

1965

## In Re Boyd M. Fullmer : Defendant's Brief

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IN THE SUPREME COURT  
OF THE STATE OF UTAH

UNIVERSITY OF UTAH

OCT 15 1927

Re:

BOYD M. FULLMER

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No. 10027

FILED

MAY 3 1928

DEFENDANT'S BRIEF

APPEAL FROM THE RECOMMENDATION  
OF THE BOARD OF COMMISSIONERS  
THE STATE OF UTAH

DEAN W. SHEFFIELD, *Secretary*

KIPP AND CHARLES

CARMAN E. KIPP, *Esq.*

520 Boston Building

*Attorney for Defendant*

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GORDON R. STRONG  
GLENN C. HANNI

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ASSOCIATE COUNSEL  
LAWRENCE L. SUMMERHAYS  
JAMES B. MEDLIN  
WENDELL E. BENNETT

May 22, 1965

The Supreme Court of the State of Utah  
State Capitol Building  
Salt Lake City, Utah

Re: Boyd M. Fullmer, Disciplinary Matter  
Case No. 10323

Gentlemen:

We have reviewed the brief of the defendant that has been filed in the above matter. The defendant does not attack the findings of the Disciplinary Committee, nor does he attack the sufficiency of the evidence to support the Committee's findings. In view of this, it is the opinion of the Prosecuting Committee that no good purpose would be served by filing an Answering Brief. It is the desire of the Prosecuting Committee to submit this matter, based on the record, and, unless the Court feels otherwise, it is our desire to submit this matter without oral argument by the prosecution. However, if the Court prefers that the prosecution be represented at the oral hearing, we certainly will attend.

The main thrust of the defendant's brief is to question the recommended three-year suspension. The Prosecuting Committee has not been invited to give its opinion relative to the recommended discipline in this matter, and the rules dealing with disciplinary matters are silent on the subject. The Committee has considered this very carefully, and we find that there is a difference of opinion as to whether the prosecution should, without having been invited to do so, make any recommendations relative to the penalty that should be imposed.

After due consideration of this, it is the feeling of the Chairman and Steve Nebeker, one of the members of the Committee, that we should express an opinion. It is the feeling of the other Committee member, Steve West, that this is not within our province and that we ought not do this. A majority of the Prosecuting Committee wants to go on record as being of the opinion that that the recommended three-year suspension is much too severe. It is our

The Supreme Court of the State of Utah  
May 22, 1965  
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opinion, considering all of the facts and circumstances, that justice will be best subserved if a suspension of somewhere from three to six months is imposed.

We would appreciate being advised by the Clerk of the Court when the oral argument is set and as to whether or not it is the desire of the Court that a member of the Prosecuting Committee be present.

Respectfully submitted,

PROSECUTING COMMITTEE

By Glenn P. Hanni  
Chairman

GCH:ac

cc: Steve Nebeker  
Steve West  
Carmen Kipp

LAW OFFICES

GORDON R. STRONG

**STRONG & HANNI**

ASSOCIATE COUNSEL

that should be imposed.

After due consideration of this, it is the feeling of the Chairman and Steve Nebeker, one of the members of the Committee, that we should express an opinion. It is the feeling of the other Committee member, Steve West, that this is not within our province and that we ought not do this. A majority of the Prosecuting Committee wants to go on record as being of the opinion that that the recommended three-year suspension is much too severe. It is our

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No statutes, cases or other annotations cited.

# IN THE SUPREME COURT OF THE STATE OF UTAH

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In Re:

BOYD M. FULLMER

} Case  
No. 10323

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## DEFENDANT'S BRIEF

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### NATURE OF THE CASE

This case involves a hearing before this Honorable Court on one charge of professional misconduct previously heard by a Committee appointed by the Board of Commissioners of the Utah State Bar, as a result of which hearing Boyd M. Fullmer, Esq. was found guilty of one charge of misconduct and, as a result of this finding, the Board of Commissioners of the Utah State Bar has recommended a three-year suspension from the practice of law of Boyd M. Fullmer.

### RELIEF SOUGHT

Defendant concedes the facts in substance as to representation, amount of settlement, proceedings in Third

District Court and sums paid and owing, but seeks relief in this proceeding from the recommended penalty of a three-year suspension from the practice of law on the basis that such penalty is tantamount to disbarment, unduly harsh and unreasonable, is not warranted by the circumstances and seems to not consider the mitigating circumstances and the degree of culpability involved.

### STATEMENT OF MATERIAL FACTS

The charge before the Board of Commissioners of the Utah State Bar consisted of two counts of alleged professional misconduct. The Disciplinary Committee found defendant guilty on the first count and found that there was reasonable doubt as to the willfulness of the conduct charged in the second count and, therefore, that such conduct was not a direct and clear violation of the Rules of Conduct of the Utah State Bar.

The facts connected with the first count in substance were that defendant undertook to represent Mr. and Mrs. Hendrick Vredevelde in a claim for personal injuries arising from an automobile collision, effected an advantageous settlement for the sum of \$2,500.00, of which his fee was to be one-third; that settlement was completed that defendant failed to remit the net recovery of Vredevelde's to them and made various representations which were not true to excuse the delay in so remitting; that suit was filed against him in Third District Court, Judgment obtained for \$2,500.00 compensatory damages, \$1,500.00 punitive damages, and costs; that payment in excess of \$2,000.00 has been made on said Judgment and

that the Judgment balance with interest as of May 1964 was \$2,213.87; that the action was willful and not excused by the various circumstances of financial, emotional and personal problems on the part of defendant and that it constituted a breach of the Rules of Conduct of the Utah State Bar; that as a result a recommendation has been made to this Court for a three-year suspension.

## ARGUMENT

### POINT I

THE PENALTY RECOMMENDED BY THE COMMITTEE AND BAR COMMISSIONERS IS UNDULY HARSH AND UNREASONABLE AND IS NEITHER WARRANTED BY THE CIRCUMSTANCES OF THE MISCONDUCT NOR DOES IT GIVE REASONABLE CONSIDERATION TO MITIGATING CIRCUMSTANCES.

As stated in the sections headed Relief Sought and the Point of this Argument, defendant petitions this Court to review only that portion of the proceedings relating to the penalty reasonably warranted by all of the facts and circumstances involved in the instant case. It is not argued that the proceedings were deficient in any way as to procedure or validity and the basic facts as found are not denied. Defendant does, however, strongly urge that the degree of culpability involved and the mitigating and ameliorating circumstances surrounding the matter have not been fully, fairly, and adequately evaluated by the Board of Commissioners, and that the extended suspension for a period of three years, which

has the virtual effect of disbarment of defendant, is not just, equitable, or warranted in this case.

It is abundantly clear from a reading of the record of the proceedings that defendant was not only under severe emotional, financial, and mental strain at the time of representation of Vredevelts and during the ensuing months, but that despite considerable personal progress and rehabilitation, the strain and emotional involvement in this matter were continuously evident during the hearing itself. The well-known maxim in the profession that "A man who acts as his own attorney has a fool for a client" is once again well illustrated. Defendant was less than an adequate advocate for himself throughout these proceedings, and it is urged to this Court that had counsel entered this cause so as to present the picture objectively and without the heat and confusion of personalities which existed, it is likely that the recommendation would have been of a considerably lesser penalty.

It is not claimed at any point that defendant did a less than professional and effective job in negotiating an advantageous settlement for the Vredevelts and, in fact, he did do a very good job in this respect. There is no question that he fell short of the standards to which an attorney must be held by allowing himself to use his clients' funds to meet his own financial needs, and it is conceded that such conduct cannot be tolerated by the Bar and that persons guilty of such conduct must be punished. However, it is defendant's position that, as of the time of filing this Brief, his punishment has been

lengthy and severe. In this respect the following facts are noted:

1. He is the judgment debtor on a Judgment for a total of \$4,000.00 plus interest and costs, which cannot be discharged in Bankruptcy, and the proceeds of which inure to the Vredevelts.
2. He has been deprived of the fee of \$667.00 which he earned in the Judgment cited above, he has paid in excess of \$2,000.00 whereas the net recovery originally to the Vredevelts would have only been about \$1,667.00, and he is still obligated to pay in excess of \$2,200.00 plus accruing interest.
3. The Disciplinary proceedings have been pending since about June 1964, and the initial presentation of this matter to the Bar was about one year before that time. During this period, defendant has refused employment as counsel in numerous cases and has engaged in very little private practice of law for the reason that he did not know what the result of the proceedings might be and did not feel that it was appropriate or proper for him to accept employment as counsel not knowing whether or not he would be able to complete such employment. This has not only greatly damaged his practice but has resulted in loss of considerable income in the form of legal fees.
4. He has made dedicated, sincere, and continuous effort to rehabilitate himself personally to rec-

tify his personal relationships in all areas, including family, business, community, political, and church activities and has achieved considerable progress and has been quite successful in this regard at the present time.

5. He has been regularly employed in a position of responsibility at UMC Motor Club with management of personnel at that club, handling of its affairs and its members in varied situations, assuming business and personal responsibilities connected with the club and its members, and has evidenced responsibility, integrity, and regard for personal and professional ethics in this position with his employees (see exhibits on pages 9 and 10 of this Brief).
  
6. While the dire financial problems of defendant certainly do not justify the taking of clients' trust funds, it must be conceded that a person with the extreme pressure of providing for his wife and children and of trying to cope with the demands of creditors which are completely beyond his ability to meet is less culpable than one who commits a similar offense for his own personal pleasure, comfort, or for luxuries, rather than essentials. In this regard, it is noted that defendant grew up in almost impoverished circumstances in a large family and only through perseverance, personal sacrifice, and enterprise succeeded in making his way through law school and becom-

ing a member of the Utah State Bar. It is urged that the financial problems of defendant were not really of his own making and were the result of his being victimized to a large extent by others from whom he was unable to collect. Some evidence of this appears in the testimony presented to the Committee relative to the second count on which their finding was of no clear violation of the Rules of Conduct.

The recommended penalty of a three-year suspension will doubtless result in loss of employment in which a part of defendant's activities involve handling of certain legal matters. This, together with the financial situation of defendant which requires a reasonable income to support his wife and children, would make it impossible for him to recommence a practice of law at any time in the future. It is, therefore, argued that while the penalty is called a "suspension," its practical effect is of disbarment. The practice of defendant has been curtailed to a point where the real effect of these proceedings has been virtual suspension for a matter of almost two years. His employment could be continued with a suspension of three months, but it is doubtful that it could be continued with a longer suspension and it is a virtual certainty that it cannot be continued with a suspension of three years.

## CONCLUSION

The ends of justice and the administration of the Rules of Conduct of the Utah State Bar can be best served by this Court ordering a three-month suspension of defendant with automatic reinstatement thereafter. The punishment already meted out to defendant at the time of filing this Brief is considerable, severe, and very likely adequate for the offense. A further suspension of three months is certainly justified by the circumstances and is consistent with application of the best rules of justice, equity, and professional conduct in view of all of the circumstances of this case and the culpability of defendant.

Respectfully submitted,

KIPP AND CHARLIER

CARMAN E. KIPP, *Esq.*

*Attorney for Defendant*



## UMC MOTOR CLUB

General Office: 555 East 4th South • Salt Lake City, Utah

P. O. Box 2068 • Telephone 359-8691

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April 29, 1965

TO WHOM IT MAY CONCERN:

Mr. Boyd M. Fullmer has been working for UMC Motor Club since May 1, 1963.

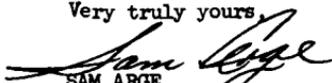
He started as a Claim Adjuster, and has been our Claim Manager nearly a year.

We have great trust and respect for Mr. Fullmer and his ability, and he is highly respected by our employees and many members.

Because of his honesty, ability and good character, he was also elected a member of our Board of Directors.

Even though I have great respect for him and his ability, it is essential that he be a member of the Bar to keep this position. If he were to be suspended for more than a very few months (2 or 3 or 4 at most), we would have to discharge him from our employ.

Very truly yours,

  
SAM ARGE  
Chairman of the Board

**SQUARE D COMPANY**  
ELECTRICAL EQUIPMENT  
WESTERN DIVISION



HEAVY INDUSTRY CONTROL

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MAIL REPLY TO  
P O BOX 2587  
SALT LAKE CITY 10 UTAH

April 30, 1965

To Whom It May Concern:

Subject: Boyd M. Fullmer

Gentlemen:

Please be advised that I have personally known Boyd Fullmer for many years, and I wish to make it known that I feel he is an honest individual, of good character, and high integrity. My associations with him have been of the best.

In my capacity as a Bishop, I can recommend him as a man of high moral character, and as a citizen, I can also recommend him as a good citizen. He has high ideals, is a church member in good standing, and an asset to our church and community.

Should there be any personal questions relative to Mr. Fullmer which I may answer, I will be happy to do so.

Sincerely,

SQUARE D COMPANY

Reed S. Richardson  
District Manager

RSR:rr