

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT  
PANEL B

**FILED**

IN RE: JOHN SKYLAR TAPP, Respondent  
Arkansas Bar ID#76123  
CPC Docket No. 2010-095

MAR 28 2011

**LESLIE W. STEEN  
CLERK**

**FINDINGS AND ORDER**

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee following investigation of a Judicial Complaint made by Special Judge Jerry Ryan in the matter of *Ronald W. Kirk v. Jonathon D. Jones*, CV08-86. The information related to the representation of Ronald W. Kirk by Respondent .

On November 1, 2010, Respondent was served with a formal complaint, supported by information from *Ronald W. Kirk v. Jonathon D. Jones*, CV08-86. Respondent filed a timely response and the matter proceeded to ballot vote before Panel B of the Committee pursuant to the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law. (2002)

The information before the Panel reflected that on October 23, 2009, Special District Court Judge Jerry Ryan entered an Order addressing the conduct of J. Sky Tapp, an attorney practicing primarily in Hot Springs, Arkansas. The information related to Mr. Tapp's continued representation of Ronald W. Kirk in his lawsuit against Jonathan D. Jones, another attorney practicing primarily in Hot Springs, Arkansas. Mr. Jones had previously represented Mr. Kirk in a divorce proceeding in Garland County Circuit Court. During the time when Mr. Jones represented Mr. Kirk, he was also in a law firm with Mr. Tapp. Mr. Jones sought Mr. Tapp's advice on how to handle a situation with Mr. Kirk when the representation was ending. Mr.

Tapp was made aware of Mr. Jones' actions and Mr. Kirk's demands at that time and rendered advice to Mr. Jones. It was this same matter and set of facts on which Mr. Kirk's lawsuit which Mr. Tapp undertook representation of Mr, Kirk in that Special Judge Ryan reviewed and issued the Order of October 23, 2009. In responding to the formal disciplinary complaint, Mr. Tapp adamantly denied that he ever discussed with Mr. Jones any issue regarding Mr. Kirk.

On January 16, 2008, Mr. Kirk filed a small claims suit against Mr. Jones in the amount of \$4909.35, for return of attorney's fees and filing fee. After service of process, Mr. Jones, through counsel, Joseph Churchwell, filed an Answer to Complaint and Motion to Dismiss. After the Answer and Motion to Dismiss was filed, Mr. Tapp filed a First Amended Complaint on Mr. Kirk's behalf. In the First Amended Complaint, Mr. Tapp set out that Mr. Jones had engaged in legal malpractice in that he had misinformed or failed to completely inform Mr. Kirk of key facts, had failed to provide and obtain proper discovery, had failed to adequately prepare for scheduled hearings and failed to represent the interests of Mr. Kirk. After Mr. Tapp filed the First Amended Complaint, Mr. Jones, through counsel, filed a Motion to Disqualify and Brief in Support.

In the Motion to Disqualify, it was clear that during a portion of time in which Mr. Jones represented Mr. Kirk in the complained about divorce action, Mr. Jones and Mr. Tapp were in the same law firm, with Mr. Tapp being the Senior Partner. Mr. Jones also explained that there were discussions with Mr. Tapp concerning Mr. Kirk and his allegation and demands for refund.

A ruling was made on July 28, 2009, disqualifying Mr. Tapp from representation of Mr. Kirk. Mr. Kirk was given thirty (30) days from July 28, 2009, to retain new counsel. While finding no ethical rule violation had occurred at that stage, Special Judge Ryan specifically held

that continued representation of Mr. Kirk by Mr. Tapp would be a direct violation of the rules dealing with conflict of interest.

The day following the ruling, Mr. Tapp, on behalf of Mr. Kirk, filed a Notice of Appeal. The Notice of Appeal was filed before the Order from the hearing was filed. On August 25, 2009, a letter Opinion was issued by Judge John Homer Wright setting out that the appeal was not proper. Judge Wright remanded the matter back to the District Court.

After the matter was remanded, Mr. Tapp filed a Second Amended Complaint which was in direct violation of the ruling of July 28, 2009, disqualifying Mr. Tapp from representing Mr. Kirk in the matter against Mr. Jones. In the Second Amended Complaint, Mr. Tapp requested that the matter be transferred to Circuit Court because the alleged losses were in excess of \$8,000, including loss of income, loss of property, loss of personal assets, and payment of additional attorney's fees and costs. Mr. Jones filed a Motion to Dismiss and Motion for Contempt and Motion for Sanctions alleging that Mr. Tapp's filing of the additional pleadings was in direct violation of Special Judge Ryan's Order. Following the filing of the Second Amended Complaint, Special Judge Ryan entered the Order of October 23, 2009. The Order expressly found that Mr. Tapp was in violation of a previous Order of the Court and that he was in violation of Rules of Professional Conduct for his continued representation of Mr. Kirk. Mr. Tapp responded that the Order by Judge Ryan was not proper because it was entered a month after the matter had been transferred to Circuit Court. Mr. Tapp also explained that he was unaware of the Order and was not allowed opportunity to be heard and could only assume Mr. Jones or his counsel prepared the Order for Judge Ryan's signature.

Mr. Tapp attempted to appeal the Order to Garland County Circuit Court. On June 16,

2010, Judge John Homer Wright signed an Order of Dismissal With Prejudice. The Order was based on Mr. Tapp's failure to comply with Rule 9 of the District Court Rules in that he failed to file a Complaint with the Circuit Court within 30 days of perfection of an appeal from District Court, as was set out in the Motion to Dismiss filed by Mr. Jones. There was no timely Notice of Appeal filed from the Circuit Court's Order of Dismissal. The underlying Order of Special Judge Ryan remains valid and in force because it was not properly appealed. Mr. Tapp disagreed with this assessment and set out that the Order was void at the time entered because the matter had already been transferred to Circuit Court.

The Order of October 23, 2009 which is not on appeal specifically awards Defendant's attorney's fees in the amount of \$700 based on Mr. Tapp's continuing representation of Mr. Kirk, which was found to be contempt of a previous Order of the Court. As of the date of the filing of the formal disciplinary complaint, Mr. Tapp had not paid the attorney's fees, nor any portion of the award.

Mr. Tapp denied that there was any conflict. He set out that the only person who might have a right to challenge his representation was Mr. Kirk, his client, not Mr. Jones. Mr. Tapp explained that Mr. Kirk and his family were clients of his for almost thirty - five years. Mr. Tapp offered that there was no basis for the Order entered against him and that the lawsuit had legitimate issues to be pursued for Mr. Kirk against Mr. Jones.

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. Tapp's conduct violated Rule 1.7(a)(1), because his continued

representation of Mr. Kirk was directly adverse to his former partner, to whom he also provided legal advice with regard to Mr. Kirk when representation of Mr. Kirk by Mr. Jones ended.

Arkansas Rule 1.7(a)(1) requires that a lawyer shall not represent a client if the representation involves a concurrent conflict of interest, such as when the representation of one client will be directly adverse to another client.

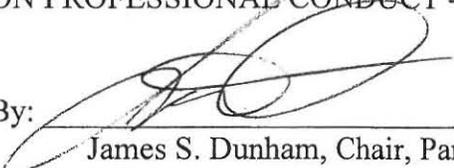
2. That Mr. Tapp's conduct violated Rule 3.4(c), because (1) he was ordered by Special Judge Jerry Ryan to cease representation against Mr. Jones, Tapp's former law partner, in the lawsuit brought by a former client of their law firm but continued to do so even after the Order was entered, and (2) because ordered by a valid legal Order to pay defendant's attorney fees due to the continued representation of Mr. Kirk, Mr. Tapp has failed to do so since entry of the Order on October 23, 2009. Arkansas 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.

3. That Mr. Tapp's conduct violated Rule 8.4(d) because his act of undertaking representation of Mr. Kirk in a matter in which he had advised his previous law partner, Mr. Jones, who was the named defendant, along with his failure to remove himself from the matter after being directed to not file any additional pleadings for Mr. Kirk caused unnecessary action and delay in the legal matter which Mr. Jones sought to have dismissed against him. Arkansas Rule 8.4(d) provides that it is professional misconduct for a lawyer to 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 JOHN SKYLAR TAPP,

Arkansas Bar ID# 76123, be, and hereby is, REPRIMANDED for his conduct in this matter. In addition, Mr. Tapp is assessed the costs of this proceeding in the amount of FIFTY (\$50) DOLLARS, pursuant to Section 18.A of the Procedures. Mr. Tapp is also ordered to pay a fine in the amount of ONE THOUSAND DOLLARS (\$1000), pursuant to Section 18.B of the Procedures. Mr. Tapp's prior disciplinary history was specifically considered when imposing the sanction herein. The fine imposed and costs assessed herein, totaling ONE THOUSAND FIFTY DOLLARS (\$1,050), 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: 

James S. Dunham, Chair, Panel B

Date: February 25, 2011