

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

**PANEL A**

IN RE: CHARLES P. BOYD

ARKANSAS BAR ID #82023

CPC DOCKET NO. 2003-014

**FINDINGS AND ORDER**

The formal charges of misconduct upon which this Order is premised arose from the Complaint of Mrs. Roberta Turley. She hired Charles P. Boyd, an attorney practicing in Little Rock, Pulaski County, Arkansas, in March of 2001 to represent her in an action for the wrongful death of her husband, Robert Turley. Mrs. Turley believed that her husband's death was the result of medical negligence. A Contract of Employment was signed on April 17, 2001, and a costs retainer was paid to Mr. Boyd the following day. The transmittal letter sent to Mrs. Turley with the employment contract in March of 2001 made reference to a limitations period of three (3) years in which the wrongful death action must have been brought. She has since learned that the true limitations period is two (2) years, and that this portion of Mr. Boyd's letter was incorrect.

Mrs. Turley stated that her contact with Mr. Boyd was rare after she hired him, and that he seldom informed her of actions taken in her legal matter. When she did receive information, it was precipitated by her calls to Mr. Boyd's office, and then she spoke to his paralegal and not Mr. Boyd himself.

Mr. Boyd, as a part of pursuit of Mrs. Turley's wrongful death action, opened her husband's estate on October 31, 2001, and Mrs. Turley was appointed Administratrix in an Order filed December 11, 2001. On that same date, Mr. Boyd filed the wrongful death action in Circuit Court. The Order entered December 11, 2001, was only temporary because Mr. Boyd had not, at that time, secured waivers from Mrs. Turley's children, the other heirs, and once he did so another Order was entered.

In March of 2002, Mr. Boyd hired Scott Richardson, an attorney licensed in Arkansas during 2001, to work in his law office. Mr. Boyd later attempted to excuse his handling of Mrs. Turley's case by blaming the problems on Mr. Richardson.

Shortly after being employed by Mr. Boyd, Mr. Richardson contacted Mrs. Turley to discuss the wrongful death action and the pending probate matter. Following that conversation, he sent Mrs. Turley a letter enclosing three Letters of Acceptance of Appointment as Administratrix of her late husband's estate, which she signed and returned. Mr. Richardson later sent Mrs. Turley a copy of the Letters for her records. These were the only correspondence Mrs. Turley received from the Boyd Law Firm concerning these two legal matters.

Eventually Mrs. Turley learned that on May 21, 2002, Patricia Moss, one of the defendants in the wrongful death action, had filed a Motion to Dismiss, alleging that Mr. Boyd had failed to serve her within 120 days after filing the Complaint on December 11, 2001. Because of the lack of service within the prescribed 120 days, Ms. Moss' attorneys asserted that Mrs. Turley's claims against her were barred by the lapse of the two-year limitations period on December 16, 2001. Seven (7) days after the Motion to Dismiss was filed, Mr. Boyd filed an Addendum to Complaint, which included, as the only new allegation the inclusion of the Letters of Administration issued to Mrs. Turley on March 29, 2002. Thereafter, on May 29, 2002, Mr. Boyd filed the Return of Summons reflecting service on Patricia Moss and Baptist Health, and a Supplemental Motion to Dismiss was then filed by the defendants.

The Docket Sheet for the wrongful death action discloses that on June 7, 2002, Mr. Boyd filed a Motion for Extension of the time within which to respond to the Motion to Dismiss. Also on June 7, 2002, Baptist Health filed its Separate Answer containing an allegation that Mr. Boyd's failure to effect timely service on Baptist Health (within the 120 day period) operated to bar Mrs. Turley's claims because of lapse of the limitations period.

The Docket Sheet also indicates that two sets of Requests for Admission were filed, but Mrs. Turley never received notice or a copy of either from Mr. Boyd.

Pulaski County Circuit Judge Proctor granted Mr. Boyd's request to extend the time to respond to the Motion to Dismiss and set the Motion for hearing on July 23, 2002. Rather than file a response to the Motion to Dismiss within the additional time granted, Mr. Boyd filed another Motion for Extension of Time to Respond, which was granted by the Court, enlarging the time within which to respond until June 28, 2002. However, on

June 28, 2002, Mr. Boyd filed a Motion for Extension Out of Time, and, In the Alternative, Motion to Allow Discovery to Ascertain the Identity of John Doe Defendants, also requesting additional time to complete service on the defendants. This was done with knowledge that the time for service had already expired, but Mr. Boyd attempted to convince the Court that there was good cause for extending the time for service, and alleged that opposing counsel had no objection to the request.

On June 2, 2002, Baptist Health filed its Motion to Dismiss, alleging that it had not been served within 120 days after filing of the lawsuit and also that the limitations period had lapsed, thereby barring Mrs. Turley's claims. Counsel for Baptist Health also contended that the Complaint incorrectly listed Mrs. Turley's status as plaintiff with authority to bring the wrongful death action. On June 18, 2002, Mr. Boyd responded to Baptist Health's Motion, and also filed a Motion for Extension of Time to Respond to Interrogatories and Requests for Production of Documents. The response of Defendant pointed out that the Court was without jurisdiction to grant an extension of time as the responses were already past due.

On the day prior to the scheduled hearing on the Motion to Dismiss, Mr. Boyd filed an Amended Complaint. Following the hearing on the Motion to Dismiss, Orders were entered dismissing the claims against Baptist Health and Patricia Moss because (1) there was a failure of service within the 120 days after filing of the complaint as required by Arkansas Rule of Civil Procedure 4(i); and (2) because the two-year limitations period had elapsed without completion of service, thereby barring Mrs. Turley's claims. As this dismissal was with prejudice, Mrs. Turley was denied her right to have her claims heard and adjudicated. She did not receive notice or a copy of these Orders from Mr. Boyd, but learned of them later from another source.

Mrs. Turley stated that on June 28, 2002, she did receive some documents and a copy of his letter to Rebsamen Insurance Company from Mr. Boyd but did not understand them, so she enlisted the assistance of others for explanation of the documents.

On July 25, 2002, Mrs. Turley received notice from the Pulaski County Probate Court that the required Inventory of her husband's estate was overdue, and Mrs. Turley's daughter, Donna Outlaw, telephoned Mr. Boyd to find out what should be done. Mr. Boyd advised her that Mrs. Turley should go by the courthouse and

take care of the probate matter. When asked about the dismissal pleadings, Mr. Boyd provided numerous excuses about the situation.

Subsequent to Mrs. Outlaw's conversation with Mr. Boyd, Mrs. Turley wrote him to express her disappointment in his handling of her legal matters, and requesting to retrieve her file and offering to pay the applicable duplication charges for the documents in the file. Mr. Boyd never responded to this letter, and Mrs. Turley has since engaged other counsel, Bill Reynolds, who has also been unsuccessful in gaining return of Mrs. Turley's file.

Mrs. Turley learned from the staff of the Office of Professional Conduct that on the same date she sent her letter to Mr. Boyd, he served a Notice of Deposition on Baptist Medical Center, Dr. Keith Dixon, and Diagnostic Physicians of Arkansas. Two days later a Motion to Quash was filed and Pulaski County Circuit Judge Proctor scheduled a hearing on the Motion for August 19, 2002. Immediately prior to the scheduled hearing, Mr. Boyd, through his associate, Ken Swindle, filed an Amended Complaint which demonstrated another error by Mr. Boyd and Boyd Law Firm. The Amended Complaint included, as an Exhibit, an Affidavit related to John Doe Defendants; although this Affidavit was required to be filed with the original Complaint, it was not. The Motion to Quash was ultimately granted on August 20, 2002, in an Order directing that no further notice, subpoenas, process, discovery, or any other type of documents be served upon the Defendants with regard to Robert Turley or his estate.

Mr. Boyd responded, denying the allegations contained in Mrs. Turley's Complaint. However, he alleged no specific facts which might tend to show that the information submitted by Mrs. Turley was factually incorrect.

Upon consideration of the Formal Complaint, the Response herein, and the Arkansas Model Rules of Professional Conduct, the Committee on Professional Conduct finds:

1. That Mr. Boyd's conduct violated Model Rule 1.1 when he (a) failed to be thorough enough in his initial communication to and contact with Mrs. Turley to ensure that she was adequately informed of the two (2) year limitation period, as opposed to the three (3) year period contained in his letter to her; (b) failed to

attempt or perfect service on Patricia Moss within the required 120 days after filing of the Complaint on December 11, 2001; (c) failed to file a timely Motion for Extension of Time within which to complete service upon the Defendants in the wrongful death action; (d) failed to obtain Letters of Administration in a timely manner following expiration of the temporary Letters he had obtained December 11, 2001; (e) brought the original lawsuit against Patricia Moss, M.D. and Baptist Health for Mrs. Turley in her individual capacity rather than as personal representative of the decedent's estate; and (f) failed to file the Affidavit required by Arkansas Code Annotated § 16-56-125 in order to toll the limitations period with regard to John Doe Defendants. Model Rule 1.1 requires that a lawyer provide competent representation to his client, including the legal knowledge, skill, thoroughness and preparation reasonably necessary for his representation.

2. That Mr. Boyd's conduct violated Model Rule 1.3 when he: (a) failed to obtain Letters of Administration for Mrs. Turley prior to expiration of the temporary Letters; (b) failed to complete timely service on Patricia Moss, M.D.; (c) failed to complete timely service on Baptist Health; (d) failed to file a timely Motion for Extension of Time within which to serve the defendants in the wrongful death action; and (e) failed to file the Affidavit concerning John Doe Defendants required by Arkansas Code Annotated § 16-56-125 until after the limitation period had elapsed. Model Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in his representation of his client.

3. That Mr. Boyd's conduct violated Model Rule 1.4(a) because throughout his representation of Mrs. Turley, he failed to keep her informed of the actions taken on her behalf or the status of her lawsuit and he failed to advise Mrs. Turley of the status of the lawsuit following the hearing on the Motions to Dismiss filed by Patricia Moss, M.D. and Baptist Health. Model Rule 1.4(a) requires that a lawyer keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

4. That Mr. Boyd's conduct violated Model Rule 1.4(b) because (a) when he had a complete turnover in staff and was unable to attend to all matters on his calendar and in his office, he failed to explain this to Mrs. Turley and to offer her the opportunity to seek other counsel; and (b) he failed to advise Mrs.

Turley, after the hearing on the Motions to Dismiss, that the action had been dismissed, and failed to inform her of her options with regard to the lawsuit. Model Rule 1.4(b) requires that a lawyer explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

5. That Mr. Boyd's conduct violated Model Rule 1.16(d) by failing to return Mrs. Turley's file to her after her letter of August 7, 2002, requesting the file and offering to pay for copies of documents, and by failing to return the file after request by Mrs. Turley's new counsel. Model Rule 1.16(d) requires, in pertinent part, that upon termination of representation, a lawyer take steps to the extent reasonably necessary to protect a client's interests, such as surrendering papers and property to which the client is entitled.

6. That Mr. Boyd's conduct violated Model Rule 3.2 by failing to comply with all procedural requirements with regard to Mrs. Turley's lawsuit, thereby causing the ultimate dismissal with prejudice for failure of timely service of process. Model Rule 3.2 requires that a lawyer make reasonable efforts to expedite litigation consistent with the interests of the client.

7. That Mr. Boyd's conduct violated Model Rule 8.4(d) by his failure to act in a timely manner on behalf of Mrs. Turley and his failure to comply with procedural requirements in her legal matters, resulting in the dismissal of her claims with prejudice and leaving her with no recourse and no opportunity to have litigated and adjudicated her claims against the medical personnel and institutions she believed were responsible for her husband's death. 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 that CHARLES P. BOYD, Arkansas Bar ID #82023 be, and hereby is, SUSPENDED for his conduct in this matter. The suspension is for a period of three (3) months and shall become effective as of the date of the filing of this Order with the Clerk of the Arkansas Supreme Court. Further, pursuant to Section 18.A of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law (2002), Mr. Boyd is ordered to pay costs in the amount of \$50. Pursuant to Section 18.B of the Procedures, Mr. Boyd is ordered to pay a fine in the amount of \$2500. The costs and fine assessed herein shall be paid in the form of a

money order or cashier's check made payable to the "Clerk, Arkansas Supreme Court" and delivered to the Office of Professional Conduct within thirty (30) days of the filing of this Findings and Order with the Clerk of the Arkansas Supreme Court. The Committee on Professional Conduct, Panel A, also hereby orders that Mr. Boyd is to deliver a copy of the complete file regarding Mrs. Turley's legal matter, in which he previously represented her, to her new counsel, Bill D. Reynolds, 404 North 7<sup>th</sup> Street, Fort Smith, Arkansas, 72902, within three (3) business days of his receipt of this Findings and Order. Failure to deliver the complete file to Mr. Reynolds, as Mrs. Turley's agent, may result in a Petition for Contempt being sought before the Arkansas Supreme Court.

ARKANSAS SUPREME COURT COMMITTEE  
ON PROFESSIONAL CONDUCT

By:

Gwendolyn D. Hodge, Chair, Panel A

Date: