

**BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL B**

IN RE: JOHN M. BURNETT

ARKANSAS BAR ID #95082

CPC DOCKET NO. 2002-123

CONSENT FINDINGS AND ORDER

The formal charges of misconduct upon which this Order is premised arose from the Complaint of Ramona Wilson, Circuit Clerk of Carroll County. The Complaint was based on certain alleged misconduct of John M. Burnett, an attorney formerly practicing law in Eureka Springs, Arkansas. The information submitted by Ms. Wilson related to information she obtained in her position as Circuit Clerk.

On November 15, 2002, Respondent was served with a formal complaint, supported by affidavits from Ramona Wilson and Beau Pederson, Investigator, Office of Professional Conduct. A response was filed. The matter proceeded to ballot vote before a Panel of the Committee on Professional Conduct. Thereafter, Mr. Burnett requested a *de novo* hearing pursuant to the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law (2002). (“Procedures”). Discovery, in the form of depositions, was engaged in by Respondent’s counsel. An interlocutory appeal was attempted to the Arkansas Supreme Court. Following the appeal and prior to the date scheduled for the *de novo* hearing, the Respondent, through counsel Peter Kumpe, and the Executive Director negotiated a discipline by consent proposal, which was submitted to this Panel.

The information before the Panel related to the divorce proceeding of *Moyer v. Moyer*, Carroll County Case Number E2000-053. The Complaint was filed on June 13, 2000, by Kimberly Canova, Attorney at Law, and a Motion for Default Judgment was filed on July 17, 2000. After the Motion for Default Judgment was filed, Mr. Burnett presented an Answer bearing a file-mark of June 28, 2000. Ms. Canova contacted the Clerk’s office and spoke with a Clerk concerning whether an Answer had been filed. Ms. Canova was advised on July

10, 2000, that no Answer was present in the file. Ms. Canova then filed a Motion to Strike on September 11, 2000.

A hearing was scheduled on the Motion to Strike. Mr. Burnett withdrew as counsel for Mr. Moyer resulting in the Court ending the hearing. Mr. Burnett stated that he withdrew from his client's representation because he would have had to respond as a witness to opposing counsel's allegations concerning the question of the timeliness of any filed Answer in the proceeding and would not be able to then represent his client.

Ms. Wilson spoke with John Casteel, the Prosecuting Attorney for Carroll County at the time of the instance complained of herein, about the matters. The documents were sent to the State Crime Lab for analysis. The report set out that the file-mark in question appeared to be different referencing the numerical date entries. Mr. Burnett informed the Committee that he had spoken with John Casteel as well who had advised him that the crime lab could not identify the cause for the distortion on the file-mark. Dawn Reed, the State Crime Lab Documents Examiner, stated under oath in deposition that she never had enough information to do a complete examination of the copies submitted by Ms. Wilson. She also offered that a reason for the distortion of the copy of the Answer could have been that it was a photocopy. According to Mr. Burnett, Mr. Casteel told him that he never entertained prosecution because he would not know who to arrest because so many people touched the file and could have altered the date if, in fact, it was altered on the Answer.

Although he does not have personal knowledge of how the irregularities of the copy of the Answer occurred, Mr. Burnett acknowledged that he did not properly supervise his support staff to ensure that the Answer for Mr. Moyer was properly filed. He also acknowledged that he did not follow up with this staff to be certain that the Answer was properly served on opposing counsel, Kimberly Canova.

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

1. That Mr. Burnett's conduct violated Model Rule 5.3(b) when he failed to properly supervise his staff to ensure the proper filing, docketing and service of the Answer in the *Moyer* case. Model Rule 5.3(b) requires that with respect to a non-lawyer employed or retained by or associated with a lawyer, a lawyer having direct supervisory authority over the non-lawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel B, that JOHN M. BURNETT, Arkansas Bar ID# 95082 and hereby is, CAUTIONED for his conduct in this matter. Further, Mr. Burnett is assessed the costs of this proceeding in the amount of \$342.32, pursuant to Section 18.A. of the Procedures. Mr. Burnett is also ordered to pay a fine in the amount of \$1,250 pursuant to Section 18.B of the Procedures. The costs assessed and fine ordered 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:

H.T. Moore, Acting Chair, Panel B

Date:
