1969

In Re: George E. Bridwell, Disciplinary Proceeding : Brief of Appellee

Utah Supreme Court

IN THE

SUPREME COURT

OF THE

STATE OF UTAH

IN RE:
GEORGE E. BRIDWELL,
Disciplinary Proceeding

Case No.
11546

BRIEF OF APPELLEE

Appeal from Findings and Conclusions of Disciplinary Committee, Utah State Bar and Recommendation of Board of Commissioners Utah State Bar

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NATURE OF CASE

This is an appeal by a Utah attorney from an order by the Utah State Bar Commission recommending disbarment.

DISPOSITION BY COMMISSION

After a hearing before a three man Disciplinary Committee which made Findings of Fact and a Conclusion of Law to the effect that the attorney had violated the rules of the Utah State Bar governing professional conduct, the Utah State Bar Commission reviewed same and entered an Order recommending disbarment.

RELIEF SOUGHT BY APPELLEE

The appellee seeks affirmation of the Bar Commission's recommendation and an Order disbarring the appellant.

STATEMENT OF FACTS

Following is a panoramic view of the facts to give the Court a general picture of the problem. As the specific Findings of Fact of the Disciplinary Committee are discussed, the essential facts will be treated in greater detail.

In 1957, the complainant, Eugene Wagner, acting for himself and Precisa Calculating Machine Company, a distributor of adding machines and orthopedic knees, engaged Bridwell to represent them in connection with charges brought by the Internal Revenue Service (R. 32). The company operated an office in Salt Lake City (R. 31). It was a small corporation whose principal stockholders were an orthopedic appliance factory in Basel, Switzerland, its president and Wagner (R. 34). Wagner, a Swiss national converted to the Mormon faith, has been doing business in Salt Lake City in connection with Swiss and American companies since 1948 (R. 28-32).

Shortly after Wagner and Precisa received deficiency notices from the Internal Revenue Service, Wagner returned to Switzerland to check the books of his company there (R. 32-3). On advice of Bridwell, who was apprehensive of fraud implications in the Internal Revenue Service charges, Wagner remained in Switzerland for the next four years (Exs. 1, 2, 5, 10, 16 and M). Bridwell took over the management of the company in Salt Lake and soon became the sole custodian of its bank account.

The Internal Revenue Service proceeded with its project. Bridwell negotiated and the cases were all ultimately settled by May 29, 1961, except Wagner's personal case involving his 1957 taxes, which was settled October 9, 1961 (R. 436).

Initially Bridwell agreed to handle the cases through the

administrative process for the sum of $14,000 (Ex. 1). Between the fall of 1957, however, and September of 1958, he paid himself out of the Precisa bank account which he controlled, the sum of $19,425.00, taking the extra $5,425.00 without knowledge or permission of Wagner or Precisa (Ex. F; R. 429, 70).

In October, 1958, Bridwell withdrew from Precisa funds another $4,000.00 without the knowledge or permission of his clients, ostensibly to finance a trip for himself and his accountant, Frank Nielson, to Basel, Switzerland, to consult with Wagner and examine books and records there (R. 352; Ex. C).

Bridwell and Nielson worked in Basel for approximately three weeks. By this time the company was not operating and had no income. No financial statement was submitted to Wagner (Ex. 6). He was not told how much remained in the dwindling bank account. Bridwell asked for additional fees over the $14,000.00 and was authorized to withdraw an additional $3,000.00 to give him a total of $17,000.00 (R.70). He did not reveal that he had already withdrawn $23,425.00.

By May, 1959 or earlier, the bank account was entirely depleted (Ex. 5).

Precisa was buying a building in Salt Lake on contract. When the cash was gone, the contract payments lapsed and the mortgagee foreclosed (R. 364; Ex. 19B, 5). Bridwell persuaded the mortgagee to give Precisa an option to repurchase at the same contract price. Then he arranged the sale of the option to his close friend and client, Robert Schubach, who purchased the property in 1959 (Exs. 16, 17, 5, 19B).

In May, 1961, he informed Wagner for the first time of the disposition of the property which had been accomplished two

years before (Ex. 5). Wagner was furious (Ex. 6). He thought the payments were still being made. In October, 1961, after settlement of all the tax cases had been achieved, Bridwell urged Wagner to borrow money in Switzerland so that he could buy the property back from Bridwell at a cost of $45,000.00 (Ex. 16). Schubach had bought it for $22,277.10. On October 29, 1961, when Bridwell informed Wagner it was safe to return to Salt Lake because the tax cases had been settled (Ex. 17), Wagner did so and had to pay Schubach $35,000.00 to repurchase the building instead of $22,277.10, the price at which he could have purchased it under the option agreement (Ex. 47). Schubach had put some money into the property, but still made a profit of $10,537.82 (R. 397).

Meantime the assets of Precisa had been sold by the Internal Revenue Service to satisfy tax deficiencies, and when the cases were settled, the government sent Precisa a refund check of $15,520.70 to Bridwell on October 9, 1961. Without the knowledge or assent of Precisa or Wagner, Bridwell disbursed the refund as follows: $1,392.34 to pay taxes of certain Precisa Redwood Road property, $6,700.00 to his accountant, Frank Nielson, and $7,428.36 to himself as additional attorney's fees (Ex. 36). He did not inform Wagner or Precisa of the receipt of the refund until Wagner's return to Salt Lake in November, 1961 (R. 204, 376). Then he did not divulge its disbursement, but claimed that it was in an attorney's trust account in his office (R. 204). Wagner asked that it be placed in a Precisa Corporation checking account requiring his and Bridwell's signatures (R. 204). When this was not done, Wagner hounded Bridwell for an accounting of the refund (Ex. 41), but it was not until October 29, 1962, after Wagner had hired another attorney to represent him against Bridwell and threatened to report Bridwell to the Bar Association (Ex. 42) that Nielson,

Bridwell's accountant, sent Wagner a letter listing the threefold distribution of the $15,520.70 (Ex. 36).

Bridwell states that in midsummer of 1961, he became "assured" that all of the tax claims would be settled (R. 358). As a matter of fact, all of the cases against the corporation and Wagner except Wagner's 1957 taxes were settled by May 29, 1961 (R. 435) and Wagner's 1957 case was settled early in October, 1961 (R. 436). Bridwell cabled Wagner three times demanding $2,000 to finance another trip to Basel. He finally threatened Wagner that if he did not send the money, Wagner might be exiled for life from the United States (Ex. 14). Wagner finally sent the money (Ex. 15) and Bridwell went to Europe alone in September, 1961. Wagner was furious that the corporation's cash and building were gone and he accused Bridwell of stealing money (R. 362). Bridwell convinced him that in order to settle the tax cases, (which were already settled,) Wagner and all of the officers of Precisa would have to execute corporate stockholder's meeting minutes which ratified the sale of the building to Schubach and absolved Bridwell of any wrongdoing in connection with his representation of Wagner and Precisa (Ex. 19B, 21). Under pressure Wagner and his colleagues signed minutes prepared by Bridwell (Ex. 21).

In the course of Bridwell's handling of things "at home," he committed other irregularities: (1) He bought a valuable Wagner-owned chandelier which the government was going to sell at auction and gave it to Robert Schubach's father (R. 388-9); (2) he got a bar built in his basement at the expense of Precisa (R. 408-9); and (3) he took funds collected by Dun & Bradstreet for Precisa and deposited them in his own personal bank account instead of the corporation account (R. 400, 380-1; Exs. 27, 28, 28A, 29, 30, 31).

ARGUMENT

POINT I

THE DELAY HAS NOT PREJUDICED THE APPELLANT AND DOES NOT REQUIRE DISMISSAL.

Mr. Bridwell's claims regarding deprivation of speedy trial and laches are adequately negatived by this court's opinion and decision in the case of *In re Steffensen*, 78 P.2d 531, 85 Utah 380 (1938). In that case an attorney collected $60.00 for a client and retained it, claiming as justification (1) that the client owed him additional fees, (2) that he could not locate the client, and (3) the client's delay in instituting the action through the bar constituted laches and unreasonable delay.

The attorney's own admissions eliminated the defense that he had not been able to contact his client. The attorney collected the money on November 11, 1930. The complaint by the Bar Association was filed in May, 1935. With regard to the issue of laches and delay, the court said:

> "In so far as the defense of laches pleaded in defendant's answer is concerned, we do not find it sustained by the facts in the record. As soon as the collection by the attorney was known to the client, the latter was reasonably active thereafter in bringing forward his insistence upon a settlement from the attorney. When his own efforts failed, he enlisted the friendly efforts of other attorneys and the county attorney's office. When a man has employed and paid one attorney to make a collection, he does not need employ and pay another attorney to collect from the first in order to demonstrate an earnestness and sincerity in desiring to get possession of his own money. The matter was kept before Mr. Steffensen's attention, if not constantly, at least with reasonable continuity from the time it

> was known he had collected on the Pingree claim. Such delay as occurred, in pressing the claim, was due to or contributed to by the attorney's own necessitous circumstances and was largely in his interest. If he lost files, or his memory has dimmed because of the delay, it would seem to be a misfortune against which he might have guarded by a reasonable appreciation of the outcome of his failure to account for and pay what was due to his client."

In the case at bar the analogous fact exists that as soon as the client, Mr. Wagner, returned to the United States from Europe and discovered what he believed to be the unprofessional conduct of his lawyer, he "was reasonably active thereafter in bringing forward his insistence upon a settlement from the attorney." In fact, he was more than "reasonably active." According to Mr. Bridwell's own brief: "After the building transaction had been completed (December 11, 1961), Wagner came to Bridwell's office and made accusations of embezzlement. Bridwell told him to get out." (App. Br. p. 21). By letter of September 24, 1962 (Ex. 24) Wagner warned Bridwell that if he did not account for cash of the corporation in his possession, he would complain to the Bar Association.

Consequently, under the rationale of the *Steffensen* case, Bridwell certainly had vigorous notice of the wrongdoing charged. He had opportunity at that time to rectify the misconduct of which he was later found guilty by the Disciplinary Committee and the Bar Commission. He had unmistakable warning at that time that he could anticipate criminal, civil or disciplinary action, and he had ample opportunity to assemble and preserve any evidence which might assist him in his defense.

On May 6, 1963, he was informed of the letter of complaint which had been filed against him. This is only a year and a half after Wagner accused him of embezzlement. That was not

too late for him to have assembled and preserved whatever evidence he could in preparation for his defense.

Bridwell has not been prejudiced by any delay of prosecution.

There is an abundance of authority declaring that a disbarment proceeding is not affected by a statute of limitations unless a specific statute has been enacted to cover such proceeding.

> "b. *Limitations and Laches.* General statutes of limitations are not applicable to disciplinary proceedings, although staleness of a charge may prevent its being considered. Special statutes, if valid, will bar the prosecution of such a proceeding.
>
> "The general statute of limitations is no defense to a proceeding for the disbarment or suspension of an attorney, nor will the courts establish a limitation as to the time in which such proceedings may be instituted by analogy to the statute of limitations unless, from the nature or circumstances of the particular case, it appears that it would be unjust or unfair to require the attorney to answer as to such occurrences.
>
> "Staleness in a charge against an attorney may prevent its being considered, because an unreasonable delay in the presentation of a charge of misconduct may make it impossible for an attorney to procure the witnesses or the testimony which would have been available at an earlier time to meet such charge. However, the court will not refuse to hear charges of unprofessional conduct against an attorney because of expiration of long period of time unless it would be unjust to compel him to answer such charges." 7 C.J.S., Attorney and Client, §25b, p. 766.
>
> "62. *Limitations and Laches.* Disciplinary proceedings are not barred by the general statute of limitations.

Nor is a disciplinary proceeding barred because it is grounded on acts that also constitute a crime that cannot be prosecuted in a criminal action because of limitations. However, proceedings instituted a long time after the commission of the act complained of are regarded with disfavor." 7 Am. Jur. 2d, §62, p. 86.

"It seems, however, that, except in the few states which have enacted specific statutes on the subject, there is no limitation on the time for instituting disbarment proceedings, except the inherent power of the court to refuse to hear an application to disbar which has been unreasonably delayed, a subject not within the scope of the present discussion.

"It has been said generally in several cases that the ordinary statutes of limitations have no application to a disbarment proceeding. Re Lowenthal (1889) 78 Cal. 427, 21 Pac. 7; People ex rel. *Stead v. Phipps* (1913) 261 Ill. 576, 104 N.E. 144; Re Elliott (1906) 73 Kan. 151, 84 Pac. 750; Re Leonard (1908) 127 App. Div. 493, 111 N.Y. Supp. 905, affirmed in (1908) 193 N.Y. 655, 87 N.E. 1121; State ex. rel. *Grievance Committee v. Woerndle* (1923) 109 Or. 461, 209 Pac. 604, 220 Pac. 744; Wilhelm's Case (1921) 269 Pa. 416, 112 Atl. 560.

"The statutory bar against actions at law has no application to a proceeding for disbarment. Re Simpkins (1915) 169 App. Div. 632, 155 N.Y. Supp. 521.

" 'The same principles which authorize the court to entertain charges against an attorney of violating his professional duties, irrespective of any civil or criminal proceedings against him, render the bar of the Statute of Limitations against a civil or criminal proceeding an immaterial element.' Ex parte Tyler (1895) 107 Cal. 78, 40 Pac. 33.

" 'The Statute of Limitations has no application to delinquencies such as have been shown to exist. The court

in such cases, will consider any unexplained, unreasonable delay in presenting the charges, and also whether, by reason of such delay, the accused has been deprived of a fair opportunity of securing proof to meet the accusation; but the proceeding for the disbarment of an attorney is not barred by the express terms of the Statute of Limitations, nor will the courts establish a limitation as to the time in which such proceedings may be instituted, by analogy to the Statute of Limitations, unless, from the nature of the circumstances of the particular case, it appears that it would be unjust or unfair to require the attorney to answer as to such occurrences.' People ex. rel. *Healy v. Hooper* (1905) 218 Ill. 313, 75 N.E. 896.

"'It is contended that the proceeding was barred by some statute of limitations, but the accused points out no particular limitations applicable to cases of this character. Staleness in a charge against an attorney might prevent its being considered, because an unreasonable delay in the presentation of a charge of misconduct might make it impossible for an attorney to procure witnesses or the testimony which would have been available at an earlier time to meet such charge; but the Statute of Limitations itself is no defense to such a proceeding.' Re Smith (1906) 73 Kan. 743, 85 Pac. 584." Annotation, ***Statutory Limitation of time for disbarment proceeding,*** 45 A.L.R. 1111.

It is clear, therefore, in this case that the defense of the statute of limitations is not available to Mr. Bridwell.

POINT II.

THE FINDINGS OF FACT OF THE DISCIPLINARY COMMITTEE ARE SUPPORTED BY SUBSTANTIAL EVIDENCE AND THE CONCLUSIONS OF LAW ARE CORRECT.

This court in the case of *In re Macfarlane,* 350 P.2d 631, 10

Utah 2d 217(1960), defined its position with regard to the review of Bar Commission findings:

> "(3, 4) It is true that this court would not follow the finding and recommendation of the Commission if it appeared to be arbitrary, nor unless it was supported by substantial evidence. But it is quite impractical to expect that there be a review of the mental process by which the conclusion was arrived at. We are not concerned with the niceties of the term 'presumption' but with a survey of the foundational facts and whether reasonable minds might regard the overall picture as meeting the required standard of proof that respondent engaged in unprofessional conduct.
>
> * * *
>
> "(5, 6) On this problem it is relevant to observe that the propriety of the questioned conduct must necessarily be directed to the good conscience and ethical and moral standards of members of the Bar, and that the Bar Commissioners as its elected representatives are peculiarly suited to be the arbiters of such standards. They are vitally concerned with the general conduct of the Bar and its public relations and are also seriously concerned with a charge against a fellow member such as that involved in the instant proceeding.
>
> "It is basic that the responsibility is upon the Bar and the courts to supervise those licensed to practice and to disbar, suspend or discipline those guilty of infractions of proper standards because the practice of law is not a right accorded all citizens, but is a privilege extended only upon showing good character, meeting required qualifications and maintaining proper professional standards. In the prudent exercise of the power to discipline in order to maintain such standards lies the protection of the public and of the Bar itself.
>
> "(7) We accept the fact that the final responsibility

is upon this court and that this involves more than mere rubber stamp endorsement of the actions of the Commission. Nevertheless, because of the considerations just discussed, we deem it discreet and proper to indulge considerable latitude to the actions and judgment of the Commission in such matters and would not disregard its finding and recommendation in the absence of some persuasive reason for doing so."

The writer submits that the Findings of Fact made by the Disciplinary Committee and affirmed by the Bar Commission are supported by substantial evidence. There is no "persuasive reason" to disregard the Commission's Findings. Based on the standard set by the *Macfarlane* case, the Findings and Conclusions should be sustained.

A. *Threats and Coercion*

The Commission's first Finding was:

> "a. That the attorney in the cablegrams and letters offered in evidence, used threats and coercion without explanation to extract an additional $2,000.00 fee; that no emergency circumstances existed justifying the coercion exercised (See exhibits 10, 11, 12, 13, 14, and 15)."

The Finding is supported by Exhibits 10, 11, 12, 13, 14 and 15. Exhibit 10 is a cablegram from Bridwell to Wagner, dated August 3, 1961, in which Bridwell states:

> "Received your letter of July 26 and contents noted under no circumstances are you to return now new developments make mandatory you send two thousand dollars to me at once personal conference urgent and imperative further letters useless your continued total confidence necessary or I must withdraw."

Bridwell does not hint at what the new developments are

and indicates he will withdraw as counsel unless the money is sent.

Exhibit 11 is a letter dated August 3, 1961, from Wagner in Switzerland to Bridwell in Salt Lake City in response to the cablegram. Wagner refuses to send the $2,000 but asks Bridwell to come to Basel for a Conference. He requests that Bridwell send him annual reports of the corporation for 1958-59-60 and a copy of the final settlement with the government on the tax case. It is remarkable that Bridwell would ask for another $2,000 after he had completely depleted the corporation's bank account and yet not given his client an annual financial report for three years.

Exhibit 12 is another cablegram, dated August 8, 1961, from Bridwell to Wagner reading:

> "August 3rd letter received and noted imperative for many important reasons you send 2000 dollars at once you will fully agree when I see you."

In the five days between the first and second cablegrams, Bridwell had not seen fit to write Wagner a letter and describe any of the "many important reasons" why Wagner should send $2,000 "at once".

Exhibit 13 is an undated letter from Wagner to Bridwell in response to the second cablegram stating that he can't send $2,000 because he does not have it. He advises he would borrow the money from the bank if Bridwell would send him "detailed information what the money is intended for," so that he could explain the need for the loan to the bank. He writes: "The Utah corporation must have assets" and suggests Bridwell take $2,000 from the corporation account and charge it to him. Though the corporation account had been depleted approximately two

years before, Bridwell still has not informed him that the corporation is without funds. Again Wagner requests the annual reports.

Exhibit 14 is an insulting, intemperate, threatening cablegram sent by Bridwell to his client:

> "Letter of August eighth received and noted you don't seem to understand English language no more argument or excuses or you may loose [sic] five years of work and gain a life of exile do exactly repeat exactly as stated or forget it and I will then later be at liberty to write you full details on why your house of cards fell."

Never did Bridwell in his testimony delineate what the emergency was that required him to demand $2,000 from his client without explanation for its need.

The committee's Finding of Fact is abundantly supported by the exhibits.

B. *Failure to Account for Sums Received*

1. *Dun and Bradstreet Collections.*

Wagner delivered to Bridwell certain accounts receivable of the Precisa Calculating Company to be collected. Bridwell turned them over to Dun and Bradstreet for handling. Bridwell testified that:

> "I recall Dun and Bradstreet was collecting the accounts. That is all I can recall about it. I do recall that upon occasion I would get money in the office, checks. I assume they are from collections. . . . I would take them down to the factory, down to the plant, and give them to whoever was there, or if I didn't happen to be dropping by there, I would mail them to Farmers State Bank." (R. 379-80).

Bridwell was shown Exhibit 28, a check from Dun and Bradstreet to Precisa Calculating Machine Company for $225.50, Exhibit 29 for $79.00 and Exhibit 30 for $78.44. All three had been endorsed by Bridwell and deposited in his account at Valley State Bank (R. 216-7; Ex. 44). Bridwell conceded the endorsement signatures were his (R. 380) and the checks themselves reveal that they were deposited in the Valley State Bank in 1958 and 1959. Precisa had not had an account in that bank since 1952. Bridwell admitted that he did have an account in that bank at the time the checks were deposited (R. 400). He had no recollection of the checks or of making the deposits and supplied no evidence of ever having accounted for that money to Precisa or Wagner (R. 380-1).

Rule II, Section 23, of the Revised Rules of Professional Conduct of the Utah State Bar provides as follows:

> "Section 23. An attorney and counselor receiving money or property of his client in the course of his professional business, shall pay or deliver the same to the person entitled thereto within a reasonable time, unless he has just cause for retaining it."

Rule III, Section 32.11, provides:

> "The lawyer should refrain from any action whereby for his personal benefit or gain he abuses or takes advantage of the confidence reposed in him by his client.
>
> "Money of the client or collected for the client or other trust property coming into the possession of the lawyer should be reported and accounted for promptly, and should not under any circumstances be comingled with his own or be used by him."

Certainly the handling of the above described checks constituted a violation of those rules.

2. *Failure to Account for the Use of the $4,000.*

The second paragraph of the second Finding of Fact reads in part as follows:

> "That the attorney with authority to incur the expenses of a trip to Switzerland, took $4,000.00 of the repayment made by Metropolitan Finance Company and used this money for that trip, and thereafter never made any accounting to his client itemizing the expenditure of the $4,000.00."

In the fall of 1958 Bridwell and his accountant, Nielson, went to Basel, Switzerland, to confer with Wagner (R. 350-1). Prior to taking the trip, he did not have any communication with Wagner concerning expenses for the trip (R. 351). Sometime after Wagner went to Europe in 1958 and left Bridwell in charge of Precisa's bank account, Bridwell withdrew $10,000 from the account and loaned it to Metropolitan Finance Company (R. 399; Ex. 26), a company operated by his friend and client, Robert M. Schubach, who was the company's managing partner. Bridwell's mother was a partner (R. 128).

Bridwell testified that it was from Metropolitan Finance Company that he acquired $4,000 and applied it on the expense of the 1958 trip (R. 351, 399).

There is no evidence that any accounting of the expenditure of the $4,000 was made to Wagner or Precisa except that it was charged to travel expense in an accounting Nielson sent to Wagner in 1958 (R. 302). There is no evidence that any breakdown of the travel expense was ever given to Wagner or Precisa. Nielson testified that $2,500 was used for airline tickets and the remaining $1,500 was converted into travelers' checks

and taken by Bridwell. Nielson simply listed it as travel expense and could not testify beyond that (R. 302).

This evidence also clearly demonstrates a violation of Rule III, Section 32.11.

3. *Failure to Account Properly for the $15,520 Government Refund.*

The third Finding of Paragraph b of the Committee's Findings of Fact reads as follows:

> "That near October 9, 1961, the Federal government refunded to the attorney $15,520.00 for his client; that the client made repeated requests of the attorney for an accounting showing the disbursement of said funds, but that the attorney never made any accounting to the client. That the attorney advised the client that the funds received on the government refund were deposited in a trust account for the benefit of Precisa and Wagner which statement was untrue. That after repeated requests by the client for an accounting one was provided by Accountant Nielson on October 29, 1962, as reflected in exhibit 36, indicating the monies had previously been disbursed principally to the attorney and Accountant Nielson."

Sometime between October 9, 1961, (R. 436) and October 14, 1961, Bridwell received a refund check from the Internal Revenue Service in the amount of $15,220.70 for Precisa (R. 374; Ex. 36). The above dates may be deduced from Bridwell's testimony (R. 375):

> "I sent a letter to Mr. Joe Thomas of the Bureau of Internal Revenue on October 14, 1961, telling him I'd paid the taxes on the Redwood Road property and I enclosed some copies of the Salt Lake County Treasurer's receipts 9381 and 9382, evidencing payment."

Bridwell's testimony is that he did not inform Wagner of the receipt of the refund until Wagner returned to Salt Lake City in November, 1961 (R. 376). Without notifying Wagner of the receipt of the refund and without consulting him concerning its disbursement, he used $1,392.34 to pay real property taxes on the Redwood Road property owned by Precisa (R. 375), paid Nielson, the accountant, $6,700 and paid himself $7,428.36 (Ex. 36). Bridwell paid himself the $7,428.36 in spite of the fact that Wagner had specifically instructed him in Switzerland in September that he was not to take any in attorney's fees, but that he could pay Nielson $6,000 for accounting fees (R. 106); however, that the $6,000 was not to come out of the refund.

Inasmuch as the Internal Revenue Service mailed the refund check on September 9, 1961 (R. 436), it should have reached Bridwell at least by the 11th or 12th of the month. He had the $15,520 in his hands on or before the 14th, because by the 14th he had used part of it to pay the taxes on the Redwood property, and on the 14th wrote the Internal Revenue Service to that effect.

Though he could write the Internal Revenue Service, he did not choose to write his client at this time and tell him of the refund, the satisfaction of the taxes, and that it was now safe for him to come back to the states. Instead, on October 12, 1961, he wrote his client a remarkable letter (Ex. 16). It said nothing about the receipt and disbursement of the $15,000. Instead, he said: "I have no way of knowing when I would recommend that you return to the United States." However, he believed the tax matter would be settled shortly and that Wagner could return no later than the middle of November. He mentioned the taxes on the Redwood Road property, but

did not reveal that they were paid. He told Wagner that he had informed the Internal Revenue Service he would lend Precisa the money to pay the Redwood Road taxes, when in fact he had either already paid the taxes or did pay them within the next two days out of the refund received from the Internal Revenue Service. In that letter he did not inform Wagner that he had received the refund, if in fact he had, by October 12th. Rather, he urged Wagner to consult his contacts in Switzerland and "immediately borrow from them the sum of $25,000" to buy the building back from his friend and client, Schubach, at the price of $45,000 – a price at which Schubach would have made a profit in excess of $20,000. Bridwell's brief admits Schubach made a profit of $10,000 at the subsequently negotiated price of $35,000. Actually the profit was $10,537.82 (R. 397). Bridwell's letter is vigorous in Schubach's behalf, urging the transaction on Wagner. He told Wagner that Schubach could sell it for $50,000 – "which he is very desirous of doing and doing rapidly." However, if Wagner "will respond at once by return mail", Bridwell could, in effect, get his property back for him wholesale – $45,000. According to Bridwell's letter, Wagner should "immediately borrow." He urged: "Please let me hear at once. . . . I suggest that you immediately start checking into the financial arrangements on this and if you are interested, *let's complete the entire transaction before you come back.*" (Emphasis supplied by Bridwell). If we assume the letter from the Internal Revenue Service was late, giving Bridwell the benefit of any doubt, and assuming that he received the $15,520 on the 12th, 13th or 14th after he wrote this letter, he did not promptly after the receipt of the money inform Wagner of that fact. He kept the information secret, allowing Wagner, if he had been so disposed, to contact his friends, borrow $25,000 and send it to Bridwell before "he came back"

and before he knew of the refund and the manner of its disbursement.

However, if Bridwell's own testimony is accurate, *he had received the refund prior to sending his October 12, 1961 letter* (Ex. 16). He testified as follows:

> "They (I.R.S.) were going to attach this property (Redwood Road) and sell it to them for that. Taxes had not been paid on it by Mr. Wagner for some time. I told the people of the I.R.S. — *I had received the refund check by this time* — that I was going to loan Mr. Wagner enough money to pay those taxes and in turn they agreed with me that they would give a reasonable time in that event for Mr. Wagner to make payments." (Emphasis supplied) (R. 374-5).

Then on October 12, Bridwell, who had already received the $15,520, wrote Wagner that he had told the Internal Revenue Service he was going to lend him (Wagner) the money to pay the taxes; then Bridwell paid the taxes out of the refund, and on October 14, informed the Internal Revenue Service that the taxes had been paid, sending them the receipts. In other words, Bridwell took the position in his own mind that the $15,520 belonged to him. Out of it he paid his accountant $6,700 and "loaned" Wagner or Precisa $1,392.34 to pay the taxes on the Redwood property. But he did not explain this to Wagner. He secluded from Wagner the receipt of the refund until November, 1961, and then secreted its disbursement until his accountant's letter of October 29, 1962 (Ex. 36). It is clear that from the moment of his receipt of the $15,520 he intended to treat it as his own money, pay Nielson what he owed him out of it and retain the remainder except the $1,392.34 which he loaned to Wagner to pay the taxes on the Redwood property.

Two weeks went by during which time Wagner offered to pay Schubach $38,000. Then on October 27, 1961, Bridwell wrote his next remarkable letter (Ex. 17) to Wagner, telling him he could come home and liquidate the Redwood Road property to pay the $17,364.21 he still owed the Internal Revenue Service. Bridwell had by this time divided approximately $14,000 of the $15,520 between Nielson and himself and he still did not in the letter of October 27 tell Wagner about it. Then on behalf of his client Schubach, he urged his client Wagner to pay $42,000 to repurchase the building. He said:

> ". . . Would suggest to you that you make immediate arrangements with the Handwerker Bank to forthwith send the $42,000 so that these matters may be resolved at once and we can all go forward and upward."

Bridwell obviously wanted the sale concluded, the papers signed and the money in Schubach's hands before Wagner could get back to Salt Lake City.

But Wagner returned and eventually, in December of 1961, handled the negotiations himself with Schubach and got the property back for $35,000 and Schubach made only a $10,500 profit.

In November Wagner asked Bridwell where the refund money was and Bridwell told him it was in his attorney's trust account in his office (R. 204). Wagner told him that he wanted the money put in a checking account in the Farmers State Bank in the name of the corporation, requiring two signatures, his and Bridwell's (R. 204). Bridwell ignored the instruction. On December 25, 1961, Wagner wrote Bridwell stating:

> "I want to see that money to be put in a checking account in the name of the corporation with two signatures necessary to draw; namely, you and I." (Ex. 41)

Bridwell ignored the letter.

For the next nine months, Wagner tried in vain to induce Bridwell to make an accounting. On August 30, 1962, he demanded Bridwell surrender the cash and he consulted Attorney Max Mangum of Salt Lake, seeking his assistance to obtain an accounting. Mangum contacted Bridwell. Bridwell stated he did not want to meet Wagner and had his secretary deliver to Mangum's office a minute book, a folder of correspondence and an envelope containing a few "statistic sheets". No cash was delivered and the refund amount was still unaccounted for. Wagner described the above in his letter dated September 24, 1962 (Ex. 42) in which he charged Bridwell with embezzlement and threatened to call on the Bar Association for help.

Finally, by letter from the accountant Nielson to Wagner, dated October 29, 1962 (Ex. 36) Wagner finally learned what had happened to the $15,520, more than a year after Bridwell had received it. It was then that the frustrated Wagner made his complaint to the Bar Association.

Bridwell's conduct in connection with the refund violates Rule III, Section 32.12 of the Rules of Practice, and the evidence clearly supports the Committee's Finding of Fact.

C. *Chandelier Incident.*

Paragraph c of the Committee's Findings is as follows:

> "The attorney's request to a government auctioneer to withhold a chandelier from the sale and the attorney's purchase of the chandelier on the following day when no other competitive bidders were expected to be present was a representation of conflicting interests."

The chandelier had considerable sentimental and some economic value to Wagner. Bridwell in his testimony simply admits that he paid $150 for the chandelier and gave it to a

friend (R. 388-9), and he has made no effort to get it back for Wagner.

Based on Bridwell's own admission, the conflict of interest between himself and his client is obvious and the Committee's Finding is supported by the evidence.

D. *Conflict Involving Sale and Repurchase of Building.* Paragraph e of the Committee's Findings reads as follows:

> "e. As amended to relate to conflict of interest. That the attorney did in fact represent both Schubach and Wagner and Precisa companies, and there is evidence that he related to Wagner and Precisa Company that he had taken steps to protect the building so that they could regain possession. That the attorney in exercising the option on behalf of Precisa and in signing that interest to Schubach who subsequently made a $10,000.00 profit on the transaction was contrary to the best interest of his client, Wagner and Precisa. That the interests of Schubach and Precisa and Wagner were hostile to each other, and the attorney's representation of both parties constituted a breach of his duty to his client and a representation of conflicting interests."

Precisa owned an equity in a building at 375 West 4th South, Salt Lake City. It was the place of business of the company in Utah. A mortgage was held by N. R. and Johanna Hines. Precisa was purchasing under contract (Ex. 19B). When Bridwell by 1959 had withdrawn all of the money out of Precisa's bank account to pay his own fees and expenses, there were no funds left to make payments on the contract. Hines foreclosed. Bridwell acquired an option for repurchase by Precisa. Then without the knowledge or consent of Precisa or Wagner, he sold the option to his friend and client, Schubach (Ex. 19A & B). Facts concerning this transaction were not communicated to

Wagner or Precisa until Bridwell's letter to Wagner in May, 1961. Then by the letters of October 12 and 27, 1961 (Exs. 16 and 17) Bridwell urged Wagner to pay a premium to repurchase the building. I have already discussed those letters and their significance at length in a previous section of this brief.

Rule III, Section 32.6, second paragraph, of Revised Rules of Professional Conduct of the Utah State Bar, provides as follows:

> "It is unprofessional to represent conflicting interests, except by express consent of all concerned given after a full disclosure of the facts. Within the meaning of this canon, a lawyer represents conflicting interests when in behalf of one client, it is his duty to contend for that which duty to another client requires him to oppose."

It is clear that Bridwell was in violation of the conflict provision, and substantial evidence supports the Committee's Finding in that regard.

E. *Unauthorized Withdrawal of Funds for Attorney's Fees.*

The first paragraph of Section g of the Findings of Fact reads as follows:

> "g. That the attorney's withdrawal of sums of money (except the original $14,000.00) from the client's corporate assets for additional legal fees was without the authorization or knowledge of the client. That there was some discussion between the attorney and the client that there may be additional sums to be paid on the attorney's fees, but there was no authorization nor knowledge as to withdrawal or use of funds under the attorney's control as attorney's fees exceeding the $14,000.00 original figure. That the records indicate that $19,425.00 and $4,000.00 had already been taken by the attorney before the first trip to Switzerland when the necessity for additional attor-

ney's fees were verbally discussed. Among the evidence which sustains this see exhibits C, E, F, and 46."

Bridwell's Exhibit F details the withdrawals made which constituted payments to himself. It reveals that Bridwell had paid himself $19,425 prior to his second visit to Switzerland in September, 1961 (Ex. F; R. 429). Exhibit C and Bridwell's testimony disclosed that he had taken an additional $4,000 ostensibly to pay expenses for him and Nielson to go to Europe (R. 352; Ex. C).

The testimony of Wagner is that up to the time of the European trip only $17,000 in withdrawals had been authorized (R. 70).

Bridwell's admissions under examination by Mr. Van Wagenen, member of the Committee, confirms his withdrawals of fees without authorization.

"MR. VAN WAGENEN: Yes. In going over Exhibit F, which was a calculation prepared by, I believe, Mr. Nielson indicating the Precisa checks to you, Mr. Bridwell, if my calculations are correct, as of the date that you went on this trip you had already drawn $19,425.00, not including the $4,000.00 check for the travel expenses.

"THE WITNESS: The four thousand is for travel.

"MR. VAN WAGENEN: Yes, but up to that point you had already drawn from the company $19,425.00.

"THE WITNESS: Whatever the exhibits reflect.

"MR. VAN WAGENEN: Can you explain any authority for doing that?

"THE WITNESS: I just didn't assume there'd be any problem because of the increased workload. Nobody knew what was going on when it first happened and I – possibly

it could have been – I don't have any documentation. Again, I've looked and looked. Maybe that was discussed over the phone. I don't say that it was but it could have been. I just don't know.

"MR. VAN WAGENEN: But you don't recall any specific authorization?

"THE WITNESS: No sir." (R. 407-8).

In Section 3 of this brief I have already discussed the unauthorized acquisition of an additional $7,428.36 fee accomplished by Bridwell in October, 1961.

The Committee's Finding on this subject is supported by substantial evidence.

F. *The Exoneration Minutes.*

The second paragraph of Section g of the Findings of Fact reads as follows:

"That the action of the attorney in preparing and securing the adoption of minutes of the stockholders meeting in Switzerland were for the protection of the attorney in an effort to exonerate himself from any wrongdoing or excuse any previous conduct for which he felt he might ultimately have some responsibility to his client."

Concerning Bridwell's reasons for taking the September, 1961 trip to Switzerland, he testified that there were two main reasons. The first was, he said, to prove that the building was lost to the corporation and that the sale to Schubach was bona fide. The second was to get the affidavit (Ex. E) signed. With respect to the first reason, he testified:

"Q. All right. Now, getting down to the precise reason that you felt that it was necessary for you to go to Switzerland in August of 1961, will you tell us about that?

"A. Well, in my varied conferences with these people they didn't believe that the building was lost to the corporation. They didn't think it was a bona fide transaction with Schubach for one thing." (R. 357)

Bridwell is not being candid in that testimony because all of the tax cases against the corporation had been settled by May 29, 1961 (R. 435). All cases against Wagner personally had been settled by that date except a case involving his 1957 taxes (R. 435-6). Consequently, by May 29, 1961, the Internal Revenue Service had allowed the loss of the building as claimed. There was no need to go to Europe to get minutes or a power of attorney or an affidavit to support that claim.

With respect to the affidavit he testified:

"The reason I felt it necessary to go was – and also by the time I went I was pretty much assured I was going to be able to work out these 1957 tax problems and I wanted to make certain, for one thing, that – to have the backing of an executed Exhibit E which I didn't have." (R. 358)

Exhibit E, the affidavit which he wanted the Precisa personnel to sign, had nothing to do with the power of attorney and the self-serving minutes he drafted and got executed. He never did get the affidavit signed, but he devoted a substantial part of his time to getting the whitewashing minutes executed. He coerced Wagner into signing them and into inducing his colleagues to sign them by threatening Wagner "with permanent exile" from the United States (Ex. 221, Ex. 14). He did this, knowing as he stated in his testimony (R. 358) that:

"By the time I went I was pretty much assured I was going to be able to work out these 1957 tax problems."

Those were the only problems left to be resolved. Yet knowing that, he scared Wagner into approving and getting

his fellow stockholders to approve his self-serving minutes. "Being pretty much assured" he was "going to be able to work out these 1957 tax problems", he cabled Wagner in August, 1961:

> "Letter of August eighth received and noted you don't seem to understand English language no more argument or excuses or you may loose [sic] five years of work and gain a life of exile do exactly repeat exactly as stated or forget it and I will then later be at liberty to write you full details on why your house of cards fell." (Ex. 14).

Now we know why it was "imperative for many important reasons you send $2,000 at once" (Ex. 12). Bridwell had the corporation's tax cases wrapped up but he wanted the exonerating minutes executed and the sale to his client friend, Schubach, ratified before Wagner returned to Salt Lake.

Substantial evidence supports the Finding of the Committee that the minutes were for the "protection of the attorney in an effort to exonerate himself."

G. *Improvement of the Attorney's Home.*

Finding h of the Committee reads as follows:

> "h. That the attorney accepted labor and materials for the improvement of the attorney's home from a contractor tenant of the client's corporation and then credited the tenant with the value of said labor and materials on the tenant's rent, which rent should have been paid to the client's corporation."

Bridwell by his own testimony admits the guilt of this charge (R. 408-9).

CONCLUSION

The three lawyers on the Disciplinary Committee who acted as judges are recognized as experienced and capable trial counsel. They have had many years of experience in judging the credibility of witnesses and weighing and evaluating evidence. They were there and saw and heard Wagner and Bridwell testify. They are in the best position to assess the veracity of the testimony. They were able to observe, as this brief has pointed out, that Bridwell in most instances condemned himself with his own testimony and his own exhibits. They were patient and liberal in their rulings on evidence, giving Bridwell a full and fair hearing. There is substantial evidence to support their findings.

The members of the Bar Commission reviewed the record, confirmed the Committee's Findings and Conclusions, and entered an Order recommending disbarment. Then the Commission at the request of Bridwell reopened and reconsidered, permitted reargument and renewed their order recommending disbarment.

The recommendation of the Commission should be implemented by this Court.

Respectfully submitted,

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