

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

PANEL A

IN RE: CHARLES PHILLIP BOYD, JR, Respondent
Arkansas Bar ID#82023
CPC Docket No. 2004-088

CONSENT FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information obtained through the documents on file with the Arkansas Supreme Court Clerk in the matter of Lonnie M. Cavender v. St. Vincent Infirmiry Medical Center, 04-00234, and through the referral by the Arkansas Supreme Court, March 26, 2004, in the Order granting the appellee's Motion to Dismiss Appeal. Charles P. Boyd, Jr., represented Lonnie M. Cavender in the attempted appeal of the lower court's decision from Pulaski County Circuit Court, Case Number CV-00-2588.

On May 22, 2004, Respondent was served with a formal complaint, supported by information contained in the Orders of the Arkansas Supreme Court. A timely response was filed. The Respondent and the Executive Director negotiated a discipline by consent proposal, which was submitted to this Panel. Although Respondent entered into the negotiated discipline by consent, he did not admit to any conduct, negligence, or fault necessary to sustain an actionable claim against him for legal malpractice. The purpose of the disciplinary arena is not to establish such grounds. This matter was presented solely on the grounds of whether the Model Rules of Professional Conduct were violated in the matter referred by the Arkansas Supreme Court.

The information before the Panel revealed that on December 26, 2002, Charles P. Boyd, Jr., an attorney practicing law primarily in Little Rock, Pulaski County, Arkansas, filed a Notice of Appeal in Pulaski County Circuit Court in case number CIV 00-2588. On March 25, 2003, Mr. Boyd filed a Motion seeking extension of time to file the record on appeal. The Motion was granted and Mr. Boyd was given until June 25, 2003, to docket the record on appeal. The Order granting the extension was not entered of record until May 15, 2003. This date is outside the ninety (90) days in which he was required to have such an Order entered. Mr. Boyd did not tender the record for filing until June 27, 2003. The Clerk of the Arkansas Supreme Court refused to accept the record because it was not timely. Mr. Boyd admitted in his response to the formal disciplinary complaint that the Order enlarging the time period during which the transcript was to be lodged was not timely met and that this served as the basis for the dismissal of Ms. Cavender's appeal. In his

defense, he stated that he signed the pleading seeking the extension but that the same was prepared by an attorney employed by him. It was also asserted by Mr. Boyd that from now forward, he will make sure that any attorney employed by his law firm will sign their own pleadings.

On February 26, 2004, Mike Huckabay, an attorney for the appellee, St. Vincent Infirmary Medical Center filed a partial record in the matter along with a Motion to Dismiss Appeal. Prior to this time, and subsequent to June 27, 2003, Mr. Boyd had taken no action to file a Motion for Rule on the Clerk in an effort to seek to preserve his client's appeal. In response to the formal disciplinary complaint, Mr. Boyd explained that he did not file a Motion for Rule on the Clerk at that time because he had been apprised by the Clerk of the Court that there was no time limitation on filing a Motion For Rule on the Clerk. According to Mr. Boyd, he could not file the Motion for Rule on the Clerk until he had his medical records from a stay at the Menninger Clinic for the five (5) week period from December 1, 2003, until January 5, 2004.

Mr. Boyd filed a Motion for Extension of Time to Respond to Motion to Dismiss Appeal and to File Motion for Rule on the Clerk, on March 11, 2004. In the Motion filed by Mr. Boyd, he explained that a Response to Motion to Dismiss Appeal had been filed on March 8, 2004, but had been filed in the Circuit Court of Pulaski County instead of with the Clerk of the Arkansas Supreme Court. Mr. Boyd offered in his Motion for Extension of Time that he had just recently received his medical records from a stay at the Menninger Clinic in Houston, Texas. Mr. Boyd explained that he needed his medical consultant to review the medical records before he could file a Motion for Rule on the Clerk.

Following review of the pleadings, the Arkansas Supreme Court granted the Motion to Dismiss Appeal on March 25, 2004. In the Order granting the Motion, the Court also referred Mr. Boyd to the Committee on Professional Conduct. Six (6) days after the Supreme Court dismissed the appeal, Mr. Boyd filed a Motion for Rule on the Clerk. In the Motion, Mr. Boyd admitted that no Order extending the time to file the record was entered within ninety (90) days of the first notice of appeal as required by the Rules of the Court. Mr. Boyd also attached to his Motion an Affidavit of Dr. Stuart Harris. On that same date, Mr. Boyd filed a Motion for Reconsideration. The reconsideration was based upon the fact that prior to making the decision to dismiss the appeal, the Court did not have the information related to Mr. Boyd's medical diagnosis of bi-polar disorder. The Supreme Court denied Mr. Boyd's Motion for Rule on the Clerk and his Motion for Reconsideration. As a result of Mr. Boyd's failure to file the record on appeal in a timely manner or to obtain a timely Order extending the time to file the record on appeal, his client lost the opportunity to have the lower court's decision reviewed at the appellate level. It was his responsibility to have all orders timely filed and he failed in that responsibility.

Mr. Boyd offered information in his response concerning his BiPolar II diagnosis and an explanation of his suffering from the same. The Committee took this information into consideration as a mitigating factor in determining the sanction to be imposed, but not as a defense to the misconduct by Mr. Boyd. Mr. Boyd's seeking medical treatment for his condition may also be considered as a mitigating factor but not as a complete defense to the violations of the Model Rules of Professional Conduct which are present herein.

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

1. That Ms. Boyd's conduct violated Model Rule 1.1 when he was not thorough enough in his representation of Lonnie Cavender, Individually, and as the Administrator of the Estate of Jodie Cavender, Deceased, to make certain that the Order extending the time to file the transcript was filed in a timely manner. Model Rule 1.1 requires that a lawyer provide competent representation to a client, including the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.
2. That Mr. Boyd's conduct violated Model Rule 1.3 when he failed to be certain that the Order extending the time to file the transcript on appeal was entered of record within ninety (90) days of the first Notice of Appeal filed in the matter involving Lonnie Cavender, Individually, and as the Administrator of the Estate of Jodie Cavender, Deceased, from Pulaski County Circuit Court, with case number CV 00-2588. Model Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel A, that CHARLES PHILLIP BOYD, JR., Arkansas Bar ID# 82023, be, and hereby is, CAUTIONED 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 the costs of this proceeding in the amount of \$50. 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 A

By: _____
Gwendolyn D. Hodge, Chair, Panel A

Date: _____

(13.M, Rev.1-1-02)