

1980

In Re: C. Demont Judd, Jr. : Brief of the Utah State Bar

Utah Supreme Court

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

Recommended Citation

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BEFORE THE SUPREME COURT
OF THE STATE OF UTAH

In re:

C. DeMONT JUDD, JR.

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CASE No. 16938

BRIEF OF UTAH STATE
BAR

APPEAL FROM THE
FINDINGS AND RECOMMENDATIONS
OF BOARD OF COMMISSIONERS OF THE UTAH STATE BAR

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BEFORE THE SUPREME COURT
OF THE STATE OF UTAH

In re: :
: C. DeMONT JUDD, JR. :
: BRIEF :
: No. 16938 :
: :

APPELLEE'S STATEMENT OF THE CASE

On November 1, 1977, Bar Counsel for the Utah State Bar received a letter from Mr. Gary A. Mitchell wherein he made certain allegations of ethical misconduct on the part of the Appellant herein, C. DeMont Judd, Jr.

After consideration of said letter, Bar Counsel sent a letter to Mr. Judd on November 14, 1977 along with a copy of complaint by Mr. Mitchell and indicated that if the allegations contained in the complaint were true, it would possibly be violations of certain Canons of the Revised Rules of Professional Conduct of the Utah State Bar. It was further requested that Mr. Judd respond to the complaint within ten (10) days.

Mr. Judd then respectively submitted his response to Bar Counsel on December 5, 1977, at which time denied all allegations made against him by Mr. Mitchell.

The Ethics and Discipline Committee of the Utah State Bar met on January 12, 1978 and at that time discussed both the complaint of Gary Mitchell and the response by the Applicant. Pursuant to that discussion, Bar Counsel sent a letter to Mr. Judd on January 19, 1978 informing him that the Committee had discussed the matter and were desirous that he appear before the Committee on the 9th day of February, 1978.

On February 13, 1978, a letter was sent from Bar Counsel to Mr. Judd indicating that an extension had been granted and that he would be allowed to meet with the Committee on March 9, 1978.

Another letter was sent to Mr. Judd on March 6, 1978 indicating a further continuance of the matter and that he would be able to meet with the Committee on March 16.

However, Mr. Judd failed to appear at any of the scheduled meetings with the Ethics and Discipline Committee.

At a subsequent meeting, the Ethics and Discipline Committee took evidence and felt that there was reasonable cause to file a complaint with the Board of Commissioners of the Utah State Bar and did so on the 22nd day of September, 1978. On that same date a Citation was sent to Mr. Judd asking that he file an answer to the complaint within twenty (20) days.

On December 6, 1978 a letter was sent to Mr. Judd from Bar Counsel indicating that they had not yet received an answer to the complaint against him and again requested that he file an answer to the complaint.

Mr. Judd was informed by letter dated April 17, 1979 from Bar Counsel that if an answer to the complaint was not received by April 25, 1979, a Motion for Default Judgment would be entered.

On April 27, 1979, a Motion for Entry of Default was entered. The Order of Entry of Default was entered on the 9th day of May, 1979 and a copy was mailed to Mr. Judd on May 18, 1979.

A Notice of Hearing, which hearing was set for the 26th day of July, 1979, was sent to Mr. Judd on the 10th day of July, 1979.

Hearing was then had on the 26th day of July, 1979 and evidence was taken as to the conduct of Mr. Judd. Following that hearing, the Board of Commissioners of the Utah State Bar entered its Findings and Recommendations.

ARGUMENT

POINT I

THE DEFAULT AGAINST APPELLANT SHOULD NOT BE SET ASIDE BECAUSE APPELLANT WAS GIVEN MORE THAN ADEQUATE TIME IN WHICH TO RESPOND.

As can be seen from the record, the first citation to the Appellant asked that he answer the complaint filed against him. Said citation was sent to the Appellant on September 22, 1978. The Motion for Default Judgment was not submitted until the 27th of April, 1979. This gave the Appellant more than adequate time in which to respond to the complaint.

The Appellant indicated in his brief that a hearing was held without him receiving proper notice. However, the record indicates that notice was, in fact, mailed to the Appellant prior to the hearing. Therefore, because the Appellant was given adequate notice and given adequate opportunity to respond to the complaint, the hearing held before the Bar Commission did not violate the Appellant's right. In the matter of Jerome P. Troy, 306 N.E.2d 203 (1973).

The court also held In the matter of the disbarment of Dayrri Kamin, 262 N.W.2d 162 (1978), "by declining to file an answer, the allegations of the petition are deemed to be admitted by default." And also, "Default judgment should be set aside and a new trial ordered in any case in which the failure of the defendant to answer before judgment was not intentional or a result of conscious indifference on his part but was due to a mistake or accident provided a motion for a new trial sets up meritorious defense." In re Munson v. State, 576 S.W. 2d 440 (1978).

The Appellant has not shown that there was an accident or mistake but the time periods involved show that the Appellant consciously disregarded the complaint. Also, the Appellant has not set forth a meritorious defense to the allegations brought against him.

POINT II

UNDER THE SUPERVISION OF THE UTAH STATE SUPREME COURT, THE AUTHORITY TO HANDLE DISCIPLINARY MATTERS OF MEMBERS OF THE UTAH STATE BAR HAS BEEN GIVEN TO THE BOARD OF COMMISSIONERS.

before the Bar Commission were included in the Appeal Brief in the case of Mitchell v. Mitchell, and said allegations were rejected by Judge VeNoy Christofferson and the Supreme Court. Therefore, the Board of Bar Commissioners lacked jurisdiction to hear the matter. The authority of the Utah State Bar to handle disciplinary proceedings is set out in Utah Code Annotated, 78-51-12 (1953) as follows:

The Board of Bar Commissioners shall establish rules governing the conduct of all persons admitted to practice and shall investigate, consider and pass upon all unethical, questionable or improper conduct of any person admitted to the practice of the law including members of the bar holding judicial office. The Board shall also establish rules governing procedure in cases involving alleged misconduct of members of the Utah State Bar including those holding judicial office and may create committees for the purpose of investigating complaints and charges which committees may be empowered to administer discipline including the recommendation of suspension or disbarment from the practice of law in the same manner as the board itself. But no recommendation for the suspension or disbarment of a member shall be final until approved by the board.

Both Judge Christofferson and the Supreme Court had no alternative but to reject the allegations of lawyer misconduct when they were raised in the civil suit knowing that the authority to handle such matters had been given to the Bar Commission of the Utah State Bar. The allegations of misconduct against the Appellant were filed with the Utah State Bar. The proper procedures were followed; a hearing was held and the Findings and Recommendations of the Board of Bar Commissioners have been made to the Utah Supreme Court.

POINT III

AT DISCIPLINARY HEARINGS BEFORE THE BAR,
THE BOARD OF BAR COMMISSIONERS, BAR COUN-
SEL IS NOT OBLIGATED TO PRESENT EVIDENCE
IN DEFENSE OF THE ATTORNEY.

The Appellant states that one reason why the recommendation of the Bar Commission should be reversed is that no evidence was presented in behalf of the Appellant even though there was substantial amount of evidence which had been presented to the attorney representing the Bar Commission. The Board of Bar Commissioners, pursuant to Utah Code Annotated, 78-51-14, has made and submitted to the Utah Supreme Court for its approval the Revised Rules of Professional Conduct of the Utah State Bar and the Rules of Discipline of the Utah State Bar. The Utah Supreme Court has approved both of these rules. Under the Rules of Discipline of the Utah State Bar, Rule V(b), Bar Counsel is to "perform all prosecutorial responsibilities at all stages of any case before the Committee, the Commission and the Court." It would be impossible for the Bar Counsel to act both as prosecutor and defense attorney in the same matter.

POINT IV

SUSPENSION IS THE APPROPRIATE DISCIPLINARY
ACTION TO BE IMPOSED.

The Bar Commission has recommended to this Court that the appropriate disciplinary action herein is suspension from the practice of law for a period of two months. It is recognized that the final decision as to what disciplinary action is to be imposed lies with this Court.

The Appellant argues that the recommendation of the Bar

attorney but also punishes his client. A person who has committed crimes who has a family can use the same argument in that he should not be incarcerated because this would be also punishing his wife and children by depriving them of a husband and father. The fallacy behind this argument is clear. The recommendation of the Bar Commission is not too severe. Any one of the offenses committed by the complainant may warrant the recommended discipline. However, the totality of the Appellant's actions certainly warrants the disciplinary action recommended.

Furthermore, there is more involved than punishment of an attorney for wrong doing. It was stated In the matter of the disciplinary proceeding against Joseph B. Zderic, 600 P.2d 1297 (1979), "The purposes of attorney discipline are to protect the public from future misconduct of the attorney and to preserve public confidences in the legal system."

The Appellant also argues that the Bar Commission and the Bar Counsel were biased against him and were on a "witch hunt" in an effort to have him removed from political office. The allegations are totally unsubstantiated. The Committee, after hearing evidence, filed a complaint with the Commission. The Appellant was given more than adequate time in which to respond to the complaint. The Appellant was notified of a hearing to be held before the Commission. At said hearing, the Commission received evidence regarding Appellant's conduct.

From that evidence, they made a determination that the Appellant was, in fact, in violation of the Code of Professional

Responsibility as promulgated by the Utah State Bar Commission and approved by the Utah Supreme Court. This Court stated, as follows, in re Badger, 27 Ut.2d 174:

. . . however, this court has established a standard that it will sustain the recommendation of the Bar unless it has acted arbitrarily, capriciously or unreasonably.

The record of the proceedings held before the Bar Commission and the evidence upon which they acted, clearly shows that the Bar Commission was not acting arbitrarily, capriciously, or beyond the scope of its powers when it made its recommendation for suspension and should therefore, be sustained by this Court.

CONCLUSION

A proper complaint was filed by Mr. Gary Mitchell against the Appellant. The Ethics and Discipline Committee of the Utah State Bar investigated the complaint and found sufficient cause to issue a complaint against the Appellant with the Board of Bar Commissioners of the Utah State Bar. Appellant was given a copy of said complaint and asked to respond to it. Appellant failed to make any response and after a period of approximately seven (7) months, default was entered against him. Appellant was then notified that a hearing would be held before the Bar Commission at which time evidence as to the allegations of misconduct would be taken. Appellant failed to respond to or appear at said hearing. From the evidence taken, the Commission found that the actions of the Appellant were in violations of the provisions of Rule IV, Canon 1,

DR 1-102(A)(4), (5) and (6); Canon 7, DR 7-106(C)(2), (5) and (7); DR 7-102(A)(1), (4) and (5), D

the Revised Rules of Professional Conduct of the Utah State Bar. The Commission, in fact, found that the Appellant's conduct had violated some of these rules several different times. From these findings, the Board of Bar Commissioners made a recommendation to this Court that the Appellant, C. DeMont Judd, Jr., be suspended from practice for the period of two (2) months. This recommendation is not arbitrary, capricious, or beyond the scope of the Bar Commission's power. Therefore, this Court should sustain the Findings and Recommendation of the Bar Commission herein and order that the Appellant be suspended from the practice of law for a period of two (2) month.

RESPECTFULLY submitted this _____ day of _____, 1980.

UTAH STATE BAR

by _____
S. Dee Long

CERTIFICATE OF MAILING

I hereby certify that on this 13 day of November, 1980, a copy of the foregoing Brief was mailed to C. DeMont Judd, Jr., Appellant Pro Se, 2650 Washington Boulevard, #102, Ogden, Utah 84401, postage prepaid.

Glorianne Ritchie

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OF THE STATE OF UTAH

In re:

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