

1983

## **In Re: C. Demont Judd, Jr. : Brief of the Board Of Commissioners of the Utah State Bar On Appeal**

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IN THE SUPREME COURT OF THE  
STATE OF UTAH

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In Re:

C. DEMONT JUDD, JR.

)  
) Case No. 19117  
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)  
)

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BRIEF OF THE  
BOARD OF COMMISSIONERS  
OF THE UTAH STATE BAR ON APPEAL

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APPEAL FROM THE FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND RECOMMENDATIONS  
OF THE BOARD OF COMMISSIONERS  
OF THE UTAH STATE BAR

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STATEMENT OF THE  
NATURE OF THE CASE

C. DeMont Judd, Appellant herein, appeals to this court from the Findings of Facts, Conclusions of Law and Recommendation of the Hearing Committee Panel Approved and Adopted by the Board of Commissioners of the Utah State Bar as the result of a hearing pursuant to Rule XII, Rules of Discipline of the Utah State Bar. This appeal is filed pursuant to Rule XIV, Rules of Discipline of the Utah State Bar.

STATEMENT OF FACTS

Appellant, an attorney licensed to practice in the State of Utah, was served with a Formal Committee Complaint pursuant to Rule IX, Rules of Discipline of the Utah State Bar. Appellant did not answer said complaint and a default certificate was filed with the office of the Executive Director of the Utah State Bar who was acting as clerk of the court pursuant to Rule XI (d) and (g) of the Rules of Discipline of the Utah State Bar. A hearing was scheduled and appellant appeared with counsel. At that date, appellant's default was set aside and his counsel was allowed time to answer the complaint.

Subsequent hearings were held, occurring on three different dates wherein both parties to the matter presented evidence and submitted arguments. At the conclusion of the presentations, the Committee hearing panel entered its written Findings of Fact and Conclusions of Law and Recommendation (R.34-39). The Board of Commissioners of the Utah State Bar acted upon the Committee Hearing Panel findings and approved and adopted the Findings of Fact and Conclusions of Law and Recommendation of that panel. (R., 40). The Board of Commissioners concluded as follows:

1) As to Count I of the Formal Committee Complaint that Appellant neglected a legal matter which was entrusted to him in violation of DR6-101 A (3) of the Revised Rules of Professional Conduct of the Utah State Bar.

2) As to Count II of the Formal Committee Complaint that appellant neglected a legal matter which had been entrusted to him in violation of DR6-101 A (3) of the Revised Rules of Professional Conduct of the Utah State Bar.

(R.40., 35)

The Board of Commissioners recommended that appellant be suspended from the Utah State Bar for a period of thirty (30) days. (R.40., 34-35) Appellant appeals this decision.

POINT I

THE FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION OF THE HEARING PANEL APPROVED AND ADOPTED BY THE BOARD OF BAR COMMISSIONERS ARE REASONABLE AND SUPPORTED BY SUBSTANTIAL EVIDENCE.

Appellant requests this court make additional and amended findings of fact. Based on the "new" findings, appellant argues for a reduction in the sanction recommended by the hearing panel and Board of Bar Commissioners. Appellant does not argue, however, that the hearing panel or the Board of Bar Commissioners acted arbitrarily, or that their Findings of Fact, Conclusions of Law and Recommendation are not supported by substantial evidence.

This court stated in the case of In Re: Judd, 629 P.2d 435 (1981) the standard for their review of the Bar Commissioners Findings and Recommended Sanction is as follows:

As to appellant's request that this court revise the Bar Commissioners finding, we note previous declarations of this court that, although it is the prerogative and responsibility of the court to make the ultimate decision in this case, the court will look indulgently upon the findings and recommendations of the Board as advisory, and will be inclined to act in accordance therewith and adopt such findings unless it appears that the Commission has acted arbitrarily or unreasonably, or unless those findings are not supported by substantial evidence. In Re. Macfarlane, 10 Utah 2d 217, 350 P.2d 631



(1960); In Re Fullmer, 17 Utah 2d 121, 405 P.2d 343 (1965); In Re Bridwell, 25 Utah 2d 1, 474 P.2d 116 (1970); In Re Badger, 27 Utah 2d 174, 493, P.2d 1273 (1972); In Re Hansen, 584 P.2d 805 (1978); In Re Blackham, 588 P.2d 694 (1978).

Appellant has failed to show wherein the findings and recommendations of the hearing panel as approved and adopted by the Board of Bar Commissioners reflect any arbitrary and unreasonable act or where they are not supported by substantial evidence. Therefore, appellant's requested adoption of his version of the facts and subsequent recommended sanction should be denied.

#### POINT II

APPELLANT HAS FAILED TO PRESENT EVIDENCE OF MITIGATING CIRCUMSTANCES TO WARRANT A REDUCTION OF THE RECOMMENDED SANCTION

The purpose of disciplinary proceedings has been said to be for the protection of the public. The California Supreme Court enunciated this proposition in In Re Giddens, 635 P.2d 166 as follows:

We have repeatedly described the purpose of disciplinary proceedings not as punishment of practitioner, but protection of the public, the courts, and the profession. (Codiga vs. State Bar (1978) 20 Cal.3d. 788, 796, 144 Cal. Rptr. 404, 575 P.2d 1186; In Re Cohen (1974) 11 Cal.3d 935, 944, 114 Cal Rptr.611 523 P.2d 651) "In the final analysis, the discipline to be imposed must be a function of the balancing

of relevant factors including mitigating circumstances." (Codiga, supra, 20 Cal.3d at p.796, 144 Cal Rpts.404, 575 P.2d 1186).

Mr. Judd has not delineated mitigating factors, to explain his behavior and neglect. Instead of accepting responsibility for his neglect, appellant casts aspersions upon his clients. He argues that the outcome of each case would have been the same even if he had properly represented his clients and followed through on his responsibilities as an attorney, but does not offer a justifiable reason why he neglected the work for which he was paid.

Upon admission to the Bar, appellant took the oath of an attorney Swearing, in part, "... that I will discharge the duties of attorney and counselor at law with fidelity." Rule III, Revised Rules of Professional Conduct of the Utah State Bar. Appellant acknowledges, in this last answer appearing on page 6 of his brief, "Well, I suppose the priorities would have to be rearranged, and I suppose that I would neglect my elected duty and be the lawyer and that's the difficulty." (Emphasis added.)


Appellant acknowledges his neglect and supposes he would do something different if the opportunity presented itself. However at the hearing on this matter, appellant still does not acknowledge his primary obligation of fidelity as an attorney to his client. He is still hedging as to what he believes his obligation is to a client.

Respondent submits that appellant has not become more aware of the Rules of Ethics and still does not evidence that, as an attorney, he owes primary fidelity to his client. The need to protect the public justifies the recommended sanction.

#### CONCLUSION

Respondent submits the Findings of Fact and Conclusions of Law and Recommendation of the Hearing Panel as approved and adopted by Board of Bar Commissioners of the Utah State Bar, are accurate, reasonable and amply supported by the evidence. Therefore, they should be adopted and approved by this court.

Respectfully, submitted this 19 day of July,  
1983.

  
\_\_\_\_\_  
C. Jeffrey Paoletti  
Bar Counsel  
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