

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL A

FILED

JUN 24 2011

**LESLIE W. STEEN
CLERK**

**IN RE: STEVEN R. SMITH
ARKANSAS BAR ID NO. 91177
CPC DOCKET NO. 2011-020**

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information contained in the records of the Arkansas Supreme Court Clerk and a self-referral from Steven R. Smith. The information related to the representation of Denisse Serrano in an appeal from a conviction in the Saline County Circuit Court.

On April 9, 2010, a Judgment and Commitment Order was entered in the case of *State of Arkansas v. Denisse Serrano*, Saline County Circuit Court Case No. CR 2009-283. A timely notice of appeal was filed on May 10, 2010. The notice of appeal did not, however, correctly identify the convictions from which the appeal was being brought. Rule 5(a) of the Rules of Appellate Procedure—Civil, requires that the record be filed with the Clerk of the Arkansas Supreme Court within ninety days from the filing of the first notice of appeal. As the notice of appeal was filed on May 10, 2010, the record was due to be filed with the Clerk on or before August 9, 2010.

Mr. Smith did not file the record of the lower court proceedings with the clerk of the court by August 9, 2010. On August 11, 2010, Mr. Smith tendered to the clerk the record and filed a Motion for Rule on the Clerk. On the same day, Mr. Smith self-reported his conduct to the Office of Professional Conduct.

On September 9, 2010, Mr. Smith's Motion for Rule on the Clerk was denied as the notice of appeal was defective in that it incorrectly stated Ms. Serrano's convictions. Mr. Smith filed a

second Motion for Rule on the Clerk on the same day. On September 30, 2010, the Arkansas Supreme Court granted Mr. Smith's second Motion for Rule on the Clerk and referred the matter to the Committee on Professional Conduct.

In his response, Mr. Smith stated that Ms. Serrano and her family did not speak English which complicated matters. Approximately twenty-four hours before the deadline for filing the record on appeal, the family had a change of heart and decided not to cover the costs of the record and transcript but did not inform Mr. Smith. When Mr. Smith found out, he contacted the translator and spoke to the family. By this time, it was impossible to file the record and transcript on time with the clerk. Mr. Smith states that he did not anticipate the last minute problem but stated that it could have been avoided simply by being more diligent and that the failure to file a proper notice of appeal was his error and his alone.

Upon consideration of the formal complaint and attached exhibit materials, the response, and the Arkansas Rules of Professional Conduct, Panel A of the Arkansas Supreme Court Committee on Professional Conduct finds:

1. Steven R. Smith failed to file on behalf of his client, Denisse Serrano, the record from the trial court with the Clerk of the Arkansas Supreme Court on or before August 9, 2010. Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

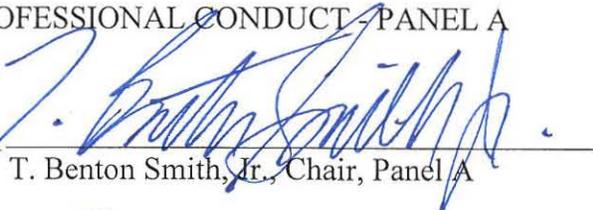
2. Steven R. Smith's failure to file a notice of appeal which correctly identified the convictions from which the appeal was being pursued on behalf of his client, Denisse Serrano, resulted in a delay in the orderly and timely resolution of appellate proceedings. Rule 8.4(d) requires that a lawyer not 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 A, that STEVEN R. SMITH, Arkansas Bar ID No. 91177, be, and hereby is, CAUTIONED and ordered to pay administrative costs in the amount of FIFTY DOLLARS (\$50.00). 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 within thirty (30) days of the date this Findings and Order is filed of record with the Clerk of the Arkansas Supreme Court.

IT IS SO ORDERED.

ARKANSAS SUPREME COURT COMMITTEE ON
PROFESSIONAL CONDUCT - PANEL A

By: 

T. Benton Smith, Jr., Chair, Panel A

Date: May 27, 2011