

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

IN RE: RALPH JOHN BLAGG

ARKANSAS BAR ID #73178

CPC Docket No. 2001-048

FINDINGS AND ORDER

The formal charges of misconduct upon which this Order is premised arose from information in a Judicial Referral made by Honorable David L. Pake, Municipal Judge of the City of Maumelle, Arkansas. Mr. Blagg represented Amy Simmons in State v. Amy Simmons, S 00-340. Trial was set for June 15, 2000, but had to be continued. The trial was reset on December 21, 2000, to accommodate Mr. Blagg's client, who was an out of state student. Mr. Blagg alleged the case was actually continued because the prosecutor failed to call or subpoena a required witness, that the continuance was granted over his objection.

Shortly before the scheduled trial date, Judge Pake learned from his court clerk, Sue McLawhorn, that Mr. Blagg wished to speak with him. Ms. McLawhorn, at the direction of Judge Pake, attempted to find out what the subject of the desired conversation was. When Mr. Blagg refused to tell Ms. McLawhorn, Judge Pake refused to speak with him. Mr. Blagg believed that the Motion to Dismiss was going to be heard on December 21, 2000, since the State had not complied with a previous Discovery Order entered at the time of the continuance during July 2000.

On December 21, 2000, all of the State's witnesses appeared for trial. Neither Ms. Simmons nor any of her witnesses appeared for trial. Mr. Blagg informed Judge Pake in open court that Ms. Simmons and her father were unable to attend because of the weather in the State of Maryland. Judge Pake refused to accept this as a valid reason for the failure to appear. He entered an Order that Ms. Simmons' driver's license be suspended and that a warrant for the failure to appear be issued. The following day, Daniel Simmons, Amy Simmons' father, called Judge Pake's law clerk and advised that the weather had not prevented his daughter or him from attending court the previous day. According to Mr. Simmons, Mr. Blagg had advised them that the matter was going to be dismissed, so their attendance would not be required. After his discussion with Judge Pake's law clerk, Mr. Simmons sent a fax setting out these facts. Mr. Blagg denied that he advised anyone that the matter would be dismissed, but rather that he did advise them that he would be filing a Motion to Dismiss.

Judge Pake provided Mr. Blagg and the prosecutor with a copy of the communication from Mr. Simmons. He scheduled a hearing for January 11, 2001, to address the allegations. According to Mr. Blagg's statements during the hearing, he did not tell Ms. Simmons not to attend the December 21, 2000, trial. Following the hearing, Judge Pake held Mr. Blagg in contempt for misrepresenting the reason that his client was not present in court on December 21, 2000. Mr. Blagg did not appeal the contempt finding, but rather paid the fine and costs imposed by Judge Pake.

On February 6, 2001, Ms. Simmons, her father and Mr. Blagg appeared before Judge Pake. After imposition of punishment for the DWI-First Offense, Judge Pake inquired of Ms. Simmons the circumstances surrounding her previous failure to appear for a scheduled court date. Ms. Simmons reported that she had two conversations with Mr. Blagg. The first one occurred in November 2000. During that conversation, Mr. Blagg advised Ms. Simmons that the case would be dismissed and she would not have to appear for court. The second conversation occurred the day before the scheduled December 21, 2000 court appearance. During that conversation, Mr. Blagg advised Ms. Simmons that she needed to appear in court but it was too late for her to arrange for transportation from Maryland to Maumelle. In addition, Ms. Simmons' father also advised Judge Pake that Mr. Blagg had advised him that it was not necessary for Ms. Simmons to appear in court during December 2000. Mr. Blagg was given the opportunity to address the comments of his client and her father but declined to do so. He did not do so because he thought it might adversely affect his client. Mr. Blagg denied all of Ms. Simmons' allegations in his response to the Committee. He also denied that he spoke with Ms. Simmons' father the day before trial.

Mr. Blagg asserted that Judge Pake's attitude toward him grew increasingly hostile in this matter. He explained that, in his opinion, Judge Pake felt like he created problems between the Prosecuting Attorney Larry Jegley and Judge Pake.

Upon consideration of the formal complaint, the response thereto, and the Arkansas Model Rules of Professional Conduct, the Committee on Professional Conduct finds:

1. That Mr. Blagg's conduct violated Model Rule 1.4(a) when he failed to timely explain to Ms. Simmons that she would need to appear in Maumelle Municipal Court on December 21, 2000, and, when, instead of correctly responding to Ms. Simmons about the status of her court proceeding, he advised her that the matter would be dismissed. Model Rule 1.4(a) requires that a lawyer keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.
2. That Mr. Blagg's conduct violated Model Rule 3.3(a)(1) when he falsely advised Judge Pake that his client could not attend court on December 21, 2000, because of the weather in Maryland. Model Rule 3.3(a)(1) requires that a lawyer not knowingly make a false statement of material fact or law to a tribunal.
3. That Mr. Blagg's conduct violated Model Rule 3.4(c), since as an officer of the court he is charged with the duty of truthfulness to the Judges he appears before. He offered false statements to Judge Pake concerning his client's failure to appear for Court on December 21, 2000. 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. Blagg's conduct violated Model Rule 8.4(c) when he gave Judge Pake false information concerning his client's absence from court on December 21, 2000. Model Rule 8.4(c) requires that a lawyer not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.
5. That Mr. Blagg's conduct violated Model Rule 8.4(d) since his false statements

to Judge Pake created the need for him to conduct a contempt hearing and have another hearing on the matter involving his client. Model Rule 8.4(d) requires that a lawyer not engage in conduct prejudicial to the administration of justice.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct that RALPH JOHN BLAGG, Arkansas Bar ID #73178, be, and hereby is, CAUTIONED for his conduct in this matter.

ARKANSAS SUPREME COURT COMMITTEE

ON PROFESSIONAL CONDUCT

By:

Bart Virden

Chairman

Date: