

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL B

IN RE: DANA A. REECE
ARKANSAS BAR ID No. 87142
CPC Docket No. 2011-085

FILED

APR 24 2012

**LESLIE W. STEEN
CLERK**

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information obtained from the records of the Arkansas Supreme Court Clerk. The conduct related to the representation of Bruce Wade Pennington in a post-conviction criminal appeal from a denial by the Poinsett County Circuit Court of a Petition for Rule 37 Post-Conviction Relief.

Dana A. Reece is an attorney licensed in Arkansas to practice law in the State of Arkansas and assigned Arkansas Bar Number 87142. Bruce Wade Pennington, an inmate at the Arkansas Department of Correction, filed a Petition for Rule 37 Post-Conviction Relief in Poinsett County Circuit Court and the petition was denied on November 3, 2010. Mr. Pennington wished to appeal and informed his attorney, Ms. Reece, of his request for an appeal and she filed a notice of appeal on November 4, 2010.

On January 26, 2011, Ms. Reece timely filed with the Arkansas Supreme Court Clerk the record from Poinsett County Circuit Court. Rule 4-3 of the Arkansas Rules of Supreme Court provides that an appellant shall file 17 copies of a brief with the Arkansas Supreme Court Clerk within forty days from the date the record is filed. As the record was filed on January 26, 2011, a brief was due to be filed on or before March 7, 2011.

On March 2, 2011, Ms. Reece's Arkansas license to practice law was suspended as she had not paid her annual license fee on or before March 1, 2011. Rule VII.A of the Arkansas

Rules Governing Admission to the Bar requires all Arkansas lawyers to pay an annual license fee to the Clerk of the Arkansas Supreme Court on January 1 of each year, and must be paid no later than March 1 of each year. Rule VII.C of the Arkansas Rules Governing Admission to the Bar states that failure to pay the annual license fee provided for in subsection VII.A shall result in a lawyer's license to practice law being automatically suspended.

On March 4, 2011, Ms. Reece filed a Motion for Extension of Time to File Brief. The motion was granted on March 7, 2011, and extended the time for filing a brief on Mr. Pennington's behalf to April 6, 2011.

On April 6, 2011, Ms. Reece filed a second Motion for Extension of Time to File Brief. Ms. Reece was notified by the Clerk that her motion would not be filed as her license to practice law had been automatically suspended on March 2, 2011, for her failure to pay her annual license fee. Ms. Reece was directed to pay her attorney license fee and then file a motion for belated brief.

On April 7, 2011, Ms. Reece paid her annual license fee and her license to practice law was reinstated. She then filed a Motion to File Belated Brief but failed to tender the brief in addition to the motion. On May 5, 2011, the Arkansas Supreme Court denied Ms. Reese's Motion for Belated Brief.

On May 11, 2011, Ms. Reece filed a second Motion for Belated Brief and for Extension of Time to File Brief. On June 2, 2011, the Arkansas Supreme Court again denied the Motion for Belated Brief and Extension of Time to File Brief as no brief had been tendered with the motion.

On August 31, 2011, Ms. Reece filed a third Motion for Belated Brief along with a

tendered brief. On September 15, 2011, the Arkansas Supreme Court granted Ms. Reece's Motion for Belated Brief and referred Ms. Reece to the Committee on Professional Conduct.

On November 2, 2011, Ms. Reece was served with a copy of the Formal Complaint, along with a copy of all exhibits, by U.S. Postal Service, certified mail, return receipt requested. As stated in the summons which accompanied the Formal Complaint, Ms. Reece had thirty days from the date of receipt of the Formal Complaint to file a response. As service was completed on November 2, 2011, a response was due to be filed on or before December 2, 2011. No response was filed with the Office of Professional Conduct on or before December 2, 2011. Ms. Reece failed to file a timely response to the Formal Complaint and the failure to timely respond, pursuant to Section 9.C(4) of the Procedures, constituted an admission of the factual allegations of the formal complaint and extinguished her right to a public hearing.

Upon consideration of the formal complaint and attached exhibit materials, the failure to file a timely response, and the Arkansas Rules of Professional Conduct, Panel B of the Arkansas Supreme Court Committee on Professional Conduct finds:

1. Dana A. Reece's conduct violated Rule 1.1 when she filed on behalf of her client, Bruce Wade Pennington, a Motion for Belated Brief on April 7, 2011, without an accompanying brief, which resulted in the Arkansas Supreme Court denying the Motion for Belated Brief in a *Per Curiam* Order on May 5, 2011, and when she filed on behalf of her client, Bruce Wade Pennington, a Motion for Belated Brief on May 11, 2011, again without a accompanying brief, which resulted in the Arkansas Supreme Court denying the Motion for Belated Brief in a *Per Curiam* Order on June 2, 2011. 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. Dana A. Reece's conduct violated Rule 1.3 when she failed to file on behalf of her client, Bruce Wade Pennington, an effective Motion for Extension of Time or a brief on or before April 6, 2011. Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

3. Dana A. Reece's conduct violated Rule 5.5(a) when her Arkansas license to practice law was suspended on March 2, 2011, as a result of her failure to pay her annual license fee as required by Rule VII.A of the Arkansas Rules Governing Admission to the Bar, and during the suspension of her license, she filed a Motion for Extension of Time to File Brief on March 4, 2011, and she tendered a Motion for Extension of Time to File Brief on April 6, 2011. Rule 5.5(a) requires that a lawyer not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction.

4. Dana A. Reese's conduct violated Rule 8.4(d) when her failure to file a timely brief on or before April 6, 2011, on behalf of her client, Bruce Wade Pennington, resulted in a delay in the orderly and timely resolution of appellate proceedings. 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 DANA A. REECE, Arkansas Bar No. 87142, be, and hereby is, REPRIMANDED, fined the sum of ONE THOUSAND DOLLARS (\$1,000.00), and assessed costs in the amount of FIFTY DOLLARS (\$50.00) for her conduct in this matter. For her failure to file a timely response to the formal complaint, DANA A. REECE, Arkansas Bar No. 87142, be and hereby is, REPRIMANDED, and fined the sum of

ONE THOUSAND DOLLARS (\$1,000.00) for her conduct in this matter. Ms. Reece had been previously sanctioned in five prior disciplinary matters involving appeals to the Arkansas Supreme Court and Court of Appeals. The Panel specifically finds that Ms. Reece's prior disciplinary history involving appellate matters establishes a pattern of misconduct and that her failure to file a timely response to the Formal Complaint are both aggravating factors as listed under Section 19.B. It is, therefore, the Panel's decision that DANA A. REECE, Arkansas Bar No. 87142, be, and hereby is, SUSPENDED for a period of Thirty Six Months from representing clients before the Arkansas Supreme Court or the Arkansas Court of Appeals. The thirty-six month suspension shall become effective on the date of the filing of this Findings and Orders with the Arkansas Supreme Court. All fines, costs, and restitution assessed herein, totaling TWO THOUSAND FIFTY DOLLARS (\$2,050.00) 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 B

By: Barry Deacon
Barry Deacon, Chairman

Date: Feb. 23, 2012