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In Re: C. Demont Judd, Jr. : Appellant'S Brief On Points and Authorities

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S. Dee Long; Attorney for RespondentC. DeMont Judd, Jr.; Attorney Pro se

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IN THE SUPREME COURT OF THE

STATE OF UTAH

	)	
Re: C. DeMont Judd, Jr.	)	Case No. 16938
	)	

APPELLANT'S BRIEF OF POINTS AND AUTHORITIES

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-ME COURT OF THE STATE OF UTAH

In Re: C. DeMont Judd, Jr.	)))	No. 16938

BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

This is an action in disciplinary proceedings. The Utah State Bar has complained of the Appellant and stated that he has breached the ethics of the profession. Appellant appeals on the grounds that the issues raised by the Bar have heretofore been disposed of by the Supreme Court in the matter of Lola H. Mitchell, plaintiff-respondent, vs. Gary A. Mitchell, defendant-appellant, Case no. 14738, before the Supreme Court, and subsequent appeals in the same case.

DISPOSITION BEFORE THE BAR COMMISSION

This matter was tried by default before the Disciplinary Committee of the Bar and thereafter before the Bar Commission, the Bar Commission making recommendation that the Appellant be disciplined.

RELIEF SOUGHT ON APPEAL

C. DeMont Judd, Jr., the Appellant herein, seeks relief as follows:

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1. Reversal of the Bar C[illegible]

2. Remanding the case to the Bar Commission for a hearing.

STATEMENT OF FACTS

Appellant herein is an attorney, authorized to practice before the Supreme Court and other lower courts of the State of Utah. That in August of 1974 he was first contacted by Lola H. Mitchell, with the request that he represent her in a proceeding before the District Court of Weber County. In that case, the defendant had removed the two minor children (one of whom was one month of age) from the custody of the mother, with allegations that the mohter was mentally ill. After an appearance in court and the restoration of the children to the mother the parties reconciled. One year later another law suit was filed, wherein allegations were made with respect to the fitness of the mother. After a long and protracted trial the mother was granted custody of the children and property was disposed of. The father appealed the case to the Supreme Court (Case No. 14738) and the Court on the 8th day of June, 1977 affirmed the findings of the District Court. As part of the allegations in the appeal, and on page 11 of the brief submitted, the husband included all of the allegations contained in his complaint to the Bar. Judge Christofferson and the Supreme Court rejected the allegations made by the husband that the attorney for the wife, appellant herein, violated ethics of standard of practice.

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[illegible] 1977 the defendant wrongfully permitted the house, which had been awarded to the wife, to be sold and the proceeds of said sale applied against debts which the defendant was obligated to pay. Thereafter, in a law suit filed by one of the creditors, to-wit: Dale Browning, without posting bond or without complying with the other areas of the statutes Attorney Browning tied-up the wife's bank account and funds on deposit with the Clerk of the Court, and after a hearing before Judge Gould it was determined that Mr. Browning should post bond. By inadvertance, the secretary inscribed the name of Browning, rather than Judd, on the document. This same was adequately explained to Judge Wahlquist.

Subsequent to that time, additional hearings were held and the husband again requested the custody of the children. Custody was again affirmed in the mother, whereupon the father kidnapped the children and kept them away from the mother for an extended period of time. At the time of the kidnapping, the husband filed this complaint before the Bar and then disappeared. Efforts and attempts to take his deposition with respect to the proceedings failed, and he was gone for a year. He propitiously returned in time to testify before the Bar proceedings and, in fact, it would appear, the attorney for the Bar knew where he was during the period of time that he was being sought for kidnapping the children.

After the filing of the complaint, Appellant retained counsel and nothing was done by that attorney. Subsequent

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to that time, the Appellant was informed that counsel could not continue to act, since his partner was a member of the Board of Commissioners of the Utah State Bar. Thereafter, another attorney was retained who also did not function. The matter therefore went to default. Without notice to the Appellant, a hearing was held.

Careful review of the findings of the Board of Commissioners will demonstrate that no evidence whatsoever, in behalf of the Appellant was presented, despite the fact that numerous letters and a substantial amount of evidence had been presented to the attorney representing the Bar Commission. No reference whatsoever was made to the fact that the Supreme Court had previously heard the issue (indeed, the Supreme Court has heard the matter of Mitchell vs. Mitchell three times).

Evidence was taken with respect to items which were not complained of originally. Specifically, the issue of whether or not negotiations had been entered into with respect to an attempt to lure Gary Mitchell back to the State of Utah so that the children could be recovered. This was clearly without the purview of the complaint and such testimony and such inquiry were without notice to the Appellant and clearly beyond the scope of the examination, and clearly demonstrate that the purpose of the hearing was a witch-hunt to dispose of a controversial legislator (said efforts now seem to have been successful). As further demonstration of the effort on the part of the Bar Counsel, witness the fact that contrary to Rule VI, the proceedings be-

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a matter of public knowledge prior to the time they were even submitted to the Supreme Court.

Despite the fact that the member of the Bar under investigation did not waive confidentiality and despite the fact that the allegations were not generally known to the public, the news media knew of and published reports of the proceedings prior to the time the matter was filed with the Supreme Court, it becoming front page news in every major newspaper in the State of Utah and was mentioned in every news broadcast on television and radio.

While allegations are made that the conduct of the Appellant was dishonest, the evidence amply demonstrates that in fact, neglect and indiscretion were involved, particularly with respect to failure to appear and defend before the Bar Commission. Good faith effort on the part of the Appellant should be considered by the Court. In re Badger (Badger I) 27 Utah 2d 174, 493 P.2d 1273 (1972); In re Johnston, Utah 524 P.2d 593 (1974), In re Macfarlane, 10 Utah 2d 217, 350 P.2d 631 (1960).

In no case is the Supreme Court obligated to accept the recommendations of the State Bar in any disciplinary proceeding. This Court, being much more familiar with the Mitchell vs. Mitchell case, certainly should understand the high state of emotion involved in said case. This Court should recognize the extent to which the complainant would go in order to insure that he receives custody of the children. If he is willing to committ the felony of kidnapping, if he is willing to give up his employment and make every sacrifice with respect to his own life, then why concern himself with

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respect to the sacrifice of one small lawyer? The net effect of the disciplinary complaint is an attempt to remove effective counsel from representing his wife. If he can do that, then certainly he stands a better chance of achieving his ultimate goal, which is the destruction of his former wife and the obtaining of the custody of his children. The fact that the Bar Commission has unwittingly become a pawn in this chess game should not sway the Supreme Court in its responsibilities to protect not only the legal profession, but also integrity of the court system of the State of Utah. If husbands can use such tactics to achieve their ends without retribution and without fear, then who is to protect the Bar Association or its members? The Supreme Court In re Blackham, 588 P2d 694, (Utah 1978); In re Hansen, 584 P.2d 805, (1978) In re Hansen (Phil), 586 P.2d 413 (1978); In re Hughes, 534 P.2d 892 (1975); In re Barnes, 574 P.2d 657, 281, Or. 275 (1978), found that the punishment or recommendation of the Utah State Bar was severe and did not impose the punishment recommended by the Bar. In this case, the penalty exacted would not only punish the lawyer, but would also punish his client, for to deprive the wife of counsel is the ultimate goal of the complainant in this case. Counsel for the Bar had ample evidence presented to her to demonstrate that this was the effort of the complainant. Counsel for the Bar did not see fit to use the evidence or did not see fit to protect the interest of the Bar Association in regard to

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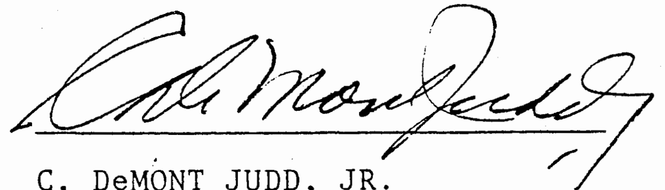
attacks upon its members.

By reason of the untoward publicity given this case, the Appellant has now been deprived of office, has been unduly hounded by the news media and others, has been unjustly accused and should not be found wanting with respect to ethics or honesty.

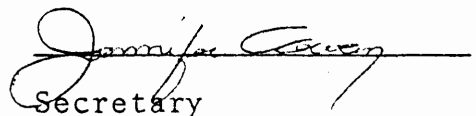
Respectfully submitted:



C. DeMONT JUDD, JR.
Appellant

CERTIFICATE OF MAILING

I certify that I mailed a copy of the foregoing Brief of Appellant to the Utah State Supreme Court, 332 State Capitol Building, Salt Lake City, Utah, 84114, this 11th day of September, 1980.



Secretary

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