

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

PANEL A

IN RE: TONYA MICHELLE ALEXANDER

ARKANSAS BAR ID #95099

CPC DOCKET NO. 2002-171

FINDINGS AND ORDER

The formal charges of misconduct upon which this Order is premised arose from the Complaint of Jerry Dewayne Johnson. Tonya Michelle Alexander, an attorney practicing primarily in West Memphis, Arkansas, was hired to represent Mr. Johnson in an appeal of the denial of his request for post conviction relief. Mr. Johnson paid Ms. Alexander \$900 for the representation. The basis for Mr. Johnson's complaint with regard to Ms. Alexander is set out in the appeal opinion delivered by the Arkansas Supreme Court on February 7, 2002, in the matter of *Jerry Dewayne Johnson v. State of Arkansas*, CR00-1421.

Mr. Johnson represented himself at a hearing on his request for relief pursuant to Rule 37 of the Rules of Criminal Procedure. On the day of his hearing, Mr. Johnson requested a continuance so that he could hire counsel but the request was denied by Circuit Judge David Burnett. Ms. Alexander appealed the denial of the continuance request. This was her first point on appeal for Mr. Johnson. The Arkansas Supreme Court found no abuse of discretion on the part of the trial court and did not find error in his declining the request for continuance.

The second point on appeal perfected by Ms. Alexander was that the trial court erred in determining that Mr. Johnson's trial counsel was not ineffective at the revocation hearing. The Arkansas Supreme Court did not address this issue on appeal. The reason for not doing so was that Ms. Alexander failed to abstract the transcript of the actual revocation hearing. The Court stated that in order to consider a claim of ineffectiveness they must consider the totality of the evidence which had been presented to the trial court. An abstract of the revocation hearing was necessary before the Court could evaluate the ineffective claims. The claim on appeal was procedurally barred due to Ms. Alexander's failure to include the abstract. As such, Mr. Johnson was prohibited from having this claim heard on appeal.

In responding to the formal complaint, Ms. Alexander pointed out that the Arkansas Court of Appeals had affirmed the merits of the revocation in June 1998. She also pointed out that she did provide an abstract of the proceedings held on the Rule 37 petition. In this proceeding, revocation counsel admitted that the only contact he had with Mr. Johnson was immediately prior to the hearing. As such, Ms. Alexander explained there was an admitted lack of preparation because of the failure to investigate the claim or witnesses. Ms. Alexander set forth her belief that the abstract of such testimony admitting lack of preparation, coupled with the fact that Ms. Johnson had been sentenced to two concurrent twenty-year terms, was adequate for the Court to make a ruling on counsel's effectiveness at the revocation hearing.

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

1. That Ms. Alexander's conduct violated Model Rule 1.1 when she failed to abstract Mr. Johnson's revocation hearing thereby causing the claim of his counsel being ineffective to be procedurally barred on appeal to the Arkansas Supreme Court. 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 Ms. Alexander's conduct violated Model Rule 8.4(d) when her failure to abstract the hearing held in Mr. Johnson's revocation proceeding resulted in the Arkansas Supreme Court holding that they could not review the claim because a necessary hearing had not been abstracted and therefore the merits of the claim were not considered, and when she denied Mr. Johnson the opportunity to have the issue of whether his counsel was effective at the revocation hearing heard on appeal because she failed to abstract the hearing, thereby causing the claim to be procedurally barred from being considered by the Arkansas Supreme Court. 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, through Panel A, that TONYA MICHELLE ALEXANDER, Arkansas Bar ID #95099 be, and hereby is, CAUTIONED for her conduct in this matter. In addition, pursuant to Section 18.A. of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law (2002), Ms. Alexander is ordered to pay costs in the amount of \$50. The costs shall be due and payable within thirty (30) days of the filing of this Findings and Order with the Clerk of the Arkansas Supreme Court. The costs shall be in the form of a cashier's check or money order payable to the "Clerk, Arkansas Supreme Court" and delivered to the Office of Professional Conduct within the time set out above.

ARKANSAS SUPREME COURT COMMITTEE

ON PROFESSIONAL CONDUCT

By:

Gwendolyn D. Hodge, Chair, Panel A

Date:
