

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

PANEL A

IN RE: DANA REECE

Arkansas Bar ID No. 87142

CPC Docket No. 2004-029

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information referred to the Committee on Professional Conduct by the Arkansas Supreme Court. The information related to the representation of Amy Bankston by Dana Reece in 2003 and 2004.

Amy Bankston was charged with Capital Murder and three counts of Terroristic Acts in Pulaski County Circuit Court. Bankston was represented at trial by Dana Reece, Attorney at Law, Little Rock, Arkansas. Bankston was tried before a jury in Pulaski County Circuit Court and the jury returned a verdict of guilty to one count of second degree murder and three counts of a terroristic act. Bankston was sentenced on each charge to twenty years in the Arkansas Department of Correction. The sentences were run consecutively for an aggregate eighty years. A Judgment and Commitment Order was entered on March 19, 2002.

According to Bankston, she informed her attorney that she wanted to appeal the decision but no response was received from her attorney. Reece stated that she did discuss with Bankston the issue of an appeal. According to Reece, Bankston did not indicate to her that she wanted to appeal the convictions. No notice of appeal was ever filed.

On September 19, 2003, a Motion for Leave to File Belated Appeal was filed in the Arkansas Supreme Court on Amy Bankston's behalf by her new counsel. According to the motion, Bankston requested that her former attorney, Reece, file an appeal of the trial court decision and Reece failed to do so.

The Arkansas Supreme Court remanded the matter to the Pulaski County Circuit Court for evidentiary hearing on the issue of whether Reece was informed of Bankston's desire to appeal within the time period allowed for filing a notice of appeal.

On December 22, 2003, an evidentiary hearing was held in the Pulaski County Circuit Court. At the hearing, testimony was heard from Bankston, Bankston's mother, Bankston's husband, and Reece. Bankston testified that she had not had any direct contact with Reece since the trial and had written several letters about an appeal. Bankston's mother testified that she attempted to contact Reece following her daughter's conviction. Bankston's husband testified that he had asked Reece on the day of trial to appeal the matter but Reece advised him that an appeal would not be in Bankston's best interests. Reece testified at the evidentiary hearing that the matter of whether to appeal was left up in the air and she did not know what Bankston wanted to do when the deadline for filing the notice of appeal neared. Reece testified that immediately prior to the expiration of the deadline for the notice of appeal, Bankston's mother informed her that Bankston did not want to appeal the matter. Reece therefore did not pursue the matter any further. Following the testimony presented at the evidentiary hearing, the Pulaski County Circuit Court entered its Findings of Fact and Conclusions of Law on January 9, 2004, and found that Bankston had sufficiently informed Reece of her interest and desire to exercise her right to appeal the conviction and the right to appeal was not personally waived.

Upon receipt of the Findings, the Arkansas Supreme Court issued a Per Curiam Order on January 29, 2004, granting the Motion for Leave to File Belated Appeal. In the Order, the Supreme Court adopted the circuit court's findings; removed Reece as attorney of record for Bankston; and substituted counsel. The Supreme Court referred the matter to the Office of Professional Conduct.

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 Dana Reece violated Model 1.3 when she failed to file a timely Notice of Appeal on behalf of her client, Amy Bankston, after she was informed that she wished to appeal the conviction in Pulaski County Circuit Court. Model Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

2. That Dana Reece violated Model Rule 3.4(d) when she failed to comply with Rule 16 of the Rules of Appellate Procedure–Criminal, which requires trial counsel, whether retained or court-appointed, to continue to represent a convicted defendant throughout any appeal to the Arkansas Supreme Court or 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. Model Rule 3.4(c) requires that a lawyer not knowingly disobey an obligation under the rules of a tribunal.

3. That Dana Reece violated Model Rule 8.4(d) when her failure to file a notice of appeal behalf of her client, Amy Bankston, resulted in a delay in the orderly and timely resolution of appellate proceedings; required the Pulaski County Circuit Court to expend additional time and effort which would not have been necessary otherwise; and required the Arkansas Supreme Court to expend additional time and effort which would not have been necessary otherwise. 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 DANA REECE, Arkansas Bar ID No. 87142, be, and hereby is, CAUTIONED for her conduct in this matter; fined the sum of FIVE HUNDRED DOLLARS (\$500.00); and assessed costs in the amount of FIFTY DOLLARS (\$50.00). The fine 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 A

By: _____

Gwendolyn D. Hodge, Chair, Panel A

Date: _____

