

2021
SPRING CASE REVIEW

1. ***Shubert v. Ada County, et. al., Idaho Supreme Court, 461 P.3d. 740 (3/12/20).***

Malpractice Claim vs. Public Defenders

General Facts

After conviction, sentence and a 2011 probation violation, the district court entered an order extending Shubert’s probation beyond the time allowed by law. In 2014, she was charged with a new probation violation and incarcerated. In 2016, she was charged with a new probation violation and assigned a new PD who discovered the probation calculation error and filed a motion to correct the illegal sentence, which was granted. Shubert then filed several civil claims which were dismissed, except for the negligence claim. Defendants filed a MSJ, which was denied, and the District Court held PDs were not entitled to quasi-judicial immunity.

Ethical Issues

The Court held that, unlike prosecutors, PDs are not entitled to quasi-judicial immunity. The opinion also discusses that the responsibilities of prosecutors and PDs are distinguished in the I.R.P.C., noting that prosecutors are bound by I.R.P.C. 3.8 regarding charging decisions and the rights of the accused. I.R.P.C. 3.8 does not apply to PDs who, like all defense attorneys, are tasked with zealous representation of their client’s best interests. Prosecutors, on the other hand, have the unique responsibility to act within the interest of justice under the IRPC. That distinction provided additional support for the holding.

2. ***State v. Hughes, Idaho Court of Appeals, No. 45972, 12/5/19, unpublished opinion.***

General Facts

Hughes appeals his conviction for heroin-related charges. The ethical issue relates to Hughes’ argument that the district court erred when it denied defense counsel’s motion to withdraw.

Counsel’s affidavit in support of his motion to withdraw included the following representations:

1. During my most recent discussion with my client about discovery, we discussed his request to file a motion to suppress the search warrant and I provided him with my opinion that such, a motion was frivolous and the legal reasoning behind my opinion.
2. Despite that discussion, Hughes insisted on attempting to address suppression at the pre-trial conference the next day. He also wrote a letter to the court, requesting that counsel file a motion to dismiss the “altered and fake search warrant”.
3. He also sent that letter to the Idaho State Bar. Counsel believes the contact with the Idaho State Bar, while not officially a Bar complaint, puts counsel in a potentially adversarial position with his client.
4. Hughes does not have confidence in my representation, and we are at a legal impasse.
5. Finally, I have an ethical concern which has arisen, but I am not at liberty to disclose that to the court which makes me unable to represent Hughes adequately a trial.

Following hearing, the district court denied counsel’s motion to withdraw. The case proceeded to trial and he was found guilty.

On appeal, Hughes argued the district court erred in denying defense counsel’s motion to withdraw, because the district court’s decision compelled counsel to represent him while laboring under an actual conflict of interest in violation of his Sixth Amendment right to conflict-free counsel.

The Court’s Analysis

The Court found that counsel simply advised the district court about issues he was having with his client and did not disparage his client to promote his own interests or disclose confidential information. The opinion noted that the prosecutor was already aware of the conflict presented at the hearing. Most of counsel’s argument was in his affidavit and not discussed in open court. The Court found counsel acted appropriately by explaining the reasons that he sought withdraw at the motion to withdraw hearing and that is precisely the appropriate venue for trial counsel to explain to the Court why he sought to withdraw. Hughes’s contention that the district court has some duty to prevent counsel from discussing the events which led to his motion to withdraw is incorrect. Finally, the Court determined that there was not an actual conflict of interest that violated the Sixth Amendment.

This case provides us an opportunity to discuss I.R.P.C. 1.16 regarding withdrawal, 1.6 regarding confidentiality, and 1.7 regarding conflicts.

3. *Merrill v. Smith, Idaho Supreme Court, No. 47511, 12/4/20.*

General Facts

This case involves a fee dispute between two attorneys arising from a purported fee-sharing agreement. The underlying case involved an airman in the U.S. Air Force who was injured while driving through Idaho on his way to his posting in Alaska. The airman hired Alaska attorney Merrill to represent him in his personal injury case in Idaho. Merrill associated with Smith, an Idaho attorney, to act as local counsel.

At a point in the proceedings, plaintiff terminated Merrill and Smith ultimately settled the case and retained the entire attorney fee. Merrill then sued Smith, seeking his proportionate share of the fee. Smith won summary judgment at the district court and the Idaho Supreme Court reversed, finding the district court erred in granting summary judgment to Smith.

Facts regarding the division of the attorneys' fee

Merrill and Smith exchanged multiple emails in an effort to agree upon how the attorneys' fees would be split between them. Merrill contended the terms of his agreement with Smith in those emails was that he and Smith agreed that 2/3 of the contingency fee would be paid to Merrill and 1/3 would be paid to Smith.

The contingency fee agreement drafted by Merrill was signed by the client and Merrill. Smith never signed the agreement. The agreement referenced a fee-sharing agreement between Merrill and Smith, but it failed to spell out or address any of the specifics of the fee-sharing agreement.

The Court's analysis.

The Court noted that the failure to set out the agreement between Merrill and Smith appeared to violate the rules of professional responsibility in both Idaho and Alaska citing I.R.P.C. 1.5(e), which provides that the client must agree to the division of a fee between lawyers not of the same firm, including the share each lawyer will receive, and the agreement must be confirmed in writing. The Court noted that while the signed agreement appears to run afoul of those rules, a violation of those rules does not affect the Court's analysis of the merits of the case. However, the Court noted that if the lawyers had complied with I.R.P.C 1.5(e), it is doubtful this dispute would have resulted.

With respect to the merits, the Court held summary judgment was inappropriate because Smith failed to meet his burden as the moving party on summary judgment by merely alleging that it was undisputed that there was no agreement reached between the parties, written or oral. That was contradicted by the crux of Merrill's complaint that the agreement about the fee sharing had been reached over the course of the email correspondence. Since Smith failed to satisfy his burden on summary judgment, the Court reversed and remanded.