

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

IN RE: JOHN E. JOPLIN, Respondent
 Arkansas Bar ID#86098
 CPC Docket No. 2006-139

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by William M. Blacker in an Affidavit dated November 13, 2006. The information related to the representation of Mr. Blacker by Respondent beginning in April 2003.

During October 2006, Respondent was served with a formal complaint, supported by an affidavit from Mr. Blacker and by letter from Respondent to the Office of Professional Conduct. Respondent filed a timely response. Thereafter the matter proceeded to ballot vote in accordance with the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law. (“Procedures”).

The information before the Panel in the disciplinary matter reflected that during April 2003, John E. Joplin, an attorney practicing primarily in Fort Smith, Arkansas, was appointed to represent William M. Blacker in a criminal matter in Sebastian County, Arkansas, case number CR-2002-354, *State of Arkansas v. William Max Blacker*. The criminal charges arose after Mr. Blacker quit his job with Calvert McBride Printing Company in Fort Smith, Arkansas. Mr. Blacker was injured at the hospital when he was having open heart surgery and therefore had to quit his job. After Mr. Blacker told the company that he was quitting, he was contacted and advised that he had to honor the “no compete” clause. Mr. Blacker informed the company that

he did not have a “no compete” clause with them but if they had a copy with his signature on it, he would honor it. Several days after this conversation, Mr. Blacker was informed that a criminal charge had been brought against him. Mr. Blacker initially hired Joel Price of Fort Smith for representation. The charges were over some expense accounts which were alleged to not be valid. During the time, Mr. Price represented Mr. Blacker the Prosecuting Attorney offered a plea bargain. The prosecutor would agree to recommend to reduce the charge to a misdemeanor if Mr. Blacker would agreed to pay \$100 per month for 36 months and his record would be expunged at the end of the 36 months. Mr. Blacker was also advised that this could be a “no contest” plea. He refused because he was not guilty of the charge. At that point he was out of money, so the Court appointed the public defender to represent him.

Mr. Blacker went in to see Mr. Joplin and the matter was extensively discussed. After a few months, a second meeting was held wherein Mr. Joplin encouraged a “no contest” plea to a misdemeanor and payment of a small fine. Mr. Joplin told Mr. Blacker that it would be far cheaper than an appeal or further pursuit of the defense of the matter. Mr. Blacker did not want to do this. To him, it just seemed wrong to plea to something that he did not do. Mr. Blacker explained that he did not give Mr. Joplin an answer at that time. Instead he thought about it for several days. Since he had no money to proceed, Mr. Blacker finally called Mr. Joplin and agreed to the deal. As it was explained to him, and as he understood it, he was to plead “no contest” to the reduced charge, would pay \$50 per month for 36 months and then his record would be expunged. Mr. Blacker advised that he did not agree with this and stated that he preferred an appeal to demonstrate that he did not take their money. If Mr. Joplin was unable to do this, Mr. Blacker would agree to \$50 per month for twelve (12) months and then his record

would be expunged. Mr. Joplin was to call Mr. Blacker back and let him know what was going to happen. As of the date of his grievance to the Office of Professional Conduct, Mr. Blacker had not agreed to any deal, as Mr. Joplin had not contacted him again. Mr. Joplin told Mr. Blacker that he did not need to come to Court, that Mr. Joplin would take care of the “no contest” plea on Mr. Blacker’s behalf, if the prosecution agreed. After the scheduled court date, Mr. Blacker called Mr. Joplin several times but was not able to reach him to find out what he needed to do. Mr. Blacker left messages for Mr. Joplin, but he did not return the telephone calls.

Mr. Blacker did not know the criminal matter had been concluded and that his duty to begin payments had started until he received a letter from the Social Security Administration advising that his monthly checks were being terminated because of an outstanding warrant. Mr. Blacker immediately went to the Social Security office and then to a lawyer in Conway to find out what was going on with the situation. Mr. Tackett, the lawyer Mr. Blacker met with in Conway, had him to call and obtain a copy of the material from the Sebastian County Sheriff’s office. Mr. Tackett sent a letter on Mr. Blacker’s behalf to the Prosecuting Attorney. The letter was mailed by Mr. Tackett on September 2, 2005. No response was received.

Mr. Blacker received from the Sebastian County Sheriff’s office copies of two Judgments, Petition to Revoke and / or Show Cause, and a copy of the Warrant that had been issued. The Judgment was nothing he agreed to with Mr. Joplin. The plea he would agreed to was \$50.00 a month for 12 months and then his record would be expunged. The Judgment reflects that Mr. Blacker would pay \$75 per month until restitution of \$30,000 was paid. Mr. Blacker did not agree to this. Mr. Blacker did not know that the Judgment had been filed, nor that a warrant had been issued. No one notified Mr. Blacker. After receiving the Judgment, Mr.

Blacker again tried to contact Mr. Joplin and left messages to no avail.

In January 2006, Mr. Blacker was served with the Bench Warrant on the Petition to Revoke. A motion to Quash the Warrant was filed on his behalf. On January 24, 2006, a hearing was held before Judge Wilkinson. He denied the Motion to Quash the Warrant and to Dismiss the Petition to Revoke. An Order was entered to amend the Original Judgment to reflect a one year suspended imposition of sentence instead of the previous suspended sentence. On that same date, Mr. Joplin entered his appearance on Mr. Blacker's behalf and entered a plea of not guilty and waived formal arraignment. A Second Amended Judgment was filed on that date as well.

Mr. Blacker ultimately hired other counsel, William O. "Bill" James. On April 10, 2006, Mr. James filed a Petition for Writ of Error Coram Nobis and Motion to Vacate Judgment. The State filed their response the next day. Then on May 25, 2006, an Order was entered granting the Motion to Vacate Judgment. An Amended Information was filed against Mr. Blacker on June 6, 2006. A jury trial was then scheduled for the week of October 16, 2006.

In responding to the formal disciplinary complaint, Mr. Joplin explained that he believed that the substance of the Plea Agreement was fully explained to and agreed to by Mr. Blacker. According to Mr. Joplin, the one exception might be the date the restitution would start. Mr. Joplin agreed that he failed to send a copy of the Judgment and Amended Judgment to Mr. Blacker. He also admitted that he did not advise Mr. Blacker that the Judgment had been entered against him in July 2004 or that the Amended Judgment had been entered against him in August 2004. Mr. Joplin admitted that neither the Judgment or Amended Judgment reflected that Mr. Blacker only had to pay restitution for four (4) years, as opposed to the entire \$30,000. Mr. Joplin also admitted that he violated Rule 24.3 of the Arkansas Rules of Criminal Procedure by

entering a nolo contendere plea by Judgment without requiring the Defendant to be present. Mr. Joplin did not recall failing to return telephone calls seeking information on the case by Mr. Blacker. Mr. Joplin asserted that he did explain in detail to Mr. Blacker that Mr. Blacker would only have to pay restitution for four (4) years unless he wanted his record expunged, in which case he would have to pay the entire amount of \$30,000 in restitution.

Mr. Joplin agreed that the Judgments presented to Judge Wilkinson did not accurately reflect the agreement of the parties. He also agreed that he allowed a Judgment to be entered against Mr. Blacker that called for restitution in the amount of \$30,000, even though the actual agreement was for substantially less restitution.

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. Joplin's conduct violated Model Rule 1.1, when he was not thorough enough in his representation of Mr. Blacker to be certain that the plea agreement he actually agreed to with his client was the one that was entered in the Judgment and Amended Judgment entered by Judge Norman Wilkinson in July 2004 and August 2004; when he was not thorough enough in his representation of Mr. Blacker to be certain that Mr. Blacker received a copy of the Judgment and Amended Judgment when entered in July 2004 and August 2004, respectively; when he was not thorough enough in his representation to be certain that the complete agreement between the Prosecutor, Defendant and Defense Counsel was present in the plea agreement which was presented and signed by the presiding Judge, specifically, there is no indication in the contents of the Judgment and / or Amended Judgment that Mr. Blacker only had to pay on the

restitution for a period of four (4) years as opposed to the entire \$30,000; and, when he was not thorough enough in his representation of Mr. Blacker to be aware that a plea of “nolo contendere” which he entered on behalf of Mr. Blacker is “required to be received only from the defendant himself in open court.” 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. Joplin’s conduct violated Model Rule 1.3, when he failed to provide Mr. Blacker a copy of the Judgment and Amended Judgment so that he would be aware of all of his duties thereunder, and when he should begin to make payments and to whom they should be made. Model Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

3. That Mr. Joplin’s conduct violated Model Rule 1.4(a), when he failed to advise Mr. Blacker when the Judgment was entered against him in July 2004; when he failed to advise Mr. Blacker when the Amended Judgment was entered against him in August 2004; when he failed to advise Mr. Blacker that the contents of the Judgment and Amended Judgment would be different than the plea actually explained to him by Mr. Joplin, and which he authorized Mr. Joplin to enter for him; when he failed to return Mr. Blacker’s telephone calls seeking information on the status of his legal matter; and, when he failed to return Mr. Blacker’s telephone calls after he received the notice from Social Security that his monthly payments were being stopped due to the outstanding warrant issued against him in Sebastian County. Model Rule 1.4(a) requires that a lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

4. That Mr. Joplin's conduct violated Model Rule 1.4(b) when he failed to adequately explain to Mr. Blacker that the Judgment which would be entered against him would contain language stating that he had to pay a total of \$30,000 in restitution and not merely the \$50 per month for 36 months he understood was his plea agreement and when he failed to adequately explain to Mr. Blacker that he could not receive expungement of his record unless he made restitution totaling \$30,000. Model Rule 1.4(b) requires that a lawyer explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

5. That Mr. Joplin's conduct violated Model Rule 3.3(a)(1) when he appeared before Judge Norman Wilkinson and presented as an agreement between Mr. Joplin, as Defense Counsel, and the Prosecuting Attorney, a deal whereby Mr. Blacker, his client, would pay restitution in his criminal matter in the amount of \$30,000, when the actual agreement was for a total of \$3,600. To sign and approve a Judgment presented to the Court and thereby allow the Court to believe the agreement was for a total of \$30,000 restitution was a false statement of material fact. Model Rule 3.3(a)(1) requires that a lawyer not knowingly make a false statement of material fact or law to a tribunal.

6. That Mr. Joplin's conduct violated Model Rule 8.4(c), when he misrepresented the true facts to Judge Norman Wilkinson when he signed off on a Judgment and an Amended Judgment which set out that his client was required to pay a total of \$30,000 in restitution, when the actual agreement, according to Mr. Joplin, was for Mr. Blacker, his client, to pay only a portion of that amount as restitution and when he misrepresented the true facts to his client, Mr. Blacker, when he allowed Mr. Blacker to believe that he was entering into a Judgment in his

criminal matter which would require him to pay \$3,600 in restitution and then be eligible to have his record expunged. Model Rule 8.4(c) requires that a lawyer not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

7. That Mr. Joplin's conduct violated Model Rule 8.4(d), because he allowed a Judgment and an Amended Judgment to be entered against his client, William Blacker, which required Mr. Blacker to pay a total of \$30,000 in restitution, and subjected him to possible contempt of court even though the actual agreement was for him to pay substantially less restitution than \$30,000. 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 JOHN E. JOPLIN, Arkansas Bar ID# 86098, be, and hereby is, REPRIMANDED for his conduct in this matter. Further, pursuant to Section 18.A. of the Procedures, Mr. Joplin 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 A

By: _____
Jerry D. Pinson, Chair, Panel A

Date: _____