

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

**IN RE: NAIF SAMUEL KHOURY
 ARKANSAS BAR ID No. 75070
 CPC DOCKET No. 2014-021**

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided by the Honorable Stephen Tabor, Circuit Court Judge for the Twelfth Judicial District, First Division. The conduct referred to the Committee related to Khoury's representation of Leroy King in the case of *State of Arkansas v. Leroy King*, Sebastian County Circuit Court Case No. CR-2013-83, and Dennis Osborne in the case of *State of Arkansas v. Dennis Osborne*, Sebastian County Circuit Court Case No. CR-2013-609.

1. Naif Samuel Khoury is an attorney licensed in 1975 to practice law in the State of Arkansas and assigned Arkansas Bar Number 75070.

2. The Honorable Stephen Tabor, Circuit Court Judge for the Twelfth Judicial District, First Division, referred the conduct of Mr. Khoury to the Office of Professional Conduct pursuant to Rule 8.3 of the Arkansas Rules of Professional Conduct.

3. The Office of Professional Conduct filed a formal complaint against Mr. Khoury and Mr. Khoury filed a timely response. The matter was submitted to Panel B of the Committee on Professional Conduct. Panel reviewed the formal complaint prepared by the Office of Professional Conduct and response filed by Mr. Khoury and issued its decision to Mr. Khoury. Mr. Khoury requested a *de novo* hearing. Prior to the *de novo* hearing, Mr. Khoury approached the Office of Professional Conduct with a proposed consent to discipline. The proposed consent to discipline was submitted to Panel A of the Committee on Professional Conduct and the

proposed consent to discipline was rejected. The *de novo* hearing was then set before Panel C for October 13, 2015.

2. A hearing was conducted on October 13, 2015. The hearing was conducted by Panel C Chair, the Honorable Kathleen Bell. Panel C was comprised of Laura Partlow, Michael Mayton, Scott Stafford, Ronnie Williams, Kent Hirsch, and Sue Winter. The Office of Professional Conduct was represented by Michael E. Harmon, Deputy Director, and Caroline Bednar, Staff Attorney. Mr. Khoury was present and not represented by counsel.

3. Witnesses called by the Office of Professional Conduct to testify included the Honorable Stephen Tabor, Barrett Milam, Aaron Jennen, Raquel Smith (formerly Harvey), Becky McKeever, and Joshua-Paul Anderson. Judge Tabor testified that he was the presiding judge in a case filed in Sebastian County Circuit Court in which Mr. Khoury was the attorney of record. The case was *State of Arkansas v. Dennis Gale Osborne*, Sebastian County Circuit Court, Fort Smith Division, Case No. CR-13-699. On November 4, 2013, a mandatory appearance was scheduled in the case for December 11, 2013. Mr. Osborne appeared at the hearing on December 11, 2013, but Mr. Khoury did not. The court set the matter aside and requested the court administrator, Raquel Smith, to try to locate Mr. Khoury. Ms. Smith testified that she asked her assistant, Becky McKeever, to help find Mr. Khoury. Ms. McKeever testified that she made efforts to locate Mr. Khoury. Ms. McKeever called Joshua-Paul Anderson, an employee of the Law Office of David L. Dunagin, to see whether he had a telephone number for Mr. Khoury. Mr. Dunagin's office was located near Mr. Khoury's office. Mr. Anderson testified that he provided a telephone number to Ms. McKeever and then realized he had given her an old number. Mr. Anderson called Ms. McKeever back and provided her with the new

telephone number. Mr. Anderson testified that he knew Mr. Khoury frequented the Sacred Grounds coffee shop and decided to go to the coffee shop to see whether Mr. Khoury was there. Mr. Anderson stated that he saw Mr. Khoury at the coffee shop and motioned to him that he needed to talk to him. Mr. Khoury came outside the coffee shop where Mr. Anderson informed him that the court administrator was looking for him concerning a client. Mr. Khoury stated that the client was Osbourne, that he had 13 of his cases already and that the public defender was representing him in that particular case. Mr. Anderson testified that Mr. Khoury told him to tell the court that he did not find him. Mr. Khoury returned to the coffee shop, and Mr. Anderson returned to his office.

When Mr. Anderson returned to his office, he called Ms. McKeever and told her that he did not locate Mr. Khoury. After he hung up with Ms. McKeever, Mr. Anderson went back to the coffee shop and informed Mr. Khoury that he was calling the court to tell them that he did in fact find Mr. Khoury. Mr. Khoury stated that he was going to court. Mr. Anderson called Ms. McKeever and told her that he had lied about not having found Mr. Khoury and that Mr. Khoury directed him to do so. Mr. Anderson left a message for Judge Tabor to call him.

Judge Tabor testified that Mr. Khoury appeared in court on December 11 about forty-five minutes to an hour after the search for Mr. Khoury began. Judge Tabor inquired about where Mr. Khoury was when the case was scheduled and Mr. Khoury stated that he did not receive notice of the hearing. At one point, Mr. Khoury turned to walk away and was told by the court that the matter with the court was not finished.

Barrett Milam and Aaron Jennen were present in the courtroom when Mr. Khoury entered the court. Ms. Milam, a Sebastian County Deputy Prosecuting Attorney, testified that

she was in the courtroom when Mr. Khoury entered. Ms. Milam stated that Mr. Khoury was wearing casual clothing . She stated that Mr. Khoury appeared agitated and was disrespectful to the court in his answers to the court's questions. Ms. Milam stated that Mr. Khoury's conduct was disrespectful to the court and that everyone in the courtroom stopped to see what was going on because of Mr. Khoury's conduct. Aaron Jennen, who at the time was a Sebastian County Deputy Prosecuting Attorney, testified that he saw Mr. Khoury enter the courtroom wearing jeans and fishing shirt. Mr. Jennen testified that Mr. Khoury seemed to be annoyed with having to be in court, that his conduct was disruptive and disrespectful, that Mr. Khoury asked to be excused, and turned around as if he were leaving while the court was still addressing him. Mr. Jennen stated that Mr. Khoury did not leave the courtroom after the court told him that it was not finished with him.

After the hearing, Judge Tabor returned to his chambers and received a message to call Mr. Anderson. Judge Tabor called Mr. Anderson and Mr. Anderson told him that he had lied to the court when he initially said that he could not locate Mr. Khoury as he was actually found at the Sacred Ground coffee shop. Mr. Anderson told Judge Tabor that he spoke to Mr. Khoury and that Mr. Khoury told him to inform the court that he did not find Mr. Khoury. Judge Tabor asked Mr. Anderson to submit an affidavit to the court detailing what happened. Mr. Anderson provided the court with an affidavit and Judge Tabor issued to Mr. Khoury an Order to Show Cause. In the order, the court directed Mr. Khoury to show cause why he should not be held in contempt for his actions concerning his failure to appear at the mandatory appearance hearing at the time designated.

A hearing was held on the Order to Show Cause. At the hearing, there was testimony

from Raquel Smith, Joshua-Paul Anderson, Lanny Johnson, and Mr. Khoury. Mr. Khoury testified that Mr. Anderson lied about Mr. Khoury's whereabouts on December 11 and that the affidavit of Mr. Anderson submitted to the court was false. Following the hearing, the court found Mr. Khoury to be in contempt of court and imposed a Five Hundred Dollars (\$500.00) fine to be paid no later than January 27, 2014. Judge Tabor testified that the fine was not paid by the January 27 deadline and he set a hearing for February 6, 2014, regarding the failure to comply with the court's order.

On February 6, 2014, the court held a hearing and Mr. Khoury appeared. Mr. Khoury was given until the end of business on February 6, 2014, to file an appeal with a supersedeas bond or pay the fine. Mr. Khoury paid the fine by the end of business on February 6.

Mr. Khoury testified on his behalf at the hearing. In his testimony, he stated that he has difficulty hearing and uses a hearing aid. Mr. Khoury stated that if he turned from the court after requesting to be excused he did so but did not realize the court was still addressing him. Mr. Khoury stated that he did not receive notice of the December 11, 2013, hearing. There was testimony from Becky McKeever and Raquel Smith that notice was sent to Mr. Khoury at the fax number. Ms. McKeever and Ms. Smith both testified that the fax transmission report which would show the fax was sent and received could not be located. Mr. Khoury inquired of the witnesses, Barrett Milam and Aaron Jennen, how his conduct could have been disruptive. Mr. Khoury testified that there may be some resentment from Judge Tabor because he won so many criminal cases and that Ms. Milam and Mr. Jennen were employed as deputy prosecutors when Judge Tabor was the prosecuting attorney for Sebastian County. Ms. Milam testified that she was not employed by Judge Tabor as he had already assumed the bench at the time of her

employment.

Upon consideration of the formal complaint and attached exhibit materials, the response to it, the testimony presented, the prior disciplinary history, if any, and other matters before it, and the Arkansas Rules of Professional Conduct, Panel C of the Arkansas Supreme Court Committee on Professional Conduct found the following:

1. Naif Samuel Khoury violated Rule 3.3(a)(1) of the Arkansas Rules of Professional Conduct when he made false statements to the court at the January 10, 2014, show cause hearing that Joshua-Paul Anderson had lied to Becky McKeever and the court and that the affidavit of Joshua-Paul Anderson submitted to the court was false. Rule 3.3(a)(1) states that a lawyer shall not knowingly make a false statement of fact or law to a tribunal.

2. Naif Samuel Khoury violated Rule 8.4(a) of the Arkansas Rules of Professional Conduct when he directed Joshua-Paul Anderson to lie to the court administrator that he could not locate Mr. Khoury, which would have been a violation of Rule 3.4(c) of the Arkansas Rules of Professional Conduct for Mr. Khoury to do so. Rule 8.4(a) states that it is professional misconduct for a lawyer to violate or attempt to violate the rules of professional conduct, knowingly assist or induce another do so, or do so through the acts of another.

3. Naif Samuel Khoury violated Rules 8.4(c) of the Arkansas Rules of Professional Conduct when he stated to the court at the January 10, 2014, show cause hearing that Joshua-Paul Anderson had lied to Becky McKeever and the court and when he stated to the court that Joshua-Paul Anderson' affidavit submitted to the court was false, both of which were dishonest, deceitful, or misrepresentations of the facts. Rule 8.4(c) states that is is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

4. Naif Samuel Khoury violated Rule 8.4(d) of the Arkansas Rules of Professional Conduct when he failed to comply with the court's January 13, 2014, order requiring him to pay a fine of Five Hundred Dollars (\$500.00) by January 27, 2014. Rule 8.4(d) states that a lawyer shall 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 C, that NAIF SAMUEL KHOURY, Arkansas Bar No. 75070, be, and hereby is, SUSPENDED FROM THE PRACTICE OF LAW FOR A PERIOD OF SIX MONTHS from the date of the filing of this Findings and Order, assessed a fine of FIVE HUNDRED DOLLARS (\$500.00), costs of THREE HUNDRED FIFTY DOLLARS (\$350.00) for court reporter fees; and FIFTY DOLLARS (\$50.00) for administrative fees, for his conduct in this matter. All fines and costs assessed herein, totaling NINE HUNDRED DOLLARS (\$900.00) 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 C

By: /s/ Kathleen Bell, Chair, Panel C

Date: January 30, 2016

Original filed with the Arkansas Supreme Court
Clerk on February 9, 2016.