

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT  
PANEL B

**FILED**

SEP 21 2011

**LESLIE W. STEEN  
CLERK**

IN RE: RICHARD M. GRASBY  
ARKANSAS BAR ID No. 85060  
CPC Docket No. 2011-049

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided by the Arkansas Supreme Court in a grievance filed by Randy Price of Hattieville, Arkansas. The conduct related to the representation of Mr. Price in a criminal proceeding following arrest for driving while intoxicated.

Richard M. Grasby is an attorney licensed in 1985 to practice law in the State of Arkansas and assigned Arkansas Bar Number 85060. Randy Price was charged with Driving Under the Influence and Improper Turn on April 29, 2006, in Conway County, Arkansas. Following his arrest, Mr. Price employed Mr. Grasby to represent him. On June 5, 2006, Mr. Price paid Mr. Grasby One Thousand Dollars (\$1,000). Trial was held on January 29, 2007, and Mr. Price was found guilty and ordered to pay Seven Hundred and Five Dollars (\$705.00) in fines and costs.

Mr. Grasby informed Mr. Price that he would appeal the matter at no further costs except for the filing fee of One Hundred Forty Dollars (\$140.00). On February 5, 2007, Mr. Price provided Mr. Grasby with the cost of the filing fee with a cashier's check made payable to the Conway County Circuit Court Clerk.

Following the payment of the costs of the appeal, Mr. Price made several attempts to contact Mr. Grasby to make sure that the appeal was filed. The week prior to the expiration of the time for filing the request for appeal, Mr. Price called Mr. Grasby to remind him of the deadline.

Mr. Price was assured that the request would be filed.

Mr. Grasby stated that he missed the deadline because he mistakenly sent the check to the Conway County Circuit Court Clerk without a copy of the transcript and the cashiers check was returned to him. He stated that he attempted to correct the problem by filing a notice of appeal with the district court without success.

Rule 36 of the Rules of Criminal Procedure requires that a written request for appeal be filed with the clerk of the circuit court having jurisdiction of the appeal within thirty days from the date of the entry of the judgment in district court. No request for appeal was filed by Mr. Grasby with the Conway County Circuit Court Clerk within thirty days of the date of the entry of the judgment.

On March 20, 2007, Mr. Price received a letter from the Conway County District Court stating that a warrant had been issued for his failure to pay on the fines imposed. Mr. Price called Mr. Grasby and left a voicemail detailing the receipt of the letter and its contents. Mr. Price eventually spoke to Mr. Grasby, who advised that he would handle the matter.

Thereafter, Mr. Price experienced difficulty contacting Mr. Grasby. Mr. Price would call Mr. Grasby from his wife's mobile phone, his place of employment, and his sister's home just so that Mr. Grasby would answer the telephone. Mr. Grasby stated that he did inform Mr. Price of the problem with the appeal.

When Mr. Price attempted to renew his driver's license, a requirement of his employment, he was told that he was not in the system. Mr. Price called Mr. Grasby asking what he needed to do to get his driver's license back but received no assistance from Mr. Grasby.

On December 6, 2007, nearly eleven months after the finding of guilty, Mr. Grasby sent a

notice of appeal along with a cover letter to the Conway County District Clerk for filing. The notice of appeal was filed with the district court clerk on December 10, 2007.

On January 10, 2009, Mr. Price and his wife were test-driving a truck when he was pulled over by the police. Mr. Price was arrested on an outstanding warrant from Conway County District Court for failure to comply. Following Mr. Price's arrest, his wife called Mr. Grasby for assistance but there was no answer and Mr. Grasby did not return the telephone calls. Following release after posting a bond of One Hundred Sixty Dollars (\$160.00), Mr. Price and his wife went to Mr. Grasby's house and met with him in person. During the meeting, Mr. Grasby opened Mr. Price's file and the cashier's check that was purchased on February 5, 2007, fell out of the file.

Section 11 of Amendment 80 to the Arkansas State Constitution of 1874 provides that there is "a right of appeal to an appellate court from the Circuit Courts and other rights of appeal as may be provided by Supreme Court rule or by law." Rule 36(a) of the Rules of Criminal Procedure, as adopted by the Arkansas Supreme Court pursuant to Amendment 80, provides that a person convicted of a criminal offense in a district court may appeal the judgment of conviction to the circuit court for the judicial district in which the conviction occurred. Mr. Grasby admitted that he failed to comply with Rule 36 of the Rules of Criminal Procedure. He asserted, however, that his error occurred in February, 2007, which was more than four years ago. Mr. Grasby stated that the applicable statute of limitations against him had run and, though not applicable to a disciplinary matter, asked that the disciplinary case be dismissed based upon equitable estoppel or laches.

Upon consideration of the formal complaint and attached exhibit materials, the response to the formal complaint and attached exhibit materials, and the Arkansas Rules of Professional

Conduct, Panel B of the Arkansas Supreme Court Committee on Professional Conduct finds:

1. Richard M. Grasby violated Rule 1.1 when he filed a request for appeal with the Conway County District Court rather than with the clerk of the circuit court as required under Rule 36(b) of the Arkansas Rules of Criminal Procedure and when, on behalf of his client, Randy Price, he failed to file a request for appeal with the Conway County Circuit Court within thirty days of a decision in Conway County District Court, as required by Rule 36(b) of the Arkansas Rules of Criminal Procedure. Rule 1.1 requires that a lawyer provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

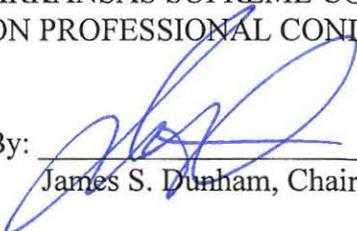
2. Richard M. Grasby violated Rule 1.3 when, on behalf of his client, Randy Price, he failed to file a timely request for appeal with the Conway County Circuit Court Clerk following a finding of guilt by the Conway County District Court and, when he failed to file the record of proceedings from Conway District Court with the Conway County Circuit Court Clerk within the time-frame established under Rule 36 of the Rules of Criminal Procedure. Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

3. Richard M. Grasby violated Rule 1.4(a)(4) when he failed to promptly comply with requests from his client, Randy Price, for information about his matter. Rule 1.4(a)(4) requires that a lawyer promptly comply with reasonable requests for information.

4. Richard M. Grasby violated Rule 8.4(d) when his failure to file a timely request for appeal denied his client, Randy Price, his constitutional right to appeal as guaranteed by the Arkansas State Constitution of 1874. 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 Richard M. Grasby, Arkansas Bar No. 85060, be, and hereby is, REPRIMANDED, fined the sum of ONE THOUSAND DOLLARS (\$1,000.00), assessed costs in the amount of FIFTY DOLLARS (\$50.00), and ordered to pay restitution in the amount of ONE HUNDRED FORTY DOLLARS (\$140.00) for a total of ONE THOUSAND ONE HUNDRED AND NINETY DOLLARS (\$1,190.00) for his conduct in this matter. The Panel expressly found that the sanction was enhanced pursuant to Section 19.A(12) of the Procedures Regulating Professional Conduct (2011). All fines and 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:   
James S. Dunham, Chair, Panel B

Date: August 29, 2011