BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

FILED
OCT 20 2008
LESLIE W. STEEN
CLERK

IN RE: FREDERICK S. SPENCER - Respondent Attorney
Arkansas Bar ID # 75120
CPC Docket No. 2008-30

CONSENT FINDINGS & ORDER

The formal charges of misconduct upon which this Consent Order is premised, involving respondent attorney Frederick S. Spencer of Baxter, County, Arkansas, arose from information brought to the attention of the Committee on Professional Conduct by Arkansas Supreme Court Per Curiams delivered February 28, 2008 and April 10, 2008.

On November 26, 2007, the Arkansas Supreme Court granted Mr. Spencer a seven-day extension of time in which to file the brief in Case No. 07-1078, *Eugene E. Lasecki v. Casey D. Sanders and Zurich Specialties of London, Ltd.* Mr. Spencer subsequently received a thirty-day extension requiring tender of the appellate brief on or before January 2, 2008. Unable to meet the January 2, 2008, deadline, Mr. Spencer filed another extension of time, but it was untimely. On January 7, 2008, Mr. Spencer filed an "Unopposed Motion to File Belated Brief," in which he requested a fourteen-day extension to file his appellate brief. Mr. Spencer indicated in his motion that it was unopposed, and the Court granted the Motion to file Belated Brief on January 24, 2008. Subsequent to the Court's grant of the motion, appellee Sanders filed a response in opposition to the motion.

On January 29, 2008, appellees filed a joint motion requesting reconsideration of the Court's decision to grant the Motion to file Belated Brief. In the motion, appellees argue not only that the motion was opposed but also that they had not been served with the motion as reflected by Mr. Spencer's certificate of service. Mr. Spencer did not respond to the joint motion until after the Court made a specific request for him to do so. In his response, filed February 27, 2008, Mr. Spencer

stated that his paralegal sent the Motion for Belated Brief by postal mail and that appellees had been asked if they had any objection to the extension. As pointed out by the Court in its Per Curiam opinion of February 28, Mr. Spencer specifically set forth in his response that, immediately upon appellees' approval of the extension,

> Appellant filed the Motion to file Belated Brief and assumed that since Appellees had no objection to the extension of time to file the Brief, they would have no objection to the filing of the Appellant's Motion to File Belated Brief since Appellant was not asking for any more time than had been discussed with the Appellees, and was only changing the pleadings from a Motion for Extension of time to a Motion to File Belated Brief because of the delay caused by the United Parcel Service[.]

After noting that a motion for extension of time is a different pleading than a Motion for Belated Brief and that the appellees were never contacted regarding the Motion for Belated Brief, the Court determined that Mr. Spencer misrepresented to the Court that appellees were unopposed to the motion. Because its reliance on Mr. Spencer's pleadings was misplaced, the Court held that its prior decision to grant the unopposed motion was erroneous, and it forwarded a copy of the opinion to the Committee on Professional Conduct.

On March 17, 2008, Mr. Spencer filed a Motion to Reconsider striking his brief from the record. Separate appellee Zurich filed a response to the motion on March 21, 2008, and appellee Sanders filed its response on March 25, 2008. The court denied Mr. Spencer's reconsideration motion on April 10, 2008, and again referred the matter to the Office of Professional Conduct based on the misrepresentation of the facts.

Following Respondent Attorney's receipt of the formal complaint, the attorney entered into discussion with the Executive Director which has resulted in an agreement to discipline by consent pursuant to Section 20.B of the Arkansas Supreme Court Procedures Regulating Professional Conduct of Attorneys at Law (2002). Upon consideration of the formal complaint and attached

exhibits, admissions made by the respondent attorney, the terms of the written consent, the approval of Panel B of the Committee on Professional Conduct, and the Arkansas Model Rules of Professional Conduct, the Committee on Professional Conduct finds:

A. Mr. Spencer violated Rule 1.3 in that he failed to timely file the appellate brief on behalf of his client, Eugene Lasecki, in Case No. 07-1078, *Eugene Lasecki v. Casey Sanders and Zurich Specialities of London, Ltd.* Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

B. Mr. Spencer violated Rule 3.3(a) in that he failed to correct a misstatement of fact made to the Arkansas Supreme Court when he (1) indicated in the heading of his pleading that the Motion to file Belated Brief was unopposed and (2) stated in the motion for reconsideration that appellee Sanders's attorney gave her consent to the Motion for Belated Brief. Arkansas Rule 3.3(a) requires that a lawyer shall not knowingly: (1) make a false statement of fact or law to a tribunal; or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer; (2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or (3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

C. Mr. Spencer violated Rule 8.4(d) in that his failure to timely file the record of the lower court proceedings on behalf of his client, Eugene Lasecki, resulted in (1) the appeal being dismissed

and (2) the Court having to expend additional time and effort which would not have been necessary otherwise. Rule 8.4(d) requires that a lawyer not engage in conduct that is prejudicial to the administration of justice.

WHEREFORE, in accordance with the consent to discipline presented by Mr. Spencer and the Executive Director, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct that Respondent, **FREDERICK S. SPENCER**, Arkansas Bar No.75120, be, and hereby is, **CAUTIONED**, and he is ordered to pay a **$250 FINE** and **$50.00 COMMITTEE COSTS** for his conduct in this matter. The fine and costs assessed herein shall be payable by cashier's check or money order payable to the "Clerk, Arkansas Supreme Court" delivered to the Office of Professional Conduct with 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 Valerie L. Kelly
Valerie L. Kelly, Chairperson, Panel B

Date 10/17/08