

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

IN RE: **WILLARD PROCTOR, JR**
 ARKANSAS BAR ID #87136
 CPC Docket No. 2014-054

CONSENT FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based from information related to Willard Proctor, Jr.'s representation of Jimmy Lee Williams on a Rule 37 Petition. Mr. Proctor is an Arkansas licensed attorney practicing primarily in Pulaski County, Arkansas.

1. On February 24, 2010, Mr. Williams was convicted of three counts of delivery of marijuana, two counts of cocaine and possession of drug paraphernalia. He was sentenced to consecutive terms of five (5) and ten (10) years on each count.

2. On September 4, 2011, Mr. Williams' conviction was affirmed on appeal.

3. On October 4, 2011, the Arkansas Court of Appeal mandate was issued to the Ouachita County Circuit Clerk.

4. On December 5, 2011, on behalf of Mr. Williams, Mr. Proctor filed a Petition for Relief Filed Pursuant to Rule 37 of the Arkansas Rules of Criminal Procedure.

5. On January 12, 2012, the State filed it's Response to Rule 37 Petition and Brief in Support of Dismissal with Prejudice. In it's petition, the State alleged that since the Rule 37 Petition had not been verified by Mr. Williams as required by Ark. R.Crim. P. 37.1(c) and 37.1(d), it was not a valid petition. The State also alleged that since the petition was not valid, it was not filed within the required sixty (60) day time frame since issuance of the appellate mandate, therefore, the court should dismiss the petition.

6. On January 26, 2012, Mr. Proctor filed an Amended Petition for Relief Filed Pursuant

to Rule 37 of the Arkansas Rules of Criminal Procedure. This time Mr. Proctor attached the required verification from Mr. Williams.

7. On January 26, 2012, Mr. Proctor also filed Defendant's Response to Plaintiff's Motion to Dismiss. In the response, Mr. Proctor argued that the amended petition was timely as "an amendment of a pleading relates back to the date of the original pleading..."

8. On January 30, 2012, the court issued its order dismissing the Rule 37 Petition for being untimely, therefore divesting the court of jurisdiction of the matter.

9. On February 8, 2012, Mr. Proctor filed a Notice of Appeal.

10. On June 27, 2012, the State filed a Motion to Dismiss Appeal. In its motion, the State argued as it had in the circuit court, that the original Rule 37 Petition was unverified and the second petition, although verified, was untimely and therefore the appeal should be dismissed.

11. The State also addressed Mr. Proctor's argument that the circuit court did have jurisdiction to address issues related to the procedural requirements for Rule 37. The State argued that because the petition was untimely, "the circuit court lacked jurisdiction to make a discretionary determination regarding the propriety of the amended petition".

12. On July 31, 2012, Mr. Proctor filed his Response to Motion to Dismiss. In his response, Mr. Proctor argued, among other things, that the circuit court did have jurisdiction to hear issue related to whether the procedural requirements of Rule 37 had been tolled under the relate back provisions of Arkansas Rule of Civil Procedure 15.

13. On August 14, 2012, the Supreme Court issued its Formal Order granting the State's Motion to Dismiss and finding the motion for extension as moot.

14. Mr. Williams' opportunity to present his Rule 37 Petition was taken away when Mr. Proctor failed to file the Rule 37 Petition, with verification, within the required time frame.

Upon consideration of the formal complaint and attached exhibit materials, the response,

the consent proposal, and 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 Willard Proctor, Jr.'s conduct violated Rule 1.3 when he failed to timely file his client Jimmy Lee Williams' verified Rule 37 Petition, resulting in a dismissal of the petition by the circuit court and dismissal of the appeal from the Supreme Court. Arkansas Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client for the representation.

WHEREFORE, in accordance with the consent to discipline presented by Mr. Proctor and the Executive Director, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel B, that Willard Proctor, Jr., Arkansas Bar ID#87136, be and hereby is, **CAUTIONED** for his conduct in this matter, and he agrees to and is ordered to pay \$50.00 case costs. The costs of 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 Consent 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/ Niki T. Cung, Chair, Panel B

Date: February 20, 2015

Original filed with the Arkansas Supreme Court
Clerk on February 24, 2015.