

**BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL B**

IN RE: JOHN SKYLAR TAPP
ARKANSAS BAR NO. 76123
CPC DOCKET No. 2006-102

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by a referral from the Arkansas Supreme Court in the case of State of Arkansas v. Alan D. Williams, Arkansas Supreme Court Case No. CR-03-252. The information related to the representation of Mr. Williams by Mr. Tapp in 2004. On May 1, 2006, Mr. Williams filed a *pro se* Motion for Belated Appeal. The Arkansas Supreme Court granted the Motion for Belated Appeal on June 15, 2006 and referred the matter to the Office of Professional Conduct.

Alan Williams was represented from October 28, 2004 until May 11, 2005, by John Skylar Tapp, Attorney at Law, Hot Springs, Arkansas. Williams entered into a conditional plea of guilty in Miller County Circuit Court, pursuant to Rule 24.3 of the Arkansas Rules of Criminal Procedure. The conditional part of the plea involved whether the search of a Williams' vehicle was in violation of the Fourth Amendment of the United States Constitution. A hearing was held on November 1, 2004, and the trial court denied the Motion to Suppress. The Order was signed on November 1, 2004, but not filed of record with the Miller County Circuit Clerk until November 29, 2004. Mr. Tapp filed a notice of appeal from the Order of Conditional Plea on December 2, 2004. The judgment in the case was not entered until December 17, 2004. Mr. Tapp did not file a notice of appeal from the judgment.

Mr. Tapp was served with a formal complaint and timely responded. For his response, Mr. Tapp stated that he was employed by Mr. Williams on October 28, 2004, and never received any retainer or fees. Mr. Tapp nonetheless appeared in Miller County Circuit Court and entered an appearance on Mr. Williams' behalf. Mr. Tapp stated that following the hearing on the Motion to Suppress, he repeatedly called Mr. Williams asking whether Mr. Williams wanted him to represent him in an appeal and whether Mr. Williams was going to pay as he had agreed to do. Mr. Tapp stated that he went ahead and filed a Notice of Appeal from the Order of Conditional Plea on December 2, 2004, despite not receiving payment. As he did not receive a response from Mr. Williams, Mr. Tapp filed a Motion to Be Relieved as Counsel with the Arkansas Court of Appeals. On May 11, 2005, the Court of Appeals granted Mr. Tapp's motion. Mr. Tapp stated that he believed he had no further obligations on this legal matter. Mr. Tapp provided a copy of a letter from Mr. Williams wherein Mr. Williams, now incarcerated, apologized for not paying him for the appeal as he promised to do, and asking Mr. Tapp to represent him in a Rule 37 Petition for Relief.

In its Per Curiam Order of June 15, 2006, the Arkansas Supreme Court stated that prior case law made it clear that an appeal must be taken from the judgment and not from an Order denying a motion to suppress. As no notice of appeal was entered following the judgment entered on December 17, 2004, there was good reason for granting Mr. Williams' Motion for Belated Appeal. The Court then referred the matter to the Office of Professional Conduct.

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

1. John Skylar Tapp violated Arkansas Model Rule 1.3 when he failed to file on behalf of

his client, Alan D. Williams, a Notice of Appeal from the Judgment entered on December 17, 2004. Model Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

2. John Skylar Tapp violated Arkansas Rule 8.4(d) when he failed to include in the Notice of Appeal filed on November 30, 2004, that the appeal was from the Judgment to be entered later which resulted in the appeal of his client, Alan D. Williams, being dismissed by the Arkansas Supreme Court on November 16, 2005 and which resulted in delay to the right of his client, Alan D. Williams, to a direct appeal to the Arkansas Supreme Court. Model 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 B, that JOHN SKYLAR TAPP, Arkansas Bar ID# 76123, be, and hereby is, CAUTIONED for her conduct in this matter; fined the sum of Two Thousand Dollars (\$2,000); and assessed costs in the amount of Fifty Dollars (\$50.00). The sanction entered herein is enhanced pursuant to Section 19.L of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law, which allows a Panel to consider the lawyer's prior disciplinary record when imposing sanctions. The fine 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: _____
Henry Hodges, Chair, Panel B

Date: _____