

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL B

IN RE: **JOHN SKYLAR TAPP**
Arkansas Bar ID # 76123
CPC Docket No. 2011-038

FILED

SEP 22 2011

**LESLIE W. STEEN
CLERK**

FINDINGS AND ORDER

The formal charges of misconduct, upon which the Complaint and this Findings and Order are based, were obtained from the file in No. 11-234, Ronald Collins v. Jon P. Fason, in the Supreme Court of Arkansas. Respondent attorney John Skylar "Sky" Tapp of Hot Springs represented Ronald Collins in the attempt by Collins to set aside the adoption by Mr. and Mrs. Fason of Caden Fason, in Garland Circuit No. PR-2010-99-2. Collins was the biological father of Caden. After a hearing on October 26, 2010, the trial judge found the Petition to Set Aside should be denied; a companion case, No. DR-2010-474-2, a petition for paternity filed for Collins against Mrs. Fason, should be denied and dismissed; and the adoption of Caden by the Respondents Fason should remain intact.

Mr. Tapp filed his original (first) Notice of Appeal in No. PR-2010-99-2 on November 9, 2010, appealing the ruling announced on October 26, 2010. The actual Final Order Denying Petition to Set Aside Adoption was not filed until November 18, 2010. Rule 4(a), AR Rules of App. P. - Civil, would automatically treat Tapp's Notice of Appeal as having been filed on the day after the judgment was filed on November 18, 2010, and commence his ninety (90) days to file his record on appeal with the appellate court on November 19, 2010, or due by on or

about February 17, 2011. On November 18, 2010, Tapp filed a Motion to Strike Notice of Appeal, which was granted by Order of the trial court filed on November 30, 2010. Tapp then filed a new Notice of Appeal on November 29, 2010, from the final Order filed on November 18, 2010, claiming he thus had a new ninety (90) days, or until February 28, 2011, to file his appellate record. Tapp filed his record with the appellate clerk on February 29, 2011, as Case No. 11-234. The Clerk determined that the trial court did not have authority to strike the first Notice of Appeal, and notified Tapp that he needed to file a Motion for Rule on the Clerk (MROC), which Motion he filed on March 7, 2011.

In his MROC, Tapp asserted that the trial court retained jurisdiction of the case until the record was actually filed with the Supreme Court and the appeal was docketed there. Under this theory, the trial court could strike or vacate or set aside his original Notice of Appeal, allowing him to file a second one later. Tapp's Motion to Strike Notice of Appeal, filed November 18, 2010, was not joined in on by all parties by joint stipulation, as required by Rule 3(b), AR Rules of App. P. - Civil (2010), adopted by the Supreme Court by Per Curiam delivered February 10, 2005, and made effective that same date. On April 7, 2011, the Supreme Court denied Tapp's MROC.

On April 12, 2011, Tapp filed a Motion to Reconsider Denial of Rule on Clerk. In this new Motion, Tapp cited the same proposition as he did in his original MROC - that the trial court retained jurisdiction of the case until the record was filed with the appellate court, citing cases through 2001. He then cited Stahl v. State, 328 Ark. 106, at 107, a criminal case, for the proposition that the trial court cannot dismiss a notice of appeal without either a proper stipulation of the parties or a motion to dismiss filed by the appellant (emphasis added by

Tapp in his original motion for reconsideration). He did not cite Rule 3(b), Ark. R.App. P. - Civil (2010), which governs civil appeals. (Emphasis added by OPC.) In criminal cases, the authority to strike a notice of appeal, or dismiss an appeal, is governed by Rule 2(f), Ark. R.App. P. - Crim. (2010). See also Stahl v. State, 328 Ark. at 107.

Mr. Tapp has practiced law since being licensed in 1976, for thirty-four (34) years at the time of the events here. A WestLaw search indicates that under the names of Sky Tapp or J. Skylar Tapp, Mr. Tapp has been a counsel of record in about fifty-six (56) reported state appellate cases, both civil and criminal.

As a result of Mr. Tapp's conduct here, Mr. Collins has lost his right to appeal the trial court decision that affirms the adoption of a child he claims to be his son.

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 B of the Arkansas Supreme Court Committee on Professional Conduct finds:

A. The conduct of John Skylar Tapp violated Arkansas Rule 1.1 in that by failing to use the correct procedure mandated by Rule 3(b), Ark. R.App. P. - Civil (2010) to strike his original Notice of Appeal in the Collins case, and thereby miscalculating his actual due date to file the Collins record on appeal, and killing Collins' appeal, Tapp, an experienced appellate lawyer, demonstrated a lack of the legal knowledge, skill, thoroughness and preparation reasonably necessary for the 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.

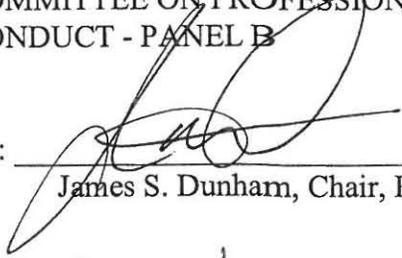
B. The conduct of John Skylar Tapp violated Arkansas Rule 1.3 in that he filed the

record on appeal in Collins' case nine (9) days late, thereby causing Collin's appeal to be dismissed as untimely filed, conduct by Tapp demonstrating a failure to act with reasonable diligence and promptness in representing a client. Arkansas Rule 1.3 requires that a lawyer shall act with reasonable diligence and promptness in representing a client.

C. The conduct of John Skylar Tapp violated Arkansas Rule 8.4(d) in that his failure to timely file the civil appeal of his client Ronald Collins has killed Collins' appeal and ended any chance he had of challenging the trial court ruling that affirmed the adoption of his son by other persons, conduct by Tapp 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 B, that **JOHN SKYLAR TAPP**, Arkansas Bar ID# 76123, be, and hereby is, **CAUTIONED** and **FINED \$2,500.00** for his conduct in this matter, and assessed standard minimum case costs of \$50.00. In assessing the sanction, the Respondent attorney's prior disciplinary record was a factor. The fine and costs assessed herein, totaling \$2,550.00, 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 B

By: 
James S. Dunham, Chair, Panel B

Date: August 29, 2011