

1984

In Re: James M. Jones : Appellant's Brief On Appeal

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SUPREME COURT OF THE STATE OF UTAH

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IN RE:

JAMES M. JONES

CASE NO. F161

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APPELLANT'S BRIEF ON APPEAL

Appeal from the recommendations of the Board of Commissioners of the Utah State Bar embodied in the Findings of Fact and Conclusions of Law of the Hearing Panel held the 18th of January, 1984, concerning disciplinary action against the Appellant James M. Jones.

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Clerk, Supreme Court, Utah

SUPREME COURT OF THE STATE OF UTAH

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JAMES M. JONES)
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APPELLANT'S BRIEF ON APPEAL

Appeal from the recommendations of the Board of Commissioners of the Utah State Bar embodied in the Findings of Fact and Conclusions of Law of the Hearing Panel held the 13th of January, 1984, concerning disciplinary action against the Appellant James M. Jones.

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NATURE OF THE CASE

The Utah State Bar filed a complaint against the Appellant, James M. Jones, based on his conviction on two counts of the felony of theft by deception in the State of Utah. The Appellant sought to offer evidence in mitigation at the hearing conducted by the Hearing Panel. The Hearing Panel denied the Appellant any right to offer evidence to the Hearing Panel of special facts and circumstances in mitigation before their recommendations and findings of fact and Conclusions of Law were submitted.

DISPOSITION OF THE UTAH STATE BAR COMMISSION

A hearing was held before a three member Hearing Panel on January 18, 1984. The Hearing Panel ruled in a two to one decision that the Appellant would not be allowed to introduce any evidence at the hearing and that the sole evidence allowed would be the record of conviction. Based upon the Hearing Panel's Findings of Fact, Conclusions of Law and Recommendation, the Board of Commissioners of the Utah State Bar submitted their recommendation to the Supreme Court of Utah that the Appellant be disbarred from the Utah State Bar.

RELIEF SOUGHT ON APPEAL

Appellant brings this appeal to the Supreme Court asking it to deny the recommendation of the Board of Commissioners of the Utah State Bar that the Appellant be disbarred from the practice of law in the State of Utah and order a rehearing before a Hearing Panel at which time the Appellant would have the opportunity to be heard and to introduce evidence of facts and

circumstances in mitigation and in accord with the Constitutional requirements of Due Process of Law , the Rules for Integrity and Management of the Utah State Bar, the Rules of Discipline of the Utah State Bar and the Revised Rules of Professional Conduct of the Utah State Bar.

STATEMENT OF THE FACTS

Subsequent to the entry of judgment on two counts of perjury by deception on the 26th of November, 1980 and the affirmation of that judgment by this Court on the 10th of November, 1981, the Utah State Bar filed a motion for disbarment before this Court. That motion was denied on the 18th of April, 1982, and the case was remanded for a hearing pursuant to the Rules of Integrity and Management of the Utah State Bar and applicable Rules of Discipline of the Utah State Bar.

The hearing was held, at which the Hearing Panel in a unanimous decision ruled that no evidence other than the record conviction would be allowed into evidence before the hearing panel. As a result of that ruling, the Appellant was denied the right to introduce evidence of facts and circumstances in mitigation of the Panel's recommendation of discipline in the Appellant's case.

Based solely upon the record of conviction, the Hearing Panel found that the record of conviction was conclusive evidence of Appellant's conviction and that as a matter of law, the Appellant should be disbarred. Relying on the Hearing Panel's Findings of Fact, Conclusions of Law, and Recommendation, the Board of Commissioners of the Utah State Bar affirmed the

recommendation of disbarment with this Court. (Hearing Panel's findings of Fact, Conclusions of Law and Recommendation). It is from the Hearing Panel's denial of Appellant's right to introduce evidence at that trial which brings about this appeal.

ARGUMENTS

Point I

DISBARMENT SHOULD BE BASED UPON THE FACTS AND CIRCUMSTANCES OF EACH CASE AND A RULE THAT REQUIRES THAT DISBARMENT BE MANDATORY WOULD NOT BE IN ACCORD WITH THE CONSTITUTIONAL REQUIREMENTS OF DUE PROCESS OF LAW.

This case deals with the rights of an accused attorney who has been brought before the Board of Commissioners of the Utah State Bar. The regulation of the practice of law is a judicial function inherent in the powers granted to the Judicial Department by Article V, section 1, and Article VIII, section 1 of the Constitution of Utah. The Supreme Court has the power to pass laws regarding the regulation of the practice of law within the State. It is through that power that the Supreme Court has set up the Board of Commissioners of the Utah State Bar and outlined certain guidelines and procedures for the Commission in the Rules of Integration and Management of the Utah State Bar.

The Rules of Integration and Management of the Utah State Bar serve as guidelines for the Utah State Bar but they are in no way final or binding upon the Supreme Court. Rule (C)19 of the Rules For Integration and Management of the Utah State Bar states that the Supreme Court may review any action of the Board and may inquire into the merits of the case and take any action

agreeable to its judgment. It is pursuant to the Court's authority granted to the Supreme Court and the above finding that the Appellant seeks to have this Court review the decision of the Hearing Panel which denied the Appellant of the right to introduce evidence at his disciplinary hearing.

POINT II

THE SUPREME COURT HAS THE AUTHORITY TO GOVERN AND CONTROL THE UTAH STATE BAR AND MAY REVIEW ANY ACTION TAKEN BY THE UTAH STATE BAR AND TAKE ANY ACTION AGREEABLE WITH ITS JUDGMENT IN THE MATTER.

In section (C)16 of The Rules for Integration and Management of the Utah State Bar it states that an accused has the right to notice of any charges brought against him and the opportunity to defend by the introduction of evidence. The Hearing Panel by a two to one decision denied the Appellant this right to introduce evidence in his defense and relied upon Rule 32 of the Rules of Integration and Management of the Utah State Bar and Rule 4 of section 4 of the Revised Rules of Professional Conduct of the Utah State Bar which basically states that a record of conviction shall be conclusive evidence of that conviction. Appellant does not contest the record of conviction for purposes of this rule but rather contests the Hearing Panels interpretation of this rule in finding that the language of the above rule was not to deny the Appellant's right to introduce evidence of facts and circumstances in mitigation of the fine discipline to be imposed upon him.

The Appellant questions the authority of the Hearing Panel to adopt a rule denying the Appellant of a right which was granted to him by the Supreme Court. In Rule 40 section 4

the Rules of Integration and Management of the Utah State Bar it states that "all rules and regulations formulated by the Board shall be submitted to and approved by the Supreme Court. Not only was this rule not formulated by the Board itself, it is in contravention of the now existing rules governing hearings by the Board. Appellant contends that the Hearing Panel overstepped its authority in taking it upon themselves to formulate a rule which deprived the Appellant of his right to introduce evidence at his disciplinary hearing.

Appellant does not contest the record of conviction as to its conclusiveness in this appeal but rather the Hearing Panel's decision to limit their Findings of Fact and Conclusions of Law upon that record alone. The purpose of the Hearing Panel is to be a fact-finding body and by limiting the evidence in such a way it can hardly be said that the Hearing Panel has served its purpose of being a fact-finding body and establishing a record upon which the Supreme Court may refer to in the matter. The underlying facts of a criminal conviction are relevant to determination of appropriate discipline to be imposed against an attorney in a disciplinary proceeding. In re: Addonizio, 95 N.J. 121, 489 A.2d 492 (1983). Appellant therefore asks this court to overrule the Hearing Panel's decision denying the Appellant his right to introduce evidence in his defense and grant the Appellant the opportunity to exercise that right in a new hearing.

POINT III

DISBARMENT SHOULD BE BASED UPON THE FACTS AND CIRCUMSTANCES OF EACH CASE AND A RULE THAT REQUIRES THAT DISBARMENT BE MANDATORY WOULD NOT BE IN ACCORD WITH THE CONSTITUTIONAL REQUIREMENTS OF OUR PROCESS OF LAW.

Rule 32 of the Rules of Integration and Management of the Utah State Bar states that "upon conviction of an attorney . . . of a felony, . . . the judgment of the Supreme Court may be that the name of the accused be stricken from the roll of attorneys . . .". Rule II section 4 of The Revised Rules of Professional Conduct of the Utah State Bar states;

an attorney and counselor may be disbarred, suspended or reprimanded for violation of any of the foregoing rules, or for any of the following causes, arising after his admission to practice:

1. His conviction of a felony, or of a misdemeanor involving moral turpitude, in which case the record of conviction shall be conclusive evidence.

The language of Rule 32 above and Rule II section 4 cited creates a conflict in the discipline to be conferred upon an attorney who has been convicted of a felony. The language of Rule 32 states that the Supreme Court "MUST" disbar the accused where the language of Rule II section 4 states that an attorney "MAY" be disbarred for his conviction of a felony.

The language in Rule 32 requiring the Supreme Court to disbar an attorney who has been convicted of a felony was adopted by the court of former legislation that is currently codified in 78-51-37 which was formerly 6-0-36 Utah Code Annotated (1943) and which had been present on the books since approximately the turn of the century. The list of crimes which are now termed felonies has greatly increased during the last 50 years and conduct that would now be deemed a felony would many times not have been such under that statute in earlier years. With the new list of felonies in the modern Utah Code section the rule requiring mandatory disbarment solely on the basis of

conviction without examining the underlying facts and circumstances to determine whether or not the conduct of the attorney warrants such discipline would be a violation of the accused's right to Due Process of Law. The right to practice law, as implemented through a license, is a constitutionally protected right and no attorney can be deprived of this right by a suspension or otherwise without strict adherence to basic constitutional principles of procedural due process. Louisiana State Bar Association v. Ehmgig, 277 So.2d 137 (La. 1973).

The rule as stated in the Revised Rules of Discipline is permissive in nature and states that an attorney may be disbarred, suspended, or reprimanded for his conviction of a felony and that discipline may be imposed under these Rules of Discipline for the conviction of a felony crime. This rule would parallel the previously mentioned rule granting an accused the right to defend himself and offer evidence in a disciplinary hearing. If the disbarment of a lawyer is to be madatory upon the record of conviction then the accused has been deprived of his right to defend in the disciplinary hearing. Conviction of a crime involving moral turpitude is conclusive evidence that grounds for imposing discipline upon an attorney exist, but it does not prevent consideration of other evidence for the purpose of determining appropriate disciplinary action. In re: Andros, 64 Ill. 2d 419, 356 N.E. 2d 513, 514 (1976). There is no hard and fast rule that requires a certain penalty to be imposed upon an attorney for conviction of a certain crime; every disciplinary matter is factually different and to be judged on its own merits.

In re: Infinito, 94 N.J. 50, 462 A.2d 160, 163 (1983). The rules requiring a factual determination in each case would mean to the accused's rights in a disciplinary hearing would be in accord with the Due Process of Law requirements of the language of The Revised Rules of Discipline, Rule II section 4 which permits disbarment rather than requires disbarment stated in Rule 32 of the Rules of Integration and Management of the Utah State Bar. Appellant therefore asks this court to resolve the conflict between the above mentioned rules in favor of the permissive language of the Revised Rules of Discipline of the Utah State Bar as being the better rule and in accordance with public policy and meeting the Due Process of Law requirements of the Constitution.

CONCLUSION

Based upon the foregoing discussion, the Appellant asks this Court to reverse the ruling of the Hearing Panel and grant a rehearing in the above matter to allow the Appellant the opportunity to defend himself and offer evidence of facts and circumstances in mitigation of the disciplinary action taken against him. Appellant further asks, that this Court resolve the conflict in the wording of Rule 32 of the Rules of Integration and Management of the Utah State Bar and section 4 of the Revised Rules of Discipline of the Utah State Bar in favor of the permissive language for the disbarment of an attorney who has been convicted of a felony and that the determination be based upon the facts and circumstances of the particular case rather than merely upon the record of conviction.

RESPECTFULLY SUBMITTED this 10th day of August, 1984

By 

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Certificate of Service

I hereby certify that I caused two true and correct copies of the foregoing Appellant's Brief on Appeal to be delivered to C. Jeffery Paoletti, Bar Counsel, 425 East First South, Salt Lake City, Utah 84111 this 10th day of June, 1984.

