

2006

Steven Crawley v. : Reply Brief

Utah Court of Appeals

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IN THE SUPREME COURT OF UTAH

In the Matter of the)	REPLY BRIEF
Discipline of:)	
)	
Steven Crawley, #0750,)	
)	Supreme Court No. 20060451
<i>Respondent.</i>)	
)	

Appeal from the Third District Court, Salt Lake County

Judge Denise P. Lindberg

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The Office of Professional Conduct (“OPC”) hereby submits its Reply Brief.

ARGUMENT

The proper employment of disciplinary probations is unclear. The Standards for Imposing Lawyer Sanctions (“Standards”) identify probation as a sanction, but unlike the sanctions of admonition, reprimand, suspension, and disbarment, which have explicit criteria for their imposition, probations have no such criteria. Similarly, whereas the Standards identify and define as sanctions “resignation with discipline pending” and “reciprocal discipline,” and the Rules of Lawyer Discipline and Disability (“RLDD”) provide criteria for their imposition, the RLDD do not address probation. Probation is the only sanction for which there are no standards upon which a decision for imposing it may be based, beyond the exhortation in Rule 3 of the Standards, which apply in all disciplinary matters, that the factors to be considered in imposing a sanction are the duty violated, the lawyer’s mental state, the level of injury caused by the misconduct, and the presence of mitigating or aggravating factors.¹

The upshot is that neither the OPC, nor the respondents, nor the District Courts have guidelines for determining when probation might be appropriate. Historically, this did not present significant problems because probation has seldom been proposed either by the OPC or by respondents, and when it was proposed, the OPC only agreed to it in certain kinds of situations. Now, however, two cases have resulted in probation being imposed outside the contexts in which the OPC has considered it appropriate,

¹ Significantly, the Rule 3 factors tie explicitly into Rule 4, which provides the framework for imposing the sanctions of disbarment, suspension, reprimand, and admonition, but not probation.

and even has been imposed when neither party suggested it.² The point is that the question appears to be arising more frequently, and deserves the Court's attention most importantly to ensure that like cases are treated similarly, and also to preserve the resources of the courts and the OPC.

The OPC recognizes the virtues of flexibility and creativity in fashioning disciplinary sanctions, but these have their limits. Too much creativity and flexibility can produce results that either impose unreasonable burden on a respondent, or allow too much lenience. Either result is unfair to the individual respondents or to respondents who have engaged in similar misconduct, and undermines the integrity of the disciplinary system. This is why the OPC seeks the Court's guidance in this case and its companion, *In re Henderson*.

The OPC's initial brief with its attached chart attempted to capture the breadth of how other jurisdictions handle probation. The diversity of their approaches illustrates the need for guidance. The Utah cases cited suggest that the Court might take a severe approach to an attorney's dishonesty, but because none of them are on point, the question remains open.

CONCLUSION

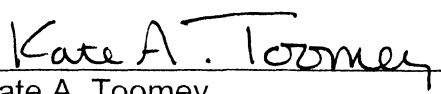
The OPC asks the Court to determine whether probation is an appropriate sanction for an attorney's dishonesty to clients and others. If it is not, the Court should reverse that portion of the District Court's Ruling and Order re: Sanctions, and impose the appropriate presumptive sanction of suspension. Although the sanction is

² Probation was not imposed sua sponte in this case, but was imposed sua sponte in the case identified in the OPC's initial brief. See Brief of the Petitioner/Appellant, at 19-20.

challenged in this case, the OPC asks the Court to go beyond addressing that, and to provide general guidelines for imposing probation.

DATED: Nov. 11, 2006.

OFFICE OF PROFESSIONAL CONDUCT



Kate A. Toomey
Deputy Counsel

CERTIFICATE OF MAILING

I hereby certify that on this 17th day of November, 2006, I caused to be mailed via United States first-class mail, postage pre-paid, two true and correct copies of the foregoing REPLY BRIEF to: Gregory Skordas, counsel for the Respondent, Steven Crawley at SKORDAS, CASTON & HYDE, Boston Bldg., Suite 1104, 9 Exchange Place, Salt Lake City, Utah 84111; and John T. Caine, counsel for the Respondent, J. Keith Henderson, at RICHARDS CAINE & ALLEN, PC, 2550 Washington Blvd., Suite 300, Ogden, Utah 84401.

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