

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL B

FILED

JUL 19 2011

**LESLIE W. STEEN
CLERK**

IN RE: JOHN D. "JAY" ELDRIDGE, III
ARKANSAS BAR ID No. 74043
CPC Docket No. 2011-022

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided by the Arkansas Supreme Court in a grievance filed by Ima Jean Lindsey of Augusta, Arkansas. The conduct related to the representation of Ima Jean Lindsey and the Estate of Ernest Coles, Deceased, and the Bank of McCrory by John D. "Jay" Eldridge, III, attorney of Augusta, Arkansas.

John D. "Jay" Eldridge is an attorney licensed in 1974 to practice law in the State of Arkansas. From 1966 through 2006, Mr. Eldridge was a member of the board of the Bank of McCrory. From 1995 through 2006, Mr. Eldridge was attorney for the Bank of McCrory. Mr. Eldridge was a stockholder in the Bank of McCrory at all times relevant to this matter.

Ima Jean Lindsey, the Complainant in the matter, is a resident of Augusta, Arkansas. Ms. Lindsey and her late husband, Hoyle, owned farmland in Woodruff County, Arkansas. John D. Eldridge, Jr., the father of Jay Eldridge, was a long-time friend of and lawyer for Ernest Coles, father of Ms. Lindsey. John Eldridge and Ernest Coles bought 200 acres of property which, following the deaths of John Eldridge and Ernest Coles, became property in which Jay Eldridge and Ms. Lindsey each had an undivided one-half interest. Following the death of John Eldridge, the Lindseys used Jay Eldridge as the Lindsey family lawyer.

While admitting that he provided legal representation on specific legal matters for the

Lindseys at various times over the years, Mr. Eldridge denied that he was the Lindsey family lawyer, as he was never retained or consulted by the Lindseys concerning the loan transactions between the Lindseys and the Bank of McCrory. Mr. Eldridge admitted that he has served as attorney for the Bank of McCrory from 1995 to the present, and that his position as a stockholder, board member and counsel to the Bank of McCrory was well-known to the Lindseys at all relevant times.

In 2002, the Lindseys' sons started Lindsey Brothers, a farming business which had a business relationship with the Bank of McCrory. The Bank of McCrory required Ms. Lindsey and her husband to provide the bank with a mortgage lien on certain real property the senior Lindseys owned to secure a crop loan being sought by their sons, d/b/a Lindsey Brothers. The Lindseys' sons also had other loans at the Bank of McCrory which were not related to the farm loans guaranteed by their parents and which were outstanding. Mr. and Ms. Lindsey stated that they were assured by the Bank of McCrory that the lien requested was to secure funding for the Lindsey Brothers 2002 crop loan and nothing else. Mr. Eldridge stated Sean Williams, President of the Bank of McCrory, reviewed the 2002 Cross Pledge Agreement with the Lindseys prior to their execution of the document. While the Lindseys stated that Mr. Eldridge acted as attorney for the senior Lindseys when he sent a letter dated May 22, 2002, to Mr. Williams which confirmed that the agreement was that the lien was only to secure the 2002 crop loan, Mr. Eldridge denied the Lindseys' belief about the effect of the agreement and stated that the final draft of the Pledge Agreement accurately reflected the Lindseys' agreement with the Bank of McCrory.

The Lindseys signed the Agreement to Give Security and Cross Pledge Guaranty

Agreement (“Cross Pledge Agreement”) to cover the crop loans for each crop year from 2002 through 2005 which secured Lindsey Brothers’ loans. The loan agreements signed by the senior Lindseys actually contained language guaranteeing all loans their sons had at the Bank of McCrory.

In 2006, the Bank of McCrory moved to foreclose on property belonging to the Lindseys’ sons. About that time, Ms. Lindsey decided to sell some property at Horseshoe Lake in March 2006 for cash. Mr. Eldridge admitted that he represented her in the matter. While it was Ms. Lindsey’s intent to use the proceeds to pay down the amount the Bank of McCrory demanded on the senior Lindseys’ loan guaranty for their sons, Mr. Eldridge denied any knowledge of the reason for Ms. Lindsey’s decision to sell the property.

Following the sale of the Horseshoe Lake property, the Bank of McCrory claimed a right of set-off against two certificates of deposit Ms. Lindsey had at the bank which totaled \$169,607.50, and the Bank took and kept these funds to apply to the debt of the sons. The senior Lindseys thereafter received a demand letter from the Bank of McCrory requesting payment in full of loans totaling \$750,000. Mr. Eldridge denied any role in perfecting the claim of set-off by the Bank against the Lindsey CDs.

On September 6, 2006, the Bank of McCrory filed suit against the Lindseys for an accounting, injunctive relief, and to pay the money back. The case was styled as *Bank of McCrory v. Johnny Lindsey, Tommy Lou Lindsey, Hoyle Lindsey and Ima Jean Lindsey*, Cross County Circuit Court Case No. CV-2006-146-4.

Ms. Lindsey then employed Ralph Myers, III, Attorney of McCrory, Arkansas. The Lindseys counterclaimed against the Bank for fraud in inducement, conversion, and breach of

fiduciary duty. On June 13, 2007, a deposition was taken of Jay Eldridge. In the deposition, Mr. Eldridge admitted that he was a member of the board of the Bank of McCrory from 1966 and remained a member of the board through the date of the deposition; that members of the board met monthly and received a report on bank loans; that he had served as attorney for the Bank of McCrory from 1995 through the date of his deposition; that in 2002, he had his father's interest in property [the 200 acres] in which Ms. Lindsey was a tenant in common; that Lindsey Brothers farmed land from 2002 through 2005 in which Mr. Eldridge and Ms. Lindsey were tenants in common from 2002 through the date of the deposition; that Ms. Lindsey purchased her sister's interest in some property in 2003 and Mr. Eldridge handled the transaction for Ms Lindsey; that Mr. Eldridge drafted each of the four Cross Pledge Agreements between Bank of McCrory and the senior Lindseys; and, that Mr. Eldridge was directed to prepare the Cross Pledge Agreements by the Bank of McCrory.

On March 17- 19, 2009, the case was tried before a jury in Cross County Circuit Court. Following the introduction of evidence, the jury returned a verdict for the Bank of McCrory against each of Ima Jean Lindsey and the Estate of Hoyle Lindsey in the amount of \$380,687 on the Bank's claim. The jury also returned a verdict for each of the Lindseys in their claim of breach of fiduciary duty against the Bank of McCrory in the amount of \$318,187. The Bank of McCrory sought attorney's fees totaling over \$233,000. The Bank's Motion for Judgment Not Withstanding the Verdict, for Attorney's Fees, or For New Trial was filed. The motions were denied and the Bank was awarded attorney's fees of \$115,000. Each side filed a notice of appeal from the judgment entered, denial of post-trial motions, and award of attorney's fees. Negotiations ensued and the parties settled all claims from the case and trial judgments. Both

sides withdrew their respective notices of appeal. On October 26, 2009, a Mutual Satisfaction of Judgment was filed by all parties, ending the litigation and all claims.

Ima Jean Lindsey paid \$175,000 to the Bank of McCrory to achieve the end to the litigation and satisfaction of all judgments. This sum was in addition to the \$169,607 in CD's the Bank took from her as an "offset" to the debt. Ms. Lindsey incurred and paid about \$170,000 in attorneys fees and expenses to her own lawyers in the Bank of McCrory litigation. Mr. Eldridge stated that the amounts Ms. Lindsey was required to pay were the direct result of obligations undertaken by her in executing each of the Cross Pledge Guaranty Agreements, as confirmed by the jury in its verdict and by the Court in its award.

In 2002, Ms. Lindsey employed Mr. Jay Eldridge to represent the estate of her late father, Ernest Coles. On October 16, 2002, Mr. Eldridge filed a Petition for Probate of Will and Appointment of Executrix in Succession in Woodruff County Circuit Court, Probate Division. The case was styled as *In The Matter of the Estate of Ernest Coles, Deceased*, Woodruff County Circuit Court, Probate Division, Case No. PR-2002-45-3. On November 26, 2002, Ms. Lindsey was named Executrix of the Estate of Ernest Coles by an order of the Woodruff County Circuit Court. In 2003, Mr. Eldridge requested \$90,000 from Ms. Lindsey to pay for state and federal taxes. Ms. Lindsey provided the \$90,000 to Mr. Eldridge. Mr. Eldridge stated that the \$90,161 was deposited into his firm's trust account and that it was tendered to the IRS and the State of Arkansas and accepted at the time application for extensions for filing the returns were filed for the Estate as follows: \$56,570 to the IRS on May 28, 2003, and \$33,591 to the State of Arkansas on May 28, 2003.

While an Inventory of the Estate was filed on April 22, 2003, no further activity occurred

in the court's file. On August 3, 2004, a Notice of Possible Dismissal of Case Pursuant to Rule 41 of the Arkansas Rules of Civil Procedure was entered by the court. An Order was entered by the court on August 9, 2004, allowing the case to remain open. No further action in the Coles Estate was reflected on the court's docket sheet from August 9, 2004, until May 4, 2005, when the presiding judge wrote a letter to Mr. Eldridge. No income tax returns were ever filed on behalf of the Estate of Ernest Coles from 2003 through 2006. The Ernest Coles estate was of sufficient size to require the filing of a federal estate tax return. No such return was ever filed for the Coles Estate by Jay Eldridge. A federal estate tax return, Form 709, is due filed within nine months of death, with a six month filing extension available. Mr. Eldridge stated that he timely filed an application for extension and paid the estimated taxes.

In June, 2006, Ms. Lindsey discovered that no tax returns had been filed for the Coles estate. Ms. Lindsey then dismissed Mr. Eldridge as Attorney for the Estate and employed Ralph Myers, III, as her attorney to represent her as the executrix of the estate. Mr. Myers entered an appearance as attorney of record in the Estate of Ernest Coles on October 26, 2006, and employed Don Rouse, a certified public accountant, to prepare tax returns for the Estate of Ernest Coles. Mr. Rouse filed tax returns for the Estate of Ernest Coles.

On March 31, 2008, the IRS notified the Coles Estate that it owed an additional \$21,148.93 in interest and penalties. Ms. Lindsey made demand upon Mr. Eldridge to pay the interest and penalties and he paid \$25,000, which was to include penalties, interest and a resolution of all other claims against him for failure to file a timely tax return on behalf of the Coles estate. The \$25,000 included the \$21,148.93 in interest and penalties assessed by the IRS. Tax "closing letters" were received from the federal and state tax authorities, and the Coles

Estate was closed in 2008.

The time within which Ms. Lindsey could have successfully pursued a claim and suit for legal malpractice against Jay Eldridge for his actions in the Ernest Coles Estate had run out by March 31, 2008. Mr. Eldridge stated that he promised to indemnify Ms. Lindsey against any loss she were to incur by reason of his failure to file the estate tax return timely; that he did indemnify her as part of the \$25,000 settlement; and that Ms. Lindsey sustained no damages.

In the June 13, 2007, deposition which related to the *Bank of McCrory v. Lindsey, et al.* case, Mr. Eldridge was asked about matters relating to the Estate of Ernest Coles. Mr. Eldridge admitted to the following: that he was responsible for filing the estate tax return and did not file the tax return for the Estate of Ernest Coles; that he received \$90,000 from Ms. Lindsey in 2003 for estimated estate taxes; that he agreed to pay the Lindseys any penalties that were assessed for his failure to file the estate tax return; that the only money paid by Ms. Lindsey to Mr. Eldridge was for the payment of state and federal estate taxes; and that on December 15, 2008, the court approved the final distribution of the Coles Estate, discharged the personal representative, and closed the administration of the case. Mr. Eldridge admitted his lack of diligence and regret for not timely filing the estate tax returns and completing the probate of the estate, that all funds entrusted to him were paid toward state and federal estate taxes; and, that Ms. Lindsey was indemnified regarding penalties and interest and suffered no financial loss.

Upon consideration of the formal complaint and attached exhibit materials, the response to the formal complaint and attached exhibit materials, and the Arkansas Rules of Professional Conduct, Panel B of the Arkansas Supreme Court Committee on Professional Conduct finds:

1. John D. "Jay" Eldridge, III, violated Rule 1.1 as he was not thorough enough in his

representation of Ms. Lindsey and the Estate of Ernest Coles to file timely state and federal tax returns on behalf of the Estate of Ernest Coles. 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.

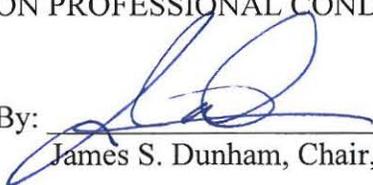
2. John D. "Jay" Eldridge, III, violated Rule 1.3 when he failed to file state and federal tax returns for the Estate of Ernest Coles while acting as the attorney for the estate and personal representative and when he allowed the estate to remain open for several years with no activity. Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

3. John D. "Jay" Eldridge, III, violated Rule 8.4(d) when his failure to timely pursue necessary and appropriate action in the Estate of Ernest Coles caused the estate to be open for many more years than was necessary and when his failure to file estate tax returns for the Estate of Ernest Coles caused the estate to incur penalties and interest which would not have been necessary otherwise.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel B, that John D. "Jay" Eldridge, III, Arkansas Bar No. 74043, be, and hereby is, REPRIMANDED, fined the sum of FIVE THOUSAND DOLLARS (\$5,000.00), and assessed costs in the amount of FIFTY DOLLARS (\$50.00) for his conduct in this matter. The Panel expressly found that the absence of any prior sanction was considered in mitigation of the sanction entered. All fines 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 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: June 27, 2011