

**BEFORE THE ARKANSAS SUPREME COURT
COMMITTEE ON PROFESSIONAL CONDUCT
PANEL A**

FILED
AUG - 3 2015
STACEY PECTOL
CLERK

IN RE: **DAVID M. LITTLEJOHN**, Respondent
Arkansas Bar ID # 2008-038
CPC Docket No. 2015-015

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based were developed from information provided to the Committee by a Supreme Court per curiam referral on February 5, 2015, in No. CR-14-636, Michael Mercouri v. State of Arkansas. The information related to the representation of Mercouri by Respondent David M. Littlejohn, an attorney practicing primarily in Little Rock, Arkansas. On February 18, 2015, Respondent was served with a formal complaint, to which he filed a timely Response.

1. As retained counsel, Littlejohn represented Michael Mercouri on criminal charges in Pulaski Circuit No. 60cr-13-1755 from at least November 20, 2013.
2. On December 4, 2013, Littlejohn filed a motion to recuse Judge Herb Wright because Wright had filed a complaint with "the Arkansas Bar" (Office of Professional Conduct) against Littlejohn. By Order of January 6, 2014, the motion was denied.
3. Mercouri was found guilty of aggravated robbery at a jury trial on January 9, 2014, and sentenced by the jury to 120 months in ADC.
4. On February 5, 2014, Mercouri filed his *pro se* notice of appeal.
5. On February 6, 2014, Judge Wright filed an Order directing Mercouri not to file pleadings as he was still represented by Littlejohn in the case.

6. On February 26, 2014, Littlejohn filed his motion to withdraw as counsel for Mercouri. No order granting his motion to withdraw was ever entered.

7. From jail on March 18, 2014, Mercouri wrote Judge Wright informing him of certain matters in Mercouri's case, including his efforts to get Littlejohn to take certain actions. Mercouri stated that Littlejohn refused to take action to file Mercouri's notice of appeal or protect his appellate rights unless Littlejohn was paid more money.

8. On April 1, 2014, the court reporter filed an affidavit reciting efforts by Mercouri's wife to obtain the trial transcript for use in his appeal.

9. On May 2, 2014, Littlejohn tendered the Mercouri record to the appellate clerk, but apparently with the record missing some pleadings and the reporter's transcript.

10. On July 22, 2014, Littlejohn filed a motion to complete the record.

11. On August 4, 2014, Littlejohn filed his motion to withdraw, stating, inter alia, that Mercouri had not hired Littlejohn to represent him on any appeal.

12. By Order of September 4, 2014, the Supreme Court denied without prejudice both the motions to complete record and to withdraw.

13. On December 10, 2014, Mercouri filed his motion to appoint new representation reciting his indigency status, his difficulty in communicating with his counsel Littlejohn, and his conclusion that Littlejohn had abandoned Mercouri on his appeal.

14. On February 5, 2015, the Supreme Court issued its per curiam order reciting the factual history of Mercouri's case and appeal effort, relieving Littlejohn as counsel, and appointed new appellate counsel. The per curiam also ordered that a writ of certiorari would issue to the trial court to bring up the remainder of the record within thirty days and the clerk

would then issue a new briefing schedule. The per curiam also referred Littlejohn to the Committee on Professional Conduct.

15. There is no indication in the record or the per curiam, that Littlejohn ever attempted to have Mercouri declared indigent by a court for appeal purposes, thus entitling the client to the services of an appointed lawyer on his appeal.

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

A. The conduct of David M. Littlejohn violated Rule 1.1 in that (1) Littlejohn abandoned his client Mercouri on appeal, and (2) faced with a client who could not pay him to do his appeal, Littlejohn made no effort to seek to have Mercouri declared indigent for appeal and have either Littlejohn or other counsel appointed to do the appeal. This conduct by Littlejohn demonstrates his lack of the required legal knowledge, skill, thoroughness and preparation reasonably necessary for the appellate representation. Arkansas Rule 1.1 requires that a lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

B. The conduct of David M. Littlejohn violated Rule 1.2(a) in that it was clearly Mercouri's objective, timely communicated to trial counsel Littlejohn after his conviction, that a direct appeal be taken, and Littlejohn failed to take appropriate and timely action to file a notice of appeal or otherwise protect Mercouri's right to that appeal. Arkansas Rule 1.2(a) requires that a lawyer shall abide by a client's decisions concerning the objectives of representation, subject to paragraphs (c) and (d), and, as required by Rule 1.4, shall consult with the client as to the means

by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation.

C. The conduct of David M. Littlejohn violated Rule 1.3 in that by failing to take appropriate and timely actions to protect his client Mercouri's right to a direct appeal, Littlejohn delayed his appeal and failed to act with reasonable diligence and promptness in representing this client. Arkansas Rule 1.3 requires that a lawyer shall act with reasonable diligence and promptness in representing a client.

D. The conduct of David M. Littlejohn violated Rule 1.4(a)(2) in that after Mercouri's judgment of conviction was entered, Littlejohn failed to consult with his client about the means by which the client's objective to have his direct appeal perfected, such as filing his notice of appeal, getting the client declared indigent for appeal purposes, and making arrangements with the court reporter for the timely production of the trial transcript. Arkansas Rule 1.4(a)(2) requires that a lawyer shall reasonably consult with the client about the means by which the client's objectives are to be accomplished.

E. The conduct of David M. Littlejohn violated Rule 1.4(a)(3) in that from after Mercouri's conviction to February 5, 2015, Littlejohn failed to keep his client reasonably informed about the status of the appellate matter. Arkansas Rule 1.4(a)(3) requires that a lawyer shall keep the client reasonably informed about the status of the matter.

F. The conduct of David M. Littlejohn violated Rule 3.2 in that by failing to actively represent Mercouri on his appellate effort after his trial conviction, and not having been relieved from the representation, Littlejohn failed to make reasonable efforts to expedite the appellate

litigation consistent with the interests of his client. Arkansas Rule 3.2 requires that a lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

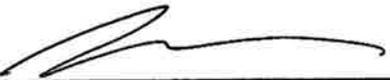
G. The conduct of David M. Littlejohn violated Rule 6.1 in that even if he was not to be paid by his client for the appellate representation, Littlejohn had a professional responsibility under Rule 6.1 to provide legal services to his client who was unable to pay him for those services, especially where the client had a constitutional right to a direct appeal that needed those services for its proper protection. Arkansas Rule 6.1 provides that every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least (50) hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should provide a substantial majority of the (50) hours of legal services without fee or expectation of fee to: (1) persons of limited means.

H. The conduct of David M. Littlejohn violated Rule 8.4(d) in that Littlejohn abandoned his criminal client Mercouri in his direct appeal, causing delay in the client's appeal and the court having to have the record completed, to relieve Littlejohn from the case, and to appoint new appellate counsel for the client, conduct by Littlejohn that is prejudicial to the administration of justice. 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 A, that **DAVID M. LITTLEJOHN**, Arkansas Bar ID# 208038, be, and hereby is, **REPRIMANDED** for his conduct in this matter and assessed \$50.00 in costs. In assessing this sanction, Respondent's prior disciplinary record was a factor. The \$50.00 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 A

By: 

Michael W. Boyd , Chair, Panel A

Date: 5-20-15