

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

PANEL B

IN RE: ROY C. LEWELLEN

ARKANSAS BAR ID #82093

CPC DOCKET NO. 2000-084

FINDINGS AND ORDER

The formal charges of misconduct upon which this Order is based arose out of a judicial referral to the Committee from the Honorable Richard Alan Enslin, United States District Court Judge for the Western District of Michigan. The referral pertained to the representation of Jerry Lee Butler by Roy C. Lewellen, an attorney practicing primarily in Marianna, Lee County, Arkansas, in a federal criminal case styled United States of America vs. Jerry Lee Butler, United States District Court for the Western District of Michigan, Case No. 1:99-CR-1-01.

On February 22, 1999, Roy C. Lewellen appeared along with defendant Jerry Lee Butler in the United States District Court for the Western District of Michigan for a first appearance from a criminal indictment. Mr. Lewellen had represent Mr. Butler many years prior to the indictment and, because of that previous relationship, Mr. Butler requested Mr. Lewellen to assist him in the Michigan matter. During the court appearance, Mr. Lewellen was directed to file the necessary papers for admission to the Bar of the Court for the United States District Court for the Western District of Michigan. Mr. Lewellen advised the Court that he would do so. Mr. Lewellen went to the clerk's office and obtained the necessary documents. Mr. Lewellen and Mr. Butler thereafter proceeded to seek local counsel to assist Mr. Butler in his criminal matter. After being unable to obtain counsel on February 22, 1999, Mr. Butler and Mr. Lewellen returned to Arkansas. On April 22, 1999, the Court issued an Order which required Mr. Lewellen to file an application for admission to practice before the Court within ten (10) days of the Order or to show cause, in writing, why he had not filed for admission and why he should be permitted to appear before the Court. According to Court records, Mr. Lewellen neither filed an application for admission to the United States District Court for the Western District of Michigan nor provided written cause as to why he should be permitted to appear before the Court. Mr. Lewellen and Mr. Butler thereafter did employ John Frawley, a Michigan attorney, to represent Mr. Butler as local counsel.

After the employment of Mr. Frawley, Mr. Butler agreed to change his plea to guilty. As there would not be any hearings or trial, Mr. Lewellen believed that his application for admission to the Bar of the Court of the United States District Court for the Western District of Michigan would no longer be necessary. Mr. Lewellen agreed to assist in the preparation of the pre-sentence report. A change of plea hearing was set and Mr. Lewellen and his client, Mr. Butler, appeared at the hearing. Following the change of plea on November 3, 1999, a sentencing hearing was then scheduled on for February 2, 2000.

On Wednesday, February 2, 2000, Mr. Butler was scheduled to appear in Court for sentencing. Neither Mr. Butler nor Mr. Lewellen appeared. Attorney John Frawley, a Michigan attorney and co-counsel for Mr. Butler, appeared before the Court and relayed a message from Mr. Lewellen. According to Mr. Lewellen, a snowstorm hit Arkansas on Friday, January 28. The snowstorm caused air traffic in and out of Little Rock to be delayed. Mr. Lewellen called the United States Attorney for the Western District of Michigan and advised him of the situation and contacted his co-counsel, Mr. Frawley, who appeared at the February 2 hearing.

Upon being informed of Mr. Lewellen's dilemma, the Court checked weather information for Arkansas for the days preceding February 2, 2000. Following its investigation, the Court noted on the record that the temperature in Arkansas on February 2, 2000 was 55 degrees. The Court adjourned the sentencing hearing and issued an arrest warrant for Mr. Lewellen's client, Jerry Butler. Mr. Butler's sentencing hearing was rescheduled for April 6, 2000 and a hearing was scheduled for February 22, 2000 concerning Mr. Lewellen and Mr. Butler's absence at the February 2, 2000, hearing.

Mr. Lewellen and Mr. Butler appeared before the United States District Court for the Western District of Michigan on February 22, 2000. Mr. Lewellen was called to the witness stand, sworn by the Clerk, and questioned by the Court. Mr. Lewellen stated that the weather conditions in Arkansas prevented his attendance at the February 2, 2000 sentencing hearing. Mr. Lewellen testified that he had made the decision to try and obtain a continuance rather than have Mr. Butler attempt to drive to Michigan for the initial sentencing date. Mr. Lewellen was asked whether his client followed his instruction not to appear and Mr. Lewellen responded, "Yes." He was asked whether he had been admitted to practice in the Western District of Michigan. Mr. Lewellen responded that he had and that he had filed the documents as far as he could remember.

On April 6, 2000, Mr. Butler appeared for sentencing on the criminal matter. Mr. Lewellen appeared with Mr. Butler. The Court inquired whether Mr. Lewellen was a member of the Bar of the Court. Mr. Lewellen stated that he was not. The Court thereafter set a show cause hearing for June 6, 2000, concerning Mr. Lewellen's conduct.

At the show cause hearing on June 6, 2000, the Court heard testimony from Mr. Lewellen that plane reservations had not been made to ensure that he and his client would attend the February 2, 2000. Mr. Lewellen also stated that as of June 6, 2000, he had not been admitted to practice the United States District Court for the Western District of Michigan. Following the presentation of evidence, the Court entered an Order on June 12, 2000, finding that Mr. Lewellen had violated Michigan Rules of Professional Conduct 1.3 and 3.3 and, as a result of the violation, Mr. Lewellen was censured.

Immediately preceding a hearing before Panel B of the Arkansas Committee on Professional Conduct scheduled for August 15, 2003, Mr. Lewellen, by and through his attorney, Jeff Rosenzweig, offered a proposed plea to the Panel. Mr. Lewellen conditionally admitted that he violated Arkansas Model Rules of Professional Conduct 3.3(a)(1), 5.5(a), and 8.4(d) and for that conditional admission, Mr. Lewellen would agree that he should be Reprimanded for his conduct and be ordered to pay a fine in the amount of \$1,000. Following questions from the Panel, the Panel took the matter into executive session and deliberated. Following deliberations, the Committee accepted Lewellen's proposal.

Upon consideration of the formal complaint, the response thereto, and the Arkansas Model Rules of Professional Conduct, the Committee on Professional Conduct finds:

1. That Mr. Lewellen's conduct violated Model Rule 3.3(a)(1) when, after being ordered by United States Magistrate Judge Joseph Scoville to obtain the necessary papers for admission to the Bar of the Court within ten days of February 22, 1999, he failed to do so; and when, despite being ordered on April 22, 1999, to file an application for admission within ten (10) days or show cause as to why he had not done so, he failed to do either. Model 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.
2. That Mr. Lewellen's conduct violated Model Rule 5.5(a) when, without being admitted to the Bar for the United States District Court for the Western District of Michigan, he filed two motions with the Court; appeared before the Court; and violated the Court's Order to seek admission. Model Rule 5.5(a) requires that a lawyer not practice in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction.

3. That Mr. Lewellen's conduct violated Model Rule 8.4(d) when the United States District Court for the Western District of Michigan found that his conduct was harmful to his client, Jerry Butler, when he told his client not to appear at the sentencing hearing; and, that his conduct was obstructive to the judicial process. Model 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 ROY C. LEWELLEN, Arkansas Bar ID#82093, be, and hereby is, REPRIMANDED; fined the sum of ONE THOUSAND DOLLARS (\$1,000.00); and, assessed costs in the amount of FIFTY DOLLARS (\$50.00) for his conduct in this matter. The fine and 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 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 B

By: _____

John Rush, Chair, Panel B

Date:
