BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL B.

FILED
SEP 19 2007
LESLIE W. STEEN
CLERK

IN RE: CHARLES DWAIN OLIVER, Respondent
Arkansas Bar ID#2001009
CPC Docket No. 2007-027

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Wilson J. McCrackin, Jr. in an Affidavit dated March 15, 2007. The information related to the appointed representation of Mr. McCrackin by Respondent in late 2006 and early 2007.

On or about March 26, 2007, Respondent was served with a formal complaint, supported by affidavit from Mr. McCrackin. Respondent failed to file a response to the complaint, which failure to timely respond, pursuant to Section 9.C(4) of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law, constitutes an admission of the factual allegations of the formal complaint and extinguishes Respondent's right to a public hearing.

The information before the Committee reflected that on November 21, 2006, Gary Potts, Mr. McCrackin's then attorney, filed a Motion for Substitution of Appellate Counsel withe the Arkansas Court of Appeals in the appeal of Mr. McCrackin's conviction for Aggravated Robbery and Theft of Property. Mr. Potts specifically requested that Dwain Oliver, an attorney practicing primarily in Hampton, Arkansas, be appointed. Mr. Potts even explained to the Court of Appeals that Mr. Oliver agreed to the appointment. Mr. Oliver was copied with the Motion.

The Court of Appeals granted the Motion on December 6, 2006. Mr. Oliver was sent a copy of the Per Curiam as was Mr. McCrackin. The Per Curiam directed that the brief on Mr.

McCrackin's behalf be filed by January 15, 2007.

On January 12, 2007, Mr. McCrackin received permission to call Mr. Oliver from the jail. He was required to leave a message because Mr. Oliver was not available to speak with him. Mr. Oliver did not contact Mr. McCrackin after the message was left for him.

The brief on Mr. McCrackin's behalf was due on January 15, 2007. Mr. McCrackin wrote a letter to Sue Newbery, Criminal Justice Coordinator, and requested a copy of the brief because Mr. Oliver had not provided one to him. Ms. Newbery responded to Mr. McCrackin in a letter dated January 23, 2007. Ms. Newbery explained that no brief had been filed on his behalf. Mr. McCrackin wrote Mr. Oliver letters as well and received no response. Mr. McCrackin then wrote to the Clerk of the Court. Ms. Newbery responded on their behalf. Ms. Newbery copied her letter to Mr. Oliver. He did not contact Mr. McCrackin after that letter was sent either.

On February 7, 2007, the State of Arkansas, through the Attorney General, filed a Motion to Dismiss the appeal. Mr. McCrackin responded to the Motion to Dismiss but Mr. Oliver did not do so. The Court of Appeals considered the Motion to Dismiss and delivered an Opinion denying the Motion to Dismiss. The Court relieved Mr. Oliver as Mr. McCrackin's attorney and appointed David Bowden to represent Mr. McCrackin and file an appeal brief on his behalf

Upon consideration of the formal complaint and attached exhibit materials, other matters before it, and the Arkansas Model Rules of Professional Conduct, Panel B of the Arkansas Supreme Court Committee on Professional Conduct finds:

1. That Mr. Oliver's conduct violated Arkansas Rule 1.2(a), because despite the fact that his client, Mr. McCrackin, wished to pursue an appeal of the lower court's decision out of Ashley County Circuit Court, Mr. Oliver failed to file a brief or request an extension of time to do so on or before January 15, 2007, the date the brief was due to be filed. Arkansas Rule 1.2(a)

requires that subject to paragraphs (c) and (d), a lawyer abide by a client's decisions concerning the objectives of representation, and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued.

2. That Mr. Oliver's conduct violated Rule 1.3, when he failed to file a brief in the appeal he was to pursue after the Court of Appeals appointed him to represent Mr. McCrackin in December 2006, and when he failed to file a response to the Motion to Dismiss filed on behalf of the Appellee in the appeal involving Wilson J. McCrackin, Jr. Arkansas Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

3. That Mr. Oliver's conduct violated Rule 1.4(a)(3), because he failed to keep Mr. McCrackin aware of the status of his appeal after he was appointed to represent him before the Arkansas Court of Appeals. Rule 1.4(a)(3) requires that a lawyer keep the client reasonably informed about the status of the matter.

4. That Mr. Oliver's conduct violated Rule 1.4(a)(4), when he failed to respond in any fashion to Mr. McCrackin's request for information about his appeal and the brief he was to file on his behalf. Rule 1.4(a)(4) requires that a lawyer promptly comply with reasonable requests for information.

5. That Mr. Oliver's conduct violated Rule 3.4(c), when he failed to adhere to the requirements of the Arkansas Court of Appeals when he failed to file a brief on behalf of his client, Wilson McCrackin, Jr., by the date of January 15, 2007. Arkansas Rule 3.4(c) requires that a lawyer not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists.

6. That Mr. Oliver's conduct violated Rule 8.4(d), because his failure to file a brief for his client resulted in the Appellee filing a Motion to Dismiss and the Court having to consider

the same. His failure to be certain that he filed a brief on behalf of his client by January 15, 2007 created unnecessary delay in the appellate proceeding and because his failure to be certain that he filed a brief on behalf of his client by the date given created the need for the Court to expend additional time and effort which would not have been necessary otherwise. Arkansas Rule 8.4(d) requires that a lawyer not engage in conduct that is prejudicial to the administration of justice.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel B, that CHARLES DWAIN OLIVER, Arkansas Bar ID#2001009, be, and hereby is, CAUTIONED for his conduct in this matter. In addition, Mr. Oliver is assessed the costs of this proceeding in the amount of $50, pursuant to Section 18.A. of the Procedures. Further, pursuant to Section 9C.(3) of the Procedures, Mr. Oliver is sanctioned for his failure to respond, after being properly served, by a CAUTION and a fine, pursuant to Section 18.C. of the Procedures, in the amount of $1000. The costs and fine assessed herein, totaling $1050, shall be payable by cashier's check or money order payable to the "Clerk, Arkansas Supreme Court" delivered to the Office of Professional Conduct within thirty (30) days of the date this Findings and Order is filed of record with the Clerk of the Arkansas Supreme Court.

ARKANSAS SUPREME COURT COMMITTEE
ON PROFESSIONAL CONDUCT - PANEL B

By: Henry Hodges
Henry Hodges, Chair, Panel B

Date: 6-26-07