BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL B

FILED
MAR 05 2010
LESLIE W. STEEN
CLERK

IN RE: CINDY M. BAKER
ARKANSAS BAR ID# 2000-022
CPC DOCKET NO. 2009-041

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided by the Honorable Gerald Kent Crow, formerly Berryville District Court Judge and currently Carroll County Circuit Court Judge, on conduct of Cindy M. Baker, Attorney at Law, Berryville, Arkansas, which occurred in January, 2008.

The hearing in this matter requested by Ms. Baker was held on February 19, 2010, before Panel B of the Committee on Professional Conduct. The hearing was conducted by Panel B Chair Steve R. Crane. Panel B was comprised by members Sylvia Orton, James Dunham, Henry Hodges, Valerie Kelly, Carolyn Morris, and Joe Polk. Joe Polk substituted for Panel Member Barry Deacon who was unable to attend the hearing. The Office of Professional Conduct was represented by Michael E. Harmon, Senior Staff Attorney. Jeff Rosenzweig represented Ms. Baker in the proceeding.

State Trooper Jeff Brondhaver testified that he was on duty on January 16, 2008, and was traveling along Highway 412 east of Huntsville when he stopped Cindy Baker going westbound for speeding. Trooper Brondhaver asked Ms. Baker where she was going at such a high rate of speed and she stated she was going to court in Huntsville.

Trooper Brondhaver went to Berryville District Court, where he was asked by Judge Crow and Prosecutor Tony Rodgers about the issuance of the traffic citation to Ms. Baker.

earlier when she brought a firecracker into the courthouse resulting in evacuation of the building. Judge Crow agreed that under the circumstances a continuance would be appropriate.

Judge Crow testified that he arrived for court at Berryville and was informed that Ms. Baker had been issued a traffic citation in Madison County near Huntsville. Trooper Brondhaver, who was present, was asked whether he issued Ms. Baker a citation. Trooper Brondhaver stated that he did and provided Judge Crow with a copy of the citation.

Judge Crow directed Betty Neal to contact Huntsville to see whether Ms. Baker had court scheduled for that morning. Ms. Neal reported that she did not. Judge Crow then directed Ms. Neal to contact St. Louis to see whether Ms. Baker was actually in the Eighth Circuit Court of Appeals for an oral argument the day before. Ms. Neal reported to him that Ms. Baker did have an oral argument and appeared there the day before.

Judge Crow testified that he called Judge Lavenski Smith and inquired of him whether Ms. Baker appeared before a panel of the Eight Circuit Court of Appeals. Judge Crow was advised that Ms. Baker's case was scheduled for 9:00 a.m. on January 15, 2008, that the schedule was altered but the hearing took place, and Ms. Baker's case was finished by 10:00 a.m.

After learning that Ms. Baker's case was finished by 10:00 a.m. on January 15, 2008, and that she told him at 2:30 p.m. that her case had not been heard, Judge Crow issued a Notice of Contempt on January 21, 2008, directing Ms. Baker to appear before his court on January 23, 2008, to show cause why she should not be held in contempt. Judge Crow also prepared a letter to the Office of Professional Conduct referring the conduct of Ms. Baker to the Committee on Professional Conduct. Judge Crow recused from the contempt matter and requested that the Court appoint a judge to hear the contempt matter and the Honorable John R. Lineberger,

Retired, was appointed to hear the matter.

A hearing on the contempt matter was set for November 4, 2008. At the hearing, Ms. Baker's Attorney, Jeff Rosenzweig, and the special prosecutor, Stephanie McLemore, agreed to allow Ms. Baker to make an open plea to the court on a reduced charge. Judge Crow was asked for his comments, and stated that he didn't agree to the reduced charge and believed there was a blatant misrepresentation to the Court which should have been dealt with appropriately.

The special judge sentenced Ms. Baker to do certain things as a result of her plea to the court. Specifically, Ms. Baker was to draft a letter of apology to Judge Crow; to contact Judge Crow and arrange a meeting; reread the Arkansas Rules of Professional Conduct in their entirety; arrange a time to speak at a local school on the topics of how to become a lawyer, the moral character required for admission to the Arkansas Bar, the privileges of being a lawyer, the responsibility of a lawyer to her clients, fellow lawyers, and particularly a lawyer's obligations to the court; and file an affidavit within six months affirming that she completed those requirements. Judge Crow stated that he did not know whether Ms. Baker had completed all of the requirements of the Court.

Judge Crow testified that he had known Ms. Baker from the time she started practicing law. Ms. Baker approached Judge Crow about opening an office in Berryville following her admission to the Arkansas Bar. Ms. Baker rented office space from Judge Crow during calendar year 2000. During that time, Judge Crow referred several domestic relations matters to her. Judge Crow stated that it was difficult for him to cite Ms. Baker for contempt and refer her to the Office of Professional Conduct, but that he believed her conduct warranted reporting.

Ms. Baker testified that she had never appeared before the Eighth Circuit Court of

Appeals prior to January 15, 2008. After her case was argued, she returned to the Clerk's office. A lady who she believed to be a member of the Clerk's staff, stated that there was something wrong with her documents and that she needed to stay. The person Ms. Baker needed to speak with was in court.

Ms. Baker waited for a while before giving her telephone number to the lady and returning to her hotel. When Ms. Baker returned to the courthouse, the person she needed to speak to was still not available. Ms. Baker was told it could be 4:00 p.m. or after before she could speak to this person. As it was near 2:30, Ms. Baker called Judge Crow and told him that the judges were out of the hearing room and she had a matter which she needed to have addressed before she left St. Louis. Ms. Baker stated that she did not know when she would be able to leave St. Louis and asked whether she could have a continuance for her cases which were scheduled for the next day, January 16, in Judge Crow's court. Ms. Baker stated that she had another case set before Judge Storey in Washington County Circuit Court but could not contact Judge Storey to see whether her case could be continued. The Washington County case was a criminal matter in which the defendant had to enter a plea on January 16, or the matter would be set for trial the following week.

After waiting some more time, Ms. Baker received a telephone call from the lady who asked that she remain in the courtroom. According to Ms. Baker, the lady had her confused with someone else and she did not need to remain. As it was after 4:00 p.m., Ms. Baker then drove home to Berryville from St. Louis. Before she left St. Louis, Ms. Baker called her husband and asked that he attempt to contact her clients who had cases set for January 16 in Berryville District Court to notify them of the continuance.

Trooper Brondhaver confirmed that he stopped Ms. Baker at 7:55 a.m. on Highway 412 near Huntsville, and he provided a copy of the traffic citation to Judge Crow.

Betty Neal, Clerk of the Berryville District Court, testified that she recalled January 16, 2008, because there was discussion about the issuance of a traffic citation to Cindy Baker that morning. Ms. Neal informed Judge Crow about the ticket upon his arrival at the courthouse, and she was asked to contact Huntsville to see whether Ms. Baker had court there. Ms. Neal called the court and learned that Ms. Baker did not have any hearings there. Upon reporting this information to Judge Crow, she was asked to call the Eighth Circuit Court of Appeals in St. Louis, as Ms. Baker was to have had an oral argument before that court on January 15, 2008. Ms. Neal called and spoke to a clerk with the Eight Circuit Court of Appeals who confirmed that Ms. Baker did have an appearance before that court and did appear. The clerk faxed a copy of that court's calendar to Ms. Neal, who provided the information to Judge Crow.

Ms. Neal provided a copy of the court's January 16, 2008, docket, which showed Ms. Baker to have had nine cases set. Ms. Neal prepared for Judge Crow a list of cases in which Ms. Baker represented individuals scheduled to be heard on January 16, 2008.

Judge Crow testified that he received a telephone call from Ms. Baker on January 15, 2008, at approximately 2:30 p.m. According to Judge Crow, Ms. Baker stated that she was in St. Louis and was scheduled to appear at an oral argument, but that all of the judges have been taken out of the building and she did not know if her case would be heard that day. Ms. Baker asked Judge Crow whether he would continue her cases set in Berryville District Court the following day, January 16. Judge Crow joked with Ms. Baker about the judges being taken out of the courtroom in light of a case that Ms. Baker had in Carroll County Circuit Court some years

Ms. Baker arrived in Berryville, got a few hours of sleep, and then left her home for Washington County Circuit Court. While traveling to Fayetteville, she was stopped and issued a speeding citation by Trooper Brondhaver. Ms. Baker then proceeded to Washington County Circuit Court, where she said she appeared on behalf of a client.

Ms. Baker admitted that she should have contacted Judge Crow after learning that the request for her to stay in St. Louis was no longer required. She stated that she did not have Judge Crow's home telephone number and it was after court hours when she learned she could leave St. Louis.

Upon consideration of the formal complaint and attached exhibit materials, the response to it, the testimony presented, the prior disciplinary history, if any, and other matters before it, and the Arkansas Rules of Professional Conduct, Panel B of the Arkansas Supreme Court Committee on Professional Conduct finds, by unanimous vote unless otherwise indicated:

1. Cindy M. Baker violated Rule 3.3(a)(1) of the Arkansas Rules of Professional Conduct when she made a false statement to Judge Kent Crow in a January 15, 2008, telephone call that she did not know if her case would be heard that day in St. Louis. Rule 3.3(a)(1) requires that a lawyer not knowingly make a false statement of fact or law to a tribunal. Panel Members voting in the majority were Steve R. Crane, Valerie Kelly, Sylvia Orton, and Carolyn Morris. Members in the minority were Joe Polk, James Dunham, and Henry Hodges.

2. Cindy M. Baker violated Rule 8.4(b) of the Arkansas Rules of Professional Conduct when she engaged in contempt of court by misrepresenting to Judge Kent Crow that she was unavailable for his court on January 16, 2008. Rule 8.4(b) requires that it is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty,

trustworthiness or fitness as a lawyer in other respects. Panel Member voting in the majority were Steve R. Crane, Valerie Kelly, Sylvia Orton, Carolyn Morris and Henry Hodges. Members in the minority were Joe Polk and James Dunham.

3. Cindy M. Baker violated Rule 8.4(b) of the Arkansas Rules of Professional Conduct when she engaged in contempt of court by failing to notify Judge Kent Crow that there was a change in circumstances which made her available for his court on January 16, 2008. Rule 8.4(b) requires that it is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects. Panel Members voting in the majority were Steve R. Crane, Valerie Kelly, Sylvia Orton, James Dunham, and Henry Hodges. The member in the minority was Joe Polk.

4. Cindy M. Baker violated Rule 8.4(b) of the Arkansas Rules of Professional Conduct when she engaged in contempt of court by failing to notify her clients of any continuances from their January 16, 2008, court date. Rule 8.4(b) requires that it is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects. Panel Members voting in the majority were Steve R. Crane, Valerie Kelly, Sylvia Orton, and Henry Hodges. Members in the minority were Joe Polk and James Dunham.

5. Cindy M. Baker violated Rule 8.4(d) of the Arkansas Rules of Professional Conduct when she failed to appear in Berryville District Court on January 16, 2008, on behalf of her clients, Theodore Brummett, Jason Davidson, Shane Garner, Klaus Kupfersberger, Aaron Porter, Rick Porter, Vicky Shaw, and Sheree Tucker, which resulted in an unnecessary delay in the prompt progression of legal proceedings in Berryville District Court. Rule 8.4(d) requires that a

lawyer not engage in conduct that is prejudicial to the administration of justice. Panel Members voting in the majority were Steve R. Crane, Valerie Kelly, Sylvia Orton, and Henry Hodges. Members in the minority were Joe Polk and James Dunham.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel B, that CINDY M. BAKER, Arkansas Bar No. 2000-022, be, and hereby is, REPRIMANDED and assessed costs of Two Hundred Twenty-Five Dollars and Fifty Cents ($225.50) for subpoena fees; One Hundred Seventy Five Dollars ($175.00) for court reporter fees; and Fifty Dollars ($50.00) for administrative fees, for her conduct in this matter. All fines and costs assessed herein, totaling Four Hundred Fifty Dollars and Fifty Cents ($450.50) 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: Steve R. Crane
Steve R. Crane, Chair, Panel B

Date: 3-3-2010