

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

PANEL A

IN RE: CHARLES MORGAN, Respondent
Arkansas Bar ID#74178
CPC Docket No. 2003-142

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information contained in the Orders of the Arkansas Supreme Court in the matter of *Hall Engineering, Inc. v. Murphy Exploration & Production Company, as Successor In Interest to Murphy Oil USA, Inc., and Merit Energy Partners, III, L.P. and Merit Partners, L.P.*, 03-00795. The information related to the representation of Hall Engineering, Inc. by Respondent, Charles Morgan.

On October 6, 2003, Respondent was served with a formal complaint, supported by the Orders and record of the Supreme Court of Arkansas. A timely response was filed by Respondent on October 27, 2003. In his Response to the Committee, Mr. Morgan admitted that the factual background sent to the Committee and incorporated into the Complaint was true and correct.

The information before the Committee revealed that on July 2, 2003, Mr. Morgan mailed to the Clerk of the Arkansas Supreme Court the transcripts prepared by the Circuit Clerk and the court reporter in connection with the appeal to be filed on behalf of his client, Hall Engineering, Inc. The letter and accompanying filing fee were received in the Office of the Clerk on July 3, 2003. Thereafter, on July 7, 2003, Mr. Morgan mailed to the Clerk a Motion for Rule on the Clerk, wherein he admitted that the record was tendered sixteen (16) days late. Mr. Morgan admitted responsibility for the late filing.

A Response to the Motion was filed by the appellee's counsel on July 15, 2003. In the Response, it was pointed out that it was a jurisdictional requirement to perfect an appeal to timely lodge the record and that there was no variance from the ninety-day rule without an extension. The Arkansas Supreme Court denied Mr. Morgan's Motion for Rule on the Clerk on September 4, 2003. The denial resulted in Hall Engineering, Inc.

not having the opportunity to have the decision of the lower court reviewed on appeal.

Mr. Morgan admitted the violations of the Model Rules of Professional Conduct as set forth in the disciplinary complaint. For mitigation, Mr. Morgan explained that he erroneously believed that the copy of the record he received from the Court Reporter was his copy and not the original. He assumed that the Court Reporter had filed the original with the Clerk and only after speaking with the Court Reporter did he realize that no copy has been filed with the Clerk of the Arkansas Supreme Court. Mr. Morgan acknowledged that it was not the Court Reporter's responsibility to file the record. Further, Mr. Morgan explained to the Committee that his client had been notified of the denial of the Motion for Rule on the Clerk resulting in no appeal being perfected. He also advised that his client was aware that the Summary Judgment entered by the trial court was now a final judgment.

Upon consideration of the formal complaint and attached exhibit materials, the response to it, 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. Morgan's conduct violated Model Rule 1.1 when he was not thorough enough in his representation of Hall Engineering, Inc. to make certain that the transcript for appeal was filed in a timely manner and when he was not thorough enough to ascertain the date for filing the record on appeal or seeking an extension of time to file the record on appeal in order to preserve his client's right to an appeal of the lower court decision. 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. Morgan's conduct violated Model Rule 1.2(a) when, despite the fact that his client, Hall Engineering, Inc., wished to pursue an appeal of the lower court's decision out of Union County Circuit Court, he failed to comply with all the procedural rules to pursue such an appeal and therefore denied Hall Engineering, Inc., the right to an appeal of the lower court's decision. Model Rule 1.2(a) requires that a lawyer abide by a client's decisions concerning the objectives

of representation, subject to paragraphs (c), (d), and (e), and consult with the client as to the means by which they are to be pursued.

3. That Mr. Morgan's conduct violated Model Rule 1.3 when he failed to be certain that the transcript for appeal was filed within ninety (90) days of the first Notice of Appeal filed in the matter involving Hall Engineering, Inc. and Murphy Exploration, Inc. and when he failed to take any action to obtain an extension of time to file the record on appeal, thereby denying his client the opportunity to have the matter heard on appeal. Model Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.
4. That Mr. Morgan's conduct violated Model Rule 3.4(c) when he failed to adhere to the requirements of Rule 5(a) of the Rules of Appellate Procedure - Civil when he failed to be certain that the record on appeal was entered within ninety (90) days of the filing of the first Notice of Appeal. Model 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.
5. That Mr. Morgan's conduct violated Model Rule 8.4(d) because his failure to be certain that his client's record on appeal was timely tendered resulted in his client being denied the right to appellate review of the Union County Circuit Court's decision in Case No. Civ-2001-0422. Model Rule 8.4(d) requires that a lawyer not 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 CHARLES A. MORGAN, Arkansas Bar ID# 74178, be, and hereby is, REPRIMANDED 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. Morgan is assessed the costs in this matter in the amount of \$50. Further, pursuant to Section 18.B. of the Procedures, Mr. Morgan is ordered to pay a fine in the amount of \$1000. The costs and fine 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 A

By: _____
Gwendolyn D. Hodge, Chair, Panel A

Date: _____