BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL B

FILED
JAN 08 2010
LESLIE W. STEEN
CLERK

IN RE: CHARLES DWAIN OLIVER, Respondent
Arkansas Bar ID#2001009
CPC Docket No. 2009-098

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Tracy Rothermel, Attorney, in an Affidavit dated September 9, 2009. The information related to Mr. Oliver's dual roles undertaken while acting as City Attorney for the City of Hampton and prosecuting misdemeanor criminal matters for the State of Arkansas and also acting as defense counsel for an individual in a pending criminal matter in the same judicial district against the State of Arkansas.

On or about September 11, 2009, Respondent was served with a formal complaint, supported by affidavit from Tracy Rothermel. Respondent filed a timely response and the matter proceeded to ballot vote before Panel B of the Committee pursuant to the Arkansas Supreme Court Procedures Regulating Professional Conduct of Attorneys at Law.

Charles Dwain Oliver is the City Attorney for the City of Hampton, in Calhoun County, a part of the 13th Judicial District of the State of Arkansas. As part of his employment as the City Attorney, Mr. Oliver prosecutes misdemeanor violations of state law which happen in the city limits of Hampton. In addition, Mr. Oliver has represented criminal defendants within the circuit courts of the 13th Judicial District. He was disqualified in Calhoun County District Court from representing a criminal defendant. In the Circuit Court matter reported by Ms. Rothermel, Judge Singleton denied the State's Motion to Disqualify and stated that the defendant had waived the conflict.

By representing defendants in criminal proceedings in any court, Mr. Oliver is taking a position contrary to the position he takes while prosecuting cases as City Attorney. This is not a conflict which can be waived. To continue to represent defendants in criminal matters, while also prosecuting defendants in other matters for the State, Mr. Oliver causes the public's perception of the administration of justice to be tainted.

In addition, law enforcement officials are faced with being witnesses for Mr. Oliver in matters wherein he is a prosecutor and then being subject to cross examination or being an adverse witness in matters wherein he is defending someone involved in criminal matters. Law enforcement officials must have a feeling of trust with the prosecutors with whom they deal on sometimes a daily basis and a degree of assurance that confidentiality is present. For any of them to then be faced with Mr. Oliver "switching hats" and defending others in criminal matters causes a loss of trust and a conflict which cannot be tolerated for the criminal justice system to being administered appropriately.

In the specific matter brought to the Committee's attention, Tracy Rothermel is the Deputy Prosecutor in a proceeding filed in Union County Circuit Court against Tania Rainwater. Mr. Oliver entered his appearance as her defense attorney in that same matter. After he did so, Ms. Rothermel filed a Motion to Remove Attorney. In responding to the Motion, Mr. Oliver made it a personal matter rather than one addressing very real concerns about the impropriety of his actions. He did admit that part of his city attorney's job is representing the City of Hampton in misdemeanor criminal matters. Ms. Rothermel filed a Reply Brief on March 11, 2009. In response to the Reply Brief, Mr. Oliver filed a Motion to Remove Deputy Prosecutor. In his Motion, Mr. Oliver alleged Ms. Rothermel had an ulterior motive for filing the Motion to

Disqualify. He attached a letter she sent the Mayor inquiring about the City Attorney position for year 2009. Judge Singleton denied the Motion to Disqualify Mr. Oliver in a ruling from the bench on May 7, 2009. In his ruling, Judge Singleton pointed out that the Defendant waived any conflict that might exist.

There is serious concern that by representing the State of Arkansas when prosecuting misdemeanor state law violations and also representing criminal defendants against the State, Mr. Oliver enters into a conflict of interest that cannot be waived. It is a conflict that the State cannot waive.

Of further concern is that prosecutors, city or circuit, must regularly deal with law enforcement officials within the jurisdiction, often as witnesses in criminal cases at trial. For a prosecutor to then "switch hats" and defend persons in cases involving the same law enforcement officials as adverse witnesses, and often using knowledge gained from contacts with law enforcement officials is a conflict that cannot be tolerated in our criminal justice system. Not only will the public lose confidence in the system but the law enforcement officials charged with seeing that the law is complied with will also lose confidence in the system.

Mr. Oliver denied that there was a conflict of interest. He offered that the cases are totally different type cases, in different counties, and not involving any of the same officials, judges or law officers. Mr. Oliver also asserted that there is no remote possibility that his responsibilities in either case or situation will be limited by his responsibilities in the other situation. While addressing the allegations of violation of Rule 8.4(d), Mr. Oliver stated that any additional motions were created by Ms. Rothermel in her over-zealous desire to please her boss in his personal vendetta against Mr. Oliver.

Upon consideration of the formal complaint and attached exhibit materials, the response to it, 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. Oliver's conduct violated Rule 1.7(a), because while acting as City Attorney for the City of Hampton and prosecuting misdemeanor criminal matters for the State of Arkansas, Mr. Oliver also undertook representation of Tania Rainwater in a pending criminal matter in the same judicial district against the State of Arkansas. The conflict of interest is not waived by the State of Arkansas whom Mr. Oliver represents when prosecuting misdemeanor violations of state law as City Attorney. Rule 1.7(a) requires that, except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if: (1) the representation of one client will be directly adverse to another client; or (2) there is significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or third person or by a personal interest of the lawyer.

2. That Mr. Oliver's conduct violated Rule 8.4(d), because by representing Tania Rainwater, as defense counsel, in her pending criminal matter in Union County Circuit Court while simultaneously acting as City Attorney for the City of Hampton in the same judicial district, Mr. Oliver created the need for additional motions and hearing before the presiding Judge which would not have been necessary otherwise and has engaged in conduct that is prejudicial to the administration of justice. Rule 8.4(d) requires that a lawyer not engage in conduct which 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 ordered to pay the costs of this matter in the amount of $50 pursuant to Section 18.A. of the Procedures. 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: December 16, 2009