

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

**IN RE: ERNEST WAYNE WITT  
Arkansas Bar ID No. 76142  
CPC Docket No. 2006-142**

**CONSENT FINDINGS AND ORDER**

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by William L. “Bud” Snow. The information related to the representation of William L. “Bud” Snow by Respondent in 1999 and 2000.

On October 26, 2006, Respondent was served with a formal complaint, supported by an affidavit from William L. “Bud” Snow. A response was filed. Ernest Wayne Witt, Attorney at Law, Ozark, Arkansas, by and through his counsel, R. Kevin Barham, and the Executive Director negotiated a discipline by consent proposal, which was submitted to this Panel.

William L. “Bud” Snow loaned Joel Bankster a bush-hog in late 1997. When he asked Mr. Bankster for the bush-hog back in 1998, Mr. Bankster denied having borrowed it. Mr. Snow filed suit against Mr. Bankster in the Paris Municipal Court, Small Claims Division, on February 12, 1999. Mr. Bankster employed an attorney and the matter was moved to Logan County District Court, Northern Division. Mr. Snow then employed Ernest “Ernie” Wayne Witt, Attorney at Law, Ozark, Arkansas, to represent him in the matter.

On December 2, 1999, there was an altercation between Mr. Bankster and Mr. Snow in which Mr. Snow fell and hit his head on a rock. Mr. Snow pursued criminal charges against Mr. Bankster for battery. Mr. Bankster was charged with Battery, Second Degree, and entered a plea of no contest to a misdemeanor count of Battery and was sentenced to twelve months in the Logan County Jail,

all suspended; fined \$250.00; and assessed court costs. The Judgment was entered on October 27, 2000.

On June 28, 2000, the bush-hog matter was heard before the Honorable Donald Goodner. Judge Goodner found in Mr. Snow's favor and against Mr. Bankster in the amount of \$500.00 plus costs of \$40.95; and attorney fees in the amount of \$50.00. The Judgment was filed on July 3, 2000, and Mr. Bankster thereafter filed a Notice of Appeal to the Logan County Circuit Court on July 13, 2000.

On October 31, 2000, Mr. Witt filed an Amended Complaint in the appeal before the Logan County Circuit Court wherein he added a second count to include the battery which occurred on December 2, 1999. This second count was not part of the matter heard previously in the Paris Municipal Court.

Mr. Bankster and his attorney filed a Motion to Dismiss or Strike Count II on November 1, 2000. In the motion, Mr. Bankster stated that the court did not have subject matter jurisdiction as to the battery count as it had not been heard in district court. Mr. Witt filed a response and stated that the appeal from District Court to Circuit Court created a *de novo* trial and the pleadings could be amended by either party at that time.

On October 13, 2003, Mr. Bankster filed a Motion for Summary Judgment reasserting that the court lacked subject matter jurisdiction. Mr. Witt responded to the Motion for Summary Judgment and again stated that the matter was to be heard *de novo* and pleadings could be amended and that the district court did not have jurisdiction as to Count II of the Amended Complaint so no election could have been made in district court.

On December 11, 2003, the matter was heard by the Honorable Paul Danielson. Judge

Danielson dismissed Count II of the Amended Complaint as the court did not have subject matter jurisdiction. Count II was dismissed without prejudice according to the Order entered on December 16, 2003. The matter was remanded back to district court.

According to Mr. Snow, Mr. Witt told him that he had one year from the date of the dismissal to refile the battery case. Mr. Snow stated that he kept in contact with Mr. Witt as the time began to run down. Mr. Snow stated that he told Mr. Witt that if he was not going to refile the case to let him know and he would get another attorney to refile it. Mr. Witt told him that he would take care of it and kept putting it off. Nothing was filed on Mr. Snow's behalf. Mr. Snow discussed his case with other attorneys who advised him that the statute of limitations had expired and he could not refile the battery case.

Mr. Witt, by and through his counsel, approached the Executive Director of the Office of Professional Conduct with a propose discipline by consent pursuant to Section 20B of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law. Ernest Wayne Witt, Attorney at Law, Ozark, Arkansas, by and through his counsel, R. Kevin Barham, tendered a conditional acknowledgment and admission of violation of Rule 1.1 of the Arkansas Rules of Professional Conduct. Upon the approval by the Executive Director, the proposal was submitted to Panel B of the Committee on Professional Conduct.

Upon consideration of the formal complaint and attached exhibit materials, the response, the consent proposal, 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. ERNEST WAYNE WITT violated Rule 1.1 when he filed an amended complaint in Logan County Circuit Court and alleged a new cause of action that had not been considered by the

district court which was contrary to the decision of the Arkansas Supreme Court in the case of Miles v. Southern, 297 Ark. 274, 760 S.W.2d 868 (1988) which held that if a district court lacked subject matter jurisdiction of an original cause, the circuit court cannot acquire jurisdiction on appeal. Rule 1.1 provides that a lawyer provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel B, that ERNEST WAYNE WITT, Arkansas Bar No. 76142, be, and hereby is, CAUTIONED and assessed costs in the amount of FIFTY DOLLARS (\$50.00) for his conduct in this matter. The 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

Date: \_\_\_\_\_