

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

IN RE: MARK E. BARTON, Respondent
 Arkansas Bar ID#96248
 CPC Docket No. 2009-139

FILED

MAY 06 2010

**LESLIE W. STEEN
CLERK**

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Myron Anderson on June 3, 2009, and the Opinion of the Court of Appeals in No. CACR08-458 affirming the conviction of Mr. Anderson. The information related to the representation of Mr. Anderson by Respondent in 2007.

On December 9, 2009, Respondent was served with a formal complaint, supported by information from the Clerk's file in the appeal Mr. Barton handled on behalf of Mr. Anderson. Mr. Anderson filed a timely response. The matter then proceeded to ballot vote before Panel A of the Committee on Professional Conduct pursuant to the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law.

On June 3, 2009, Myron Newjean Anderson, Jr., filed a grievance concerning Mark E. Barton, an attorney practicing in El Dorado, Arkansas. Mr. Barton represented Mr. Anderson in his trial court proceeding in Ashley County Circuit Court, and also on appeal to the Arkansas Court of Appeals. During the course of the investigation of Mr. Anderson's grievance, the appeal briefs and the Opinion of the Arkansas Court of Appeals were reviewed in connection with Mr. Barton's representation of Mr. Anderson. It is from the Opinion of the Arkansas Court of Appeals that the formal disciplinary complaint and the allegations of Rule violations were derived.

After being convicted on September 19, 2007, of three counts of a Terroristic Act as a Habitual Offender and also of being a felon in possession of a firearm, and sentenced to a combined term of commitment of one hundred ten (110) years, Mr. Anderson requested an appeal be filed on his behalf. Mr. Barton filed a timely Notice of Appeal and the appeal was perfected. The record was lodged on April 14, 2008.

Being upset with Mr. Barton's representation of him, Mr. Anderson sought to have other counsel appointed on appeal. The Court of Appeals denied his Motions seeking that relief. As a result, Mr. Barton remained responsible for the appeal.

After four extensions of time were granted to him, Mr. Barton filed an appellant brief on behalf of Mr. Anderson. The matter was submitted to the Court of Appeals on January 14, 2009. The majority Opinion affirming the conviction of Mr. Anderson was delivered on January 28, 2009. The Statement of the Case and the three page Argument of Mr. Barton were copied from the brief he filed on behalf of Mr. Anderson and were made a part of this formal complaint.

The Opinion, sets out that the Court of Appeals first considered Mr. Barton's argument concerning the sufficiency of the evidence. His *entire* argument (emphasis added by the Court of Appeals in its Opinion) was the following statement "Appellant argues that testimony from the witnesses was so inconsistent that it was unreliable." There was no authority cited and no argument advanced by Mr. Barton on behalf of Mr. Anderson. Further, Mr Barton did not explain what testimony he was referring to nor which elements of the offenses were lacking sufficient proof for the conviction. His argument did not preserve for appeal the issues relating to a specific deficiency, such as insufficient proof on the elements of the offense as required by Arkansas Rule of Criminal Procedure 33.1(c). Judge Pittman also explained that an argument on

appeal is insufficient if it simply invites the Court to search the record generally for errors. It was the holding of the Court that Mr. Barton's directed verdict motion was inadequate and that his argument on appeal was frivolous.

Mr. Barton's second argument on appeal was also without merit. He asserted an argument without any citations to authority.

Although he had ample opportunity to prepare a brief and set out arguments thoroughly for Mr. Anderson, Mr. Barton did not do so. He made arguments without citation of authority and made other arguments which were found to be frivolous by the Court of Appeals. He failed to fulfill his ethical duties owed to Mr. Anderson, his client.

Mr. Barton responded to the formal disciplinary complaint by denying that he violated any of the Rules as alleged. He asserted that he abstracted all relevant information but did admit that the Court of Appeals found his argument to be frivolous.

Upon consideration of the formal complaint and attached exhibit materials, the response to it, and the Arkansas Rules of Professional Conduct, Panel A of the Arkansas Supreme Court Committee on Professional Conduct finds:

1. That Mr. Barton's conduct violated Rule 1.1, when he was not thorough enough in his representation of Mr. Anderson to include more than one sentence in his argument concerning the sufficiency of the evidence for Mr. Anderson on appeal; when he failed to be thorough enough in his representation of Mr. Anderson to cite authority or advance any argument for his untenable assertion that mere inconsistency in the testimony of different witnesses is of itself so destructive of the jury's ability to discern the truth that it somehow renders otherwise-sufficient evidence insufficient to support a criminal conviction; Mr. Barton failed to set out in his brief

what testimony he was referring to or which elements of the offenses were lacking sufficient proof to support Mr. Anderson's conviction; when he was not thorough enough in his representation of Mr. Anderson to be certain that he provided more argument in his directed-verdict motion than merely stating the evidence was insufficient, which failed to preserve for appeal the issues relating to a specific deficiency such as insufficient proof on the elements of the offense; and when he made an argument on appeal which was determined to be frivolous by the Court of Appeals. 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.

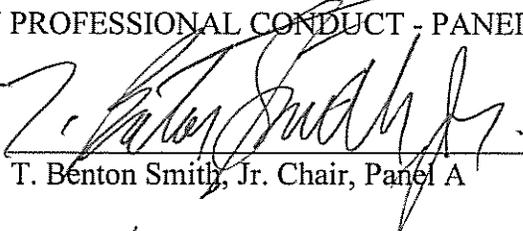
2. That Mr. Barton's conduct violated Rule 3.4(c), when in his representation of Mr. Anderson, Mr. Barton failed to comply with the requirements of Arkansas Rule of Criminal Procedure 33.1(c) when he failed to make an adequate directed verdict motion by failing to present a specific deficiency such as insufficient proof on the elements of the offense. 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.

3. That Mr. Barton's conduct violated Rule 8.4(d), when his failure to present an adequate directed-motion verdict on behalf of Mr. Anderson along with failing to make an argument on appeal which was not frivolous caused his argument on appeal with regard to the sufficiency of the evidence not to be addressed by the Court of Appeals. 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 MARK E. BARTON, Arkansas

Bar ID#96248, be, and hereby is, CAUTIONED for his conduct in this matter. Pursuant to Section 18.A. of the Procedures, Mr. Barton is ordered to pay the costs of this proceeding in the amount of \$50. 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 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: 

T. Benton Smith, Jr. Chair, Panel A

Date: 3/23/10