

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL A

IN RE: L. HOWARD SCHWANDER, III, Respondent
 Arkansas Bar ID#92099
 CPC Docket No. 2004-063

CONSENT FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information obtained through the Orders of the Arkansas Supreme Court. The information related to the representation of Elizabeth French by Respondent in 2003 and 2004.

On April 23, 2004, Respondent was served with a formal complaint, supported by Orders of the Arkansas Supreme Court. A response was filed. The Respondent, through his counsel, William H. Trice, III, and the Executive Director negotiated a discipline by consent proposal, which was submitted to this Panel.

The information before the Panel revealed that L. Howard Schwander, III, an attorney practicing primarily in Little Rock, Pulaski County, Arkansas, attempted to pursue an appeal for Ms. French. Ms. French hired Mr. Schwander to appeal the decision in the lower court matter from Jackson County Circuit Court Juvenile Case No. DR-2002-068.

Mr. Schwander filed a Motion for Rule on the Clerk on December 17, 2003, with the Arkansas Supreme Court. Mr. Schwander was required to file the Motion for Rule on the Clerk because Mr. Schwander tendered the record six (6) days late. The Judgment and Order appealed from was entered of record on August 27, 2003. A timely Notice of Appeal was filed on September 11, 2003. Based upon the Rules of the Court, the record was due to be filed with the Clerk no later than December 10, 2003. However, the record was not tendered to the Clerk until December 16, 2003. There was no Order granting an extension of time for filing the record. After consideration of the Motion for Rule on the Clerk, the Arkansas Supreme Court denied the Motion and Ms. French was denied the opportunity to have her appeal heard.

After the formal disciplinary complaint was filed and consent was being negotiated, Mr. Schwander offered to refund to Ms. French the full \$3500 paid to him by her to pursue the appeal on her behalf. Due to the failure of Mr. Schwander to perfect the appeal, Ms. French received no service for that payment of fee and received no review of the lower court's decision to change the custody of her child, who was less than two years old, from her to the biological father, David Hohn, who lives in another state.

Upon consideration of the formal complaint and attached exhibit materials, the response, the consent proposal, and other matters before it, and the Arkansas Model Rules of Professional Conduct, Panel A of the Arkansas Supreme Court Committee on Professional Conduct finds:

1. That Mr. Schwander's conduct violated Model Rule 1.3 when he failed to be certain that the record in Ms. French's matter was filed within ninety (90) days of the first Notice of Appeal filed in the matter involving Ms. French and Mr. Hohn. Model Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.
2. That Mr. Schwander's conduct violated Model Rule 8.4(d) because his failure to be certain that the record for his client's appeal was timely filed with the Clerk of the Arkansas Supreme Court resulted in his client being denied her opportunity to appellate review of the Jackson County Circuit Court's decision in *Elizabeth French v. David Hohn*, Case #DR-2002-068. 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, acting through its authorized Panel A, that L. HOWARD SCHWANDER, III, Arkansas Bar ID# 92099, be, and hereby is, CAUTIONED for his conduct in this matter. Further, pursuant to Section 18.A. of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law (2002), Mr. Schwander is assessed the costs of this proceeding in the amount of \$50. Mr. Schwander is also ordered, pursuant to Section 18.C. of the Procedures, to pay restitution for the benefit of Ms. French in the amount of \$3500. The costs assessed and restitution ordered 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.

ARKANSAS SUPREME COURT COMMITTEE ON
PROFESSIONAL CONDUCT - PANEL A

By: _____

Bart Virden, Chair, Panel A

Date: _____

(13.M, Rev.1-1-02)