

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

IN RE: OSCAR STILLEY

ARKANSAS BAR ID #91096

CPC Docket No. 2001-060

FINDINGS AND ORDER

The formal charges of misconduct upon which this Order is based arose out of information that came to the attention of the Committee from a Supplemental Opinion of the Arkansas Supreme Court, delivered on March 22, 2001, in the case of Oscar Stilley v. Maurice Hubbs; Robert Garner; Patti Hill, in her capacity as County Clerk of Crawford County, Arkansas; Kenneth Chitwood, Bill Coleman, and Helen Campbell, in their official capacities as County Election Commissioners of Crawford County, Arkansas. The information pertained to the conduct of Oscar Stilley, an attorney practicing in Fort Smith, Arkansas, in the appeal proceedings.

The first opinion issued by the Supreme Court in the above mentioned matter was delivered on March 1, 2000. In that Opinion, the Court issued an Order for Mr. Stilley to show cause why he should not have Rule 11 sanctions imposed against him. This action was based upon Mr. Stilley's involvement in another appeal, Stilley v. Henson, in which the Opinion was controlling of the same issues in the Stilley v. Hubbs appeal. The only difference was that the matter involved two different counties. Although the initial Opinion in Henson was not handed down until after Mr. Stilley's original brief, Mr. Stilley filed a reply brief instead of dismissing his appeal after the Henson decision. In addition, Mr. Stilley referred to the Court's decision in Henson as "fatally flawed". Mr. Stilley did not file a Petition for Rehearing in Henson but did continue to disagree with the decision. He also continued to pursue the primary issue which had been disposed of four months earlier.

In Mr. Stilley's responsive pleading to the Court's directive that he show cause why he should not be held in contempt, Mr. Stilley set out his belief that there was absolutely no basis for punishing him. According to Mr. Stilley, the Court still had not answered the central question he had raised. The reasoning for not filing a Petition for Rehearing was set out to be that the Court caused the Mandate to issue immediately. Following review of Mr. Stilley's pleading and the responsive pleadings of two of the appellees, the Court ordered Mr. Stilley to pay \$2,000 as attorneys' fee to appellees for requiring appellees to go forward in defending the appeal.

Mr. Stilley denied that his conduct violated any of the Model Rules as alleged. In addition, he disagreed with the Court's finding that he violated Rule 11 of the Rules of Appellate Procedure - Civil. Instead of addressing the allegations of the formal disciplinary complaint more fully in his response, Mr. Stilley expressed his dissatisfaction with the fact that the Office of Professional Conduct continues to serve him by certified mail - return receipt requested as required by the Procedures, instead of in the manner in which he wishes to be served. Further, Mr. Stilley demonstrates his lack of understanding of the disciplinary process and system in Arkansas when he says that it would save taxpayer's money to serve him by first class mail, since none of the funding for the disciplinary system is derived from taxpayer funds.

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

1. That Mr. Stilley's conduct violated Model Rule 3.1 when he continued to pursue the same arguments in his Hubbs appeal even though the Supreme Court had issued an opinion in his Henson appeal addressing the same issue, and when the Arkansas Supreme Court found that he continued to pursue the Hubbs appeal even though by doing so he was continuing with a frivolous appeal in violation of Rule 11 of the Rules of Appellate Procedure - Civil. Model Rule 3.1 requires that a lawyer not bring or defend a proceeding, or assert or controvert 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.
2. That Mr. Stilley's conduct violated Model Rule 3.4(c) since his conduct in the continuing pursuit of the Hubbs appeal, despite the decision in Henson, was found to be a violation of Rule 11 of the Rules of Appellate Procedure - Civil. Model Rule 3.4(c) requires that a lawyer 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.
3. That Mr. Stilley's conduct violated Model Rule 8.4(d), to wit: (i) the orderly and timely administration and resolution of appellate proceedings before the Arkansas Supreme Court were delayed by his continued pursuit of a frivolous appeal in the Hubbs matter, and, (ii) his continued pursuit of a frivolous appeal before the Arkansas Supreme Court required the 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 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: