

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

IN RE: CHARLES P. BOYD, JR., Respondent  
ARKANSAS BAR ID #82023  
CPC Docket No. 2002-076

**FINDINGS AND ORDER**

The formal charges of misconduct upon which this Order is premised arose from information contained in a Judicial Referral by the Arkansas Supreme Court on May 30, 2002, in the matter of Ron Davenport, et ux v Tyrone Lee, M.D., et al. The Court's Per Curiam set forth specifics of the conduct of Mr. Boyd which resulted in the filing of the formal charges of misconduct herein.

On April 11, 2002, the Court handed down an opinion in *Davenport, et ux v Lee, et al*, holding that a *pro se* complaint for wrongful death filed by a non-attorney personal representative was a nullity and affirmed dismissal by the trial court of the wrongful death action. In an attempt to have the mandate recalled, on May 7, 2002, Mr. Boyd filed with the Clerk of the Court a pleading styled Motion to Stay Mandate, or, In the Alternative, Motion to Recall Same and Motion to File Petition for Rehearing. The Court's Per Curiam containing the Judicial Referral herein was handed down in dealing with the attempt by Mr. Boyd to have this pleading accepted and filed by the Clerk.

The Court's April 11, 2002, Opinion noted Mr. Boyd's admission that he represented the Appellants at the time of the filing of the initial *pro se* complaint in the trial court. There was further evidence that Mr. Boyd refused to sign the complaint because of his inability to verify the allegations contained in it. The Court held that the personal representative had engaged in the unauthorized practice of law by signing the complaint as *pro se* for the other plaintiffs, and that the complaint was, accordingly, a nullity and should be dismissed.

The record before the Committee demonstrated that on April 29, 2002, the last day to file a Petition for Rehearing in the matter, Mr. Boyd filed a Motion requesting an extension of time which was granted, extending the time within which to file the Petition for Rehearing until May 6, 2002. Shortly before 5:00 p.m.

on May 6th, Mr. Boyd telephoned the Court Clerk's Office and informed a Deputy Clerk that two of his employees were on the way to file the Petition for Rehearing. They did not arrive at the Clerk's Office until after 5:00 p.m. and, consequently, the Petition was not accepted for filing by the Clerk.

Thereafter, having been unable to file his untimely Petition for Rehearing, Mr. Boyd filed the aforesaid Motion which led to the *Per Curiam* referral to the Committee. In his Motion, Mr. Boyd acknowledged that the duty to ensure the timely filing of a Petition for Rehearing does not rest with the Court, but offered no compelling reason why he was unable to meet both the original deadline and the extended deadline for filing the Petition.

In its *Per Curiam*, the Court noted the contents of the draft of the Petition for Rehearing which Mr. Boyd appended to his Motion, assuming that the draft was the one intended to be filed on May 6th. The Court found that this Petition was completely devoid of any citation to any authority supporting an allegation of either legal or factual error, and found, as well, that the tenor of Mr. Boyd's Petition was one of disrespect bordering on contempt toward members of the Court. Supreme Court Rule 1-5 prohibits an attorney from showing disrespect in any argument, brief, or motion filed or made in the Court containing language showing disrespect for the circuit court. The Court set out this Rule in the *Per Curiam*, stating that not only would disrespect for circuit court judges not be permitted, but for members of the Supreme Court, as well.

In his Response to the Committee, Mr. Boyd denied violation of any of the Model Rules as set forth in the formal disciplinary complaint, and included an Affidavit from his former secretary in an effort to show that the Petition attached to the Motion was not the Petition intended to be filed on May 6, 2002. It was alleged that more than one draft of the Petition for Rehearing had been prepared by Mr. Boyd, and the wrong one was presented to him in error for signing and filing with the Motion. He further offered his apology to the Court for his oversight which led to the filing of the document appended to the Motion (the Petition), which ultimately resulted in the *Per Curiam* referral to the Committee.

Mr. Boyd contended that the issue in the *Davenport* case was one of first impression, and that the decision of the Court overturned a Court of Appeals decision supporting his position. He argued further that he

honestly believed he has complied with the rule concerning Petitions for Rehearing.

In response to the allegation of assisting his clients in the unauthorized practice of law, Mr. Boyd stated that he refused to sign the pleadings until he had received a complete copy of the medical records necessary for maintaining the wrongful death action. According to Mr. Boyd, he further fully informed his clients of this and also explained to them that their cause of action must have been filed within two years of the date of the alleged negligence or their claims would be forever barred. Given the options, his clients decided to sign the complaint prepared by Mr. Boyd as *pro se* litigants. Mr. Boyd unequivocally asserted that he did not believe that action of his clients constituted the unauthorized practice of law, and argued that it was merely a highly technical point permitting an individual to sign a complaint for himself but not on behalf of the estate which is a separate entity and of which he was the duly authorized personal representative.

Mr. Boyd steadfastly denied engaging in any conduct constituting or involving dishonesty, fraud, deceit or misrepresentation. He took issue with the allegation that he acted to conceal the fact that the complaint had been prepared by a lawyer and thereby committed a fraud on the court at the time of the filing of the complaint.

Upon consideration of the Formal Complaint and Exhibits thereto, the Response of the Attorney, the Arkansas Model Rules of Professional Conduct, and other matters and things before it, Panel A of the Arkansas Supreme Court Committee on Professional Conduct hereby finds:

1. That Mr. Boyd's conduct violated Model Rule 1.3 when he failed to file in a timely manner with the Arkansas Supreme Court a Petition for Rehearing even after being granted an extension of time in which to do so, thereby denying his clients the right to be heard on rehearing. Model Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

2. That Mr. Boyd's conduct violated Model Rule 3.4(c) inasmuch as his Motion submitted to the Court on May 7, 2002, with attachments, including his Petition for Rehearing, was disrespectful to the Court in tenor in spite of his obligation as an attorney to show proper respect for the Court in his pleadings. Mr. Boyd, as an officer of the Court by virtue of his license to practice law within the State of Arkansas, is charged with diligently fulfilling his professional responsibilities while still maintaining the highest ethical standards, which

he failed to do. Model Rule 3.4(c) requires, in pertinent part, that a lawyer not knowingly disobey an obligation under the rules of a tribunal.

3. That Mr. Boyd's conduct violated Model Rule 5.5(b) by his preparing the complaint signed and filed *pro se* by his client in Faulkner County, Arkansas, thereby assisting his clients in the unauthorized practice of law. Model Rule 5.5(b) requires that a lawyer not assist a person who is not a member of the bar in performance of activities constituting the unauthorized practice of law.

4. That Mr. Boyd's conduct violated Model Rule 8.2(a) in that his statements in the Petition for Rehearing attached to the Motions filed during May of 2002, were made with reckless disregard for their truth or falsity concerning actions and decisions of the Court and the reasons therefor. Model Rule 8.2(a) requires, in pertinent part, that a lawyer not make a statement with reckless disregard for its truth or falsity concerning the integrity of a judge.

5. That Mr. Boyd's conduct violated Model Rule 8.4(c) in his preparing a complaint for his clients to file *pro se* in Faulkner County Circuit Court and in doing so concealing the fact that the complaint was prepared by a lawyer, thereby committed a fraud on the court by permitting the filing of the complaint under those circumstances. Model Rule 8.4(c) requires that a lawyer not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

6. That Mr. Boyd's conduct violated Model Rule 8.4(d) in his failing and refusing to sign the complaint filed by his clients in Faulkner County Circuit Court with the ultimate consequence that his clients were found to have committed the unauthorized practice of law, resulting in the holding that their complaint was a nullity and their loss of opportunity to have their legal matter heard and adjudicated. Mr. Boyd's conduct further violated Model Rule 8.4(d) in that he failed to file his Petition for Rehearing before the Supreme Court in a timely fashion, causing his clients the loss of the opportunity to be reheard on the Court's decision of April 11, 2002. Model Rule 8.4(d) requires that a lawyer not engage in conduct 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 P. BOYD, JR., Arkansas Bar ID# 82023, be, and hereby is, REPRIMANDED for his conduct in this matter. Further, pursuant to Section 18.A. of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law, Mr. Boyd is assessed costs in the matter in the amount of \$50.00. Mr. Boyd is also ordered to pay a fine in the amount of \$500 pursuant to Section 18.B. of the Procedures. Said costs and fine shall be due and payable in the Office of Professional Conduct within thirty (30) days of the date of filing the Findings and Order with the Clerk of the Arkansas Supreme Court. The costs and fine shall be remitted in the form of a cashier's check or money order made payable to the "Clerk of the Arkansas Supreme Court."

ARKANSAS SUPREME COURT COMMITTEE  
ON PROFESSIONAL CONDUCT

By:

Gwendolyn D. Hodge, Chair, Panel A

Date: