

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL A

IN RE: CINDY M. BAKER
ARKANSAS BAR ID No. 2000022
CPC DOCKET NO. 2009-110

FILED

APR 27 2010

**LEOLIE 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 from a referral from the Arkansas Supreme Court in the case of *Donald Thompson v. State of Arkansas*, Arkansas Supreme Court Case No. 2009-249.

Donald Thompson entered into a plea agreement in 2005 where he received a suspended imposition of sentence. On July 21, 2008, a hearing was held on a Petition to Revoke the Suspended Sentence. Mr. Thompson was represented by Cindy M. Baker, Attorney at Law, Berryville, Arkansas. At the hearing, the Court revoked Mr. Thompson's suspended imposition of sentence and sentenced him to a term of eight years in the Arkansas Department of Correction. A Judgment and Commitment Order was filed on July 28, 2008.

Ms. Baker filed a Motion for Temporary and Permanent Stay of Sentence for Order to Compel Disclosure to Dismiss Alternatively for a New Trial on July 25, 2008, and the motion was denied by the Court on August 5, 2008. Rule 4(a) of the Rules of Appellate Procedure-Civil, extends the time for filing a notice of appeal to thirty (30) days from the entry of the order disposing the last motion outstanding. As the Court entered an Order denying the Motion for New Trial on August 5, 2008, the deadline for filing a timely notice of appeal on Mr. Thompson's behalf was September 4, 2008.

Ms. Baker filed a Notice of Appeal and Designation of Record on September 18, 2008,

and attached an affidavit from Mr. Thompson which stated he was placed in lock-down at the county jail for a week and was not allowed to contact anyone including his mother, his girlfriend or Ms. Baker, during that period. According to the affidavit, after Mr. Thompson was released from lock-down, he was able to notify his attorney that he wanted an appeal, that Ms. Baker prepared the affidavit, and filed the notice of appeal.

A transcript of the lower court proceedings was tendered by Ms. Baker to the Arkansas Supreme Court on March 10, 2009, along with a Motion for Belated Appeal. In the motion, Ms. Baker stated that she visited her client in jail on September 18, 2008; was informed that her client had been in administrative lock-down where he was denied visitors, mail or telephone calls; and that he wanted to appeal.

The Arkansas Supreme Court issued a *Per Curiam Order* remanding the matter to the trial court for an evidentiary hearing on the circumstances surrounding Mr. Thompson's inability to communicate with counsel. The trial court held a hearing and received testimony. The trial court entered an Order dated May 13, 2009, reflecting its findings. The trial court found that Mr. Thompson spoke with Ms. Baker, placed calls to Ms. Baker's office, asked his mother to speak to Ms. Baker, and made Ms. Baker aware of his desire to meet and discuss his appeal. The trial court believed that Mr. Thompson's mother had money to pay for an appeal, that Mr. Thompson told Ms. Baker he wanted to appeal and asked his mother to contact Ms. Baker. The trial court found no explanation for Ms. Baker's failure to go to the jail and meet with her client until after the appeal deadline had passed. The trial court found Ms. Baker's statements in her motion that Mr. Thompson was in lock-down and that Mr. Thompson was unable to make telephone calls or send mail to be untrue. The trial court further found that the affidavit prepared by Ms. Baker for

Mr. Thompson contained untrue statements.

The Arkansas Supreme Court issued a *Per Curiam* Order on June 4, 2009, finding that Mr. Thompson timely communicated his desire to appeal the revocation of probation to Ms. Baker, but that she did not contact Mr. Thompson until September 18, 2008, which was after the time for filing the notice of appeal had passed. As a result, the Court granted the Motion for Belated Appeal and referred the matter to the Office of Professional Conduct.

Ms. Baker was served with the Formal Complaint and filed a timely Response. In her response, Ms. Baker stated that Mr. Thompson told her he wished to appeal but he was in lock-down and unable to contact her. After the time for filing the appeal had passed and he was out of lock-down, he was able to inform Ms. Baker that he wished to appeal. Ms. Baker stated the findings adopted by the Supreme Court were based on those of the Honorable Judge Kent Crow and that the Supreme Court did not look at a transcript of the proceedings. Ms. Baker alleged that Judge Crow was biased against her because of numerous issues between them, some of which were, at the time of the filing of her Response, still on-going. Ms. Baker denied violating the Arkansas Rules of Professional Conduct.

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

1. Cindy M. Baker violated Rule 1.3 when she failed to file a timely Notice of Appeal on behalf of her client, Donald Thompson, after being timely notified that he wished to pursue an appeal from a judgment in the case of *State of Arkansas v. Donald Thompson*, Carroll County Circuit Court Nos. CR03-191 and CR04-3. Rule 1.3 requires that a lawyer act with reasonable

diligence and promptness in representing a client.

2. Cindy M. Baker violated Rule 1.4(a)(4) when she failed to timely reply to requests from her client, Donald Thompson, for Ms. Baker to visit him and discuss his legal matter at the Carroll County Detention Center. Rule 1.4(a)(4) requires that a lawyer promptly comply with reasonable requests for information.

3. Cindy M. Baker violated Rule 3.3(a)(1) when she made a false statement of fact in a Motion for Belated Appeal filed with the Arkansas Supreme Court that her client, Donald Thompson, had been denied phone calls to counsel and family for a couple of weeks; made a false statement in a Motion for Belated Appeal filed with the Arkansas Supreme Court when she stated in a Motion for Belated Appeal that she was informed by her client that he had been placed on administrative lock-down for a full week at the time his answer to whether to appeal was due; made a false statement of fact in a Motion for Belated Appeal filed with the Arkansas Supreme Court that her client's mother had obtained a loan to cover the costs of the appeal; made a false statement of fact in a Motion for Belated Appeal filed with the Arkansas Supreme Court Clerk that her client had failed to communicate with his attorney and family about his desire to appeal because law enforcement would not allow him to do so; made a false statement of fact in a Motion for Belated Appeal filed with the Arkansas Supreme Court that her client would have to obtain a loan against property he owned or sell some of it to come up with an attorney's fee when his mother had the money for the appeal all along; made a false statement of fact in a Motion for Belated Appeal with the Arkansas Supreme Court that her client was placed in lock-down at the county jail for one week and was unable to contact anyone during that time; made a false statement of fact in a Motion for Belated Appeal filed with the Arkansas Supreme Court that her

client was unable to secure funding for the appeal until September 18, 2008; and made a false statement of fact in a Motion for Belated Appeal filed with the Arkansas Supreme Court that her client notified her of his wish to appeal the judgment on September 18, 2008. Rule 3.3(a)(1) requires that a lawyer not knowingly make a false statement of fact or law to a tribunal.

4. Cindy M. Baker violated Rule 3.4(c) when she failed to comply with Rule 16 of the Rules of Appellate Procedure—Criminal, when she failed to file a timely notice of appeal. Rule 16 of the Rules of Appellate Procedure—Criminal, requires that trial counsel, whether retained or court-appointed, shall continue to represent a convicted defendant throughout any appeal to the Arkansas Supreme Court or Arkansas Court of Appeals. Rule 3.4(c) states that a lawyer shall 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.

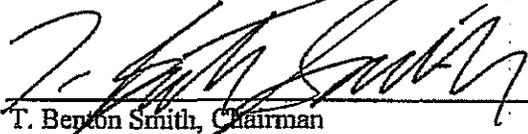
5. Cindy M. Baker violated 8.4(d), when her failure to file a timely notice of appeal on behalf of her client, Donald Thompson, resulted in unnecessary delay in the orderly and timely resolution of appellate proceedings; when her failure to file a timely notice of appeal on behalf of her client, Donald Thompson, required the Arkansas Supreme Court to expend additional time and effort which would not have been necessary otherwise; and when her failure to file a timely notice of appeal on behalf of her client, Donald Thompson, required the Carroll County Circuit Court to expend additional time and effort which would not have been necessary otherwise. 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 CINDY M. BAKER, Arkansas

Bar No. 2000022, be, and hereby is, REPRIMANDED, fined the sum of ONE THOUSAND DOLLARS (\$1,000.00) and assessed costs in the amount of FIFTY DOLLARS (\$50.00) for her conduct in this matter. All fines and 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, Chairman

Date:

April 2, 2010