

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

PANEL A

IN RE: JAMES O. WYRE, II

ARKANSAS BAR ID #94056

CPC DOCKET NO. 2002-102

FINDINGS AND ORDER

The formal charges of misconduct upon which this Order is premised arose from the Complaint of Honorable Robert F. Fussell, United States Bankruptcy Judge, Western District of Arkansas, Fayetteville Division. Mr. Wyre, an attorney then practicing primarily in Fayetteville, now practicing in Conway, Faulkner County, Arkansas, was attorney for SKF Steel, Inc. in the case of John T. Lee, Trustee v. SKF Steel, Inc. Certain of Mr. Wyre's conduct caused Judge Fussell to report him to the Committee on Professional Conduct.

On October 30, 2001, the day set for trial in the above described legal proceeding, Mr. Wyre presented Judge Fussell with a Motion to Substitute him as counsel for the defendant. Judge Fussell granted the Motion and also continued the trial until a later date. According to Mr. Wyre, he did not know that the trial was set for that date because this was an inherited case when he began work at the Pearson Law Firm and he had not yet reviewed the file at the time of the trial setting. An Amended Pre-Trial Order resetting the trial for December 18, 2001, was issued by Judge Fussell on November 16, 2001. In addition the pre-trial Order granted Mr. Wyre until December 3, 2001, to comply with an earlier Order entered before he became counsel of record for the defendant. A copy of the Order was sent to the address Mr. Wyre provided in his Motion for Substitution of Counsel. Mr. Wyre explained that it was also in November that he decided he could not continue to work for the Pearson Law Firm. Mr. Wyre stated that he requested another attorney with the firm take back the case but he was met with a refusal by that attorney. On December 4, 2001, Mr. Wyre filed an Amended Answer for the defendant but did not file a response to Judge Fussell's pre-trial Order. As such, the list of witnesses and testimony to be used by the defendant was not provided to the Court as directed. Mr. Wyre admitted that he did not file a written exhibit list as required by the Court but explained that he did discuss the witnesses and exhibits with the opposing counsel. On December 18, 2001, Mr. Wyre and his client failed to appear for trial. Mr. Wyre had not requested a continuance or given the Court any notice that he would not be appearing nor that his client would not be appearing. Judge Fussell allowed the plaintiff to put on the case and then took the matter under advisement. Mr. Wyre explained that during the week before the trial, he had no transportation, no money, no keys to his house and his marriage was in shambles. Mr. Wyre's level of frustration heightened when he realized the matter would not settle and he took no action in this regard. On the day of trial, Mr. Wyre was in Conway with his children and their maternal grandmother. Mr. Wyre was not in Fayetteville because he was filing police reports and recovering from the assault he suffered when his wife battered him. Mr. Wyre asserted that he contacted the bankruptcy clerk and advised that he would not be at the trial on that date.

On January 3, 2002, Judge Fussell issued an Order to Show Cause compelling Mr. Wyre to appear and show cause why sanctions should not be imposed against him for failing to comply with the pre-trial Order and for failing to appear at the trial. The show cause hearing was conducted on January 14, 2002. Prior to the commencement of the show cause hearing, Judge Fussell dictated in to the record that the plaintiff had met its burden of proof and that the plaintiff was entitled to judgment in the sum of \$8,623.50 and costs in the amount of \$150.00. After taking testimony and statements at the show cause portion of the hearing, Judge Fussell put Mr. Wyre on notice that he would not sanction him but was going to report his conduct to the Committee on Professional Conduct. After being advised of this fact, Mr. Wyre advised Judge Fussell that he was planning on closing his law practice and that he would no longer practice law. Based upon this information Judge Fussell advised Mr. Wyre that he would not file a complaint with the Committee.

At a later date, Mr. Wyre shipped his files to the Court with no return address. The review conducted of those files revealed that Mr. Wyre had not filed motions to be relieved as attorney of record in any of those cases. In addition, there was no indication that Mr. Wyre had advised his clients that he would no longer be representing them. As a result the Clerk of the Bankruptcy Court was required to contact Mr. Wyre's clients to advise them that they could pick up their files at the Clerk's office or request that they be mailed to the last known address. The Clerk also advised Mr. Wyre's clients that he was no longer going to practice law. Mr. Wyre stated that he panicked and sent all of his files to the Court because he mistakenly believed that the Courts would help the clients find attorneys to take their cases.

A Motion for Relief from Judgment was filed by Steven Kay on February 4, 2002. A consent judgment was thereafter entered on April 24, 2002 in favor of the plaintiff in the amount of \$4000. Mr. Wyre agreed to pay \$1000 toward satisfaction of the judgment. On May 16, 2002, a Satisfaction of Judgment was filed.

Judge Fussell reported Mr. Wyre's conduct after becoming aware that contrary to Mr. Wyre's statements to the contrary that he would no longer be practicing law, he was practicing in Conway, Faulkner County, Arkansas. Mr. Wyre asserted that he did intend to quit the practice of law when he made those statements to the Court. However, since his efforts to locate employment in other fields failed, he returned to the practice of law.

In responding to the formal complaint, Mr. Wyre also provided additional information concerning his personal circumstances at the time of the incidents complained of by Judge Fussell. Mr. Wyre reported that at the time of the conduct contained herein, he was married and the father of three children. Since the time of the incidents complained of, he has become divorced. During the time frame involved, Mr. Wyre reported that he and his wife were experiencing difficulties, both financially and emotionally. Because of the plight of his private business, Mr. Wyre took a position with the Pearson Law Firm in Fayetteville. One of the cases Mr. Wyre inherited when he began work at the Pearson Law Firm was the SKF Steel matter. Mr. Wyre explained that despite the employment, he continued to struggle financially and emotionally and he was physically and mentally exhausted. From October 2000 until the Spring of 2002, Mr. Wyre reported

that he applied for jobs nationwide. For a brief period Mr. Wyre worked for the Dickerson Law Firm. However, because of the work load he had placed on himself, his stress level was elevating at all times relevant hereto. In addition, according to Mr. Wyre, he began to assume a greater responsibility during the weekdays caring for his children, especially his two year old. As such, no meaningful work was accomplished during the day time hours. Mr. Wyre concluded by explaining that he has taken steps to avoid this type of situation from occurring again.

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. Wyre's conduct violated Model Rule 1.16(d) when he failed to provide notice to his clients with matters pending in the United States Bankruptcy Court that he was turning their files over to the Court and that he would no longer be representing them; when he failed to advise his clients with matters before the United States Bankruptcy Court that they needed to seek other representation since he was turning his files over to the Court; and, when he failed to file Motions to Be Relieved in his pending cases before the United States Bankruptcy Court when he turned his files over to the Court following his statement to the Court that he would no longer be practicing law. Model Rule 1.16(d) requires that upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned.
2. That Mr. Wyre's conduct violated Model Rule 3.3(a)(1) when during the show cause hearing conducted as a result of his failure to appear for trial before Judge Fussell, he falsely stated to Judge Fussell that he would no longer be practicing law. Model Rule 3.3(a)(1) requires, in pertinent part, that a lawyer not knowingly make a false statement of material fact to a tribunal.
3. That Mr. Wyre's conduct violated Model Rule 3.4(c) when he failed to comply with the Order of Judge Fussell which directed that he give notice of his witnesses by a date certain prior to trial; when he failed to appear for trial on December 18, 2001, although he received an Order notifying him that the trial would be conducted that date; and, when he breached his duty of honesty to the Court by providing false information to Judge Fussell concerning his decision to no longer practice law. 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.
4. That Mr. Wyre's conduct violated Model Rule 8.4(c) when he provided false information to Judge Fussell when he advised that he was no longer going to be practicing law. Model Rule 8.4(c) requires that a lawyer not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.
5. That Mr. Wyre's conduct violated Model Rule 8.4(d), to wit: (1) his failure to appear for trial on December 18, 2001, created the need for further proceedings before Judge Fussell which would not have been necessary but for that conduct; (2) his conduct in shipping his client files to the Court without notice to his clients or Motions to Be Relieved created the need for the Bankruptcy Clerk to contact his clients and notify them of his decision to no longer represent those clients with matters pending before the United States Bankruptcy Court; and, (3) his failure to notify his clients that he would no longer be practicing law and that he had provided their cases files to the Court resulted in the additional time and effort on the part of the Bankruptcy Court and the Clerk of the Bankruptcy Court which would not have been necessary otherwise. Model Rule 8.4(d) requires that a lawyer shall 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, through Panel A, that JAMES O. WYRE, II, Arkansas Bar ID #94056 be, and hereby is, REPRIMANDED for his conduct in this matter. In addition, pursuant to Section 18A of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law, Panel A imposes costs in the amount of \$50. Said costs shall be due and payable within thirty (30) days from the filing of this Findings and Order with the Clerk of the Arkansas Supreme Court. The cashier's check or money order in the amount of \$50 should be made payable to the Bar of Arkansas and delivered to the Office of Professional Conduct. Further the Committee order that Mr. Wyre, be, and he hereby is, referred to the Arkansas Lawyer Assistance Program (ArLAP) for his conduct in this matter. Imposition of further diversion, sanctions, fines, and costs is hereby suspended for six (6) months pending the Panel being timely informed as to Respondent's progress and compliance with any treatment program and conditions imposed by ArLAP. Respondent's failure to comply with ArLAP-imposed treatment and conditions may result in the Panel imposing additional sanction. Mr. Wyre is to report to ArLAP within thirty (30) days of the filing of this Order with the Clerk of the Arkansas Supreme Court.

ARKANSAS SUPREME COURT COMMITTEE

ON PROFESSIONAL CONDUCT

By:

Gwendolyn D. Hodge, Chairperson, Panel A

Date:
