

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

PANEL B

IN RE: DAVID W. TALLEY, JR., Respondent
 Arkansas Bar ID#82155
 CPC Docket No. 2004-098

CONSENT FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Kevon D. Trotter in an Affidavit executed June 1, 2004. The information related to the representation of Mr. Trotter by Respondent in 2002 and 2003.

On June 9, 2004, Respondent was served with a formal complaint, supported by affidavit from Mr. Talley. A response was filed. The Respondent and the Executive Director negotiated a discipline by consent proposal, which was submitted to this Panel.

The information before the Panel reflected that David W. Talley, an attorney primarily practicing in Magnolia, Arkansas, represented Mr. Trotter as defense counsel in a criminal matter which was conducted in Ouachita County, Arkansas. Mr. Talley was court appointed to represent Mr. Trotter. According to Mr. Trotter, communication with Mr. Talley during the pendency of the trial court matter was minimal at best. Following Mr. Trotter's conviction, Mr. Talley did pursue an appeal on Mr. Trotter's behalf but did not communicate with him about the appeal process. Mr. Talley failed to communicate with Mr. Trotter by mail or in any form after his conviction was affirmed by the Arkansas Court of Appeals.

Mr. Trotter's conviction was affirmed June 18, 2003 and the mandate issued July 8, 2003. The dates were vital in any post-conviction proceeding which Mr. Trotter might attempt. Mr. Trotter had sixty (60) days from the date of the Mandate to file a petition pursuant to Arkansas Rule of Criminal Procedure 37. He did not learn of the Mandate within that time frame. The Mandate had been sent directly to Mr. Talley and not to Mr. Trotter, individually. Mr. Trotter only learned of the Mandate after contacting Sue Newbery, Criminal Justice Coordinator for the Arkansas Supreme Court, on September 18, 2003. After receiving the information from

Ms. Newbery, Mr. Trotter wrote Mr. Talley, who did not respond.

Upon consideration of the formal complaint and attached exhibit materials, the response, the consent proposal, 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. Talley's conduct violated Model Rule 1.1 when he was not thorough enough in his representation of Mr. Trotter to make certain that he notified Mr. Trotter of the decision of the Arkansas Court of Appeals and the resulting mandate thereby depriving Mr. Trotter of the opportunity to seek relief pursuant to the Arkansas Rules of Criminal Procedure 37. 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. Talley's conduct violated Model Rule 1.3 when he failed to be certain that he notified Mr. Trotter when Mr. Trotter's conviction was affirmed and when the resulting Mandate issued therefrom. Model Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

3. That Mr. Talley's conduct violated Model Rule 1.4(a) when he failed to keep Mr. Trotter informed of the status of his underlying criminal proceeding after being appointed to represent him in that matter; when he failed to comply with Mr. Trotter's requests for information related to his trial court proceeding after having been appointed to represent Mr. Trotter therein; when he failed to keep Mr. Trotter informed of the status of his appellate proceeding after beginning the process of pursuing the matter on Mr. Trotter's behalf; when he failed to advise Mr. Trotter when his conviction was affirmed; and, when he failed to advise Mr. Trotter when the Mandate issued by the Court of Appeals with regard to Mr. Trotter's conviction which was affirmed by Opinion delivered June 18, 2003. 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.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel B, that DAVID W. TALLEY, JR., Arkansas Bar ID# 82155, 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 (2002), Mr. Talley 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 B

By: _____

J. Michael Cogbill, Chair, Panel B

Date: _____