

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

**IN RE: THOMAS W. BYARLAY
ARKANSAS BAR No. 86029
CPC DOCKET No. 2006-052**

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 the Honorable Audrey R. Evans, Chief Judge for the United States Bankruptcy Court for the Eastern and Western Districts of Arkansas. The information related to the representation of Donald Wayne Hamilton by Mr. Byarlay in 2005 and forward.

Thomas W. Byarlay represented Donald Wayne Hamilton in a bankruptcy matter filed on September 29, 2005, and styled as In Re: Donald Wayne Hamilton, Bankruptcy Court Case No. 4:05-bk-23612. Mr. Hamilton did not pay the filing fee at the time of filing. An application to pay the filing fee in installments was filed on his behalf by Mr. Byarlay. According to Mr. Byarlay, he informed Mr. Hamilton that the filing fee was required to be paid in full at least one day prior to the 11 U.S.C. §341(a) meeting of creditors. The meeting of creditors was scheduled for November 2, 2005. Mr. Byarlay stated that Mr. Hamilton came to his office on November 3, 2005, and paid the \$250.00 filing fee. As the filing fee had not been paid prior to the meeting of creditors, the case was dismissed by the bankruptcy court on November 4, 2005.

Changes were made to the Bankruptcy Code by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, most of which became effective on October 17, 2005. One of the changes made concerned the automatic stay. In cases filed after October 17, 2005, an automatic stay was valid for only thirty days if there had been a bankruptcy petition filed one year preceding the filing of any bankruptcy petition. The automatic stay could be extended but only if a motion is filed within thirty days of filing the bankruptcy petition, is filed in good faith, and provides a certificate of service. A hearing on the motion must be held within thirty days of the filing of the bankruptcy petition and an order entered prior to the expiration of the 30 day automatic stay.

Mr. Byarlay stated that Mr. Hamilton chose to re-file the bankruptcy case and apply the \$250.00 paid by Mr. Hamilton on November 3 to the filing fee in the new bankruptcy case. On November 17, 2005, a second bankruptcy petition was filed on behalf of Mr. Hamilton, styled In Re: Donald Wayne Hamilton, Bankruptcy Case No. 4:05-bk-40152. Under the changes made by the Bankruptcy Abuse Prevention and Consumer Protection Act, the automatic stay in Mr. Hamilton's second case was good for only thirty (30) days after filing. On November 17, 2005, a Motion to Extend Automatic Stay was filed. The Motion failed to list the case number, stated the wrong chapter of bankruptcy, failed to state the reason the new case was filed, and failed to have a certificate of service attached. Mr. Byarlay stated that he, like every bankruptcy attorney, was struggling with issues such as: how to obtain an extension of the automatic stay, what to say in the motion, what details to provide, how and when a hearing would be held, what notice was required, and how to determine the proper procedures for handling a drastic change to the bankruptcy law. Mr. Byarlay stated that the Motion to Extend the Automatic Stay he drafted was replete with errors and incomplete information and that he should have reviewed the motion thoroughly before allowing it to be filed. Nonetheless, the motion was filed and on November 29, 2005, the Court entered an Order striking the Motion Extend the Automatic Stay.

After learning of the Order Striking the Motion to Extend the Automatic Stay, Mr. Byarlay stated that he and the other lawyers in his office discussed what should be done. As a result, a second Motion to Extend the Automatic Stay and Notice of Opportunity to Object was filed on December 9, 2005. Mr. Byarlay stated that he was unsure whether the Court would set the hearing date for consideration of the motion or whether he had to take special action to request a hearing. As no emergency hearing was requested and the thirty (30) day time limitation for an order extending the Automatic Stay expired, the protections under the automatic stay were removed on December 17.

On January 5, 2006, Judge Evans granted the Motion to Extend Automatic Stay. On February 22, 2006, however, the Court issued an Order withdrawing its January 5 Order and vacating the Order of Dismissal in the first bankruptcy, Case No. 4:05-bk-23612. The effect was to reinstate the previous bankruptcy case so that Mr. Hamilton could receive the protections afforded him under the old bankruptcy code.

On May 25, 2006, Respondent Thomas W. Byarlay was served with a formal complaint, supported by Exhibits from the Honorable Audrey R. Evans. A timely response was filed. Mr. Byarlay and the Executive Director negotiated a discipline by consent proposal, which was submitted to Panel B.

Upon consideration of the formal complaint and attached exhibit materials, the response, the consent proposal, and 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. Thomas W. Byarlay violated Rule 1.1 of the Arkansas Rules of Professional Conduct when he failed to provide a case number identifying which case the motion was associated in a Motion for Extension of Automatic Stay filed on behalf of his client, Donald Wayne Hamilton; failed to state the proper chapter of bankruptcy on the motion; failed to state that the second bankruptcy petition was filed in good faith; and failed to attach a certificate of service. Model 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. Thomas W. Byarlay violated Rule 3.2 of the Arkansas Rules of Professional Conduct when he failed to request an emergency hearing to ensure that the automatic stay in the second bankruptcy case would be extended beyond the thirty days provided by 11 U.S.C. §362(c).
3. Thomas W. Byarlay violated Rule 3.4(c) of the Arkansas Rules of Professional Conduct when he failed to comply with the requirements of 11 U.S.C. §362(c) relating to the automatic stay. 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.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel B, that THOMAS W. BYARLAY, Arkansas Bar ID No. 86029, be, and hereby is, CAUTIONED and assessed costs in the amount of FIFTY DOLLARS (\$50.00) for his conduct in this matter. 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: _____

Harry Truman Moore, Chair, Panel B

Date: _____