

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

PANEL A

IN RE: GARY J. BARRETT, Respondent
 Arkansas Bar ID#200071
 CPC Docket No. 2005-045

CONSENT FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Bernie Tate in an Affidavit dated March 14, 2005. The information related to the representation of Mrs. Tate by Respondent beginning in 2001.

On March 21, 2005, Respondent was served with a formal complaint, supported by affidavit from Bernie Tate. A response was filed. The Respondent and the Executive Director negotiated a discipline by consent proposal, which was submitted to this Panel.

The information submitted by Mrs. Tate reflected that she hired Gary J. Barrett, an attorney practicing in Stuttgart, Arkansas, to represent her in a medical malpractice action she wished to file against David Davilla. Mrs. Tate initially contacted the Nolan Law Firm in Stuttgart about the matter. Mr. Barrett was the one who was assigned to her case and when Mr. Barrett left the firm, Mrs. Tate remained his client.

Mrs. Tate averred that the purpose of the lawsuit was to bring suit, following her husband's death, because of the wrong diagnosis of her husband's chronic sleep apnea. Dr. Davilla had prescribed a CPAP machine for Mrs. Tate's husband based on a diagnosis of chronic sleep apnea. Several months later an ENT examined Mr. Tate and discovered a tumor in his throat which had actually been the cause of Mr. Tate's difficulties.

Mrs. Tate believed that Mr. Barrett had all of the information in an ample amount of time to file a timely lawsuit. Mr. Barrett did not file a lawsuit on her behalf until the statute of limitation had expired. The lawsuit also failed to name the correct entity as the plaintiff, because he filed on behalf of Mrs. Tate and not on behalf of the Estate of Mr. Tate. The lawsuit filed by Mr. Barrett was on based on a claim of wrongful death

and not on the mis-diagnosis and medical malpractice. The lawsuit also listed the wrong date of death. Mrs. Tate reported that Mr. Barrett did not ever explain to her why he filed on the basis of wrongful death or why he delayed in filing the civil lawsuit on her behalf against Dr. Davilla.

The lawsuit filed by Mr. Barrett was filed on August 18, 2003. Mrs. Tate was not sent a copy of the Complaint until October 20, 2003, when Mr. Barrett sent her a copy of the Motion to Dismiss which had been filed by counsel for the defendant. Both documents were sent to Mrs. Tate based upon her request, after being notified by Mr. Barrett in a letter dated October 17, 2003, that her lawsuit had been dismissed. The records on file with the Arkansas County Circuit Clerk do not reflect that Mr. Barrett ever filed a Response or took any action after the Motion to Dismiss was filed.

Mrs. Tate reported that during the course of Mr. Barrett's representation of her, she called him on numerous occasions to follow up on the status of the legal matter or any action he had taken. According to Mrs. Tate, more often than not Mr. Barrett did not return her telephone calls, nor did he send correspondence to her to advise her of the status of her legal matter.

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

1. That Mr. Barrett's conduct violated Model Rule 1.1 when he was not thorough enough in his representation of Mrs. Tate to be certain that he took the necessary action to file a civil proceeding on her behalf before the expiration of the statute of limitation and when he was not thorough enough in his representation of Mrs. Tate to be certain that he brought the lawsuit against Dr. Davila with the correct person or entity named as the plaintiff. Model 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. Barrett's conduct violated Model Rule 1.3 when he did not file a Response to the Motion to Dismiss filed by Dr. Davila. Model Rule 1.3 requires that a lawyer act with

reasonable diligence and promptness in representing a client.

3. That Mr. Barrett's conduct violated Model Rule 1.4(a) when he did not keep Mrs. Tate informed of the actions, if any, he was taking with regard to the matter which he was hired to pursue against Dr. Davila; when despite the various attempts Mrs. Tate made to request information about the claims against Dr. Davila, he failed to promptly comply with the requests for such information; and when he failed to advise Mrs. Tate when the Motion to Dismiss was filed by Dr. Davila's counsel. Model Rule 1.4(a) requires that a lawyer keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel A, that GARY J. BARRETT, Arkansas Bar ID# 2000071, be, and hereby is, CAUTIONED for his conduct in this matter. Pursuant to Section 18.A of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law, Mr. Barrett is assessed the costs of this proceeding in the amount of \$50. Further, pursuant to Section 18.B of the Procedures, Mr. Barrett is ordered to pay a fine in the amount of \$450. 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 A

By: _____

Bart F. Virden, Chair, Panel A

Date: _____

