BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL A

FILED
MAR 17 2009
LESLIE W. STEEN
CLERK

IN RE: **DON C. COOKSEY**
Arkansas Bar ID # 74199
CPC Docket No. 2008-100

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based were developed from information provided to the Committee by Thomas Brown on June 19, 2008. The information related to the representation of Mr. Brown in Miller County Circuit Court Case No. CR-2002-0049-2, *State of Arkansas v. Thomas Brown* by Respondent Don C. Cooksey, a Texas and Arkansas licensed attorney practicing primarily in Texarkana, Bowie County, Texas. On October 31, 2008, Respondent was served with a formal complaint, supported by affidavits from Thomas Brown and Denise Parks. Respondent failed to file a response to the complaint, which failure to timely respond, pursuant to Section 9.C(4) of the Procedures, constitutes an admission of the factual allegations of the formal complaint and extinguishes Respondent's right to a public hearing.

The facts giving rise to the formal complaint are as follows. In 2004, the Miller County Circuit Court ordered Thomas Brown to serve ten years probation for fraudulent use of a credit card. Seeking early release from his probation, Brown went to see Mr. Cooksey in February 2008. Mr. Cooksey agreed to represent Mr. Brown for $750. On March 17, 2008, Mr. Cooksey filed a "Motion for Expunction" on behalf of Mr. Brown. On March 18, 2008, Deputy Prosecuting Attorney Charles E. Black informed Mr. Cooksey that his office would not agree to expungement or termination of probation, even if it could be proven that all monetary obligations had been paid, because Mr. Brown had served less than half of his probation period.

Following receipt of the prosecutor's letter, Mr. Brown wrote to Mr. Cooksey and requested a $650 refund. Mr. Cooksey made no refund, and he took no further action on the case. Mr. Brown filed a complaint against Mr. Cooksey in Texarkana, Bowie County, Texas, for a refund of the $750. Cooksey file a general denial on July 11, 2008. Hearing was set for August 27, 2008, and Mr. Cooksey was notified of the same. Mr. Cooksey did not appear, and the court entered a default judgment against Mr. Cooksey. Cooksey filed a Motion for New Trial, which was denied on September 8, 2008.

Further investigation by the Office of Professional Conduct revealed that Mr. Cooksey's Arkansas law license was administratively suspended for his failure to pay his annual state licensing fee by March 1, 2008. He paid his license fee on May 30, 2008.

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

A. Mr. Cooksey violated Rule 1.1 when he did not provide Thomas Brown with competent representation in the probation matter arising from Miller County Circuit Court Case No. CR-2002-0049-2, *State of Arkansas v. Thomas Brown*. Arkansas Rule 1.1 provides that a lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

B. Mr. Cooksey violated Rule 3.1 in that there was no basis in law or fact for the filing of an expungement motion when there was no indication that Mr. Brown had paid his fines, fees, and costs, or that he had served a sufficient probationary term to warrant early release. Arkansas Rule 3.1 requires that a lawyer shall not bring or defend a proceeding, or assert or controvert an issue

therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

C. Mr. Cooksey violated Rule 3.4(c) in that he failed to pay his 2008 Arkansas bar license fee by March 1, 2008, as required by Arkansas Supreme Court Rule VII.A, Rules Governing Admission to the Bar. Arkansas Rule 3.4(c) requires that a lawyer shall 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.

D. Mr. Cooksey violated Rule 5.5(a) in that he failed to pay his 2008 Arkansas Bar license fee by March 1, 2008, as required by Arkansas Supreme Court Rule VII.C, Rules Governing Admission to the Bar, resulting in the automatic suspension of his Arkansas law license until May 30, 2008, when he paid his 2008 license fee. Mr. Cooksey practiced law, including on Thomas Brown's matter, while his license was suspended during this period. Arkansas Rule 5.5(a) provides that a lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

E. Mr. Cooksey violated Rule 8.4(d) in that his failure to provide competent representation to Mr. Brown resulted in Brown having to file a small claims action against Cooksey, an action that would not have been necessary but for Cooksey's incompetence. Arkansas Rule 8.4(d) provides that it is professional misconduct for a lawyer to 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 A, that **DON COOKSEY**, Arkansas Bar ID# 74199, be, and hereby is, **REPRIMANDED** for his conduct in this matter and ordered to pay **RESTITUTION** in the amount of **$750**. Mr. Brown confirmed with the Office of Professional Conduct that Mr. Cooksey has already satisfied the restitution assessed herein. For his **FAILURE TO RESPOND**, Mr. Cooksey is hereby **REPRIMANDED**. Further, Mr. Cooksey is ordered to pay **COSTS** in the amount of **$50**, payable by cashier's check or money order 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 A

By: Steven Shults
Steven Shults, Chairperson, Panel A

Date: February 9, 2009