

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

**PANEL A**

IN RE:           PHILLIP ASHLEY MOON, Respondent  
                  Arkansas Bar ID#84109  
                  CPC Docket No. 2006-070

**FINDINGS AND ORDER**

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee in an Arkansas Supreme Court referral of June 1, 2006, involving the matter of *Paul Barron, Sr. v. State of Arkansas*, CR06-00506. Phillip A. Moon, an attorney practicing primarily in Harrison, Boone County, Arkansas, represented Mr. Barron in his underlying legal matter and in the appeal that was to be pursued to the Arkansas Supreme Court. His failure in doing so resulted in the Supreme Court of Arkansas referring his conduct to the Committee on Professional Conduct.

On July 20, 2006, Respondent was served with a formal complaint, supported by documentation from the Clerk's file in the matter of *Barron v. State*. Pursuant to the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law, Mr. Moon filed a timely response to the disciplinary complaint. The matter thereafter proceeded to ballot vote before Panel A of the Committee.

The information before the Panel reflected that:

Mr. Moon represented Mr. Barron in his criminal proceeding in Carroll County, Arkansas, Eastern District. A Judgment and Commitment Order was entered in Mr. Barron's criminal proceeding on January 8, 2002. On January 18, 2002, Mr. Moon filed a timely Notice of Appeal on behalf of Mr. Barron. In the Notice of Appeal Mr. Moon set out that he had ordered the transcript of the trial court proceeding involving Mr. Barron. Following the filing of the Notice of Appeal in January 2002, the record was not filed with the Clerk of the Court by Mr. Moon nor was any other action taken by Mr. Moon to perfect Mr. Barron's appeal. This was despite Mr. Moon's duty to so proceed pursuant to Rule 16 of the Arkansas Rules of Appellate Procedure - Criminal. Rule 16(a) requires that trial counsel, whether retained or court-appointed, shall continue to represent

a convicted defendant throughout any appeal to the Arkansas Supreme Court or Arkansas Court of Appeals, unless permitted by the trial court or the appellate court to withdraw in the interest of justice or for other sufficient cause. After Mr. Moon filed the Notice of Appeal of the judgment and conviction, the Arkansas Supreme Court had exclusive jurisdiction to relieve him and appoint new counsel. Mr. Moon was never permitted to withdraw as counsel after he filed the Notice of Appeal, nor was the appeal dismissed. The record before the Court did not demonstrate that Mr. Moon ever sought to be relieved of his duty to pursue the appeal. As such, Mr. Moon was never relieved of his obligation to perfect the appeal on Mr. Barron's behalf.

Four (4) years after the record was due to be filed with the Clerk of the Court, Mr. Barron filed a Motion for Rule on the Clerk or in the alternative Motion for Leave to File a Belated Appeal. Mr. Barron requested that the Court compel Mr. Moon to perfect the appeal. The Supreme Court granted the Motion in the Per Curiam Opinion delivered June 1, 2006. In the Per Curiam, the Court set out that it is well settled that under no circumstances may an attorney who has not been relieved by the Court abandon an appeal. Mr. Moon was also directed to file a petition for writ of certiorari within thirty (30) days to call up the entire record, or that portion of it necessary for an appeal. On July 3, 2006, the Office of Professional Conduct received a copy of a letter Mr. Moon purportedly sent Express Mail to the Clerk of the Supreme Court with his Petition for Writ of Certiorari to Complete the Record. In the Petition, Mr. Moon asserted that Mr. Barron failed to tender any funds to pay the Court Reporter for the record at any time after January 18, 2002. Mr. Moon also asserted that Mr. Barron discharged Mr. Moon from representing him. Mr. Moon denied failing in any duties to Mr. Barron. There is no explanation in the Petition of Mr. Moon's failure to seek to be relieved from the representation of Mr. Barron as is required pursuant to Rule 16 of the Arkansas Rules of Appellate Procedure - Criminal.

In responding to the formal disciplinary complaint, Mr. Moon denied violating Model Rule 1.1, 1.2(a) and 1.3 as alleged in the complaint. Mr. Moon admitted that an appeal was not perfected on behalf of Paul Barron. Mr. Moon admitted that the record on appeal was not filed within ninety (90) days, that an Order extending the time for filing Mr. Barron's record on appeal was not sought, that a Motion for Belated Appeal was not filed, and that the appeal was not perfected after filing the Notice of Appeal in January 2002. Mr.

Moon admitted that he violated Model Rule 3.4(c) in that he failed to adhere to the requirements of Rule 16 of the Rules of Appellate Procedure - Criminal. Mr. Moon explained that he violated this Rule when he did not request the Arkansas Supreme Court of the Arkansas Court of Appeals to allow him to withdraw after Mr. Barron terminated his representation on appeal. Mr. Moon admitted that he failed to seek to be relieved as attorney for Mr. Barron but denied that he violated Model Rule 8.4(d).

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 A of the Arkansas Supreme Court Committee on Professional Conduct finds:

1. That Mr. Moon's conduct violated Model Rule 1.1 when he was not thorough enough in his representation of Mr. Barron to be certain that he filed the record on appeal in a timely manner and when he was not thorough enough in his representation of Mr. Barron to be certain that he pursued the appeal following the filing of the timely notice of appeal in January 2002. 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. Moon's conduct violated Model Rule 1.2(a) because despite the fact that his client, Mr. Barron, wished to pursue an appeal of his conviction in Carroll County Circuit Court, Mr. Moon failed to perfect the appeal on his behalf, even though Mr. Moon was never relieved of that obligation. Model Rule 1.2(a) requires that a lawyer abide by a client's decisions concerning the objectives of representation, subject to paragraphs (c), (d), and (e), and consult with the client as to the means by which they are to be pursued.
3. That Mr. Moon's conduct violated Model Rule 1.3 when he failed to file the record in Mr. Barron's appeal within ninety (90) days of the date of filing the Notice of Appeal; when failed to seek an Order extending the time for filing Mr. Barron's record on appeal; when he failed to pursue a Motion for Belated Appeal on behalf of Mr. Barron which required Mr. Barron to do so *pro se* four years after his conviction in Carroll County Circuit Court; and when he failed to perfect Mr. Barron's appeal after filing the Notice of

Appeal in January 2002, even though he was never relieved of his obligation to do so; and, when he failed to file a Petition for Writ of Certiorari within thirty (30) days of June 1, 2006, as he was directed to do by the Arkansas Supreme Court. Model Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

4. That Mr. Moon's conduct violated Model Rule 3.4(c) because he failed to adhere to the requirements of the Rule 16 of the Arkansas Supreme Court Rules of Appellate Procedure - Criminal, when he failed to pursue the appeal for Mr. Barron or to request that he be allowed to withdraw from representation. 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.

5. That Mr. Moon's conduct violated Model Rule 8.4(d) because his failure to file Mr. Barron's record with the Supreme Court along with his failure to submit a Motion for Belated Appeal delayed Mr. Barron's appeal from being considered by the Arkansas Court of Appeals; because his failure to perfect the appeal for Mr. Barron, despite his obligation to do so, resulted in a delay in the orderly and timely resolution of appellate proceedings; because his failure to perfect the appeal for Mr. Barron, despite his obligation to do so, required the Court to consider Mr. Barron's pro se Motion for Belated Appeal four (4) years after the Judgment and Conviction was entered in Carroll County Circuit Court and thereby to expend additional time and effort which would not have been necessary otherwise; because his failure to seek to be relieved from the representation of Mr. Barron, after he allegedly terminated Mr. Moon's services, created the need for further proceedings four (4) years after Mr. Barron's conviction. Model 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 A, that PHILLIP ASHLEY MOON, Arkansas Bar ID# 84109, be, and hereby is, REPRIMANDED for his conduct in this matter. Pursuant to Section 18.A. of the Procedures, Mr. Moon is assessed the costs of this proceeding in the amount of \$50. Further, pursuant to Section 18.C. of

the Procedures, Mr. Moon is fined in the amount of \$500. The costs assessed and fine imposed herein, totaling FIVE HUNDRED AND FIFTY DOLLARS (\$550.00) 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: \_\_\_\_\_

Phil D. Hout, Chair, Panel A

Date: \_\_\_\_\_