

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

IN RE: OSCAR STILLEY

ARKANSAS BAR ID #91096

CPC DOCKET NO. 2001-006

FINDINGS AND ORDER

The formal charges of misconduct upon which this Order is premised arose from the affidavit of Jerry Canfield and Wyman Wade. Mr. Canfield and Mr. Wade brought the matter to the attention of the Committee pursuant to their duties required in Rule 8.3(a) of the Arkansas Model Rules of Professional Conduct. The information provided by Mr. Canfield and Mr. Wade involves the conduct of Oscar Stilley, an attorney practicing primarily in Fort Smith, Arkansas.

The matters which were brought to the attention of the Committee arise out of various matters in litigation. Some of the matters involve past or current litigation with the clients of Mr. Canfield and/or Mr. Wade involving clients represented by Mr. Stilley. The matters will be set out herein individually.

On June 5, 1997, Mr. Stilley filed a complaint in a matter styled Thomas Scamardo, Jr. v. Wendell N. Sampson, Jr. and the City of Fort Smith, Arkansas. In the complaint Mr. Stilley alleged that Mr. Scamardo had been wrongfully arrested.

During pre-trial proceedings, counsel for the defendants advised Mr. Stilley of witnesses who would provide information to indicate that there was reasonable cause for Mr. Scamardo's arrest. Despite having this information, Mr. Stilley did not contact either witness. The matter was eventually tried before a United States Magistrate and dismissed. Prior to the matter being heard by the Magistrate, Mr. Scamardo filed a Motion for Substitute of Counsel. In the Motion, Mr. Scamardo explains that Mr. Stilley failed to keep him informed of various occurrences during the pendency of the litigation. In addition, Mr. Scamardo's new attorney filed a Motion for Continuance which explained that Mr. Stilley did not diligently pursue the claims in the lawsuit; did not keep his client reasonably informed about the litigation; and failed to file discovery requests in a timely manner pursuant to the Court's Scheduling Order.

In the portion of his response addressing the Scamardo matter, Mr. Stilley explained that he would never have filed the Complaint had he realized that Mr. Scamardo had given him a check on a fictitious account for the filing fee. It is Mr. Stilley's contention that he was not confident of Mr. Scamardo's truthfulness, so he did not intend to continue with the representation and advised Mr. Scamardo to locate other counsel. Mr. Stilley also offered that Mr. Scamardo did locate other counsel, just not in a timely fashion. Further, Mr. Stilley denied that he failed to keep Mr. Scamardo aware of the status of his lawsuit, and explained that he informed Mr. Scamardo that he could not in good faith prosecute his case because Mr. Scamardo had left him holding a check on a fictitious account. He also asserted that he did not continue to pursue Mr. Scamardo's case after he became aware of facts which caused him to reasonably doubt the credibility of Mr. Scamardo's statements. On December 28, 1998, Mr. Stilley filed an action entitled Joe McCutcheon v. J. Fred Patton, City of Fort Smith, and Mayor Ray Baker, individually, and in his capacity as Mayor of the City of Fort Smith. It was claimed in the action that the Mayor of the City of Fort Smith had improperly appointed a "multi-ethnic Committee" and went on to challenge the appropriation of \$20,000 for the Committee in the 1999 budget of the City of Fort Smith. There were several allegations contained within the complaint which had no relevance to any legitimate issue in the lawsuit and could have only been alleged for the purpose of attempting to embarrass third parties, including members of the "multi-ethnic Committee", and to attempt to intimidate the defendants in the lawsuit. The trial court dismissed the charges brought by Mr. Stilley on behalf of his client. Mr. Stilley appealed the decision to the Arkansas Supreme Court but he did not appeal the allegations which were not relevant to the lawsuit. The Arkansas Supreme Court affirmed the decision of the trial court. Mr. Stilley stated that the factual allegations of the Complaint that he filed were not false or irrelevant. Mr. Stilley also denied that the statements made in the lawsuit brought by Mr. McCutcheon were not true nor proper for the determination of the issues raised therein.

On November 29, 1999, Mr. Stilley filed a lawsuit for Linda Chapman challenging the legality of the City of Fort Smith providing \$400 per month expense allowances to the members of the Board of Directors of the City of Fort Smith. There were other issues included within the lawsuit as well. According to Mr. Stilley's allegations, the \$400 per month payment was "nothing but disguised salary". He also referred to the payment as "disguised tax free compensation". The tax consequences of the payment was irrelevant to the legal issues being raised in the lawsuit. As such the allegation had no purpose other than to be an attempt to intimidate and embarrass. Mr. Stilley asserted that the Complaint he filed centered on the illegality of the practice of the money being paid as a lump sum for expenses, from which taxes are not withheld, and therefore cannot understand why that would be considered without a legitimate purpose. Mr. Stilley stated that it was important that the Plaintiff in this matter properly characterize the \$400 payments in order to plead facts showing entitlement to relief.

Prior to the lawsuit listed immediately above, Mr. Stilley filed an action for Ms. Chapman against approximately thirty-five owners of real property within the City of Fort Smith who had received housing assistance grants or loans from housing programs administered by the City of Fort Smith utilizing funds provided by the federal government through its community block grant development and other housing programs. Neither the City nor any of the employers of the officials of the City were named as defendants, although it was alleged that the providing of loans and grants violated the provisions of Article 12, Section 5 of the Arkansas Constitution. Mr. Stilley included allegations that were factually incorrect in the complaint and also complained of alleged spending and taxing practices of the City of Fort Smith, a non-party. Since those allegations dealt with a non-party, there was no valid purpose for their inclusion in the lawsuit. Mr. Stilley advised that it was necessary to show how and where the defendants got the money in order to establish the facts giving rise to a valid claim. According to Mr. Stilley, it was necessary to show the source of the payments and to show that the illegal exaction statutes covered this particular situation in order to make a good record.

In early 1997, Mr. Stilley filed a Complaint on behalf of Earl Oxford in Sebastian County Chancery Court. The purpose of the lawsuit was to challenge the assessment of real property taxes by tax officials of the Fort Smith District of Sebastian County. However, Mr. Stilley's client was actually a taxpayer in the Greenwood District of Sebastian County. Even though the two districts of Sebastian County are separate taxing districts, Mr. Stilley continued to prosecute the claim in the wrong district. The day before a scheduled hearing on the issue of venue and other matters, Mr. Stilley attempted to add other parties who were taxpayers in the Fort Smith District. However, because the issue pursued was frivolous the Court dismissed the litigation by Order filed February 3, 1999. According to Mr. Stilley the issue of the Greenwood venue was raised only as a technical defense since after the litigation was later refiled in the Greenwood District, the presiding judge held court in Fort Smith for the convenience of the defendants.

Subsequently Mr. Stilley initiated another action, on March 15, 1999, for Fort Smith District taxpayers against the taxing authorities in the Fort Smith District of Sebastian County. Since the taxes had been voluntarily paid by the time of the filing of the 1999 cause of action, the lawsuit was dismissed. The dismissal was thereafter affirmed by the Arkansas Supreme Court. Mr. Stilley believes that any allegation about his untimely filing of his lawsuit is meritless because it is uncontested that the lawsuit was filed before payment of the illegal tax. It is Mr. Stilley's contention that the only reason that it appears from some statements that the lawsuit was not timely filed is dismissal of the

lawsuit, which should have been without prejudice.

Once final instance of Mr. Stilley's conduct which was brought to the Committee's attention involves the lawsuit styled Hoyle v. Faucher. For several months, Mr. Stilley prosecuted the action on behalf of a named plaintiff, Shelly Bruce. However, Mr. Bruce never consented nor extended permission for Mr. Stilley to represent him in the lawsuit. Mr. Stilley denied that he falsely stated that Mr. Bruce gave him permission to file this suit. Mr. Stilley claimed that Mr. Hoyle had spoken with Mr. Bruce and Mr. Bruce had stated that he wanted to be in on the lawsuit. After Mr. Stilley learned that Mr. Bruce had complained about his name being on the lawsuit, Mr. Stilley did not put his name on the pleadings unless there was a scrivener's error. Finally Mr. Stilley stated that there was no truth to the assertion that he put Mr. Bruce's name on the Hoyle lawsuit without his knowledge and consent.

Upon consideration of the formal complaint, the response herein, and the Arkansas Model Rules of Professional Conduct, the Committee on Professional Conduct finds:

1. That Mr. Stilley's conduct violated Model Rule 1.1 when he failed to be thorough enough in his representation of Mr. Scamardo to ensure that all deadlines set by the Scheduling Order in the lawsuit he filed on Mr. Scamardo's behalf were met. 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. Stilley's conduct violated Model Rule 1.3 when he failed to file timely discovery requests on Mr. Scamardo's behalf and when he failed to file a timely lawsuit for the residents of Fort Smith who wished to challenge the validity of their 1999 taxes. Model Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.
3. That Mr. Stilley's conduct violated Model Rule 1.4(a) when he failed to keep Mr. Scamardo informed about the status of his lawsuit. Model Rule 1.4(a) requires that a lawyer keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.
4. That Mr. Stilley's conduct violated Model Rule 3.1 when he included allegations in the Chapman v. Bevilacqua, et al litigation concerning practices of the City of Fort Smith even though the City was not a party and when he continued to pursue an action against tax officials of the Fort Smith District of Sebastian County for Earl Oxford even though Mr. Oxford was a taxpayer of the Greenwood District of Sebastian County, a separate taxing district, and this venue problem had been timely brought to Mr. Stilley's attention. Model Rule 3.1 requires, in pertinent part, that a lawyer not bring a proceeding, or assert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law.
5. That Mr. Stilley's conduct violated Model Rule 3.2 when he failed to file the lawsuit on behalf of the named Fort Smith taxpayers before the issue became moot because the taxes had already been voluntarily paid. Model Rule 3.2 requires that a lawyer make reasonable efforts to expedite litigation consistent with the interests of the client.
6. That Mr. Stilley's conduct violated Model Rule 3.3(a)(1) when he falsely averred to the Court that Mr. Bruce gave him consent or permission to file a lawsuit on his behalf by listing Shelly Bruce as a plaintiff in an action he filed. Model Rule 3.3(a)(1) requires, in pertinent part, that a lawyer not make a false statement of material fact to a tribunal.
7. That Mr. Stilley's conduct violated Model Rule 4.4 when he included allegations in the McCutcheon complaint about city officials of Fort Smith and the Multi-Ethnic Commission concerning the use of the \$20,000 appropriation which were baseless and when he included allegations concerning the spending and taxing practices of the City of Fort Smith, a non-party to the lawsuit of Chapman v. Bevilacqua, et al. Model Rule 4.4 requires, in pertinent part, in representing a client, that a lawyer not use means that have no substantial purpose other than to embarrass, delay or burden a third person.
8. That Mr. Stilley's conduct violated Model Rule 8.4(c) when he filed a lawsuit for Shelly Bruce, even though he had no client consent or permission to do so. Model Rule 8.4(c) requires that a lawyer not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

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, REPRIMANDED for his conduct in this matter.

ARKANSAS SUPREME COURT COMMITTEE

ON PROFESSIONAL CONDUCT

By:

Bart Virden

Chairman

Date:

BV/MEH/mm