

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

IN RE: GERALD A. COLEMAN, Respondent
Arkansas Bar ID#82034
CPC Docket No. 2009-012

FILED

JUN 01 2009

**LESLIE W. STEEN
CLERK**

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee in a Supreme Court referral on January 22, 2009. The information related to the representation of Ledell Lee by Respondent in an appeal to the Arkansas Supreme Court from the denial of Mr. Lee's Rule 37 Petition at the trial court level.

On February 11, 2009 Respondent was served with a formal complaint, supported by the information contained in the Court's file. Respondent filed a timely response and the matter proceeded to ballot vote before Panel B of the Committee.

The information before the Committee reflected that on February 4, 2008, Gerald A. Coleman, an attorney practicing primarily in West Memphis, Arkansas, filed the record on appeal for Mr. Lee, from the denial of his Rule 37 Petition. The first brief filed by Mr. Coleman and co-counsel was May 1, 2008. The brief was tendered but rejected because there was no reference to the abstract and / or addendum in the statement of case or argument. On the same date that the brief was tendered, a Motion for Withdrawal and Substitution of Counsel was filed. The Court denied that Motion in a Per Curiam delivered May 29, 2008. A Motion to File Corrected Brief was filed on May 15, 2008 and granted by the Court on May 29, 2008.

After the briefs were submitted to the Court, a Per Curiam was delivered on November 13, 2008, wherein the Court ordered that Mr. Coleman and co-counsel re-brief. In the Per

Curiam, the Court set out that it was unable to consider appellant's argument because the brief did not comply with Arkansas Supreme Court Rule 4-2(a) (2008). The Court pointed out three requirements contained in the Rule, i.e. (1) all material parts of the testimony of the witnesses and colloquies between the court and counsel and other parties as are necessary to an understanding of all questions presented to the Court for decision; (2) on a second or subsequent appeal, the abstract must include a condensation of all pertinent portions of the transcript filed on any prior appeal; and, (3) inclusion of all relevant pleadings in the Addendum portion of appellant's brief. In the Per Curiam delivered November 13, 2008, the Court found that Mr. Coleman failed to abstract all relevant portions of the guilt and penalty phases of Mr. Lee's underlying criminal trial. The Court also set out that he failed to abstract the relevant testimony from the first Rule 37 proceeding and that the Addendum was deficient because it failed to include a copy of the Amended Rule 37 petition. As one of the counsel of record for Mr. Lee, Mr. Coleman was ordered to file a substituted brief curing the deficiencies in the abstract and Addendum. A substituted brief was filed on December 10, 2008.

The matter was once again submitted to the Court with the substituted brief filed on behalf of Mr. Lee. After review of the brief, the Court delivered another Per Curiam ordering re-briefing. In the Per Curiam, the Court set out that the substituted brief did not include a copy of the Rule 37 petition on which the circuit judge ruled in his November 21, 2007. The Court also set out that the abstract in the substituted brief did not appear to include the relevant testimony from all of the post-conviction hearings. There was abstracted testimony from the "Rule 37 Hearing" but the Court pointed out that the brief does not indicate which Rule 37 hearing was abstracted. Further, certain pleadings, exhibits and orders were abstracted but "true and legible

photocopies of the order... from which the appeal is taken, along with any other relevant pleadings, documents or exhibits essential to the understanding of the case and the Court's jurisdiction on appeal" must be included in the addendum, not the abstract.

The Court specifically set out what was to be included in the substituted brief. Because it was the second time re-briefing was ordered in this appeal, the Court referred Mr. Coleman to the Committee on Professional Conduct.

In responding to the formal disciplinary complaint, Mr. Coleman explained that since his co-counsel did not wish to undertake the appeal, he agreed to do the appeal work. Mr. Coleman explained that while working on the appeal, he was contacted by Lori Leon, an attorney representing Mr. Lee in his federal habeas proceeding. Because there were disagreements on the direction that the brief should take, Mr. Coleman contacted Leslie Steen to find out if there was time to be allowed to withdraw. Mr. Steen did not believe so. Mr. Coleman filed a brief with the understanding that Ms. Leon would file to be appointed substitute counsel and ask to file an amended and substituted brief. Ms. Leon did not do so.

Mr. Coleman stated that when the Court ordered re-briefing the second time, he recognized that some of the abstract, through his error, had been mislabeled as to what it contained. Mr. Coleman apologized to the Court and the Committee for making the mistakes.

Upon consideration of the formal complaint and attached exhibit materials, the response to it, other matters before it, and the Arkansas Rules of Professional Conduct, Panel B of the Arkansas Supreme Court Committee on Professional Conduct finds:

1. That Mr. Coleman's conduct violated Rule 1.1 when he failed at the time of the first re-brief to include a copy of the Rule 37 Petition on which the circuit judge ruled in

November 21, 2007; when he failed at the time of the first re-brief to include the relevant testimony from all of the post-conviction hearings; when he failed at the time of the first re-brief to include “true and legible photocopies of the order...from which the appeal is taken, along with any other relevant pleadings, documents or exhibits essential to an understanding of the case and the Court’s jurisdiction on appeal” in the addendum portion of the brief; and, when he failed at the time of the first re-brief to indicate which Rule 37 hearing was abstracted in the brief. 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. Coleman’s conduct violated Rule 3.4(c) when he failed on two occasions in the matter of Lee v. State, CR08-160, to comply with Ark. Sup. Ct. R. 4-2(a)(2008). Rule 3.4(c) requires that a lawyer not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists.

3. That Mr. Coleman’s conduct violated Rule 8.4(d) because his failure to file a compliant brief on appeal on Mr. Lee’s behalf created unnecessary delay in the appeal he was pursuing on Mr. Lee’s behalf, from the denial of his Rule 37 Petition in Pulaski County Circuit Court and because his failure to file a compliant brief on appeal for Mr. Lee created the need for additional proceedings before the Arkansas Supreme Court which would not have been necessary but for his failure. Rule 8.4(d) requires that a lawyer not 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 GERALD A. COLEMAN, Arkansas Bar ID#82034, be, and hereby is, CAUTIONED for his conduct in this matter.

In addition, pursuant to Section 18.A. of the Procedures, Mr. Coleman is assessed the costs of this proceeding in the amount of FIFTY DOLLARS (\$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 B

By: Valerie Kelly
Valerie Kelly, Chair, Panel B

Date: April 29, 2009.