

1972

In Re: Norman Wade, Disciplinary Proceeding : Petitioner'S Brief For Rehearing

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**IN THE SUPREME COURT
OF THE STATE OF UTAH**

IN RE:

NORMAN WADE,
Disciplinary Proceeding.

PETITIONER'S BRIEF FOR RELEASE

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Clerk, Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

IN RE:

NORMAN WADE,
Disciplinary Proceeding.

}

Civil No.

PETITIONER'S BRIEF FOR REHEARING

STATEMENT OF KIND OF CASE

This is a disciplinary proceeding against Norman Wade, a licensed and practicing attorney for the State of Utah.

DECISION ON ORIGINAL HEARING

No original hearing was held on this case. However, the court reached a decision that your petitioner, Mr. Wade, had neglected to attend to the affairs of his clients and that he failed to maintain complete records of clients' funds, securities and properties which were entrusted to him and did not account to the client therefor and as a result suspended your petitioner from the practice of law for a period of two years.

RELIEF SOUGHT ON HEARING

Your petitioner seeks to have the court review the record in the above-entitled case and to reduce the judgment which this court has levied against your petitioner.

STATEMENT OF FACT

Complaints against your petitioner were brought to the Bar Association by LeGrande Hubbard, Helen Gledhill, Ruth Shaver, William Harrison, Donna P. Wise, Carl Burkholtz and Shirley E. Moore. Hearings were held by the Bar Commission on the said complaints and the Bar Commission made the findings of fact and conclusions of law and recommended to the Supreme Court that your petitioner be suspended for a period of two years.

ARGUMENT

POINT I

THE DECISION OF THE SUPREME COURT TO SUSPEND YOUR PETITIONER FOR A PERIOD OF TWO YEARS WAS UNTIMELY IN LIGHT OF COURT SANCTIONED NEGOTIATIONS BETWEEN YOUR PETITIONER AND THE BAR ASSOCIATION AT THE TIME THE DECISION OF SUSPENSION WAS ENTERED.

Prior to the 18th day of April, 1972 it was informally suggested to your petitioner that it would be a good idea for him to contact the Bar Association concerning the proceedings against petitioner; that perhaps an agreement could be reached between the Bar Association and petitioner concerning the disciplinary action which would be taken against petitioner as a result of these complaints against him. It was further suggested to your petitioner that he contact Bryce Roe concerning this matter. In response to these suggestions your petitioner made an appointment with Bryce Roe to meet with him at 8:30 a.m. on the 18th day of April, 1972. On that date and at that time your petitioner met with Bryce Roe concerning the matter and discussions were had between your petitioner and Mr. Roe concerning what action should be taken. At that time Mr. Roe asked your petitioner what he would be willing to stipulate to with the Bar Association to which your petitioner replied he would stipulate to anything the Bar Association desired; that he hoped that the stipulation would not be too harsh in regard to your petitioner, but that your petitioner was willing to comply with any requirement of the Bar Association and to stipulate to the same. Whereupon Mr. Roe stated to your petitioner that shortly the Bar Association would be meeting and that he would take the matter up with the Bar Association, let them know your petitioner's position on the matter and thereafter contact your petitioner concerning the Bar Association's desires. Mr. Roe thereafter failed to contact your petitioner at any time concerning the said matter and the next thing that your petitioner

heard concerning the matter now before the court was through the Deseret News newspaper when on the evening of May 15, 1972 your petitioner read in the Deseret News that he had been suspended by the Supreme Court from the practice of law in the State of Utah for a period of two years. Thereafter on the 17th of May your petitioner received through the mail a formal notice from the Supreme Court in the form of a decision by the Supreme Court of the State of Utah. Your petitioner had taken no further action with the Supreme Court because his understanding with Mr. Roe that there would be further negotiations between the Bar Association and your petitioner and that he would have the opportunity to stipulate with the Bar Association concerning the disciplinary action to be taken against him in this matter. For this reason petitioner took no further steps with this court to protect his rights and interests.

POINT II

THE JUDGMENT BY THIS COURT AGAINST THE PETITIONER IN THIS MATTER IS UNUSUALLY HARSH IN LIGHT OF THE CIRCUMSTANCES ON THIS CASE AND THEREFORE THE FACTS OF THE CASE SHOULD BE REVIEWED AND THE JUDGMENT RECONSIDERED BY THE COURT.

The facts of this case show that complaints against your petitioner were brought by Helen Jensen Gledhill, Ruth Shaver, William Harrison, Donna P. Wise, Carl

Burkholtz, Shirley E. Moore and LeGrande Hubbard. The findings of fact of the Bar Commission affirmatively show that Gledhill and Shaver are both satisfied with your petitioner's work for them. Since that time the Shaver matter has been completely concluded to Mrs. Shaver's satisfaction and that your petitioner is still representing Mrs. Gledhill on various legal matters. The records further show that although your petitioner took longer to complete the work of Mrs. Wise than Mr. Wise desired, that he did satisfactorily complete Mrs. Wise's work.

The records further show that your petitioner was paid a fee of \$25 for consultation regarding the purchase of a water softener by Mr. Burkholtz and that your petitioner gave Mr. Burkholtz the satisfactory and requested advice. Thereafter, and this is a quote from the findings of fact by the Bar Commission "There is some doubt in the evidence as to what happened next, but it seems likely that no decision was made by Burkholtz as to which route he would follow and therefore Mr. Wade took no further action. Mr. Burkholtz was served with Summons and Complaint and he delivered the same to Mr. Wade. Since no decision was made by Burkholtz as to what course of action to follow Wade did not respond to the complaint. Subsequently Burkholtz was cited into court on a supplemental order and he terminated the relationship with Wade". The record further shows that your petitioner refunded Mr. Burkholtz's money.

In regard to the Harrison complaint the record will show that Mr. Harrison retained your petitioner to

represent him in multiple misdemeanor charges; that the record further shows that your petitioner entered the pleas of not guilty and demanded that trial be had by jury on each separate charge; that thereafter without notice to your petitioner a trial was had before Justice of the Peace Childs in the absence of both your petitioner and Harrison. When it was brought to the attention of your petitioner that a trial had been held without notice to your petitioner, your petitioner thereafter filed an appeal in the case after which Harrison was dissatisfied with your petitioner's services and relieved him of any further responsibility in regard to the matter. In light of the above, it can hardly be seen in this matter how your petitioner could have been at fault since he was not notified of any trial to be had in the matter. It would seem, therefore, from the foregoing, that your petitioner was at fault only in the matters of Hubbard and Moore.

In regard to the Moore matter, Mrs. Moore was under the influence of drugs at the time she was involved in an automobile accident. She was cited by the court for leaving the scene of an automobile accident and was under investigation for the illegal use of drugs. Your petitioner was retained by Mrs. Moore to represent her on both of these matters. Your petitioner represented her on these matters and as a result of said representations the drug charge was never brought against Mrs. Moore and Mr. Wade entered a plea of guilty to the charge of leaving the scene of an accident and was fined \$100 with \$25 of it suspended, leaving a net payable of \$75, said \$75 was to have been paid within three months. Thereafter

Mrs. Moore paid certain monies to your petitioner through your petitioner's secretary, but the amount paid was not paid within the three months required and the payments made were not shown to be on the court fine, therefore, due to inadequate record keeping your petitioner did not apply the monies received to the payment of the said fine and especially since some of the payments made were several months after the fine was to have been paid. Further, while this was happening, Mrs. Moore brought to the attention of your petitioner that she had several bad checks out and requested your petitioner to represent her on these matters, at which time your petitioner informed Mrs. Moore that he would have to be paid his fee completely for the representation in the traffic case before monies would be applied to the payment of the checks. Thereafter monies were received by your petitioner. When the final payment was made to your petitioner on December 12, 1969 for the fine was months after said time should have been paid and due to improper bookkeeping on the part of your petitioner said funds were not applied to the fine, since it was way past the time the fine should have been paid. Thereafter other payments were made to your petitioner and Mrs. Moore was cited into court for lack of payment of the fine. Thereafter Mrs. Moore complained to the Bar Association and after the complaint to the Bar Association was made your petitioner paid the fine in full and further paid off monies on the outstanding bad checks of Mrs. Moore and excused a debt of Mrs. Moore to your petitioner in excess of \$400. Although Mrs. Moore was inconvenienced extremely by

the bookkeeping error on the part of your petitioner in regard to the fine, since that time your petitioner has more than made up for the same to Mrs. Moore.

In regard to the Hubbard matter, your petitioner did fail to file a suit for Mr. Hubbard within the statute of limitations. However there are certain extenuating circumstances in this regard, these being that during part of the period of the statute of limitations Mr. Hubbard was living out of the state and failed to contact your petitioner during that time; that prior to the running of the statute of limitations on the claim of Mr. Hubbard in November of 1969 Mr. Hubbard obtained the file from your petitioner and turned the matter over to another attorney to handle the matter prior to the running of the statute of limitations; that said other attorney further failed to file said suit and protect Mr. Hubbard's interest although Mr. Hubbard had notice at the time that no suit had been filed on his behalf. That since this time Mr. Hubbard's claim for injuries which were sustained in an automobile accident have been completely satisfied by your petitioner.

In light of the foregoing facts it would seem that this suspension of your petitioner for a period of two years is extremely harsh and unjustified. It is the recommendation of your petitioner that since he was at fault in certain of the matters before the court that he be suspended for an undetermined length of time, which said suspension would be reviewed by the Bar Commission at the end of six months, at which time your petitioner would have an opportunity to demonstrate

to the Bar Commission what he has been doing during that time and the steps which he has taken to alleviate the factors which caused the problems in the past; that if at the end of six months the Bar Commission felt that the situation had been alleviated, that your petitioner be reinstated to practice law for a probationary period and that he be allowed to practice law under the supervision and control of the Bar Commission for such time as the Commission and the court deems just and proper and that after a satisfactory period of probation your petitioner then be allowed to continue in the practice of law; that if the Bar Commission at the end of six months does not find your petitioner has corrected the faults that another period of suspension be levied and that a review of petitioner's position be made again at six months or other appropriate time. In light of the facts of this matter this judgment would seem to be far more just than that which was levied by this court.

CONCLUSION

That although the petitioner herein has been at fault in the handling of certain matters entrusted to his care, that the period of suspension against him as levied by this court is unduly harsh and that the court should therefore review the facts and enter judgment in accordance with the recommendation of petitioner under Argument II hereof.

Respectfully submitted

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