

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

IN RE: OSCAR STILLEY

ARKANSAS BAR ID #91096

CPC DOCKET NO. 2001-001

FINDINGS AND ORDER

The formal charges of misconduct upon which this Order is premised arose from the affidavit of Abraham Bogoslavsky, who brought the matter to the attention of the Committee pursuant to his duties required in Rule 8.3(a) of the Arkansas Model Rules of Professional Conduct. His information involves Oscar Stilley, an attorney practicing primarily in Fort Smith, Arkansas. Respondent appeared for public hearing before the Committee on September 20, 2001, acting as his own counsel, and Stark Ligon, Executive Director, represented the Office of Professional Conduct.

1. Mr. Bogoslavsky's first involvement with Mr. Stilley was during May 1996, when Mr. Stilley was representing John Speed, who had been terminated by the Western Arkansas Chapter of the American Red Cross. Prior to filing a lawsuit on behalf of Speed, Mr. Stilley sent a demand letter and talked with Mr. Bogoslavsky on the telephone. During the communications with Mr. Bogoslavsky, Mr. Stilley threatened media attention if settlement in the amount of \$100,000 was not reached. When it became clear that no settlement was going to be reached, Mr. Stilley held a press conference and announced the filing of the Complaint. During discovery taken during the course of litigation, Mr. Stilley's client admitted that the plan was to use media attention in order to force settlement in his favor. Mr. Stilley's lawsuit was ultimately dismissed as a matter of law, and the defendants prevailed on their counterclaim, receiving a judgment against Speed in excess of \$3,000, which Stilley paid off for Speed.

2. After the conclusion of the Speed lawsuit, Mr. Bogoslavsky represented four of the Speed defendants in a malicious prosecution filed against both Mr. Stilley and his client, Mr. Speed. Even though Mr. Stilley was a party to the lawsuit and acting as his own counsel, he continued to act as attorney for Mr. Speed, as well. By letter of November 16, 1998, Mr. Bogoslavsky advised Mr. Stilley of the conflict of interest, especially as it appeared to him that Stilley would have to be a witness at trial, and asked Stilley to recuse as counsel or get separate counsel for Mr. Speed. Mr. Stilley declined to do either.

3. A few weeks before the trial, Speed consulted with Little Rock attorney Mike Spades, Jr. about Speed's concern on the upcoming trial and that Stilley had a conflict of interest as to Speed. As a result of communications among them, on February 7, 2000, Stilley signed an unlimited indemnification agreement in favor of Speed, agreeing to promptly pay any judgment that might result against Speed from the trial of the malicious prosecution case.

4. During trial of the lawsuit, Mr. Stilley testified as a witness for himself while continuing to act as counsel for both himself and Mr. Speed. At the close of all the evidence, a directed verdict was granted in favor of Mr. Stilley. The issue of Mr. Speed's responsibility went to the jury, which awarded Mr. Bogoslavsky's clients a \$200,000 judgment against only Mr. Speed. After the judgment was entered, on April 17, 2000, Mr. Speed filed a motion with the court explaining that he had fired Mr. Stilley and wanted to have him removed as his attorney and replaced by Mike Spades, Jr. On the morning of April 18, 2000, the trial court's Order removing Mr. Stilley as Mr. Speed's attorney was filed with the clerk. Later on that same afternoon, after receiving a mailed copy of the motion to relieve him as Speed's counsel, Mr. Stilley filed a Notice of Appeal on behalf of Mr. Speed. Even though Mr. Stilley was no longer representing Mr. Speed, Mr. Stilley ordered the transcript for appeal and tendered it and the \$100 filing fee to Leslie W. Steen, Clerk of the Arkansas Supreme Court on July 12, 2000. Mr. Stilley even asserted to Steen that Mike Spades, Mr. Speed's new counsel, had requested him to do so. Mr. Spades immediately wrote Steen, emphatically denying this claim by Stilley. Newspaper articles at the time note that Mr. Stilley acknowledged that Mr. Speed did not wish to pursue an appeal of the judgment. In his response to the Committee, Mr. Stilley explains that he went ahead with the appeal because Mr. Speed said that he would consider an appeal if Mr. Stilley would provide him with a proposed abstract and brief at no cost. According to Mr. Stilley, he did not know that an Order had been entered substituting counsel at the time Stilley filed the notice of appeal. It is Mr. Stilley's contention that Mr. Speed was required to assist in his own defense, or to tender the defense, as a condition of obtaining indemnity. Mr. Stilley also continues to contend that Mr. Spades told him to go ahead and file the record for appeal.

5. Early in the lawsuit for malicious prosecution, Mr. Bogoslavsky conveyed to Mr. Stilley an offer to settle that involved Stilley and Speed paying the "James" plaintiffs \$3,000 and running a public apology in the local newspaper. Mr. Stilley rejected the offer but said if Mr. Bogoslavsky's clients paid Mr. Speed \$35,000 then the matter could be settled. According to Mr. Speed's affidavit, Mr. Stilley never conveyed the offer to him. Mr. Stilley states that his former client is not telling the truth about this matter because he did tell Mr. Speed about all the settlement offers. It is Mr. Stilley's assertion that he would not purport to respond to an offer without actually consulting with his client. Mr. Stilley states that the Committee should not accept his former's client's word over his. The evidence at hearing indicates a settlement demand of \$50,000 to be paid to the defendants was conveyed by Mr. Stilley after some pre-trial deposition, but was rejected. Shortly before trial Mr. Bogoslavsky conveyed an offer of \$40,000 to be paid by Stilley and Speed plus a public apology, which demand was rejected. On Saturday before trial Mr. Bogoslavsky conveyed a settlement demand of about \$30,000. On Sunday before trial he conveyed to Stilley an offer of about \$25,000, which Stilley rejected immediately without conveying the offer to Speed. Testimony at the hearing established that later Mr. Spades got involved on behalf of Speed and there was talk of settlement conveyed to Stilley that settlement might be possible in the range of \$17-18,000, representing the costs and attorney fees the "James" plaintiffs then had invested in the litigation. Nothing came of this last discussion.

6. Following entry of the \$200,000 judgment against Mr. Speed, Stilley did not reveal the existence of the indemnity agreement to anyone. Mr. Spades prepared appropriate responses for Speed to discovery propounded to Speed by Mr. Bogoslavsky and revealed the indemnity agreement in April 2000. Mr. Stilley failed to pay the judgment against Speed after demand was made by Mr. Speed and by Mr. Bogoslavsky on behalf of his clients. Based on the failure to pay, a lawsuit for declaratory judgment on the indemnification agreement was brought against Stilley and Speed by Mr. Bogoslavsky's clients, Mr. Spades, on behalf of Mr. Speed, cross-claimed against Mr. Stilley. In September 2000, Circuit Judge James R. Marchewski ruled that Mr. Stilley was liable for the \$200,000 judgment pursuant to the indemnity agreement. Mr. Stilley asserts that he cannot be bound by the indemnity agreement because Mr. Speed declined to permit proffered assistance or to cooperate in any way with an appeal. On June 23, 2001, the Arkansas Supreme Court affirmed Stilley's appeal and his liability to Speed on the \$200,000 judgment under the indemnity agreement, and referred the matter to the Committee for consideration under Model Rule 3.5(c). 7. Documents introduced at the public hearing reveal Mr. Speed would have allowed Stilley to pursue the appeal on behalf of Speed, but required that another attorney acceptable to Speed and paid by Stilley handle the appeal. Spades wrote Stilley on behalf of Speed and named an acceptable experienced Little Rock appellate attorney who indicated he was willing to accept the employment for a retainer of \$15-20,000. No agreement was ever reached on this issue and the direct appeal of the malicious prosecution judgment did not go forward.

8. Mr. Stilley denies throughout that he engaged in any conduct involving dishonesty and deceit. He averred that he told the truth to Mr. Bogoslavsky throughout all the involved litigations. Mr. Stilley stated that he did not have, and does not now have, the funds to pay the Speed judgment. He stated, without challenge, that he has paid about \$20,000 against the judgment through execution levied by Mr. Bogoslavsky in December 2000, by selling his law office equipment to Mrs. Stilley.

9. At the hearing Mr. Stilley admitted he was counsel for the successful plaintiffs in an illegal exaction tax case, *Barclay v. Melton*, 339 Ark. 362, decided December 2, 1999, and that he became entitled to a fee that eventually reached \$538,000, and which he had access to in the Fall of 2000. He stated that in the Spring of 2000 he assigned, or possibly "factored," much of the fee to National Voter Outreach of Carson City, Nevada, and to Receivables Purchasing, for services NVO rendered to him in several local ordinance petition initiatives he sponsored in 2000, and for work on his campaign for state senate. He was trying to get on the local ballot ordinances that would require the sale of certain county-owned hospitals, with him receiving a 5% fee for each sale. His "plan," as he described it, in forcing the hospital sales, was designed to bring him as much as \$15,000,000-20,000,000 in total fees, while "righting a wrong" done to the taxpayers of those jurisdictions. According to Mr. Stilley, all his local initiatives eventually failed and he received no fee income on his large investment.

10. Stilley explained that of the \$538,000 legal fee he was to receive, about \$260,000 went to his senate campaign expenses, about \$60-80,000 to initiative efforts, about \$80,000 to pay of his credit card debts associated with initiative efforts, and the balance to pay off debts associated with his law office and practice. The evidence at the hearing shows Stilley's expenditures on his senate campaign and ballot initiative efforts were occurring at about the same time as Mr. Spades and he were trying to negotiate an arrangement by which Stilley could move forward with the appeal for Speed on the \$200,000 judgment and Bogoslavsky was trying to collect the judgment from Stilley. Mr. Stilley admits he made a decision to invest the \$538,000 legal fee he was receiving in his "hospital plan," rather than use it to pay off or settle the \$200,000 judgment under the indemnity agreement or finance the Speed appeal.

Upon consideration of the formal complaint, the response herein, the evidence adduced at the public hearing, and the Arkansas Model Rules of Professional Conduct, the Committee on Professional Conduct finds:

1. That Mr. Stilley's conduct violated Model Rule 1.2(a) when he pursued an appeal of the judgment granted to Mr. Bogoslavsky's clients, although his former client, John Speed, did not wish to pursue one and when he failed to inform Mr. Speed of the settlement offer made by Mr. Bogoslavsky on behalf of his clients thereby denying Mr. Speed the opportunity to decide whether to settle. Model Rule 1.2(a) requires, in pertinent part, that a lawyer abide by a client's decisions concerning the objectives of representation and abide by a client's decision whether to accept an offer of settlement of a matter.
2. That Mr. Stilley's conduct violated Model Rule 1.16(a) when he continued to pursue an appeal on behalf of Mr. Speed even though he had discharged Mr. Stilley from representing him and had obtained a Court Order substituting another lawyer to be his counsel. Model Rule 1.16(a) requires, in pertinent part, that a lawyer not represent a client if the lawyer is discharged.
3. That Mr. Stilley's conduct violated Model Rule 3.7 when he continued to act as an advocate for himself and Mr. Speed in the lawsuit brought by Mr. Bogoslavsky's clients even though he was a necessary witness. Model Rule 3.7 requires, in pertinent part, that a lawyer not act as an advocate at a trial in which the lawyer is likely to be a necessary witness.
4. That Mr. Stilley's conduct violated allegations 3 and 4 as to Model Rule 8.4(c) when he filed a Notice of Appeal indicating that Mr. Speed wanted to pursue an appeal even though he did not; and when he misled the appellate court that Mr. Speed desired an appeal by tendering the record to Leslie W. Steen, Clerk of the Court. Model Rule 8.4(c) requires that a lawyer not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.
5. That Mr. Stilley's conduct violated Model Rule 8.4(d), because although the Indemnity Agreement he prepared and executed required that he promptly pay any judgment entered against Mr. Speed as a result of the lawsuit pursued by Mr. Bogoslavsky's clients, he did not do so despite a demand made by Mr. Speed and Mr. Bogoslavsky and having access to sufficient funds to pay the judgment. Mr. Bogoslavsky had to file a declaratory judgment action on the indemnity agreement, and prevailed on Mr. Stilley's appeal to the Arkansas Supreme Court, thereby causing the Sebastian Circuit Court and the Arkansas Supreme Court to unnecessarily expend judicial resources on the issue. Model Rule 8.4(d) requires that a lawyer not engage in conduct that is prejudicial to the administration of justice.
6. The Committee finds no violation of Model Rules 1.7(b), 3.1, 4.1(a), and allegations 1 and 2 of 8.4(c). By a vote of 5-2, no violation is found of Model Rule 3.3(a)(1).

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct that OSCAR STILLEY, Arkansas Bar ID #91096 be, and hereby is, SUSPENDED FOR THIRTY (30) FROM LAW PRACTICE for his conduct in this matter, to be effective on the filing date of this order, unless stayed by the Committee pending appeal. The Office of Professional Conduct has twenty (20) days from the filing date of this order in which to file any petition for assessment of costs against Respondent pursuant to Section 8A of the Procedures.

ARKANSAS SUPREME COURT COMMITTEE

ON PROFESSIONAL CONDUCT

By:

Bart F. Virden - Chairman

Date:

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