

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

IN RE: MONICA MASON, Respondent
Arkansas Bar ID#98104
CPC Docket No. 2012-028

CONSENT FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Honorable Alice Gray on January 12, 2012. The information related to the representation of various parties in adoption proceedings by Respondent before Judge Gray.

During May 2012, Respondent was served with a formal complaint, supported by the January 12, 2012, referral letter of Circuit Judge Alice Gray, documents obtained from the adoption proceedings and the Affidavit of Brent Houston. A response was filed. The Respondent, through counsel, Bart Virden, and the Executive Director negotiated a discipline by consent proposal, which was submitted to this Panel.

The information before the Panel reflected as follows:

1. The birth mother here (“KW”) earlier placed another male baby for adoption through ABBA. Couple H adopted this baby.
2. On March 7, 2011, KW signed a “relinquishment” document with ABBA about placing her unborn baby (BBW) for adoption. ABBA arranged for Couple H to adopt BBW, KW agreed with this placement, and Couple H began paying KW’s expenses.
3. Also on March 7, 2011, AJ, the putative father of BBW, signed a relinquishment document in favor of ABBA for the baby’s adoption by Couple H through ABBA.
4. By August 2011, Monica Mason had become the attorney for Couple E who were

seeking to adopt an infant, BBW, who was expected to be born to KW in mid-September 2011.

5. By August 2011, Monica Mason had become the attorney for birth mother KW.

6. In August 2011, KW allegedly gave notice to ABBA that KW was cancelling her arrangement with ABBA regarding adoption of BBW, according to a pleading filed by Mason. OPC found no document reflecting any such written communication to ABBA.

7. In August 2011, as attorney for Couple E, Mason proceeded to have necessary background checks and home studies done for Couple E as adoptive parents for BBW.

8. On August 16, 2011, Eric Woodard, MD, wrote Mason that each of Couple E's health is good and he and she would make an excellent adoptive parent.

9. On August 23, 2011, the wife in Couple E executed an Authorization for Release of Confidential Information Within the Arkansas Child Maltreatment Central Registry, requesting the information be addressed to Ms. Mason at a Sherwood address.

10. On August 25, 2011, Arkansas Criminal History reports from the Arkansas State Police were generated on each spouse in Couple E and released to a representative of Monica L. Mason, P.A.

11. On August 31, 2011, a licensed social worker completed a home study report on Couple E, based on home visits conducted on August 23 and 30, 2011, and citing references provided to their attorney, Monica Mason.

12. On September 7, 2011, KW executed her Relinquishment of Parental Rights to her attorney, Monica Mason, approving Mason being guardian for BBW, and identifying the couple KW wanted to adopt her child.

13. On September 14, 2011, at about 5:45 a.m., KW entered St. Vincent Hospital in Little

Rock and gave birth to BBW by C-Section at about 7:45 a.m.

14. On September 14, 2011, at St. Vincent, at about 8:00 a.m., putative and self-admitted father AJ allegedly signed his consent to adopt in favor of a couple named K and J of Arkansas identified by KW, Couple E, by a Consent to Adoption notarized by Monica Mason, whom AJ identified as the attorney for KW.

15. On September 14, 2011, at 11:25 am, Monica Mason filed a Petition for Appointment of Temporary Guardian of the Person, Case No. 60PR-2011-1628, seeking the appointment of Ms. Mason as guardian of the person of new-born BBW for ninety (90) days, pending a proposed adoption by a couple named and selected by KW and to be represented by attorney Milas “Butch” Hale III.

16. At mid-day September 14, 2011, representatives of ABBA, the hospital social worker(s), AJ, and Mason were all in and out of the room of KW discussing the situation involving BBW and various consents.

17. On September 14, 2011, from after 1:00 p.m. but ending by 1:45 p.m., Judge Alice Gray, to whom the new file was assigned, conducted a conference call with Ms. Mason on the petition to appoint Mason as guardian in No. 60PR-11-1628.

18. After the conference call, Mason may claim to have drafted documents for KW and/or AJ to revoke their previous adoption consents in favor of ABBA and Couple H.

19. Mason was at the hospital with KW, and was told by KW to go to courthouse and get a copy of guardianship order and return to hospital with the Order.

20. On September 14, 2011, at 2:41 p.m. (14:41), Ms. Mason filed the Order of guardianship with clerk in No. 60PR-11-1628.

21. Mason claims she first learns about putative father of BBW at the hospital later on September 14, 2011.

22. Putative father, AJ, delivered revocation of his consent to ABBA to the BBW adoption to someone at the hospital.

23. On September 14, 2011, at 3:15 pm, KW signed a Release of BBW to ABBA at St. Vincent.

24. On September 14, 2011, at about 3:15 pm, birth mother (KW) left hospital "Against Medical Advice" after her C-section earlier that same day.

25. On September 14, 2011, immediately after leaving hospital, KW signed revoking any previous consent to adoption of BBW given by KW to ABBA. KW's friend, maybe AJ, took this revocation form into hospital to Tyler and Cox/ABBA, along with certified copy of guardianship order provided by Mason.

26. On or about September 15, 2011, a DHS representative visited BBW in the hospital, and determined DHS would not take custody. DHS advised that if KW revoked her consent, DHS would need to take custody of BBW for further proceedings.

27. KW made a claim on ABBA for payment of about \$8,000 to reimburse Couple E their expenses paid to KW.

28. On Saturday, September 17, 2011, Mason physically placed BBW with Couple E.

29. On September 20, 2011, at 11:06 am, Brent Houston filed a petition for ABBA to intervene in Mason's BBW "guardianship" case, No. 60PR-11-1628.

30. On September 20, 2011, at 11:30 am, Brent Houston filed a petition for Couple H to adopt BBW, as Pulaski Circuit No. 60-PR-11-1669.

31. On September 20, 2011, at 3:30 pm Milas Hale III, filed a petition for Couple E to adopt BBW, as Pulaski Circuit No. 60-PR-11-1673.

32. On September 21, 2011, Judge Gray conducted a conference call with attorneys Mason, Houston, and Hale on the competing adoption petitions. During the conference call, Mason stated she physically placed BBW with Couple E on Monday of that week which would have been September 19, 2011. Mason admitted that she received the Petition filed by the adoption agency on the afternoon of September 21, 2011, via fax. After Judge Gray inquired about the possibility that KW had executed a consent for two different families to adopt the child, Mason stated that KW specifically told her she did not execute a consent to ABBA and that Mason was inclined to believe her. Mason also admitted that at the time Mason placed the baby with Couple E, she was aware of the other adoptive couple, Couple H. Mason further admitted that she faxed a revocation of relinquishment of parental rights to the court on September 14, 2011, the day BBW was born, after her conference call with Judge Gray. Mason also admitted that she learned about the putative father later that same afternoon.

33. On September 23, 2011, Mason filed a detailed Petition for a Temporary Restraining Order on behalf of KW as Case No. CV-11-4667, against ABBA agency and its owner Cox. In the Petition Mason admitted that she picked up the signed Order of Guardianship on September 14, 2011, after she had an encounter with Kandi Cox and the hospital social worker, Carolyn Tyler, in the hospital room of Mason's client, KW. Mason also admitted that the putative father delivered his Revocation of his previous Consent for ABBA to handle the adoption and the Court Order of Temporary Guardianship to Cox and Tyler at the hospital on September 14, 2011.

34. On September 26, 2011, at an adoption hearing before Judge Gray, with attorneys

Mason, Houston, and Hale present, testimony was taken from the putative father, AJ, the hospital social worker, and ABBA owner, Kandi Cox. Birth mother KW failed to appear. Mason did not testify, but served as counsel for KW.

35. On September 27, 2011, Judge Gray conducted a conference call with Mason, Houston & Hale on adoption and payments to KW. At this time, the court learned Mason had personally incurred \$744 in credit card expenses for her client, KW. The court also learned that Mason had previously secured the adoptive couple, Couple E, prior to their filing of an adoption petition on September 20, 2011, as case No. 60PR-11-1673.

36. On October 6, 2011, Judge Gray entered her Order removing Mason as guardian for BBW and as attorney representing KW because of Mason's failure to disclose potential conflicts of interest. The court based its decision on Mason's failure to disclose her financial interest in the adoption matter and her failure to inform the court of conflicts and developments that arose regarding adoption arrangements involving BBW, despite having several opportunities to do so.

37. On October 10, 2011, Milas Hale wrote the court, providing the telephone number and address he had for KW and AJ, who were apparently living together during these events in August-October 2011.

38. Judge Gray later set aside her October 6, 2011, so DHS could proceed with its dependency-neglect petition in Juvenile Court.

39. On January 12, 2012, Judge Gray filed her letter complaint against Mason with OPC.

40. Later in 2012, Couple H finalized their adoption of BBW.

41. Couple H spent about \$10,000 in pre-adoption expenses for support of birth mother KW, according to Attorney Brent Houston.

42. Couple H was required to expend about \$2,952 in additional legal fees with Mr. Houston as a result of the extra work required by Ms. Mason's efforts to direct the adoption of BBW to another adoptive couple after Couple H had earlier obtained consents from both parents of BBW.

43. Couple H, from Missouri, was also required to expend about \$3,176 for travel and lodging for meetings in Arkansas with DHA, the attorney ad litem, and for court hearings associated with the extra effort required in the adoption as a result of the events involving Ms. Mason and the birth mother.

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

1. That the conduct of Monica L. Mason, violated Arkansas Rule 1.7(a) because during August-September 2011, Mason concurrently served as legal counsel representing the birth mother (KW), as court-appointed temporary guardian of the newborn (BBW), and as legal counsel for Couple E, a couple seeking to adopt BBW, by assisted Couple E with the legal preparation to adopt. During the September 14, 2011, conference call with Judge Gray, Mason stated that attorney Hale would be filing an adoption petition for Couple E but failed to fully disclose that she had represented the same couple when they were preparing to adopt BBW, and had advanced at least \$744 in personal funds for expenses of KW. The court learned of this representation from the review of the Clerk's file in the adoption case filed by the Couple E and from Hale's statement during the September 27, 2011, conference call. From the documents included in Couple E's adoption filing, it is apparent that Mason had been their attorney in

preparing for the adoption. Mason failed to disclose the potential conflict to the court whether she was acting in her capacity as attorney for the birth mother, Guardian of the child, as an advocate for the adoptive couple, or her own personal interest. Arkansas Rule 1.7 (a) provided that a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if the representation of one client will be directly adverse to another clients; or there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

2. That the conduct of Monica L. Mason violated Arkansas Rule 3.3(a), because Mason failed to correct her statements made in the September 14, 2011, conference call that no conflicts existed, in the aftermath of encountering the hospital social worker and ABBA adoption owner within hours, even though Mason came to the courthouse shortly after the conference call to pick up the signed Guardianship Order. Arkansas Rule 3.3 (a)(1) provided that a lawyer shall not knowingly make a false statement of fact or law to a tribunal; or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.

3. That the conduct of Monica L. Mason violated Arkansas Rule 8.4(d), because Ms. Mason's failure to be fully candid and timely forthcoming with the trial court in all matters related to the adoption of BBW and the various roles played by Ms. Mason in the matter caused the court to have to devote additional and unneeded time and resources to the matter, conduct by Ms. Mason that was prejudicial to the administration of justice. Arkansas Rule 8.4 (d) provides that it is professional misconduct for a lawyer to 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 MONICA L. MASON, Arkansas Bar ID#98104, be, and hereby is, REPRIMANDED for her conduct in this matter. In addition, Ms. Mason is assessed the standard costs in this proceeding of FIFTY DOLLARS (\$50), pursuant to Section 18.A of the Procedures. 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 B

By: /s/ Henry Hodges, Chair, Panel B

Date: February 15, 2013

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(13.M, Rev.5-26-11)