

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

IN RE: ALLEN W. BIRD, II, Respondent

ARKANSAS BAR ID #68006

CPC Docket No. 2001-140

FINDINGS AND ORDER

The formal charges of misconduct upon which this Order is premised arose from information in a Judicial Referral made by Honorable Robert F. Fussell, United States Bankruptcy Judge. Mr. Bird was the Court appointed trustee in the Chapter 11 bankruptcy case of In Re: NWFX, Inc., Northwest Financial Express, Inc; and Gold Financial Express, Inc., Debtors. On June 22, 2001, Judge Fussell issued a Memorandum Opinion which related to Mr. Bird's conduct as trustee in the bankruptcy matter. Judge Fussell thereafter referred his Opinion to the Office of Professional Conduct for preparation of a formal disciplinary complaint against Mr. Bird, as a result of his conduct as set forth in the Memorandum Opinion.

The Opinion provides, by way of background, that the Debtors filed for bankruptcy relief on August 1, 1986 and Mr. Bird was appointed trustee in the three bankruptcy cases (the three cases were subsequently consolidated for purposes of administration). Larry Shaffer was the sole shareholder of each of the Debtor Corporations. The litigation in the consolidated case continued for fourteen (14) years. Subsections B and C of Judge Fussell's Memorandum Opinion dealt specifically with Mr. Bird's misconduct.

In his Answer to the Complaint, Mr. Bird provided a brief history of the bankruptcy proceeding and his involvement therein. Mr. Bird explained that the sole shareholder of the three companion corporations filed the bankruptcies in 1986. The business of the three corporations was the sale of money orders through numerous retail stores and other outlets in 13 states as well as Puerto Rico. When the bankruptcy was filed all three corporations were in chaos according to Mr. Bird. The situation with the corporations was such that the Arkansas State Securities Department had ordered the businesses to cease and desist selling additional money orders. Money orders which had been sold throughout ten states as well as Puerto Rico had made their way through bank channels to the companies' banks and were being returned to tens of thousands of innocent purchasers who did not understand why they were being dishonored. Those tens of thousands individuals went to the businesses to get their money back. Hundreds of the agents who sold the money orders were also trying to find someone to tell them what was going on. With all of these occurrences, Mr. Shaffer decided to file bankruptcy for the three companies. After one individual declined to serve as Trustee, Mr. Bird accepted the appointment.

Mr. Bird explained that he immediately dedicated himself full time and effort to bringing some organization to the situations. According to Mr. Bird, after setting up telephone services, he and his staff spent hours on the phones trying to explain how a money order could "bounce" and trying to lessen the impact of everything that occurred as a result of the non-payment of the money orders. Mr. Bird also offered that he worked with Union National Bank to devise a system to receive and keep track of the hundreds of thousands of money orders which were retrieved so that they could not be fraudulently sold. In addition, he devised a second system with Union National Bank to receive and keep track of millions of dollars which were ultimately recovered for the bankruptcy estate. Mr. Bird also managed to keep nervous regulators in other states from pursuing action against the Debtor Corporations. Mr. Bird also began to gather assets of the Debtor Corporations. After negotiation, Mr. Bird was able to obtain bond funds from the various states which were later disbursed to the money order purchasers. The funds were proceeds of bonds and letters of credit required when the companies began doing business in the various states. With technical help, Mr. Bird was able to distribute \$5,799,509.39 to valid claimants. Ultimately, every money order holder that could be located was paid in full. In addition, Mr. Bird focused on the claims of the Debtor Corporations' ordinary trade debt and resolved those claims and paid all creditors in full. As a result of all of this, the sole shareholder, Mr. Shaffer, also received hundreds of thousands of dollars. Although he did not agree with all of Judge Fussell's Memorandum Opinion, Mr. Bird did point out that even the Judge included information demonstrating the complexity of this particular bankruptcy proceeding. Judge Fussell also pointed out that the superior result in the bankruptcy proceeding was the performance of Mr. Bird in his capacity as Trustee.

One of the first areas of misconduct addressed by Judge Fussell involved the sale of personal property of the Debtor Corporations' estates. The assertion by Mr. Shaffer was that in 1996 Mr. Bird was negligent in selling, disposing of, and donating the corporations' personal property. It was Mr. Shaffer's assertion that Mr. Bird did not obtain a Court order authorizing the sales or donation in 1996; did not account for the property in his final reports; and, did not exercise reasonable business judgment in disposing of assets. In his response to the bankruptcy court, Mr. Bird explained that a prior 1986 Order authorized the 1996 sales. In addition, Mr. Bird submitted information to Judge Fussell to demonstrate that his actions were supported by reasonable business judgment. In the trial which dealt with these matters, Mr. Bird testified that he did remember the 1986 Order when he disposed of the assets of the corporations in 1996 but that he would not read the 1986 Order to definitely apply to the assets which were sold in 1996. There was also a provision in the 1986 Order that required Mr. Bird to report disposition of the assets to the Court. Mr. Bird did not contest the fact that he did not comply with that provision of the Order in 1996. In delivering his Opinion, Judge Fussell explained that Section 363 of the Bankruptcy Code provides that the trustee may use, sell or lease property of the estate only "after notice and a hearing". In addition, Section 102(1) requires that the trustee give appropriate notice in the particular circumstances. Mr. Bird was found to have exercised reasonable business judgment in selling or disposing of the property, however, he was found to have breached his fiduciary duty by failing to give proper notice and by failing to obtain a Court Order approving the sales. The specific finding of the bankruptcy court was that the estates were not damaged by Mr. Bird's disposition and sale of the property. Mr. Bird admitted some procedural improprieties in the administration of the bankruptcy estate. He acknowledged that he did not give notice and failed to obtain a court order, regarding the sale and disposition of items of the bankruptcy estates. In his defense, he explained that at the time the disposition of the items was occurring, everyone involved in the bankruptcy proceeding was anxious to close the estate and distribute the remaining proceeds to the sole stockholder, Mr. Shaffer. Because of the situation, Mr. Bird could not conceive of anyone complaining about the disposition of these items.

The next act of misconduct which is discussed in Judge Fussell's Opinion is the payment of a \$10,000 bonus to an employee, Penny Scharmberg, by Mr. Bird. It is documented that Mr. Bird believed that Ms. Scharmberg was essential to the maintenance of the day to day operation of the Debtor Corporations' estates. Mr. Bird explained to Judge Fussell that Ms. Scharmberg was offered the bonus in order to ensure her continued employment through conclusion of the matter. Mr. Bird did not dispute that he paid the bonus without filing a Motion, without giving notice and without obtaining Court authorization. Although there was a finding that the continued employment of Ms. Scharmberg was in the best interest of the corporations' estates, it was also the Court's conclusion and finding that Mr. Bird breached his fiduciary duty by not filing a Motion, by failing to give notice to all parties, and by not obtaining a Court Order approving the bonus. Mr. Bird acknowledged to the Committee that he did not get Court approval to pay the bonus to Ms. Scharmberg. Mr. Bird contended that he was not legally required to do so because Section 1108 of the Bankruptcy Code allows the trustee to "operate the debtor's business".

The next section of Judge Fussell's Opinion discussed Mr. Bird's alleged improper payments to Victoria Mason as accountant in the corporations' cases. During 1991, Mr. Bird filed an application to employ Ms. Mason to prepare tax returns and give accounting advice. Mr. Bird explained that because he was concerned about an accountant charging an hourly rate, he wanted to hire Ms. Mason on a fixed rate. Pursuant to Mr. Bird's request, the Court appointed Ms. Mason as an additional accountant on April 3, 1991. Over the course of the next few years, Mr. Bird, on his own, determined that Ms. Mason's fees were reasonable. Mr. Bird admitted that he did not obtain a Court Order authorizing payments in all instances. In fact, of the ten (10) checks issued to Ms. Mason, only two were issued pursuant to Court Orders. Mr. Bird's failure to obtain Court approval in the remaining eight instances resulted in a breach of his fiduciary duty to the bankruptcy estates. Mr. Bird admitted that on some occasions he did fail to get court approval for payments to Victoria Mason. Because of Ms. Mason's performance of beneficial tasks to the bankruptcy estates, Mr. Bird explained that the failure to get approval for all payments was a technical impropriety without harm. In addition, Mr. Bird was found to have breached his fiduciary duty in four instances when he paid the Rose Law Firm, the firm for which he worked, without Court Orders. The four instances occurred on October 6, 1992; April 28, 1993; March 8, 1995; and January 17, 1997. Mr. Bird did acknowledge that there were four occasions when he paid the Rose Law Firm for legal fees without obtaining court order but that those acts were unintentional. After discovery of the unauthorized payments, the amounts were repaid with interest. Thereafter a request was made for such payments and the Court approved the same.

The final portion of Opinion dealt with three areas of alleged misconduct: (1) Whether Mr. Bird knowingly and intentionally made overpayment of trustee's fees to the Rose Law Firm or himself; (2) whether Mr. Bird filed false, misleading or inaccurate final reports and accounts; and, (3) whether Mr. Bird failed to timely provide or reveal information as to his trustee's fees as requested by Larry Shaffer, as a party in interest, and breached his fiduciary duty. It was not disputed in any of the evidence and testimony before Judge Fussell that Mr. Bird paid himself or the Rose Law Firm \$88,000 in duplicate payments. The evidence revealed that Mr. Bird's first Application of Interim Allowance of Trustee's Fees was filed on January 3, 1989. Mr. Bird set out in the application that he had disbursed a total of \$1,609,000 through the date of filing and therefore would be entitled to a maximum fee of \$48,000, but he only requested an interim fee of \$38,000. This payment was allowed by the Court in an Order dated January 27, 1989. Mr. Bird issued a check to himself as Trustee on February 2, 1989.

Mr. Bird's application for second interim payment was filed on December 26, 1989. In this application, Mr. Bird explained that he had disbursed \$3,500,000 through November 30, 1989, which meant he was entitled to a maximum fee of \$105,000. Mr. Bird acknowledged in his application that he had received one interim payment of \$38,000 and believed that a second payment of \$50,000 was reasonable. The Court agreed and payment was authorized by Order on January 30, 1990. The day before the Order was entered Mr. Bird issued a check in the amount of \$50,000 payable to himself.

Two and a half years later, on June 25, 1992, Mr. Bird filed a Motion for Allowance of Trustee's Fee and Authorization for Payment of Legal Fees held back. At that time, Mr. Bird calculated the allowable fee to be \$226,800. Mr. Bird requested that full amount in his application. There was no mention in the application of the Interim Fees that Mr. Bird had received. At a subsequent hearing on this matter, Mr. Bird testified that when he submitted the 1992 Motion he had forgotten that he had received two earlier interim payments. Judge Fussell did not believe Mr. Bird's testimony. Judge Fussell found that Mr. Bird had knowingly and intentionally committed fraud upon the debtor corporations' estates and the Court with regard to the June 25, 1992, Motion. According to the Opinion delivered by Judge Fussell, Mr. Bird's fraudulent intent was formulated when he prepared the Motion and executed when he obtained the July 27, 1992, Order, which allowed him to subsequently pay himself or the Rose Law Firm \$88,000 in duplicate payments of trustee's fees. The circumstances leading up to, and including, the filing of the Motion belied Mr. Bird's testimony that he forgot receiving the interim payments. Judge Fussell set out that Mr. Bird's own Motion was indicative of the fact that he knew of the payment of interim fees and intentionally failed to disclose the payment. Judge Fussell's finding was based upon the fact that Mr. Bird was very detailed, meticulous, and exact in preparing the disclosure of other fees. In addition, Judge Fussell pointed out the magnitude of the amount of funds Mr. Bird claimed to have forgotten.

Mr. Bird also received fees from various contracts he negotiated with state regulators to distribute state surety bond proceeds to money order claimants in the bankruptcy matter. The state surety bond proceeds had been held to not be property of the Debtor Corporations' estates. As such the bankruptcy estate was not to pay Mr. Bird a trustee's fee on distribution of the state surety bond proceeds. The total fee paid to Mr. Bird pursuant to those contracts was \$41,527. On June 15, 1992, Mr. Bird wrote a check payable to the Rose Law Firm in the amount of \$41,600 for those fees. Then on October 29, 1992, a check was written for \$141,527 (\$100,000 was for trustee's fees). Mr. Bird testified that he had forgotten the \$41,600 had already been paid. He explained to the Court that the first check was "coded" incorrectly in the accounting program and that mistake led to the mistake of the duplicate payment of the same fees. Judge Fussell again did not find Mr. Bird's testimony to be believable. Instead, Judge Fussell determined that the duplicate payment was made with knowledge and intent. Judge Fussell held that Mr. Bird formulated his fraudulent intent when he failed to disclose in his June 25, 1992, Motion that ten days before he had written a check for fees in the amount of \$41,600. Further, it was determined by Judge Fussell that Mr. Bird executed his fraudulent intent when he obtained the October 29, 1992, check for \$141,527, of which \$41,527 was purported to be payment of state regulator fees, and which were paid from the Debtor Corporations' funds. In his response to the Committee, Mr. Bird stated that although there was only a four and a half month period from first payment to duplicate payment, he did forget about the payment because it was at a time when a flurry of activity regarding payment of money order recipients, purchasers and agents was occurring. Also to further compound his problem, Mr. Bird's staff had incorrectly recorded the fee in the accounting records. Mr. Bird asserted that he wanted to make it clear to the Committee that no one knew of the error of overpayment in this instance until he reported it and repaid it to the bankruptcy estate. Mr. Bird maintained throughout his response that he had no intent to defraud anyone.

Mr. Bird testified before Judge Fussell that he did not recall ever having the intent to write a check that was not authorized and proper under the bankruptcy code. He also offered that he did not believe he wrote any checks to the Rose Law Firm or himself without a Court Order authorizing the same. Judge Fussell found the following checks were knowingly and intentionally signed and paid without Court Order: (1) \$1,500 payable to Allen W. Bird, II, dated May 5, 1991; (2) \$2,000 payable to Allen W. Bird, II, dated December 8, 1991; (3) \$10,000 payable to Allen W. Bird, II, dated July 7, 1992; (4) \$2,000 payable to Allen W. Bird, II, dated July 20, 1992; (5) \$100,000 to Rose Law Firm, dated January 27, 1993; (6) \$5,000 payable to Allen W. Bird, II, dated May 24, 1993; (7) \$5,000 payable to the Rose Law Firm, dated May 24, 1993; (8) \$2,500 payable to Allen W. Bird, II, dated June 29, 1993; (9) \$2,500 payable to Allen W. Bird, II, dated July 30, 1993; and, (10) \$5,000 payable to Allen W. Bird, II, dated September 22, 1993. Judge Fussell had authorized trustee's payments in the amount of \$246,880. Even

without considering the \$88,000 and \$41,600 duplicate payments made by Mr. Bird, he still wrote checks from May 5, 1991, through September 22, 1993, which totaled \$292,027, which was \$45,147 over the amount authorized by Judge Fussell. Mr. Bird's testimony that he had no intent to write any check which he did not believe was authorized under the bankruptcy code was not credited. The reason for not crediting the testimony was Judge Fussell's finding that the facts clearly contradicted his testimony. Mr. Bird averred to the Committee that he never had any intent to write a check he did not believe was proper and authorized under the bankruptcy code. The problem with the checks as listed above, according to Mr. Bird, was one that he did not recognize at the time, the overlooking of the \$88,000 in Trustee's fees in 1989 and 1990. This clerical oversight was the sole basis for some of the checks exceeding the court authorized amounts.

Mr. Bird was also found to have attempted to avoid accounting for the payment of trustee's fees because he stopped filing operating reports which would have reflected the current amount of trustee's fees paid in 1991, 1992, and 1993. Mr. Bird's last operating report was filed August 6, 1991. Mr. Bird's final report and account which was filed on November 9, 1998, was found to include a false statement because of the statement that his compensation of \$338,500 had been approved and paid to date. The statement was determined to be false because he knowingly and intentionally omitted the \$88,000 in overpayment of trustee's fees he received and because he failed to disclose that he received two payments for fees from state regulators for trustee's fees. Mr. Bird was also found to have made false statements in his July 29, 1999, Final Report and Account and Application for Final Decree when he stated that his compensation in the amount of \$296,973 was approved and paid. Mr. Bird was found to have knowingly and intentionally failed to disclose previous receipt of \$88,000 in interim attorney's fees. The Court also did not believe Mr. Bird's statement that when he prepared the final report he believed \$41,527 was the amount he had been paid out of state bond fees, because he failed to disclose that he had already been paid his personal fee by the state regulators. Mr. Bird again explained with regard to the inconsistencies in the final report that he overlooked the previous \$88,000 in Trustee's fees and the duplicate payment for bond fees. However, prior to the hearing on the final report, which occurred almost one (1) year after the final report was filed, Mr. Bird filed his response to the objections. In the response, Mr. Bird noted his review of the records and the overpayment of Trustee's fees. Mr. Bird asserted that this demonstrated he was not attempting to conceal the information from the Court, rather he admitted and explained it prior to the hearing. Mr. Bird admitted that he did not file operating reports after August 6, 1991, however, he did not believe that this was a legal failure. Mr. Bird admitted that Rule 2015(a)(5) of the rules of bankruptcy procedure requires a trustee to file a quarterly report until a plan of reorganization is confirmed. However, he pointed out that Rule 2015(a)(5) was not added until 1991 and this case preceded the U.S. Trustee program. Furthermore, he stressed that by 1991 there were no new funds coming in to the estate, its value was fixed and stable, and at that time there was no reason to continue preparing operating reports.

There was no finding by the Court that Mr. Bird directly concealed the Debtor Corporations' record from Mr. Shaffer or his counsel. There was a finding that Mr. Bird engaged in a course of conduct designed to conceal indirectly, by avoiding providing Mr. Shaffer and his counsel a calculation of trustee's fees, the documents upon which the calculation would be based, and an account of all fees from November 9, 1998, until October 1, 1999. There was also a finding that Mr. Bird breached his fiduciary duty to Mr. Shaffer when he failed to disclose and provide a calculation of trustee's fees in his final report and account; when he failed to provide an account of all trustee's fees paid as of July 29, 1999; and when he failed to disclose the \$41,600 duplicated payment of state regulator's fees which was paid from money belonging to the estates of the Debtor Corporations. Mr. Bird had a duty to provide information to parties in interest but failed to do so despite various requests. Mr. Bird flatly denied the allegation that he failed to provide information to Mr. Shaffer and his counsel. According to him, throughout his tenure as Trustee, he afforded Mr. Shaffer and his various counsel and representatives complete access to all of the information in his possession, including a means with which to review it. Specifically, Mr. Bird pointed out that (1) he wrote to Mr. Shaffer and told him the records of the estate were open to him and his representatives; (2) he provided Mr. Shaffer with a printout and a disk of the check records maintained on Quicken; (3) he provided Mr. Shaffer with all data base information on claims paid and every check written in payment of those claims; (4) he openly discussed the operations of the estate with Mr. Shaffer and his representatives; (5) he presented a draft of his final report to Mr. Shaffer's counsel before filing it; (6) he responded to written communications from Mr. Shaffer and his representatives; (7) he made all documents available to Mr. Shaffer's representative who came to Mr. Bird's office in Little Rock; (8) he voluntarily sat for a deposition by Mr. Shaffer's counsel; and, (9) he demonstrated the computer he kept records on and completed a report run for Mr. Shaffer's representative in order to show him that he had furnished all information to Mr. Shaffer.

Based upon the breach of fiduciary duty and the commission of fraud by his overpayments in trustee fees, Mr. Bird was found to not be entitled to any compensation for services performed except for the fees received from the state regulators. Mr. Bird was ordered to return to the bankruptcy estate the sum of \$199,979.26, the amount of interim trustee fees previously paid. Mr. Bird appealed this Order and it was reviewed by Honorable Jimm Larry Hendren, United States District Court Judge. Judge Hendren affirmed the findings of Judge Fussell and ordered the appeal dismissed.

Mr. Bird denied that he ever knowingly made any false statement to the Court. Mr. Bird first pointed out that his responsibilities and actions were not performed in his capacity as an attorney but in his capacity as Trustee and therefore certain of the Model Rules alleged in the complaint were not applicable. However, if found to be applicable, Mr. Bird denied violating those rules. Mr. Bird maintained that he overlooked previously authorized and paid Trustee's fees when he submitted his Motion to the Court. It was explained that the first application for Trustee's fees was filed on January 3, 1989 and the second on December 26, 1989. The Motion for Allowance of Trustee's Fees was not filed until two and half years later. During those two and a half years, the bulk of the tasks Mr. Bird undertook were being performed. There were innumerable financial transactions which occurred during this two and a half year time span. Mr. Bird offered this information to explain his testimony that he forgot about the earlier interim payments, not as an excuse for what occurred. Mr. Bird stated that he recognized that he should have examined the records rather than relying on his memory. In 1999, after thoroughly reviewing his records, Mr. Bird realized his memory had failed him and repaid the bankruptcy estate the excess Trustee's fee with interest.

Mr. Bird concluded his response to the Committee by admitting errors of oversight and omission in his service as Trustee. He did not seek to justify his omissions but did assert that none of them involved knowing or intentional acts. Further, Mr. Bird pointed out that the Court had punished him for his errors by not only the numerous negative findings about his conduct but also by ordering him to repay \$199,979.26 (the entirety of his Trustee's fees), the \$20,000 enhancement fee was set aside, and the Court surcharged Mr. Bird for all of Wright, Lindsey & Jennings' legal fees and expenses in the amount of \$339,369.44. With all of that said, Mr. Bird again stressed his belief that none of his conduct violated the Model Rules of Professional Conduct. He maintained and submitted that his transgressions were those of omission and that they resulted from the confusion and magnitude of the operations of the bankruptcy estate.

Upon consideration of the formal complaint and attached exhibit materials, the response to it, 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. That Mr. Bird's conduct violated Model Rule 3.3(a)(1) when he knowingly made a false statement to Judge Fussell in his June 25, 1992, Motion for Allowance of Trustee's Fees when he calculated his allowable fee to be \$226,800 without mention of the interim fees already received; when he falsely testified before Judge Fussell that he had forgotten he had received the two earlier interim payments; when he provided testimony which was not credible that when he wrote the check for \$141,527 representing the trustee's fee on distribution of the state surety bonds proceeds, he had forgotten he previously wrote a check for \$41,600 as

partial payment of those fees; when he gave testimony that was not credible that he had no intent to write any check he did not believe was authorized under the bankruptcy code; and when he made the false statement, in his November 9, 1998, final report, that his compensation of \$338,500 had been approved and paid to date. Model Rule 3.3(a)(1) requires, in pertinent part, that a lawyer not knowingly make a false statement of material fact to a tribunal.

2. That Mr. Bird's conduct violated Model Rule 3.4(c) when he violated provisions of the Bankruptcy Code by failing to give proper notice and failing to obtain a Court Order approving the sale and disposition of the corporations' personal property in 1996; when he failed to file a motion, give notice or obtain Court authorization prior to paying a \$10,000 bonus to employee Penny Scharnberg although required to do so by the rules of the bankruptcy court; when he failed to obtain a Court order authorizing payments to Victoria Mason for her accounting services on eight (8) occasions; when he paid the Rose Law Firm amounts for legal fees without obtaining Court Orders allowing him to do so, on four occasions, October 6, 1992, April 28, 1993, March 8, 1995, and January 17, 1997; when he breached the duty of honesty he has as an officer of the Court by providing numerous instances of false testimony before Judge Fussell concerning his conduct as trustee in the bankruptcy proceeding; when, despite the requirement he obtain Court Order authorizing checks for fees, he wrote the following without authorization: (a) May 5, 1991, check for \$1500; (b) December 8, 1991, check for \$2,000; (c) July 7, 1992, check for \$10,000; (d) July 20, 1992, check for \$2,000; (e) January 27, 1993, check for \$100,000; (f) May 24, 1993, check for \$5000; (g) May 24, 1993, check for \$5,000; (h) June 29, 1993, check for \$2,500; (i) July 30, 1993, check for \$2,500; (j) September 22, 1993, check for \$5,000; when he failed to file operating reports after August 6, 1991; when he failed to disclose in his November 9, 1998, final report that he had previously received \$88,000 in overpayments of trustee's fees; when he failed to disclose in the final report that he received two payments for fees from state regulators for trustee's fees; and when, despite his duty to provide information to parties in interest, he failed to provide requested information to Mr. Shaffer and his counsel. Model 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. Bird's conduct violated Model Rule 8.4(c) when he testified falsely before Judge Fussell when he advised that when he submitted his June 25, 1992, Motion for Trustee Fees, he had forgotten he received two earlier interim payments; when he provided testimony, which was determined to be unbelievable, that he had forgotten \$41,600 in fees from state surety bond proceeds which had already been paid when he wrote the October 29, 1992, check for \$141,527; when he falsely testified before Judge Fussell that he did not recall ever having the intent to write a check that was not authorized and proper under the bankruptcy code; when he provided the false statement in his November 9, 1998, final report and account that his compensation of \$338,500 had been approved and paid to date; and, when he committed fraud on the Court by making the overpayments of trustee's fees to himself. Model Rule 8.4(c) requires that a lawyer not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, through Panel B, that the law license of ALLEN W. BIRD, II, Arkansas Bar ID #68006, be, and hereby is, SUSPENDED FOR A PERIOD OF ONE (1) YEAR for his conduct in this matter. This sanction is imposed based upon the Panel's finding that Mr. Bird's misconduct is "serious misconduct" as that term is defined by Section 17 of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law (2002) (Procedures) and therefore requires a sanction which restricts Mr. Bird's license to practice law. The suspension shall become effective upon the filing of this Findings and Order with the Clerk of the Arkansas Supreme Court. In addition to the suspension, Mr. Bird is also fined in the amount of \$25,000 pursuant to Section 18.B of the Procedures. Mr. Bird is also ordered to pay costs in this matter in the amount of \$50 pursuant to Section 18.C of the Procedures. The fine and costs are due and payable in 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 cashier's check or money order shall be made payable to the Bar of Arkansas.

ARKANSAS SUPREME COURT COMMITTEE

ON PROFESSIONAL CONDUCT - PANEL B

By:

Michael Cogbill, Acting Chairman, Panel B

Date: