

**BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT  
PANEL B**

IN RE: GERALD CARLYLE, Respondent  
Arkansas Bar ID#72019  
CPC Docket No. 2011-011

**FILED**  
OCT 21 2011  
LESLIE W. STEEN  
CLERK

**CONSENT FINDINGS AND ORDER**

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Janice A. Johnson in an Affidavit dated January 25, 2011. The information related to the representation of Elmer Robinson by Respondent beginning in August 2006, in a divorce proceeding.

On January 28, 2011, Respondent was served with a formal complaint, supported by affidavit from Janice A. Johnson and additional documentation obtained during the investigation of the matter by the Office of Professional Conduct. Mr. Carlyle filed a timely Response, although not in Affidavit form. Rebuttal was received from Ms. Johnson. The matter then proceeded to ballot vote before Panel A pursuant to the Arkansas Supreme Court Procedures Regulating Professional Conduct of Attorneys at Law. After notification of the ballot vote decision, the Respondent, through counsel, Scott Nance, and the Executive Director negotiated a discipline by consent proposal, which was submitted to this Panel.

The information before the Panel reflected that during August 2006, Elmer G. Robinson hired Gerald W. Carlyle, an attorney practicing primarily in Newport, Arkansas, to represent him in a divorce proceeding. At the time of payment, Mr. Robinson was unaware of a previous filing by his estranged wife in Pulaski County. When he was served with Summons, Mr. Robinson made Mr. Carlyle aware of it so that Mr. Carlyle could file an Answer on his behalf. Mr. Carlyle did not file a timely Answer to the Complaint for Divorce.

After Mr. Carlyle filed an untimely Answer, the opposing counsel, Brian Woodruff, filed a Motion to Strike. Mr. Carlyle did not file a Response of any kind to the Motion. A hearing was scheduled in the Pulaski County divorce on August 2, 2007. Mr. Carlyle and Mr. Robinson both attended. Judge McGowen granted the Motion to Strike and granted Ms. Freddie Robinson a divorce on that date. Mr. Robinson was prohibited from even participating in the property division testimony of the hearing.

Following the entry of the Decree, Mr. Carlyle contacted and hired Debra Reece to assist with post-Decree pleadings. Ms. Reece filed a Motion to Vacate the portion of the Decree dealing with the property division. The Motion to Vacate was deemed denied. Ms. Reece filed a Notice of Appeal to the Court of Appeals. On September 24, 2008, the Court of Appeals reversed the decision of the trial court and remanded the matter back to the trial court. Mr. Carlyle did not notify Mr. Robinson or Ms. Johnson of the decision of the Court of Appeals in written form. Mr. Carlyle advised that he did explain it to them orally but Ms. Johnson disputed this fact. According to Ms. Johnson, they learned of the decision from Ms. Reece.

At that time, many attempts were made to contact Mr. Carlyle about seeking a hearing before the trial judge based upon the remand. Mr. Carlyle failed to return the file to Mr. Robinson or Ms. Johnson. Mr. Carlyle failed to terminate his representation of Mr. Robinson with written notice and took no action to be relieved by the trial court from the representation of Mr. Robinson after the remand.

In early 2010, Mr. Carlyle spoke with Ms. Johnson and explained that he was too ill to go to Court with Mr. Robinson. For the previous fourteen (14) months, Ms. Johnson reports that she was not informed of this fact.

Until Mr. Carlyle seeks to be released by the trial court, he remains attorney of record. Mr. Carlyle may have reason for withdrawal but he must take action to file such a Motion. His failure to provide written notice of his termination of representation of Mr. Robinson was one cause for Mr. Robinson not being able to preserve his property or rights with regard to property at issue in the divorce. Elmer G. Robinson died on August 12, 2010. He died with the property division issues still not resolved.

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

1. That Mr. Carlyle's conduct violated Rule 1.16(d) when Mr. Carlyle failed to return the file of his client, Mr. Robinson, to Mr. Robinson or Ms. Johnson, after deciding he was no longer going to represent Mr. Robinson after the decision of the Court of Appeals reversing the decision of the trial court and remanding the matter back to the trial court. Mr. Robinson died before the file contents were returned to Ms. Johnson; and, when Mr. Carlyle failed to give Mr. Robinson or Ms. Johnson timely notice that he was no longer going to represent Mr. Robinson following the decision of the Arkansas Court of Appeals, demonstrating a complete lack of protection of his client's interests. Rule 1.16(d) requires, in pertinent part, 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, and surrendering papers and property to which the client is entitled.

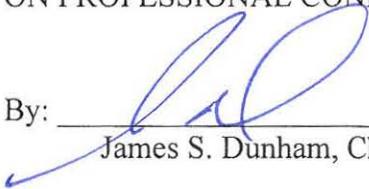
2. Mr. Carlyle's conduct violated Rule 8.4(d) because his failure to take action

following the decision of the Arkansas Court of Appeals reversing the decision of the trial court and remanding the matter back to the trial court caused there to be an extremely lengthy delay in taking action to have Mr. Robinson's arguments heard and to have his interests in the property determined. In fact, Mr. Robinson died without ever having the property interest determined. 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 B, that GERALD CARLYLE, Arkansas Bar ID#72019, be, and hereby is, REPRIMANDED for his conduct in this matter. Mr. Carlyle is assessed the costs of this proceeding in the amount of FIFTY DOLLARS (\$50), pursuant to Section 18.A. of the Procedures. Further, pursuant to Section 18.B of the Procedures, Mr. Carlyle is ordered to pay a fine in the amount of FIVE HUNDRED DOLLARS (\$500). The fine and costs assessed herein, TOTALING FIVE HUNDRED FIFTY DOLLARS (\$550) 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 B

By: \_\_\_\_\_

  
James S. Dunham, Chair, Panel B

Date: \_\_\_\_\_

October 21, 2011