BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL B

FILED
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LESLIE W. STEEN
CLERK

IN RE: WILLIAM S. ROBINSON, Respondent
Arkansas Bar ID#76108
CPC Docket No. 2008-072

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee in the Orders of the Arkansas Supreme Court in the matter of *Carmine Tieri and Lori Tieri v. Nakia J. Wilson; Capps Backhoe & Dozier Service, Inc.*, 08-646. The information related to the representation of Carmine Tieri and Lori Tieri by Respondent beginning in 2006.

On September 5, 2008, Respondent, Williams S. Robinson, an attorney practicing primarily in North Little Rock, Arkansas, was served with a formal complaint, supported by records from the matter involving Carmine Tieri and Lori Tieri. Respondent filed a timely response and the matter proceeded to ballot vote before Panel B of the Committee on Professional Conduct.

The information before the Committee reflected that on December 19, 2006, a Complaint was filed in Pulaski County Circuit Court on behalf of Mr. Robinson's clients, Carmine Tieri and Lori Tieri. A Response and Motion to Dismiss was filed on behalf of the defendants on February 27, 2007. For the Motion to Dismiss, the defendants alleged insufficiency of service of process pursuant to Rule 12(b)(4) and (5) of the Arkansas Rules of Civil Procedure. Mr. Robinson filed a Response to the Motion to Dismiss on March 12, 2007. Thereafter on April 5, 2007, Mr. Robinson filed a Motion for Extension of Time to perfect service. The Court granted Mr.

Robinson sixty (60) additional days to perfect service.

Apparently, there was some discovery being completed in the months following the Answer and Motion to Dismiss being filed, because on May 9, 2007, the defendants filed a Motion to Compel. A subsequent Motion to Compel was filed on May 11, 2007. An Order was entered on May 24, 2007, directing that responses be made within twenty (20) days of the date of the Order. The Order also set out that failure to comply might result in dismissal of the Complaint.

After the Order was entered, Mr. Robinson filed a Motion requesting it be set aside. The defendants' counsel filed a Response to the Motion two days later. In the Response, it was pointed out that there was a previously filed lawsuit involving the same incident and that it was dismissed as a result of continued failure to fully respond to discovery requests. No action was taken by the Court to set aside the Order compelling discovery.

On July 23, 2007, the defendants filed a Motion to Dismiss. The Motion to Dismiss was filed on the basis that Mr. Robinson and his clients had not complied with discovery requests. Mr. Robinson's co-counsel, William Blevins, filed a Response setting out that all requests for discovery had been answered by Plaintiffs, who have complied with the Orders of the Court. A Reply was filed which set out that in fact this was not true. On October 17, 2007, an Order was filed which denied the Motion to Dismiss but required full compliance with the discovery requests. Mr. Robinson advised that he associated Mr. Blevins because of his expertise in personal injury matters but unbeknownst to him, Mr. Blevins was experiencing severe health problems and not responding to discovery requests, which caused the second dismissal. Mr. Robinson went on to explain to the Committee that he was not trying to escape blame because he

was ultimately responsible.

Mr. Robinson explained in his response to the formal disciplinary complaint that subsequent to receiving the Circuit Court's Order requiring responses to discovery, he made copies of all his files in the Tieri matter, except for pleadings, and personally hand-delivered them to opposing counsel. He advised that he could not provide medical reports and records because he did not have them in his possession, and he advised opposing counsel of this fact.

Since there was not full compliance with the discovery requests as ordered by the court, the defendants filed a Motion to Dismiss again. After consideration of the Motion to Dismiss, the court entered an Order dismissing the matter. Because it was the second dismissal of the same lawsuit, the dismissal was entered with prejudice.

On December 19, 2007, Mr. Robinson filed a Motion to Reconsider. A Response was filed on January 9, 2008. There was no action taken on the Motion to Reconsider. Mr. Robinson explained that he requested a hearing but was advised none could be set because the matter had already been dismissed.

On February 19, 2008, Mr. Robinson filed a Notice of Appeal and Designation of Record. There is no evidence on the Pulaski County Circuit Court docket sheet for this case that Mr. Robinson took any further action on the matter after filing the Notice of Appeal. The record on appeal was due to be filed no later than 90 days from the filing of the first Notice of Appeal. The record was not filed by Mr. Robinson nor was an extension of time sought for filing.

In responding to the formal disciplinary complaint, Mr. Robinson explained that simultaneously with filing the Notice of Appeal, he called the Court Reporter and left a message requesting the transcript be prepared. According to Mr. Robinson, when he subsequently talked

with the Court Reporter, he was assured that the record was being prepared and a deposit would not be necessary. He admitted fault in not following up when he did not receive any notification from the Clerk's office that the transcript was ready.

Mr. Robinson denied that the Notice of Appeal was filed for the purpose of delay but rather to protect the clients' interests. He offered that, based on the case being dismissed on appeal, he had contacted his insurance carrier and taken steps to try to mitigate the consequences of the dismissal and to protect the interests of his clients.

The defendants' counsel filed a Motion to Dismiss Appeal on June 3, 2008. Although served with the Motion to Dismiss, Mr. Robinson filed no response. On June 26, 2008, the Supreme Court dismissed the appeal.

It appears the defendants have incurred additional attorney fees based on the filing of the Notice of Appeal which was not pursued. There was also a delay at the trial court level. One concern with such a delay is that it calls into question the legal process and administration of justice which can affect the integrity of courts and laws.

Upon consideration of the formal complaint and attached exhibit materials, the response to it, 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. Robinson's conduct violated Rule 3.2, when he failed to pursue the appeal on behalf of his clients, Carmine Tieri and Lori Tieri, after filing a Notice of Appeal in Pulaski County Circuit Court. Rule 3.2 requires that a lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

2. That Mr. Robinson's conduct violated Rule 3.4(c), when he took no action to fully

comply with the Circuit Court's Order requiring responses to discovery in the second Pulaski County Circuit Court matter filed on behalf of Carmine Tieri and Lori Tieri. 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.

3. That Mr. Robinson's conduct violated Rule 4.4 because his filing of a Notice of Appeal in the Tieri matter served no purpose other than to delay a third party, i.e., Nakia J. Wilson and Capps Backhoe & Dozer Service, Inc., having this matter completed with no further legal action being required of their attorney. Rule 4.4 requires that, in representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

4. That Mr. Robinson's conduct violated Rule 8.4(d) because his failure to follow through with the appeal in the Tieri matter after filing a Notice of Appeal created an unnecessary delay in the final conclusion of the matter brought by him against Nakia J. Wilson and Capps Backhoe & Dozer Service, Inc. 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 WILLIAM S. ROBINSON, Arkansas Bar ID#76108, be, and hereby is, CAUTIONED for his conduct in this matter. Further, pursuant to Section 18.A. of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law (2002), Mr. Robinson is assessed the costs of this proceeding in the amount of $50. In addition, pursuant to Section 18.B. of the Procedures, Mr.

Robinson is ordered to pay a fine in the amount of $500. The costs and fine assessed herein, totaling $550, 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: Valerie L. Kelly
Valerie Kelly, Chair, Panel B

Date: January 13, 2009