

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

PANEL B

IN RE: ANDREW L. CLARK, SR., Respondent
 Arkansas Bar ID#73018
 CPC Docket No. 2006-020

CONSENT FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information obtained by the Office of Professional Conduct in the Orders of the Arkansas Supreme Court in case number 06-00096, *John Henry Montroy v. Tanna Charlene Montroy*. The information related to the representation of John Henry Montroy by Respondent in 2005 and 2006.

On February 26, 2006, Respondent was served with a formal complaint, supported by the Order from the Arkansas Supreme Court and other pleadings filed in case number 06-00096. A response was filed. The Respondent and the Executive Director negotiated a discipline by consent proposal, which was submitted to this Panel.

The information before the Committee reflected that on June 22, 2005, Circuit Court Judge Alice S. Gray entered an Order to which Mr. Clark's client, John Henry Montroy took exception. On July 19, 2005, Mr. Clark timely filed a Notice of Appeal to the Order. On October 17, 2005, he sought an Order extending the time to file the record on appeal. The Court granted his Motion and granted an additional ninety (90) days for the record to be completed and filed. On January 17, 2006, the Court Reporter contacted Mr. Clark and advised that the record was ready to pick up and file with the Clerk of the Court. According to Mr. Clark's Motion for Rule on the Clerk, the Court Reporter advised him that the time for filing the record had been extended until January 19, 2006. Mr. Clark accepted this statement and did not tender the record for filing until January 19, 2006. After he tendered the record, he was notified by the Clerk of the Court that a Motion for Rule on the Clerk would be necessary because the record had been tendered after the expiration of the time granted in the Order extending the time to file the record. Mr. Clark filed his Motion for Rule on the Clerk on January 24,

2006. In the Motion, Mr. Clark explained that he had correctly marked your calendar for January 17, 2006 to file the record on appeal. This would have been the appropriate date since the ninetieth day fell on Sunday, January 15, 2006 and Monday, January 16, 2006, was a holiday and the Clerk's office was closed. However, despite having marked the calendar for January 17, 2006, Mr. Clark failed to file the record on that date. He accepted full responsibility for the late filing. On February 16, 2006, the Supreme Court denied Mr. Clark's Motion. The result of the denial caused Mr. Montroy to not be able to pursue the appeal he wished to pursue of Judge Gray's decision.

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

1. That Mr. Clark's conduct violated Arkansas Rule 1.1, because he was not thorough enough in his representation of John Henry Montroy to be certain that he filed the record on appeal within the time granted him in the Order for Extension of time to file the record on appeal. Arkansas 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. Clark's conduct violated Arkansas Rule 1.3, when he failed to be certain that the record on appeal was filed within the time granted him in the Order for Extension of Time to file the record on appeal for his client, John Henry Montroy. Arkansas Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

3. That Mr. Clark's conduct violated Arkansas Rule 8.4(d) because his failure to be certain that his client's record on appeal was filed prior to the expiration of the time granted him in the Order of Extension caused his client, John Henry Montroy, not to be able to have his appeal of the Order of June 22, 2005, heard by the appellate court. Arkansas 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 ANDREW L. CLARK. SR., Arkansas Bar ID# 73018, be, and hereby is, CAUTIONED for his 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), Mr. Clark is assessed the costs of this proceeding in the amount of \$50. Pursuant to Section 18.C. of the Procedures, Mr. Clark is ordered to pay restitution to Mr. Montroy in the amount of \$1,108.40. The costs assessed and restitution ordered herein, totaling \$1,158.40, 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: _____

Harry Truman Moore, Chair, Panel B

Date: _____