

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

PANEL B

IN RE: JOHN ROBERT IRWIN

ARKANSAS BAR ID #95151

CPC DOCKET No. 2004-106

FINDINGS AND ORDER

The formal charges of misconduct arose from the Arkansas Supreme Court case of Irene Waddle v. State of Arkansas, CR 04-179. John Robert Irwin, an attorney practicing law in Morrilton, Arkansas, represented Irene Waddle in her appeal of the decision of Scott County Circuit Court Case No. CR02-73B involving Ms. Waddle. The information concerning Mr. Irwin's conduct came to the attention of the Office of Professional Conduct in the Orders of the Arkansas Supreme Court referred to the Committee in the *Per Curiam* of May 13, 2004.

The information submitted to the Committee reflected that on January 28, 2004, Mr. Irwin tendered the record on appeal for Ms. Waddle. Approximately two (2) weeks later, Mr. Irwin filed a Motion to Docket Appeal and Memorandum of Authorities with the Clerk of the Court. In the Motion to Docket Appeal, Mr. Irwin explained that the Judgment of Conviction was filed July 8, 2003 and that a Notice of Appeal was timely filed on July 31, 2003. Thereafter an Order was entered on October 27, 2003, granting an extension of 94 days within which to perfect the appeal. The Order expressly stated that the intent of the Circuit Court was to provide Appellant 90 days from October 31, 2003, within which to perfect her appeal. The Clerk refused to docket the transcript on appeal, based upon the lack of authority of the Scott County Circuit Court to grant an extension of time for filing from October 27, 2003, to January 29, 2004. Mr. Irwin argued that the Clerk was in error in refusing to docket the appeal.

After considering the Motion, the Court delivered an opinion denying the same. In the *Per Curiam* denying the Motion, the Court explained that in the October 27, 2003, Order, the Circuit Court granted Appellant Waddle a ninety (90) day extension of time to receive the transcript and to perfect her appeal. There

was a second or “Amended Order” filed and stamped October 27, 2003, also appearing in the record. The “Amended Order” appears to be a certified copy of the first October 27, 2003, Order, but the “Amended Order” reflects a handwritten inter-lineation that has been added which reads, “It is the intent of this Court to grant an additional 90 days from October 31, 2003.” The Court found that the Clerk was correct in stating that the Scott County Circuit Court lacked authority to grant an extension of time for filing to January 29, 2004, by merely adding language to the October 27, 2003, order to say, “It is the intent of this Court to grant an additional 90 days from October 31, 2003, “ instead of October 27, 2003 – the date the first order was signed and filed. In concluding the *Per Curiam* Opinion, the Court directed that Mr. Irwin file an appropriate Motion for Rule on the Clerk admitting fault within ninety (90) days of the date of the *Per Curiam*.

On April 23, 2004, Mr. Irwin filed a Motion for Rule on the Clerk. In the Motion, Mr. Irwin admitted that he erred in calculating the date on which the transcript was due. The Motion was granted on May 13, 2004.

Mr. Irwin denied each Model Rule violation set forth in the formal disciplinary complaint. Mr. Irwin, as he did in his Motion to Docket Appeal to the Supreme Court, argued that Arkansas Rules of Appellate Procedure - Civil 5(a) and (b) allowed for him to file the record when he did so based upon the Order and Amended Order entered in Ms. Waddle’s matter. According to Mr. Irwin, Honorable Paul Danielson called him on his cell phone to advise him that he had amended the order to allow for the ninety (90) day extension to run from October 31, 2003. Mr. Irwin argued that the Supreme Court’s ruling that the Scott County Circuit Court lacked the authority to grant an extension of time to January 29, 2003, by adding its own language to its own order implies that a Circuit Court may neither grant an extension of more than ninety days nor amend its own order by its own hand. Further, Mr. Irwin argued that the ruling requires the attorney representing an appellant to have been aware that the Supreme Court would find the Scott County Circuit Court to be without the very authority that Rule 5(b) confers upon Circuit Courts. Mr. Irwin opined that his reliance upon the Amended Order cannot be subject to disciplinary action because the record for his client was filed within the allotted time by the Amended Order.

Mr. Irwin continued by advising the Committee that the Motion for Rule on the Clerk was filed only because he was ordered to do so under pain of contempt. Mr. Irwin stated that the error in calculation of time admitted to in the Motion for Rule on the Clerk is an admission of error in recognizing which Order was valid, not in a miscalculation of the day on which the record was due.

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. Irwin's conduct violated Model Rule 1.1 when he was not thorough enough in his representation of Ms. Waddle to make certain that the transcript for appeal was filed in a timely manner. 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 Mr. Irwin's conduct violated Model Rule 1.3 when he failed to be certain that the transcript on appeal was filed in a timely manner in the matter involving the appeal of the criminal conviction of Ms. Waddle. Model Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

3. That Mr. Irwin's conduct violated Model Rule 3.4(c) when he failed to adhere to the requirements of Rule 5(a) of the Rules of Appellate Procedure - Civil when he failed to be certain that the record on appeal was filed in a timely manner in the appeal of the criminal conviction of Ms. Waddle, despite the fact that he remained responsible for the pursuit of the appeal in that he had not been relieved from representation of Ms. Waddle. 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. Irwin's conduct violated Model Rule 8.4(d) because his failure to be certain that the record on appeal was timely filed with the Clerk of the Supreme Court resulted in his client being delayed in her right to appellate review of the criminal conviction from Scott County Circuit Court; because his failure to file the record with the Clerk of the Arkansas Supreme Court in a timely manner resulted in a delay in the orderly and timely resolution of appellate proceedings; and, because his failure to file his client's record with the Supreme

Court required the Court to expend additional time and effort which would not have been necessary otherwise. 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 that John Robert Irwin, Arkansas Bar ID No.95151, be, and hereby is, CAUTIONED for his conduct in this matter and assessed costs in the amount of \$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 with 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: _____

J. Michael Cogbill, Chair, Panel B

Date: _____