

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

PANEL B

IN RE: **JOHN F. STROUD, III**
 ARKANSAS BAR ID #90033
 CPC Docket No. 2004-190

CONSENT FINDINGS & ORDER

The formal charges of misconduct upon which this Consent Order is premised, involving respondent attorney John F. Stroud, III, of Texarkana, Miller County, Arkansas, arose from information brought to the attention of the Committee on Professional Conduct by orders of the Arkansas Court of Appeals in No. CACR02-1005, *Robert Spears v. State of Arkansas*.

Following Respondent Attorney's receipt of the formal complaint, the attorney entered into discussion with the Executive Director which has resulted in an agreement to discipline by consent pursuant to Section 20.B of the Arkansas Supreme Court Procedures Regulating Professional Conduct of Attorneys at Law (2002).

On December 15, 2004, the Arkansas Court of Appeals affirmed the conviction of Mr. Stroud's client Robert Spears in the case of *Robert Spears v. State of Arkansas*, No. CACR02-1005, an appeal from the Circuit Court of Miller County. The Court's Opinion delivered June 4, 2003, ordered rebriefing by Mr. Stroud for abstracting deficiencies and two other reasons. The Court's Opinion delivered February 11, 2004, which again ordered rebriefing by him for abstracting deficiencies. The Court's Opinion delivered December 15, 2004, affirmed his client's conviction and five year sentence on the basis of abstracting deficiencies. The Court was unable to consider any point he raised on appeal for reversal due to his failure in two court-ordered attempts to cure his abstracting deficiencies.

Upon consideration of the formal complaint and attached exhibits, admissions made by the respondent attorney, the terms of the written consent, the approval of Panel B of the Committee on Professional Conduct, and the Arkansas Model Rules of Professional Conduct, the Committee on Professional Conduct finds:

A. Mr. Stroud's conduct violated Model Rule 1.1 in that he failed to comply with all the procedural rules regarding properly abstracting the record for his appellate brief in three attempts, thereby denying his client the right to have his appeal considered on the merits, demonstrating a lack of legal knowledge, skill and thoroughness reasonably

necessary to represent a client on a criminal appeal. Model Rule 1.1 requires that a lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

B. Mr. Stroud's conduct violated Model Rule 1.2(a) in that despite the fact that his client Mr. Spear wished to pursue an appeal of the lower court's decision, he failed to comply with all the procedural rules regarding properly abstracting the record for his appellate brief in three attempts, thereby denying his client the right to have his appeal considered on the merits. Model Rule 1.2(a) requires that a lawyer abide by a client's decisions concerning the objectives of representation, subject to paragraphs (c), (d), and (e), and consult with the client as to the means by which they are to be pursued.

C. Mr. Stroud's conduct violated Model Rule 3.4(c) in that in his first revised brief filed July 7, 2003, after the Court's first order to him to correct deficiencies in his abstract, he failed to comply with the Court's order, as set out in the Court's Opinion issued February 11, 2004. In his second revised brief filed April 16, 2004, after the Court's second order to him to correct deficiencies in his abstract, he failed to comply with the Court's order, as set out in the Court's Opinion issued December 15, 2004. Model Rule 3.4(c) requires that a lawyer shall 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.

D. Mr. Stroud's conduct violated Model Rule 8.4(d) in that he failed to comply with all the procedural rules regarding properly abstracting the record for his appellate brief in three attempts, thereby denying his client the right to have his appeal considered on the merits. His failure to properly abstract the record in his briefs on three occasions required the Court of Appeals to have to expend extra and unnecessary time and energy on this appeal. Model Rule 8.4(d) requires that a lawyer not engage in conduct that is prejudicial to the administration of justice.

WHEREFORE, in accordance with the consent to discipline presented by Mr. Stroud and the Executive Director, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct that Respondent John F. Stroud, III, Arkansas Bar No. 90033, be, and hereby is, cautioned for his conduct in this matter and assessed \$50.00 costs. 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 with 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 _____

J. Michael Cogbill, Chairperson, Panel B

Date _____