counseling. Respondent has a sincere desire to become a teacher. He believes that the mistakes which he has made in his life will enable him to give effective guidance to the children whom he teaches and will, perhaps, keep them from making similar errors. During his testimony, respondent was actually moved to tears as he described his desire to teach and his resolve to assist young children to avoid the mistakes which he had made.

Respondent has found spirituality through Buddhism. He is a group leader in a Buddhist lay organization. He has served as Secretary and Treasurer for his home owners association. He is active in a boys and girls chess club in Carlsbad, California. He gave them chess sets, books and manuals. He gives free chess lessons to the children.

12. Exhibit A is a letter written by respondent's wife, Laurie Stowell. She is presently an Associate Professor in the College of Education at California State University San Marcos. She has been on the faculty at San Marcos for eight years. She teaches prospective teachers. Prior to joining the faculty of Cal State, San Marcos, Ms. Stowell taught elementary and middle school in Columbus, Ohio for eleven years. Her letter demonstrates keen insight into the respondent's character and gives an excellent summary of the situation in which respondent found himself in 1980, when he was released from the monastery. She says:

I met John when he was released from prison . . . and I have watched him slowly put his life back together, with little family support and no financial means. Upon release he immediately found work and was self sustaining shortly thereafter. . . .

When John was fourteen his parents sent him to a monastery. Even though John did not feel a calling to become a monk, his homelife was so unhappy, he decided anywhere was better than home. After spending nine years there, he was told he did not have the calling and was asked to leave. Unfortunately, the school was not accredited and so all his years of schooling there did not amount to any kind of degree nor could the credits be transferred. So at the age of twenty-three, John was on his own with no family support, no degree, no formal training and no financial means. . . .

John is an entirely different person from the young man he was. . . . and I have seen the transformation from the time he left federal prison to now. . . . I'm constantly amazed that he was able to emerge from that environment physically fine - drug free, in good health and that mentally, emotionally and spiritually he is really a better person. He has definitely learned from his experiences and wants to give back to society. His final dream, one that he has always had, is to become a teacher. . . . I have seen him with children and he will make a wonderful teacher. Having been an educator for almost twenty years, I also want what is best for the children of our nation. I would not jeopardize any child's future, even for the sake of my husband's dream. But I know that given the chance, John would have a powerfully positive impact on the lives of many children.

13. Respondent and his wife are not the only persons who believe that respondent would be a good teacher. Respondent has submitted seven (7) additional letters which strongly recommend him. They are found in Exhibits B, C, D, F, G, H and I. Excerpts from these letters shed further light on respondent's good character.

Exhibit B is authored by respondent's friend of seven years, Francisco Rios, Ph.D., who is an Associate Professor in the College of Education at California State University San Marcos. Initially, Professor Rios establishes that respondent has demonstrated one of the most important indicators of rehabilitation from criminal conduct, namely, recognition of the criminal nature of his conduct and acceptance of responsibility for his criminal actions. In this important regard, Professor Rios states:

At the outset let me say that John and I have talked about his life before he came to California. He talked at length about mistakes he made, reasons for those poor life decisions, but always with the courage to admit that he was, ultimately, responsible for those life mistakes. It would be easy to explain away his behavior, but he refuses to fault anyone other than himself for what happened. Equally important, he has worked to serve out the punishment associated with these mistakes without complaint. His revelation of past illegal behavior was a surprise because his present behavior demonstrates that of a person who is trustworthy, fair and just in his interactions. He has, without doubt, changed in the most affirmative ways.

Professor Rios then states that he has observed respondent interact with respondent's son and with the professor's own children. Respondent shows concern for the children and an interest in their welfare. In this regard, he says:

I have come to trust John completely with my own children for their education and their welfare, a trust I do not freely give.

14. Exhibit C is a letter from Antonette W. Wood, an Instructor in the College of Education at California State University San Marcos. She has known respondent for six years. She is aware of his criminal convictions. She speaks highly of his performance in several classes which she taught at Cal State San Marcos. She is also a friend and she has observed respondent's actions as a family man. She notes that he is devoted to his family. She strongly supports him in his quest to become a teacher.

15. Exhibit D is authored by Randi McDonnell, based upon her personal observations of respondent while he was in her classroom for the thirty-six hours of observation required prior to admission to the Teacher Credential Program at California State University San Marcos. Exhibit D is the form which Ms. McDonnell submitted to Cal State San Marcos upon respondent's completion of his classroom observation and assistance to the credentialed teacher. Ms. McDonnell strongly recommended respondent for admission into the Teacher education Program. In all fourteen categories in which respondent was analyzed on this form, he received an evaluation of outstanding. In her written comments, Ms. McDonnell states:

John demonstrates the personal and professional attributes of someone who loves learning, relating to others, and being challenged. He has the freshness and energy and receptivity of a student . . . yet he shows maturity, understanding, and flexibility necessary for teaching. My students enjoyed activities with John. I appreciated his keen observational skills and desire to learn to be a great teacher.

16. Exhibit F was written on respondent's behalf by Dawn M. Formo, an Assistant Professor, Literature and Writing Studies, College of Education at California State University San Marcos. Respondent has taken several classes taught by her. She has known him since the Fall of 1995. She strongly believes that respondent has the necessary skills to be an excellent teacher. She is aware of his criminal convictions. She also has pertinent observations concerning respondent's acceptance of responsibility for his actions. In Professor Formo's words:

In the 1980s, John committed Pell Grant Fraud, a crime for which he served time and for which he continues to pay restitution. John and I have spoken at length about his illegal actions. Three significant points continue to strike me as I recall our conversations: First, John assumes full responsibility for his illegal actions; second, John has thought deeply about his wrong-doings and changed his life accordingly; third, John has committed his spiritual, personal, and professional life to treating others with fairness and compassion and to respecting and enhancing institutional structures.

Professor Formo closes her letter with an unqualified endorsement of respondent, thus:

As a professor who has observed John inside the classroom with his peers and outside of the classroom with his younger son, I tell you honestly and wholeheartedly that the State of California would be proud to call John Goddard a teacher.

17. Janet E. McDaniel, Ph.D., is the author of Exhibit G. She is an Associate Professor of Education and the Coordinator of the Middle Level Teacher Education Program in the College of Education at California State University San Marcos. She has been a personal friend and colleague of respondent's wife, Laurie Stowell, since she arrived at Cal State San Marcos eight years ago. She has known respondent for the same period of time. They are good personal friends who have had frequent social and professional contact with each other for this extended period of time.

In her letter, Professor McDaniel first establishes her professional ability to judge the qualifications of teacher candidates:

I am a tenured Associate Professor of Education at California State University San Marcos, and I serve as Coordinator of the Middle Level Teacher Education Program here. I have taught hundreds of CSUSM teacher education candidates over a period of eight years. In that time, I have coordinated and had the final word on the admission

of candidates to the Middle Level Program and I have recommended (and chosen not to recommend) to our programs scores of students whom I have taught in a prerequisite course. I have had to counsel students out of our Middle Level Program and I have contributed to the decision to counsel students out of our Multiple Subjects Program from time to time. In short, I have demonstrated the capacity to exercise good judgment in the admission, retention, and dismissal of teacher education candidates in the State of California.

It is with this professional background that I speak on behalf of John Goddard, who wishes to become an elementary school teacher in California.

Thereafter, Professor McDaniel proceeds to set forth, in language more eloquent than is normally found in any formal legal decision, the reasons why respondent should be granted a Certificate of Clearance. She says:

Let me tell you what I know of John. He is an intelligent as well as persistent person-one who decided a few years ago to complete his dormant undergraduate degree in Liberal Studies and who made steady progress to that B. A.. while working full-time. He is a thoughtful and spiritual person-one who is committed to his own religious faith and yet is completely respectful of his wife's different religion. He is a responsible and gentle person-one who is the favorite baby-sitter and entertainer of children for the parents of youngsters in the College of Education faculty. He is a person of humor-one who makes you laugh when you are feeling low. He is the father of two boys who are the recipients of his deep and abiding love and care. John is a friend I call on when I need a hand, when I need advice, when I have an occasion to celebrate.

Will John make a good elementary school teacher? Should we entrust the children of California to his care for the purpose of achieving educational aims? Absolutely. Had John applied to the Middle Level Program, I would have had no hesitation about his character as a factor in admissions-only the conflict of interest with his wife as an instructor made this path out of the question for John. He demonstrates the qualities of an exemplary teacher: intelligence, common sense, persistence, caring, commitment, humor, responsibility, and morality. Did John make a serious mistake in his twenties? You bet. Did he accept his punishment for that mistake and pay restitution as ordered? Yes he did. Did he learn from his poor judgment; did he spend the next decade of his life making all the right judgments to once again become a contributing member of our society; did he marry a teacher and professor who herself meets the highest standards we could devise for one who teaches children and future teachers? Yes to all of these. In his forties now, John is as fine a person as one could wish to have join the teaching force of California.

18. Steve Lilly is the Dean of the College of Education, California State University San Marcos. He is the author of Exhibit H. He has known respondent for five years. He strongly believes that respondent will be an excellent teacher, as well as a credit to the teaching profession. He is aware of respondent's past record and he is convinced that respondent is a different person now than he was when he became adversely entangled with the law ten years ago.

Dean Lilly states:

... In my 30 years in teacher education, I have received multiple requests to intervene for candidates who were being denied either program completion or licensure clearance. In some of those cases I was supportive of the candidate, while in others I declined to offer my support. However, in all of those instances I was never as certain of my support and the reasons for it as I am with John Goddard.

John is a model citizen, an exemplary husband, father, employee, and student. He has distinguished himself as a person who has learned from his mistakes and seeks to help others through his life and his actions. Equally important is the fact that he is wonderful with children. I have watched John interact with children of all ages and I marvel at his ability to relate to them in ways that earn their trust and respect. Also, while I have not taught or observed him directly in the credential program, I have received glowing reports on his performance. . . .

I support John's request with complete confidence that my faith in him is well placed and that he will bring honor to the teaching profession.

19. Exhibit I is a letter from respondent's brother, Philip Goddard. He confirms the early trauma of respondent's childhood. Philip Goddard has seen the beneficial change which has occurred in respondent's life since his incarceration. Philip confirms that respondent has been a good person for many years. Philip notes that while respondent is no longer a member of the Christian faith, having been converted to Buddhism, nonetheless, Philip, who has remained a Christian, asked respondent to be his son's godfather.

Philip Goddard concludes his letter with these words:

John is now who he should have been had it not been for the sad misfortunes of his early years. He is happily married, and is a genuinely good person. He is not only my brother, he is my friend.

20. While respondent's July 28, 1987 conviction of the misdemeanor offense of passing a bad check, and his November 1, 1989 conviction of the felony offenses of conspiracy to defraud, use of a false social security number with intent to defraud, and making a false

statement on a loan application are crimes which involve moral turpitude, under the facts and circumstances of this case, and particularly in light of the number of years which have passed since their commission and the clear and convincing evidence of respondent's rehabilitation, they do not constitute cause to deny respondent's application, pursuant to Section 44345(e) of the Education Code.

The evidence which has been introduced in this case on behalf of the respondent clearly and convincingly establishes that respondent has been completely rehabilitated from the criminal conduct which he committed over thirteen (13) years ago. He has truly become a model citizen. The endorsements of the persons who know him well clearly attest to this. His present good character and his continued good conduct for many years last past is no longer subject to question. He has proven himself worthy of the faith which has been placed in him by Dean Lilly (Exhibit H). Granting him a Certificate of Clearance at this time will enable him to obtain his teaching credential. We can all look forward to his bringing honor to the teaching profession in the coming years.

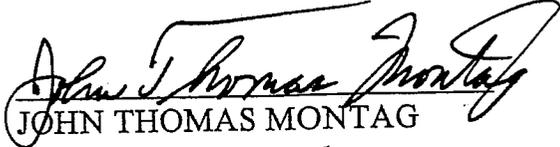
LEGAL CONCLUSION

Cause does not exist, pursuant to Section 44345(e) of the California Education Code, to deny respondent's application for the issuance of a Certificate of Clearance for having committed acts involving moral turpitude, in that said acts were committed more than thirteen years ago and the overwhelming weight of the evidence shows that respondent has been completely rehabilitated. This conclusion is based on Findings 1, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20.

ORDER

The application of respondent, John Joseph Goddard, for issuance of a Certificate of Clearance by the California Commission on Teacher Credentialing is hereby granted.

Dated: September 11, 2000


JOHN THOMAS MONTAG
Administrative Law Judge
Office of Administrative Hearings

BEFORE THE
COMMISSION ON TEACHER CREDENTIALING
STATE OF CALIFORNIA

In the Matter of the Denial of the) No. 154
Application for an Emergency) OAH No. L-1999120412
30-Day Substitute Teaching)
Permit Submitted by:)
)
STEELE CLARKE SMITH III)
[REDACTED])
)
Respondent.)

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Commission on Teacher Credentialing as its Decision in the above-entitled matter.

This Decision shall become effective July 15, 2000.

IT IS SO ORDERED June 8, 2000.

COMMISSION ON TEACHER CREDENTIALING
STATE OF CALIFORNIA

By 
SAM W. SWOFFORD, Ed.D.
Executive Director

btm

BEFORE THE
CALIFORNIA COMMISSION ON TEACHER CREDENTIALING

In the Matter of the Denial of the
Application for an Emergency 30-Day
Substitute Teaching Permit
Submitted by:

NO. 154
OAH NO. L 1999120412

STEELE CLARKE SMITH III


Respondent.

PROPOSED DECISION

John Thomas Montag, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on February 29, 2000.

S. Paul Bruguera, Deputy Attorney General, represented the California Commission on Teacher Credentialing.

Respondent, Steele Clarke Smith III, appeared on his own behalf.

Evidence was received. The record was left open to permit the parties to submit additional documents. Respondent submitted eighteen documents with an Exhibit List attached, which has been marked as Exhibit A and admitted into evidence as administrative hearsay. Deputy Attorney General Bruguera submitted argument in response to Respondent's Exhibit A. The record was closed and the matter was deemed submitted on March 27, 2000.

FACTUAL FINDINGS

1. Respondent, Steele Clarke Smith III, was born on July 30, 1968. He is presently thirty-one (31) years of age. In May 1992 he received a Bachelor of Arts Degree, with a Major in English, from the University of Southern California, in Los Angeles, California. At that time he was two months away from his twenty-fourth birthday.

2. On July 29, 1992, respondent was accepted for admission into Western State University College of Law at Fullerton, California, through its one-year, part-time Academic Support Program, commencing in the Fall 1992 semester (Exhibit A). As indicated in respondent's letter of acceptance from Western State: "This program is offered to a limited number of students whose academic and/or exam credentials are below that which enable us to predict success." (Exhibit A.) On April 13, 1993, respondent was forced to formally "drop" his courses at the law school because of legal proceedings against him in Federal Court, as discussed hereinafter.

3. On February 8, 1993, in the Municipal Court of the State of California, County of Orange, West Orange County Judicial District, in Case Number HBW238724PO, respondent was convicted, upon his plea of guilty, of a violation of Section 484/488 of the California Penal Code (Petty Theft).

The circumstances of this offense are:

On April 15, 1992, respondent accompanied his girlfriend (now his wife), Theresa Terry, to Golden West College, where she was employed, for a scheduled interview with her director. Theresa Terry's immediate supervisor had a desk which was located immediately outside the private office of the director. Theresa's supervisor knew that Theresa was to be terminated from her employment because of poor performance, but Theresa was apparently blissfully unaware of her imminent termination. Respondent waited outside the director's office while Theresa had her interview, during which she was indeed terminated from her employment.

Theresa Terry and respondent left the office, and the building, together. Once outside, Theresa obviously told respondent that she had just been terminated from her employment, for respondent suddenly burst back into the office, angrily seeking the director. The director, however, had already left the building. Respondent thereupon turned his wrath upon the supervisor. He cursed at her, and immediately thereafter, he swept his arm angrily across her desk, knocking everything which was on the desk to the floor. Respondent then grabbed the supervisor's name plate and left her office with the name plate in his possession. This name plate had been carved in wood for the supervisor while she worked for a company in the Philippines.

Six days later, the police telephoned the respondent concerning this incident. Respondent admitted being in the supervisor's office on April 15, 1992, but he denied creating a disturbance or knocking items from the supervisor's desk. He admitted that he had taken the supervisor's name plate but he claimed that he had simply placed it on a bench outside the supervisor's office.

Concerning this offense, respondent testified at the hearing herein that he had placed the name plate on a bench outside the supervisor's office. He further testified that he had told the police where it was, but when they searched for it, it was gone. He said that he was embarrassed

that he had taken the name plate. He stated that he was originally charged with disturbing the peace, but he pleaded guilty to petty theft of the name plate. It should be noted that in a written statement which respondent made to the Teacher Credentialing Commission May 12, 1999 (Exhibit 7) respondent gave a somewhat different version of this incident. In this statement, respondent admitted that he had berated the supervisor. He said that after he had given a "verbal admonishment" to the supervisor, he had taken "her wooden name plaque from the premises, in symbolic protest" and that he "threw the name plaque in the trash bin outside the office where she worked and went home."

4. Two weeks later, on February 22, 1993, in the United States District Court for the Central District of California, in Case Number CR 92-756-WDK, respondent was convicted, upon his plea of guilty, of a violation of Section 472 of Title 18, United States Code, knowingly possessing, with intent to defraud, approximately \$9,360.00 in counterfeit 20 dollar Federal Reserve Notes.

The circumstances of this offense are:

On or about July 22, 1992, respondent was in possession of \$9,360.00 in counterfeit 20 dollar Federal Reserve Notes. On that date respondent gave these counterfeit bills to an undercover United States Treasury Agent, from whom respondent had expected to receive 40% of their face value in genuine Federal Reserve Notes.

In his testimony at the hearing concerning this offense, respondent contended that he was only twenty-one years old at the time he committed this crime. (In fact, he was twenty-four years old.) He was working with some friends in organizing Rave concerts. This involved renting a vacant warehouse, scheduling bands and disk jockeys, and advertising and selling admission tickets to teen-agers and young adults. The admission fee was \$20.00. Respondent paid 50% of the expenses "up front" and he was to pay the remaining 50% after the event had concluded.

Respondent further testified that over several week-ends he had received a number of counterfeit 20 dollar bills, which had been given to him for the admission fee to the Rave event. He testified that, in this manner, he came into possession of \$5,000.00 in counterfeit money. He owed money to various people who had provided services for the concerts and he was under threat of bodily harm to himself if he did not pay these bills. He testified that he believed he would be subject to physical violence if he did not pay these bills.

Respondent further testified that one of his business associates told respondent that he knew someone who could get him 40 cents in legal tender for every dollar of the counterfeit currency. Respondent gave \$1,000.00 of the counterfeit bills to this person to exchange for legal tender. The person to whom he gave these bills was a confidential informant, who soon made arrangements for respondent to turn over the remaining counterfeit money to another person.

who was a Treasury Agent. Respondent testified that he gave the remaining bills, which amounted to \$3,600.00, to the Treasury Agent. Immediately, respondent was arrested.

It must be noted that respondent testified at the hearing that he had only passed a total of \$4,600.00 worth of counterfeit bills to the Treasury Agent. In his May 12, 1999 written statement to the Commission, however, which is Exhibit 7, once again, respondent gave a different version of this incident. He stated:

After graduation, I moved to Hollywood and took a job as a law clerk at a local Law Firm during the day. On weekends I operated several one night only dance parties. Unfortunately for me, the 'rave' industry was rife with crime. One fateful weekend I received approximately ten thousand dollars in counterfeit U. S. 20-dollar bills, in consideration for many admission tickets. The next day, when I realized the money was bogus, I asked an associate if he knew any way to 'launder' the 20-dollar bills and I gave him a few samples, shortly after, he was arrested by the U. S. Secret Service. He turned informant and arranged a single purchase for the balance of the bogus currency. I was arrested, along with my accomplice (now my wife, Theresa Ann Smith), by the U. S. Secret Service.

5. Respondent testified that he was sentenced to serve nine months in incarceration at the Federal Penitentiary in Lompoc, California. He commenced serving his sentence on April 22, 1993. After completing five months of his sentence, he was released from prison under supervised-release for a period of three years. Inter alia, respondent was to participate in a program for the treatment of narcotic and/or alcohol addiction or drug dependency; to refrain from using narcotic or other controlled substance; and to reside in a community corrections center for five months, observing the rules of said facility.

In April 1994, respondent was charged with violating the following terms and conditions of his supervised release:

- a. Testing positive for use of marijuana on January 26, 1994, February 28, 1994, March 17, 1994 and March 29, 1994.
- b. Being unfavorably discharged from the Court Ordered substance abuse program on April 14, 1994.
- c. Failing to provide verification of employment for the period from March 8, 1994 to April 8, 1994.
- d. Failing to abide by the established schedule of his home confinement facility on February 6, 1994, March 11, 1994 and March 12, 1994.

Respondent was returned to court on these charges. He admitted to the Court that he had violated the terms and conditions of his Judgment and Probation/Commitment Order of February 22, 1993. Respondent was thereupon committed to the Bureau of Prisons for three months, commencing on July 15, 1994. On October 13, 1994 respondent was again released from the Federal Penitentiary. According to respondent, he was then completely free, the additional three months confinement having satisfied his three years of supervised release.

Respondent testified that his violation of the terms of his supervised release was deliberately done in order to set him free from the supervision of an unreasonable Probation Officer. Respondent stated that his wife was being supervised by the same Probation Officer who had been assigned to his case, and this Probation Officer had been making life miserable for his wife, having already cited her for violation of probation on ten separate occasions. His wife had been brought back to court for violation of probation and she was able to terminate her three years of supervised release by serving three additional months in prison.

Respondent testified that he contacted his attorney to inquire about this occurrence in his wife's case and his attorney told him that there was such a "loop hole" in the law which allowed this to happen. Accordingly, respondent, allegedly with the advice of his attorney, initiated a course of action which would violate the terms of his probation, but which would not involve the commission of any new, serious criminal misconduct. Thereafter, although he did not like to smoke marijuana, respondent valiantly undertook to do so, in order to have a positive drug test for his probation report. At the hearing, he lamented the fact that he was obliged to do so on four separate occasions before he could entice his Probation Officer to formally charge him with violation of his probation. In his May 12, 1999 statement (Exhibit 7) respondent stated that he had traded one month of confinement for each year of probation. In his words: "This trade would, in three months, eliminate three years of government intrusion in my life." The wisdom and propriety of respondent's actions in this regard are subject to serious doubt.

6. On April 2, 1997, respondent signed an Application for Credential Authorizing Public School Service and submitted it to the Commission. The credential which he sought was an Emergency 30-Day Substitute Teaching Permit. An Emergency 30-Day Substitute Teaching Permit authorizes the holder thereof to serve as a day-to-day substitute teacher in any classroom, including pre-school, kindergarten and grades one through twelve, inclusive, and is valid for one year. The holder of such a permit may not serve as a substitute for more than 30 days for any one teacher during the school year.

Respondent's Application was denied by the Commission on the grounds that respondent's actions in connection with his two criminal convictions, both of which involved moral turpitude, constituted conduct which render him unfit to teach. Respondent appealed the Board's denial of his application for a teaching permit.

7. On August 19, 1999, Sam W. Swofford, Ed.D., signed the Statement of Issues herein in his official capacity as the Executive Director, California Commission on Teacher Credentialing, seeking to have respondent's application for a 30-Day Substitute Teaching Permit denied. The ground for seeking denial of respondent's application is that respondent has committed acts involving moral turpitude, as evidenced by his two criminal convictions, which conduct renders him unfit to teach.

8. The Statement of Issues was duly served on respondent. Respondent timely executed his Notice of Defense on November 1, 1999 and caused it to be appropriately filed with the Commission. The case was finally brought to hearing on February 29, 2000.

9. Section 44345(e) of the California Education Code provides that the Commission may deny the application for issuance of a credential made by an applicant who has committed any act involving moral turpitude. The 30-Day Substitute Teaching Permit for which respondent has applied is a credential within the meaning of Section 44345(e), pursuant to the provisions of Section 80300(g) of the Education Code.

Clearly, respondent's February 22, 1993 conviction of the federal crime of knowingly possessing, with intent to defraud, approximately \$9,360.00 in counterfeit 20 dollar Federal Reserve Notes, and his February 8, 1993 conviction of Petty Theft, under the circumstances set forth in Findings 3 and 4, above, are crimes which involve moral turpitude. This constitutes cause to deny respondent's application, pursuant to Section 44345(e) of the Education Code.

10. Respondent's older brother has been teaching as a substitute teacher in Special Education classes since September 1998. He testified on behalf of respondent. He believes that respondent could be a good influence on children. He believes that respondent's past mistakes would enable him to prevent the children whom he might teach from making the same mistakes which the respondent made.

Respondent's brother testified that he has observed his brother change and become a better person since his criminal convictions. In his younger years, respondent was egotistical and selfish. Now respondent is more aware of his obligation to give something to his community. Respondent has done some volunteer work at church and school.

11. Respondent's sister-in-law also testified on his behalf. She is a credentialed teacher with six years of teaching experience. She teaches first grade. She has known respondent since the sixth grade. She said that respondent's experiences in court and prison have humbled him. She testified that respondent is remorseful for his illegal actions. She had visited him in prison on week-ends, at which times he had expressed regret for what he had done.

After respondent was released from prison, she noted a change in him. He began to live a clean life. She does not see him drink alcohol any more. She sees him at least once a week. The

family, including respondent's wife, his mother and his father, go out to dinner together frequently. Respondent has the support of his entire family.

12. In his testimony at the hearing, respondent established that he has made a success in legitimate business enterprises since his release from prison. He has obtained and marketed several patents. Concerning his conviction involving counterfeit money, he gave a confusing explanation. Initially, he stated that he never intended to defraud anyone. Then he admitted that he did intend to convert it into legitimate currency, but that he had attempted to do so only to protect himself from bodily harm.

Respondent wants to have a permit to teach because he likes children and other members of his family are teachers. He stated that sharing knowledge with children is one of the greatest rewards which anyone can receive. He said that the Magnolia School Board hired him even after he had revealed his criminal record. Respondent related that he was ashamed of his actions and that he is extremely remorseful for having committed such crimes. He attributes his mistakes partially to his youth, stating that he was only twenty-one years old when he committed them. He says that he has matured since then and that he is now a completely different person.

Concerning the actions which he has taken to rehabilitate himself since his involvement in criminal activity, respondent stated that he has completed two years of law school. He volunteers at a church near his home and he volunteers to assist children after school with their homework. The only detail which he gave concerning the church volunteer work was that he had worked at the church fair. Concerning the volunteer work at school, he stated that he had done so six times within the last year.

13. The record was left open in order to allow the respondent the opportunity to submit documentation concerning his volunteer work, documentation of his attendance at law school and letters of reference on his behalf. Respondent had indicated at the hearing, for example, that he had the support of a member of the School Board in one of the school districts. Respondent was advised that any letters of recommendation which he could obtain from responsible members of the community, such as a School Board Member, would be of value in his case. Respondent also stated he had received counseling from a psychologist. He was advised that a narrative report from the psychologist would also be of value in assessing his rehabilitative efforts since his convictions.

Exhibit A was received from respondent as the requested documentation of his rehabilitation. This document is of little probative value. There are no current letters of recommendation. Instead, respondent has submitted photocopies of four business cards. Two of the cards are for the same person, who is a member of the Anaheim Union High School District. Respondent has indexed these four business cards as "Copies of business cards of people who know me." These photocopies of business cards of people who know the respondent are of absolutely no probative value concerning respondent's alleged rehabilitation.

Similarly, the letter from respondent's psychologist, included in Exhibit A, can be easily quoted, for it comprises only three lines, as follows:

Steele Smith has been under my care since December of 1996. He has attended therapy sessions on an as needed basis during that period. He has been a motivated patient and has always appeared sincere in his efforts.

This report offers virtually no insight into respondent's efforts at rehabilitation and his success in such a pursuit.

Also included in Exhibit A is documentation concerning respondent's law school career. It reveals that he commenced law school in the fall of 1992, commencing August 26, 1992. He discontinued his law school classes eight months later, on April 13, 1993. He was to return to law school in the Spring of 1994. A letter concerning his erroneous dismissal, dated July 19, 1994, seems to indicate that respondent had returned for the Spring semester, but there is no documentation beyond that date. Accordingly, only one year of law school is documented and not the two years which respondent claimed to have completed.

Indeed, much of respondent's testimony is of the same imprecise and contradictory nature. For example, concerning the infamous name plate belonging to his wife's supervisor, he testified that he had taken the name plate and put it on a bench outside the supervisor's office. His May 12, 1999 letter to the Commission, however, clearly states that he threw the name plate into a trash bin. (Exhibit 7.)

Similarly, in his testimony at the hearing, respondent stated that he possessed only \$4,600.00 in counterfeit money. In his May 12, 1999 statement to the Commission, however, respondent stated that he had "received approximately ten thousand dollars in counterfeit U. S. 20-dollar bills."

Further, respondent testified that he was only twenty-one years old when he committed the acts which led to his criminal convictions, attributing his mistakes to his youth. In fact, he was nearly twenty-four years of age at the time of his criminal activity.

Respondent, unfortunately, fails to understand the concept of rehabilitation. The mere passage of time without sustaining another criminal conviction, standing alone, does not demonstrate rehabilitation. While it does appear that respondent is on the right path to full rehabilitation, he has not yet completed his journey. The unexplained discrepancies between his testimony and his prior written statements is one indication that his rehabilitation is not complete. Further, while he may now be a successful business entrepreneur, he needs to become more involved in community and charitable activities, and be able to document such involvement. It is respondent's burden to prove that in spite of his prior criminal activity, he is now fit to

teach. He has not sustained that burden at this time. Accordingly, his application for a teaching permit must be denied.

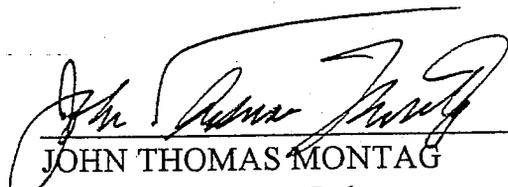
LEGAL CONCLUSION

Cause exists to deny respondent's application for an Emergency 30-Day Substitute Teaching Permit, pursuant to Section 44345(e) of the California Education Code, in that respondent has committed acts involving moral turpitude, as evidenced by his conviction of the crime of knowingly possessing, with intent to defraud, counterfeit Federal Reserve Notes, and his conviction of the crime of Petty Theft, by reason of Findings 3, 4, 5, 6, 9, 12 and 13.

ORDER

The application of respondent, Steele Clarke Smith III, for an Emergency 30-Day Substitute Teaching Permit is denied.

Dated: April 21, 2000


JOHN THOMAS MONTAG
Administrative Law Judge
Office of Administrative Hearings