



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**In the Matter of the Application of James Joseph Hamm to be admitted  
as a member of the State Bar of Arizona SB-04-0079-M**

**PARTIES AND COUNSEL:**

**Applicant:** James Joseph Hamm, *In Propria Persona*.

**Committee on Character and Fitness:** Represented by Lawrence McDonough, Monroe & McDonough, P.C.

**Amicus Curiae:** State Bar of Arizona represented by Robert Van Wyck. Arizona Attorneys for Criminal Justice represented by Michael Kimerer.

**FACTS:** In 1974, when James Hamm was 26 years of age, he and two accomplices planned to rip-off two young men who wanted to buy 20 pounds of marijuana. Hamm claims that the plan was merely to rob the buyers, not murder them. Hamm and an accomplice ended up shooting the buyers and killing them. Hamm was arrested and charged with two counts of first degree murder and two counts of armed robbery. A few months later, Hamm pled guilty of one count of first degree murder, involving the victim he killed, and the remaining charges were dismissed. He was sentenced to life in prison, without the possibility of parole for 25 years.

Hamm spent 17 ½ years in prison. During that time, he was a model prisoner. He obtained his undergraduate degree, wrote numerous grants for programs and speakers on various issues relevant to prisoners and rehabilitation, and assisted other prisoners in their attempts to better themselves and accept responsibility for their acts. Hamm and his first wife, with whom he had a son, were in the process of divorcing at the time of the crime. He never received the final order of child support, and understood that his former wife's new husband had adopted his son. While in prison, he met and married Donna Leone. She and Hamm founded Middle Ground Prison Reform, a prisoner and prisoner family advocacy organization.

In 1992 Hamm was paroled. While on parole, he devoted many hours to serving the community, appearing and speaking at various schools and organizations, appearing at legislative hearings regarding revisions to the criminal code, and answering questions regarding the Department of Corrections' policies and procedures. He attended the ASU College of Law and graduated in 1996. In 1999, he passed the bar examination. In 2001, Hamm was discharged from parole.

**Proceedings:** In early 2004, Hamm filed his Character Report with the Committee on Character and Fitness. A formal hearing was held on May 20 and June 2, 2004. Hamm testified and addressed the Committee's questions concerning the facts surrounding the murders, certain omissions in his character report, his neglect of a 1974 child support order, and allegations of the unauthorized practice of law while working with Middle Ground.

Hamm had several character witnesses testify on his behalf. He also submitted numerous

letters of support and recommendation from judges, attorneys and those who know him and his work. There were also numerous letters opposing his admission.

**Committee Report:** The Committee recommended the denial of Hamm’s application for admission. Its report analyzed the relevant traits, characteristics and conduct listed in Rule 36 and focused on three areas of Hamm’s conduct: the 1974 murders, his failure to comply with a long-standing child support order, and the complaints of the unauthorized practice of law in his work with Middle Ground.

*The 1974 murders:* The Committee acknowledged that significant time had passed since the murders, but Hamm was not discharged from parole until 2001. The Committee found that Hamm was “less than forthright” about his role in the murders. He mischaracterized the incident as “a drug deal gone bad in an instant,” when the evidence and facts suggest that it was carefully planned. Furthermore, Hamm failed to take full responsibility for the murder of the second victim. The letters of support for Hamm and his evidence of rehabilitation did not completely “negate” the impact of the murders on the victims’ families.

The Committee gave deference to the Arizona Board of Executive Clemency in deciding that Hamm was rehabilitated for purposes of returning to society. Hamm’s involvement in service projects and his professional successes were impressive. The Committee weighed heavily Hamm’s positive social contributions, especially his non-legal work with Middle Ground.

*The child support issue:* The Committee found that there was a long-standing child support order with which Hamm failed to comply. The Committee did not find Hamm’s testimony regarding the reasons he failed to comply credible.

*Unauthorized Practice of Law:* There were recent complaints that some of Hamm’s work with Middle Ground amounted to the unauthorized practice of law. Hamm explained that he ceased any document preparation after the rules were amended in 2003 regarding the unauthorized practice of law. The Committee noted, however, that Hamm’s conduct in drafting and signing notice of claims for prisoners was prohibited even under the former version of the rules.

In weighing all the evidence presented, the Committee concluded that Hamm had failed to meet his burden of establishing that he possessed the requisite character and fitness to practice law. The evidence of rehabilitation was strong, but it did not “negate” the heinous murders, the serious consequences of the murders, Hamm’s mischaracterization of the facts, his failure to comply with a long-standing child support order, and his unauthorized practice of law.

- Issues:**
- 1) Does the evidence in the record substantially support the existence of reasonable doubts about Petitioner’s present good moral character or about Petitioner’s fitness to practice law?
  - 2) Does the decision effectively create an ad hoc per se rule via the manner in which the Committee reached the decision to recommend denial of Petitioner’s application?

**Authority:**

**Rule 36**, Rules of the Supreme Court of Arizona, provides in part:

**(a) Determination of Character and Fitness.** The Committee on Character and Fitness shall, in determining the character and fitness of an applicant to be admitted to the state bar, review and consider the following:

**1. Relevant Traits and Characteristics.** An attorney should possess the following traits and characteristics; a significant deficiency in one or more of these traits and characteristics in an applicant may constitute a basis for denial of admission:

- A. Honesty; B. Trustworthiness; C. Diligence; D. Reliability;
- E. Respect for law and legal institutions, and ethical codes governing attorneys.

\* \* \*

**3. Evaluation of Relevant Conduct.** The Committee on Character and Fitness shall determine whether the present character and fitness of an applicant qualifies the applicant for admission. In making this determination, the following factors shall be considered in assigning weight and significance to an applicant's prior conduct:

- A. The applicant's age, experience and general level of sophistication at the time of the conduct
- B. The recency of the conduct  
The reliability of the information concerning the conduct
- C. The seriousness of the conduct
- D. Consideration given by the applicant to relevant laws, rules and responsibilities at the time of the conduct
- E. The factors underlying the conduct
- F. The cumulative effect of the conduct
- G. The evidence of rehabilitation
- H. The applicant's positive social contributions since the conduct
- I. The applicant's candor in the admissions process
- J. The materiality of any omissions or misrepresentations by the applicant.
- K.

**Rule 36(d)(6)** provides that “the applicant shall have the burden of proving by a preponderance of the evidence, the requisite character and fitness qualifying the applicant for admission to the state bar.”

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