

1988

In Re: Ray Stoddard v. : Brief of Appellant

Utah Supreme Court

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John R. Bucher; Attorney for Appellant.

Toni Marie Sutliff; Office of Bar Counsel; Attorney for Respondent.

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BRIEF

880130

IN THE SUPREME COURT

STATE OF UTAH

In Re:

RAY STODDARD

*

* BRIEF OF APPELLANT

*

Case No. 880130

BRIEF OF APPELLANT

AN APPEAL FROM A RECOMMENDATION OF THE UTAH STATE
BAR COMMISSIONERS RECOMMENDING A SUSPENSION FROM
THE PRACTICE OF LAW OF APPELLANT FOR A PERIOD
OF SIX MONTHS.

TONI MARIE SUTLIFF
Office of Bar Counsel
645 South 200 East
Salt Lake City, Utah 84111

Attorney for Respondant

JOHN R. BUCHER
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Salt Lake City, Utah 84105

Attorney for Appellant

IN THE SUPREME COURT

STATE OF UTAH

In Re: ~~RAY STODDARD~~

*

* BRIEF OF APPELLANT

RAY STODDARD

*

Case No. 880130

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Attorney for Appellant

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NATURE OF PROCEEDINGS IN THE UTAH STATE BAR AND JURISDICTION

This is an appeal from the Utah State Bar Commissioner's
Order on Order to Show Cause and Recommendation of Suspension dated
January 19, 1989.

STATEMENT OF ISSUES ON APPEAL

I. The Record on Appeal is incomplete in that it does not contain the "Recommendation of the Board of Bar Commissioners" dated May 9th 1989, attached hereto as Exhibit "A".

II. The Record on Appeal is incomplete in that it does not contain the "Recommendation" dated April 25 1989, attached hereto as Exhibit "B".

III. The Record on Appeal does not contain any order disposing of appellant's Amended Objections to Order on Order to Show Cause nor does the Record on Appeal contain findings of fact or conclusions of law.

IV. The Record on Appeal does not contain a transcript of appellant's proffers of evidence and statements of appellant at his hearing on his Amended Objection To Order on Order To Show Cause on April 25, 1989 because no court reporter was in attendance.

V. The Record on Appeal does not contain appellant's Notice of Appeal (Exhibit "C") nor his Motion to Augment the Record nor affidavits (2) presented to the Hearing Panel at the hearing on his Amended Objection to Order on Order to Show Cause.

VI. The Record on Appeal does not contain that certain "Objection To Recommendation" (Exhibit "D") dated May 22, 1989, which is an objection to the Recommendation of the April 25, 1989 hearing on appellant's prior objection and motion for reconsideration and that is not in the Record either.

VII. The Order of Discipline dated January 6, 1988, which is that Order appellant is charged with violating is not supported by the Findings of Fact or Conclusions of Law and the monitoring provision of his probation appeared for the first time in the Supreme Court's Order.

VIII. That the Record on Appeal does not contain appellant's Second Objection to the Recommendations.

IX. That the Recommendations which were made as Exhibits A and B are not supported by Findings of fact and conclusions of law and are not supported by any transcript in that the hearing was unrecorded by any means.

X. That the Recommendations denying appellant's Amended Objection to the Order on Order to Show Cause do not reflect the stipulations and proffers intended to show that there was not a failure to pay restitution.

XI. The Record on Appeal does not reflect that restitution of all amounts has been paid and was tendered prior to April 25, 1989.

RULES OR STATUTES

Rule XIV of the Code of Judicial Administration states in relevant part:

1. The Executive Director shall be responsible for preparing the record of the proceedings and forwarding the same to the Supreme Court . . .

STATEMENT OF FACTS

A formal complaint was issued against appellant on August 14, 1986 (R.4 appellant's attorney John R. Bucher added pagination to the Record with the approval of the clerk). At the hearing the Bar found against appellant and ordered his suspension but stayed it subject to his probation and restitution. (R. 35)

An Order Affirming that Recommendation was entered (R. 37) by the Bar Commissioners on January 22, 1988. For the first time on April 18, 1988, a term of monitoring and reporting appeared (R. 40) in the Order of Discipline by the Supreme Court.

The Bar recommended that probation be revoked (R. 54) on January 19, 1989, and appellant obtained counsel for the first time and Filed an Ammended Objection of Order on Order to Show Cause (R. 63) and a hearing was had on April 25, 1989 where appellant introduced exhibits, made proffers, and submitted a stipulation and argument. Nonetheless, the Bar affirmed its ruling (not in record) and the appeal was filed (not in record).

The appellant filed a Motion to Augment the Record on June 27, 1989 because of the deficiency of the Record and that Motion was granted but later denied in an Order not a part of the Record.

SUMMARY OF ARGUMENT

1. The lack of important parts of the Record do not give a review court sufficient information from which to assess the appropriateness or legality of the Bar Commissioner's decision.

ARGUMENT

The Record does not contain those items listed in the statement of issues.

In the case of In the Matter of Drainage District No. 1 vs. Cerro, 435 N.E. 2d 902, 106 Ill. App 3d 241, the court stated what is obvious. The holding was as follows on page 900.

Can either the trial court or a reviewing court re-examine an administrative agency's actions without a record before it?

No.

The following is what is deficient in the Record and why it makes a difference.

A) The two Recommendations of the Board of Bar Commissioners disposing of appellant's objections to the Order on Order to Show Cause and denying the request for reconsideration.

The appellant presented a proffer of evidence and an oral stipulation at an unrecorded hearing on said Objection that would show that the failure to pay restitution was due to the delayed negotiation of the check with a subsequent garnishment of appellant's account. The record does not reflect that restitution was again proffered then paid on April 25, 1989.

B) There were no findings of fact or conclusions of law prepared as a result of the aforesaid hearing and together with the lack of a transcript, it is not possible for the appellant to argue error for failing to take into consideration the proffers as to restitution and monitoring and the unique personal and professional circumstances of the appellant. The two affidavits

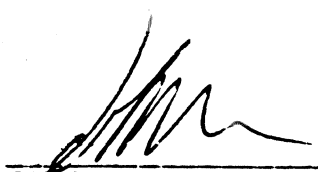
presented by appellant at said hearing are not in the Record and argument is therefore precluded thereon.

C) The appellant filed an objection to the Recommendations based on the arguments above but that objection is not in the Record on Appeal and this Court cannot make a determination of whether or not the Bar erred in not correcting the Recommendations to reflect the tender of restitution and the justifiable cause of that check not being funded.

D. The appellant argued and proffered concerning the lack of the finding as to appellant's probation terms, ie. that no monitoring or reporting was recommended to the Supreme Court but neither those arguments nor a finding thereon exists in the Record.

The appellant requests an Order remanding the case to the Utah State Bar to augment the Record herein or that the appellant should not be suspended because the restitution was timely tendered and the monitoring requirement was improperly included in original order of probation.

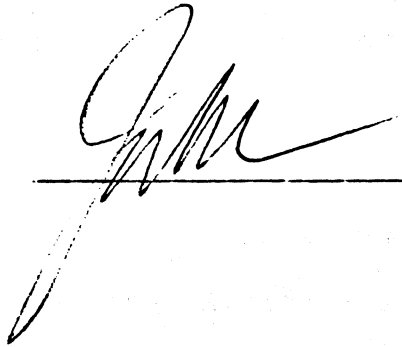
Respectfully submitted,



JOHN R. BUCHER
Attorney for Appellant

DELIVERY CERTIFICATE

I hereby certify that I delivered a true and correct copy of the foregoing document to Toni Marie Sutliff, Office of Bar Counsel, 645 South 200 East, Salt Lake City, Utah 84111, on October 25, 1989.



A handwritten signature in dark ink is written over a horizontal line. The signature is stylized, appearing to be the initials 'JMS' or similar, with a long, sweeping underline that extends to the left.

A

BEFORE THE BOARD OF COMMISSIONERS

OF THE UTAH STATE BAR

Review Panel:

Jackson B. Howard, Chair
H. James Clegg
Kent Kasting

In Re:)	
)	RECOMMENDATION OF THE
RAY STODDARD,)	BOARD OF BAR COMMISSIONERS
Respondent)	
)	F-224
DOB: 04/14/43)	
Admitted: 09/27/68)	

The above-captioned matter having come before the Board of Bar Commissioners at its regular meeting on the 28th day of April, 1989, and the Board having reviewed the Recommendation of a Review Panel dated April 25, 1989, and being fully advised, makes and enters the following:

RECOMMENDATION

1. That paragraph 4 of the Findings of Fact in the Order on Order to Show Cause and Recommendation of Discipline of the Hearing Panel dated January 19, 1989, should be amended to read as follows:

4. Respondent attempted to make restitution of \$185.00 to Patricia Knight by June 17, 1988, as required by the Order of Discipline by submitting a check to the Utah State Bar in early July, 1987;

Respondent claims, however, that he has had insufficient funds since July, 1987, to satisfy that check. Respondent paid the \$185.00 in full and the \$150.00 owed to the Utah State Bar for costs awarded, by check dated April 24, 1989.

2. That paragraphs 2 and 3 of said Recommendation of Discipline should be deleted.

3. That the above-referenced Order on Order to Show Cause and Recommendation of Discipline should be otherwise adopted in its entirety.

Dated this 9th day of May, 1989.

BOARD OF BAR COMMISSIONERS

By: Kent M. Kasting
Kent M. Kasting, President

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I mailed a true and correct copy of the foregoing Recommendation to John R. Bucher, Counsel for Respondent, at 1518 South 1100 East, Salt Lake City, Utah 84115 on this 15th day of May, 1989.

Carol J. Salvo

B

BEFORE THE BOARD OF COMMISSIONERS
OF THE UTAH STATE BAR

Review Panel:

Jackson B. Howard, Chair
H. James Clegg
Kent Kasting

In Re:)	
)	RECOMMENDATION
RAY STODDARD,)	
Respondent)	F-224
)	
DOB: 04/14/43)	
Admitted: 09/27/68)	

This matter having come on for hearing before a Review Panel of the Board of Bar Commissioners of the Utah State Bar, comprised of Jackson B. Howard, H. James Clegg and Kent Kasting, on April 25, 1989, at 2:00 p.m. pursuant to Respondent's Amended Objection to Order on Order to Show Cause and Motion for Reconsideration, and the Utah State Bar being represented by Toni Marie Sutliff, Associate Bar Counsel, and the Respondent being present and being represented by counsel, John R. Bucher, and the Review Panel having reviewed the file, the evidence and the arguments of counsel, makes and enters the following:

RECOMMENDATION

1. That paragraph 4 of the Findings of Fact in the Order on Order to Show Cause and Recommendation of Discipline of the Hearing Panel dated January 19, 1989,

should be amended to read as follows:

4. Respondent attempted to make restitution of \$185.00 to Patricia Knight by June 17, 1988, as required by the Order of Discipline by submitting a check to the Utah State Bar in early July, 1987; Respondent claims, however, that he has had insufficient funds since July, 1987, to satisfy that check. Respondent paid the \$185.00 in full and the \$150.00 owed to the Utah State Bar for costs awarded, by check dated April 24, 1989.

2. That paragraphs 2 and 3 of said Recommendation of Discipline should be deleted.

3. That the above-referenced Order on Order to Show Cause and Recommendation of Discipline should be otherwise adopted in its entirety.

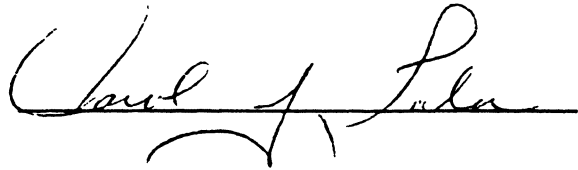
Dated this 25th day of April, 1989.

HEARING PANEL

By: Jackson B. Howard
Jackson B. Howard

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I mailed a true and correct copy of the foregoing Recommendation to John R. Bucher, Counsel for Respondent, at 1518 South 1100 East, Salt Lake City, Utah 84115 on this 15th day of May, 1989.

A handwritten signature in dark ink, appearing to read "Charles J. Linder", is written over a horizontal line.

15

C

JOHN R. BUCHER #0474
Attorney for Respondent
1518 South 1100 East
Salt Lake City, Utah 84105
Telephone: (801) 487-5971

IN THE SUPREME COURT
STATE OF UTAH

BEFORE THE BOARD OF COMMISSIONERS
OF THE UTAH STATE BAR

In Re:

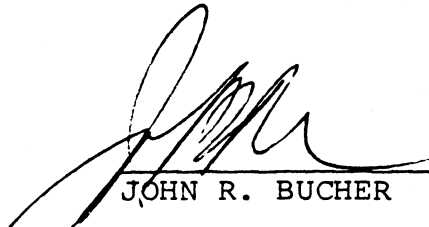
RAY S. STODDARD
DOB: 04/14/43
Admitted:
09/27/68

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*
NOTICE OF APPEAL
F-224

COMES NOW, John R. Bucher, Attorney for Respondent, and gives Notice of Appeal to that certain Recommendation of the Utah State Board of Bar Commissioners recommending an Order of Suspension of the Respondent right to practice law for six (6) months.

This Appeal is to the Supreme Court from that Recommendation of the Board of Bar Commissioners dated the 12th day of May, 1989.

DATED this 8 day of June, 1989.


JOHN R. BUCHER

CERTIFICATE OF SERVICE

I hereby certify that I mailed/delivered a true and correct copy of the foregoing NOTICE OF APPEAL to the following: Utah State Bar, Board of Commissioners, 645 South, 200 East, Salt Lake City, Utah 84111-3834, and the Supreme Court, 332 State Capitol Building, Salt Lake City, Utah 84114.

A handwritten signature in cursive script, appearing to read "D. A. Howell", is written over a horizontal line.

D

JOHN R. BUCHER
Attorney for Respondent
1518 South 1100 East
Salt Lake City, Utah 84105
Telephone: 487-5971

BEFORE THE BOARD OF COMMISSIONERS
OF THE UTAH STATE BAR

Review Panel:

Jackson B. Howard, Chair
H. James Clegg
Kent Kasting

In Re:

RAY STODDARD,
Respondent

DOB: 04/14/43
Admitted: 09/27/68

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OBJECTION TO
RECOMMENDATION.

COMES NOW, John R. Bucher, Attorney for the above
named Respondent, and hereby objects to that certain Recommendation
dated April 25, 1989, on the following grounds:

1. Paragraph 1)4 does not reflect correctly the Stipulation
that the Respondent submitted a restitutionary check in early
July, 1987, and that had that check been timely deposited, it was
supported by adequate funds and that the Respondent tender offered
a restitutionary check in January, 1989 at a hearing before
the Bar Commissioner.

DATED this 22nd day of May, 1989.

JOHN R. BUCHER
Attorney for Appellant
1518 South 1100 East
Salt Lake City, Utah 84105
Telephone: 487-5971

ORIGINAL

FILED

JUN 27 1989

Clerk, Supreme Court, Utah

IN THE SUPREME COURT

STATE OF UTAH

IN RE:

RAY S. STODDARD

DOB: 04/14/43

Admitted: 09/27/68

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MOTION TO REMAND FOR AUGMENTATION
OF RECORD ON APPEAL

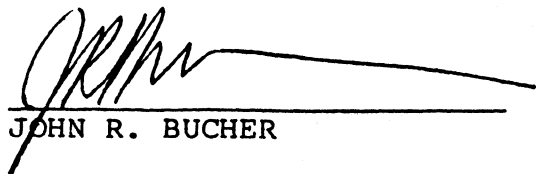
Supreme Court No. 880130
USB No. F-224

COMES NOW, JOHN R. BUCHER, Attorney for the above named Appellant/Respondent, and hereby moves the Court for an Order remanding the Record on Appeal in the above matter to the Utah State Bar for the purposes of augmenting the Record as follows:

1. For the inclusion of Recommendation and Finding regarding Respondent's amended Objection to Order on Order to Show Cause and Motion for Reconsideration and;

2. For the inclusion of Recommendation and Finding and Order regarding the second Objection to the Findings and Recommendation referred to in paragraph one above.

DATED this 27 day of June, 1989.


JOHN R. BUCHER

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy
of the foregoing to: Toni Marie Sutliff, Office of Bar Counsel,
645 South 200 East, Salt Lake City, Utah 84111-3834.

_____

Order

motion granted.

June 28, 1989

Richard C. Howe
Justice