

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

IN RE: **DAVID W. TALLEY, JR.**
Arkansas Bar ID #82155
CPC Docket No. 2006-044

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based were developed from information provided to the Committee by Charles Burdine, Jr. and others starting in 2001. The information related to the representation of the Estate of Charles Burdine, Sr., in Columbia County Probate Court by David W. Talley, Jr., an attorney practicing primarily in Magnolia, Columbia County, Arkansas. On June 20, 2006, Respondent Talley was served with a formal complaint, supported by affidavits from Charles Burdine, Jr., James M. Pratt, Jr., Mike Kinard, and other documents.

William B. "Buster" Guthrie, Jr. is a "former" Arkansas attorney, having surrendered his Arkansas law license on September 19, 1983, after he plead guilty in Prairie County, Arkansas, to felony theft charges and was sentenced to serve prison time for thefts of funds from his legal clients. Guthrie went to work for Magnolia attorney Mike Kinard as a paralegal in late 1986, and worked there until August 30, 1995. While working at the Kinard law firm, Guthrie became acquainted there with Charles Burdine, Sr., a client of Mr. Kinard's. Mr. Talley became acquainted with Guthrie during the time he worked at the Kinard law firm. After Guthrie left the Kinard law firm, Charles Burdine, Sr. became a client of Mr. Talley's law office. After Guthrie left the employ of Mr. Kinard's firm, he was employed in 1998 as a paralegal in Mr. Talley's law office. At the time he

employed Guthrie, Mr. Talley knew of his background as a former attorney, and convicted but pardoned felon, who had served time in the Arkansas prison system for theft from clients or the estate of a client.

Mr. Talley stated Guthrie worked for him until May 7, 2004, when Mr. Talley says he first learned of Guthrie's misappropriation, or alleged "borrowing," of funds from the Estate of Charles Burdine, Sr., Columbia County Probate P-2000-105, an estate for which he had been appointed the executor, as provided in several wills prepared for Mr. Burdine in Mr. Talley's law office from 1999 through August 24, 2000. Mr. Burdine died September 8, 2000. Probate administration was opened that same day, and letters testamentary were issued to Guthrie. Guthrie then employed Mr. Talley as attorney for the estate and for him as executor. Mr. Talley acted in both capacities until he resigned those positions on May 7, 2004.

Guthrie made two check disbursements, not authorized by any court order, and known only to Guthrie and Talley, totaling \$7,000.00 from the estate bank account by checks payable to David Talley, payments that were not disclosed to the Court or others until on or shortly before May 5, 2004. The checks were #571 dated December 19, 2000, for \$2,500.00, marked as "partial atty fee, and #156 dated January 11, 2001, for \$4,500.00, marked as "partial atty fee."

On September 12, 2001, Guthrie filed a [first] Accounting for the Burdine Estate, approximately one year after probate was opened, listing an estate account at BancorpSouth with a balance of \$21,726.12 as an estate asset, and attorney's fees of \$4,712.18 owed to David Talley and an executor's fee of \$4,660.56 owed to Guthrie as unpaid liabilities of the estate. The same fee numbers were listed as unpaid liabilities of the estate in the Final Accounting filed by Guthrie October 23, 2003, which bears a certificate of service signed by Mr. Talley. The Final Accounting

listed “cash in hand” of \$9,372.74 as an estate asset.

Bank records obtained by James Pratt in March or April 2004 show the balance in the BancorpSouth Burdine Estate account was only \$617.68 on September 6, 2001, just before the [first] Accounting was filed on September 12, 2001. The estate account was closed out on October 10, 2001, when Guthrie debited the remaining balance of \$507.31. There is no evidence of Estate “cash in hand” in any amount on October 23, 2003, when the Final Accounting was filed, unless one considers the \$29,207.31 Guthrie had secretly removed from the estate bank account in 2000-2001, without any court authorization, and apparently without notice to anyone.

On August 29, 2003, Mr. Talley filed for Guthrie a petition for Authority to Pay Fees, in which Mr. Talley stated that the Estate was ready to be closed and he should be paid an attorney’s fee of \$4,712.18 for his legal services to the estate and Guthrie should be paid a fee of \$4,660.56 for his service as personal representative of the estate. Mr. Talley did not disclose, nor give the estate credit for, the \$7,000.00 he had been paid from Estate funds by the checks in December 2000 and January 2001. On September 15, 2003, James Pratt, attorney for the heirs, filed a Response to Mr. Talley’s petition for fees, objecting to payment of these two fees, and to other matters. Efforts to get this issue heard by the court were not successful before the events of early May 2004, when the extent of Mr. Guthrie’s unauthorized and fraudulent disbursements from the estate were discovered by Mr. Pratt from records he had to obtain directly from the bank holding Guthrie’s Burdine Estate account

Guthrie made undisclosed withdrawals totaling \$29,207.31 from the Estate bank account, by a series of checks and a debit payable to himself, that were not disclosed until on or shortly before May 5, 2004, as follows: January 8, 2001, #577, \$2,000.00, “partial executor’s fee”; January 10,

2001, #580, \$4,800.00, “partial executor’s fee”; February 26, 2001, #165, \$6,000.00, “Executor”; March 15, 2001, #171, \$1,500.00, “Exec. Exp.”; April 17, 2001, #213, \$500.00, “Exec. Costs”; April 25, 2001, #195, \$4,000.00, “Dist.”; May 7, 2001, #204, \$2,500.00, “Adj. Dist.”; May 14, 2001, #192, \$2,500.00, “Final Dist.”; June 21, 2001, #189, \$2,100.00, “Bal.”; June 26, 2001, #186, \$1,200.00, “Equalize”; July 23, 2001, # 861, \$600.00, “PPD”; July 25, 2001, #862, \$600.00, “FPD”; August 3, 2001, #863, \$400.00, “AVP”; October 10, 2001, Debit, \$507.31 (Closed account).

On September 12, 2001, an Accounting by Personal Representative for the Burdine Estate was filed by Guthrie as Executor. Mr. Talley provided a copy of this document to Mr. Pratt by letter dated September 14, 2001, thereby indicating Mr. Talley was familiar with the document at the time. The “Summary of Account” section of this Accounting shows an item as balance remaining in hands of accountant “Checking Account, BancorpSouth, Magnolia, AR \$21,726.12.” From bank records obtained by Mr. Pratt in March or April 2004, it can be seen that the Estate bank account balance on September 12, 2001, was only \$617.68, and that the estate bank account was closed out by Guthrie’s debit transaction for \$507.31 on October 10, 2001. Bank records show he had written estate account checks totaling about \$29,000 to himself between January 8 and August 31, 2001, and deposited these funds into his personal account, converting these estate funds to his control. This initial Accounting in September 2001 further showed as outstanding unpaid liabilities of the Estate \$4,712.18 in attorney’s fees to Mr. Talley, and \$4,660.56 in executor’s fees to Guthrie. At the time of filing this initial Accounting, Mr. Talley knew that it was inaccurate and false, at least to the extent that he had already been paid \$7,000.00 for “partial attorney’s fees” from the Estate by Guthrie almost nine months previously. Mr. Talley breached a fiduciary duty to the estate and the

Burdine heirs by failing to disclose these earlier payments made to him, and by either filing, and/or permitting the filing of, false documents, or failing to take timely and appropriate steps to correct material information he knew to be false on Estate documents and pleadings.

On October 28, 2003, a Final Accounting for the Burdine Estate was filed by Guthrie as Executor, with Mr. Talley signing the certificate of service to Mr. Pratt, which indicates Mr. Talley was familiar with the document at the time. The “Summary” section shows “Balance remaining in hands of accountant - \$9,372.74.” This is now known to be a false statement by Guthrie, because bank records show he had written estate account checks to himself or drawn cash by a debit, totaling about \$29,000 between January 8 and October 10, 2001, and either deposited same in his personal account or converted these funds to his control. The Final Accounting further showed as outstanding liabilities of the Estate \$4,712.18 in attorney’s fees to Mr. Talley, and \$4,660.56 in executor’s fees to Guthrie. At the time of filing this Final Accounting in late October 2003, Mr. Talley knew that it was inaccurate and false, at least to the extent that he had already been paid \$7,000.00 for “partial attorney’s fees” from the estate by Guthrie almost two years previously. Mr. Talley breached a fiduciary duty to the estate and the heirs by failing to disclose these earlier payments to him and by either filing a false document or failing to take timely and appropriate steps to correct material information he knew to be false on this document.

On November 19, 2003, Mr. Pratt filed for his three Burdine heir clients an “Objections to Accountings,” objecting to certain expenses claimed by Guthrie and specifically to the claim Mr. Talley filed for payment to him of an attorney’s fee of \$4,712.18 and a claim to an executor’s fee for Guthrie of \$4,660.56. Mr. Talley breached his fiduciary duty to the estate and the heirs by failing to disclose these earlier “partial attorney’s fee” payments to him and by failing to take timely and

appropriate steps to correct material information he knew to be false on a court document filed by him or his client Guthrie.

On May 5, 2005, Pratt filed a Motion to Remove Executor, seeking to remove Guthrie once his conversion of over \$29,000 in Estate funds had been discovered. On May 7, 2004, Guthrie and Mr. Talley submitted letters or motions resigning their respective positions as executor and attorney for the estate of Charles Burdine, Sr. On May 26, 2004, letters testamentary were issued to Charles Burdine, Jr. as the successor executor of his father's estate and he employed Camden attorney James M. Pratt, Jr. to represent him as executor. Mr. Burdine and Mr. Pratt continue in these duties at this date.

In a letter dated October 21, 2004, to the Office of Professional Conduct, Mr. Talley stated that Mr. Pratt advised him of the apparent misappropriation of estate funds by Guthrie on May 5, 2004. Mr. Talley stated he then sought out Guthrie to find out what was going on, and talked with him that date. Mr. Talley stated Mr. Guthrie left him a note the next day and copies of what are purported to be promissory notes contemporaneously prepared and executed by Guthrie as evidence of his self-asserted "borrowing" of these funds from the estate and his obligation to repay the funds in five years after the borrowing, with interest. The last of such "notes" is a "consolidation note" dated March 1, 2004, indicating Guthrie claims he owes the Burdine estate \$12,350.93 due 1-7-05.

As attorney for the successor executor, on October 11, 2004, Mr. Pratt wrote Mr. Talley demanding he repay the \$7,000.00 he received from Guthrie. Mr. Talley repaid the \$7,000.00 in two agreed installments by December 1, 2004.

W. B. Guthrie, Jr. was arrested by Arkansas authorities in Paducah, KY, on a warrant on or about October 12, 2004. Guthrie was formally charged with felony theft from the Burdine Estate in

Columbia County Circuit Court No. CR-2004-148 by an Information filed October 22, 2004. Guthrie was released from jail on November 8, 2004, a \$25,000 commercial bond. Mr. Talley, appeared with Guthrie as “defense counsel” in court on February 3, 2005, as shown by the docket, to request a continuance until April 7, 2005, which was granted. In the criminal case, with attorney Euel Kinsey as his counsel, Guthrie entered a plea to felony theft on February 2, 2006, received a five year probated sentence and was ordered to pay restitution to the Burdine Estate of \$17,358.24, which he paid that date.

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

A. Mr. Talley’s violated Model Rule 1.1 in that (1) he failed to be sufficiently thorough in his representation of the Burdine Estate to ensure that the statements in the two accountings filed for the Estate were accurate as to actual assets at the times; (2) he failed to be sufficiently thorough in his representation of the Burdine Estate to ensure that the statements in the two accountings filed for the Estate were accurate as to the attorney’s fee stated as an unpaid liabilities of the Estate, against the fees he had actually received from the estate; (3) as legal counsel for the estate, he failed to be sufficiently thorough in his representation of the estate to take the reasonable precaution of requiring a bond for the executor of the estate, who worked as a paralegal in his office at the time and whom he knew had been a former attorney convicted of felony theft from clients and had served a prison sentence for his crimes; (4) as legal counsel for the estate, he failed to be sufficiently thorough in his representation of the estate to take the reasonable precaution of making detailed examinations of the accountings and supporting documentation for them, including the estate bank account, prepared by

the executor Guthrie, who worked as a paralegal in his law office at the time and whom he knew had been a former attorney convicted of felony theft from clients and had served a prison sentence for his crimes. Model Rule 1.1 requires that a lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

B. Mr. Talley's conduct violated Model Rule 3.3(a)(1) in that (1) knowledge was imputed to him that his client Guthrie, the executor of the Burdine estate, also Mr. Talley's client, made false statements of material fact to the Probate Court of Columbia County in the [first] Accounting Guthrie and/or Mr. Talley filed on September 12, 2001, and which Mr. Talley is deemed by his fiduciary duty to the estate and heirs to have adopted, as to the correct amounts of attorneys fees due Mr. Talley; and (2) knowledge was imputed to him that his client Guthrie, the executor of the Burdine estate, also Mr. Talley's client, made false statements of material fact to the Probate Court of Columbia County in the Final Accounting Guthrie and/or Mr. Talley, filed on October 23, 2003, and which Mr. Talley is deemed by his fiduciary duty to the estate and heirs to have adopted, as to the correct amount of attorneys fees due Mr. Talley; and (3) knowledge was imputed to him that his client Guthrie, the executor of the Burdine estate, also Mr. Talley's client, made false statements of material fact to the Probate Court of Columbia County in the [first] Accounting Guthrie and/or Mr. Talley filed on September 12, 2001, and which Mr. Talley is deemed by his fiduciary duty to the estate and heirs to have adopted, as to the correct balance of cash on hand in the estate bank account; and (4) knowledge is imputed to Mr. Talley that his client Guthrie, the executor of the Burdine estate, also Mr. Talley's client, made false statements of material fact to the Probate Court of Columbia County in the Final Accounting Guthrie and/or Mr. Talley filed on October 23, 2003, and

which he is deemed by his fiduciary duty to the estate and heirs to have adopted, as to the correct balance of cash on hand in the estate. Model Rule 3.3(a)(1) provides that a lawyer shall not make a false statement of material fact or law to a tribunal.

C. Mr. Talley's conduct violated Model Rule 3.3(a)(2) in that (1) he failed to disclose a material fact to the Probate Court in the Accounting filed September 12, 2001, that he had already received payments totaling \$7,000.00 for "partial attorney's fees" from the executor of the estate in late 2000 and early 2001, an amount in excess of the \$4,712.18 shown on the Accounting as attorney's fees due to him from the estate. Disclosure of this fact would have helped prevent a larger fraud on the estate and the Court by his client, the executor; and (2) he failed to disclose a material fact to the Probate Court in the Final Accounting filed October 23, 2001, that he had received payments totaling \$7,000.00 for "partial attorney's fees" from the executor of the estate in late 2000 and early 2001, an amount in excess of the \$4,712.18 shown on the Accounting as attorney's fees due to him from the estate. Disclosure of this fact would have helped prevent a larger fraud on the estate and the Court by his client, the executor. Model Rule 3.3(a)(2) requires that a lawyer shall not fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client.

D. Mr. Talley's conduct violated Model Rule 3.4(c) in that (1) he signed off as attorney of record on the Burdine Estate Accounting filed by Guthrie on September 12, 2001, indicating he had read the paper, and signifying that to the best of his knowledge, information, and belief formed after reasonable inquiry that the Accounting was well-grounded in fact, when he knew at the time that it did not disclose the previous "fee" payments of \$7,000 to him by Guthrie. By signing this Accounting, Mr. Talley violated Rule 11(a) of the Arkansas Supreme Court's Rules of Civil

Procedure; (2) he signed off as attorney of record on the Burdine Estate Final Accounting filed by Guthrie on October 28, 2003, indicating he had read the paper, and signifying that to the best of his knowledge, information, and belief formed after reasonable inquiry that the Accounting was well-grounded in fact, when he knew at the time that it did not disclose the previous “fee” payments of \$7,000 to him by Guthrie. By signing this Accounting, Mr. Talley violated Rule 11(a) of the Arkansas Supreme Court’s Rules of Civil Procedure; (3) he signed off as attorney of record on the Burdine Estate Petition for Authority to Pay Fees filed August 29, 2003, indicating he had read the pleading, and signifying that to the best of his knowledge, information, and belief formed after reasonable inquiry that the Petition was well-grounded in fact, when he knew at the time that it did not disclose the previous “fee” payments of \$7,000 to him by Guthrie. By signing this pleading, he violated Rule 11(a) of the Arkansas Supreme Court’s Rules of Civil Procedure; (4) by permitting William B. Guthrie, Jr., a former lawyer (whom he knew had surrendered his Arkansas license in 1983 as a result of his felony convictions for theft from his clients) to work in his law office after January 1, 2002, Mr. Talley violated Section 22 of the Arkansas Supreme Court Procedures Regulating Professional Conduct of Attorneys at Law (Rev. 2002), which provides that a former attorney providing services to an attorney or law firm shall not occupy, share, or use office space in any location or building where the practice of law is being conducted. Model Rule 3.4(c) requires that a lawyer shall 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. Rule 11(a) of the Arkansas Supreme Court’s Rules of Civil Procedure provides that the signature of an attorney on a pleading, motion, or other paper constitutes a certificate by the attorney that he or she has read the pleading, motion, or other paper; and that to the best of the attorney’s knowledge, information, and belief

formed after reasonable inquiry that the pleading, motion or other paper was well-grounded in fact.

E. Mr. Talley's conduct violated Model Rule 8.4(c) in that (1) he accepted payments totaling \$7,000.00 by checks from William B. Guthrie, Jr., executor of the Estate of Charles Burdine, Sr. in late 2000 and early 2001, without court authorization and in an amount in excess of the \$4,712.18 legal fee Mr. Talley claimed was owed to him in the First Accounting filed September 13, 2001, by Guthrie for the Estate; (2) by accepting \$2,287.82 in funds above the amount he claimed for his legal fees, \$4,712.18, Mr. Talley was a party to a knowing conversion of Burdine estate funds for an unauthorized purpose; (3) as attorney for the Executor Guthrie and for the Estate of Charles Burdine, Sr., Mr. Talley permitted the Executor to file a first Accounting on September 13, 2001, that was materially false, by showing an estate bank account balance of \$ 21,762.12, when a minimal investigation or review of records by Mr. Talley would have revealed the account balance was only \$617.68. Mr. Talley adopted this accounting by providing a copy of the false Accounting to James M. Pratt, Jr., their attorney, for delivery to the three Burdine estate heirs he represented; and (4) as attorney for the Executor Guthrie and for the Estate of Charles Burdine, Sr., Mr. Talley permitted the Executor to file a Final Accounting on October 23, 2003, that was materially false, by showing an estate "cash in hand" balance of \$9,372.74, when a minimal investigation or review of records by Mr. Talley would have revealed the account balance was \$00.00, and in fact the account had been closed by Guthrie in October 2001. Mr. Talley adopted this accounting by providing a copy of the false Final Accounting to James M. Pratt, Jr., their attorney, for delivery to the three Burdine estate heirs he represented. Model Rule 8.4(c) requires that a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

G. Mr. Talley's conduct violated Model Rule 8.4(d) in that (1) his failure to disclose, until

found out by another, to the Court and other Burdine heirs the improper and illegal actions of the Burdine estate's executor, Guthrie, caused the resignation of the executor and of Mr. Talley, as attorney for the estate, resulting in unnecessary delay in marshaling estate assets, closing of the estate, and final distribution of the estate assets to those entitled to such distribution, conduct prejudicial to the administration of justice; and (2) Mr. Talley's failure to disclose, until found out by another, to the Court and other Burdine heirs the improper, unauthorized, and illegal actions of the Burdine estate's executor, Guthrie, in paying himself over \$29,000 from the estate by October 10, 2001, caused the loss to the estate and heirs of an estimated \$17,000 for almost four years, conduct prejudicial to the administration of justice. Model Rule 8.4(d) requires that a lawyer shall 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 **DAVID W. TALLEY, JR.**, Arkansas Bar ID# 82155, be, and hereby is, **REPRIMANDED** for his conduct in this matter, fined \$1,000.00, and assessed Committee costs of \$50.00. The \$1,000.00 fine and \$50.00 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 with 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: _____
Harry Truman Moore, Chair, Panel B

Date: _____

