BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL B

FILED
AUG 21 2009
LESLIE W. STEEN
CLERK

IN RE: B. DALE WEST, Respondent
Arkansas Bar ID#89192
CPC Docket No. 2009-078

CONSENT FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee through the Orders of the Arkansas Supreme Court in the matter of *Antonio Daniels v. State of Arkansas*, CR09-370. The information related to the representation of Mr. Daniels by Respondent, B. Dale West, in 2009.

On July 14, 2009, Respondent was served with a formal complaint, supported by Orders and pleadings from the Supreme Court Clerk's file in the appeal of *Antonio Daniels v. State of Arkansas*, CR09-370. A response was filed. The Respondent and the Executive Director negotiated a discipline by consent proposal, which was submitted to this Panel, pursuant to the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law. (2002)

On April 2, 2009, the record in case number CR09-370, was tendered to the Clerk of the Arkansas Supreme Court. It was noted by the Clerk when the record was received that the Order Extending Time to File the Record on appeal for Mr. Daniels did not comply with the appellate procedural rules and also that the Order did not contain an extended date time. Renee Herndon, Deputy Clerk, wrote B. Dale West, an attorney primarily practicing in Monticello, Arkansas, on April 2, 2009, after speaking with his assistant that same day, and explained that he would need to file a Motion for Rule on the Clerk. As counsel for Mr. Daniels, Mr. West was responsible for

being certain that the Order did comply with all the provisions of the appellate rules as required by the Arkansas Supreme Court.

On April 9, 2009, Mr. West filed a Motion for Rule on the Clerk. In the Motion, Mr. West explained that the opposing party was served with the Motion and no response was forthcoming so a hearing was not required. Mr. West also stated that no date was in the Order but it was to be calculated as seven (7) months from the date of the Judgment. The Court remanded the matter to the Circuit Court in a Per Curiam delivered on April 30, 2009. In the Per Curiam, the Court again explained that an extension is permitted where the requirements of Rule 4 of the Rules of Appellate Procedure - Criminal are met. In this instance, the Order did not comply. There was nothing in the Order to demonstrate that all parties consented to the extension and it did not state the length of the extension granted.

On May 7, 2009, an Order was filed with the Clerk of the Arkansas Supreme Court. The Order contained certain of the required findings but did not include a date when the record was required to be filed. Because of this lack of date, another Per Curiam was delivered remanding the matter back to the Circuit Court. On June 4, 2009, another Order was entered and sent to the Clerk of the Arkansas Supreme Court. In this Order, the Circuit Judge set out that the date for filing the record was extended to March 4, 2009. This date is almost one month before Mr. West tendered the record to the Clerk. On June 25, 2009, the Court granted Mr. West's Motion for Rule on the Clerk and established a briefing schedule for the appeal.

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

1. That Mr. West's conduct violated Rule 1.1, when he was not thorough enough in his representation of Mr. Daniels on appeal to be certain that he complied with all provisions of Rule 4 of the Rules of Appellate Procedure - Criminal when obtaining an Order extending the time to file the record on appeal. Rule 1.1 requires that a lawyer provide competent representation to a client, including the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

2. That Mr. West's conduct violated Rule 3.4(c), when he failed to adhere to the requirements of the Rule 4 of the Arkansas Supreme Court Rules of Appellate Procedure - Criminal, when he failed to make certain the Order granting extension of time to file the record on appeal contained all the findings as required in order to be effective. 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. West's conduct violated Rule 8.4(d) because his failure to make certain he obtained a compliant Order Extending the Time to File the Record on appeal for Mr. Daniels resulted in the need for the Supreme Court to consider another Motion and take the matter up on more than one occasion in order that the matter could go forward on appeal and created an unnecessary delay in the progress of his appeal from his conviction in Drew County Circuit Court. 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 B. DALE WEST, Arkansas Bar ID# 89192, be, and hereby is, CAUTIONED for his conduct in this matter. Further, pursuant to

Section 18.A of the Procedures, Mr. West is assessed the costs of this proceeding in the amount of $100. The 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 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: 8/21/05

(13.M, Rev.1-1-02)