

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

IN RE: **BRYAN L. POWELL**, Respondent  
Arkansas Bar ID #2003151  
CPC Docket No. 2015-014

**FINDINGS AND ORDER**

The formal charges of misconduct upon which this Findings and Order is based were developed from information provided to the Committee by Rene Garcia on February 11, 2015. The information related to the representation of Garcia in a criminal appeal by Respondent Powell, an attorney practicing primarily in Bentonville, Arkansas. On February 20, 2015, Respondent was served with a formal complaint, to which he filed a timely response.

The facts found here are:

1. In Washington County Circuit Court, Rene Garcia was convicted of two counts of rape and sentenced to 600 months in the ADC on each count, to run consecutively.
2. On February 3, 2014, Powell lodged the record with the Supreme Court Clerk. The Garcia brief was due on March 17, 2014. Powell disputes Garcia's claim that Powell was paid \$1,300 to do Garcia's appeal.
3. On March 17, 2014, Powell filed a motion for extension of time to file brief, which was granted to April 16, 2014. After no Garcia brief was filed, on June 3, 2014, the State filed a motion to dismiss the appeal. By letter order of June 18, 2014, the motion to dismiss was denied and Powell was given a "final" extension to July 30, 2014. On his final extension deadline of July 30, 2014, Powell filed a motion for belated brief.

4. By letter order of August 20, 2014, the motion for belated brief was granted and Powell was given a new briefing extension to September 18, 2014. On September 11, 2014, the Court's Criminal Justice Coordinator ("Coordinator") wrote Garcia, copying Powell, about the status of his appeal.

5. On September 18, 2014, Powell filed another motion for belated brief. From the ADC, Garcia filed an affidavit dated September 20, 2014, about the status of his appeal. On September 24, 2014, the Coordinator wrote Garcia, copying Powell, about the status of his appeal.

6. By letter order of October 8, 2014, the motion for belated brief was granted and Powell was given a new briefing extension to November 7, 2014. On November 7, his new briefing deadline, Powell filed another motion for belated brief. From the ADC, Garcia filed an affidavit dated November 15, 2014, about the status of his appeal. On November 20, 2014, the Coordinator wrote Garcia about the status of his appeal, that no brief had been filed for him. From the ADC, Garcia filed an affidavit dated November 24, 2014, about the status of his appeal. By letter order of December 3, 2014, the motion for belated brief was granted and Powell was given a new and "final" briefing extension to January 5, 2015, with five of the twelve Court of Appeals judges being noted as voting to deny the motion.

7. On December 19, 2014, the Coordinator wrote Garcia about the status of his appeal, that his brief deadline was now January 5, 2015. On January 9, 2015, the Coordinator wrote Garcia about the status of his appeal, that no brief had been filed for him. On January 23, 2014, the Coordinator wrote Garcia about the status of his appeal, that no brief had been filed for him and about how he could go about requesting the court appoint him a new attorney.

8. On January 28, 2015, Stark Ligon emailed Powell a copy of the Coordinator's January 23, 2015, letter and asked for a response. From the ADC, Garcia filed an affidavit dated February 10, 2015, about the status of his appeal. As of February 13, 2015, no brief has been filed by Powell for Garcia. Powell received at least four extensions of brief time, to January 5, 2015, since his original brief deadline of March 17, 2014.

9. In his response, Mr. Powell informed the Panel that personal issues had impacted his ability to perform as a lawyer during the time he was involved in the Garcia appeal, he is participating in ArJLAP, that Garcia was his first appeal, and that since this complaint was filed the new attorney has filed a "no-merit" *Anders* brief for Garcia.

10. A check of the case docket reveals Garcia's pro se motion for a new appellate attorney was granted on March 11, 2015, new counsel was appointed in place of Powell, and appellant's brief has been filed.

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

A. The conduct of Bryan L. Powell violated Rule 1.1 in that after an initial briefing deadline of March 17, 2014, Powell sought and was granted at least four brief extensions to January 5, 2015, but as of February 13, 2015, he has filed no brief for his imprisoned client. Arkansas Rule 1.1 requires that a lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

B. The conduct of Bryan L. Powell violated Rule 1.2(a) in that assuming client Garcia

desired to have a brief filed in his appeal, as shown by his many affidavits filed and his many letters to the Court's Criminal Justice Coordinator, Powell failed for almost a year to abide by his client's objective that Powell get his first brief filed. Arkansas Rule 1.2 (a) requires that a lawyer shall abide by a client's decisions concerning the objectives of representation, subject to paragraphs (c) and (d), and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued...

C. The conduct of Bryan L. Powell violated Rule 1.3 in that by failing to file his client's first brief from March 17, 2014, through February 13, 2015, in spite of at least four briefing extensions granted to him, Powell failed to act with reasonable diligence and promptness in representing his client Garcia. Arkansas Rule 1.3 requires that a lawyer shall act with reasonable diligence and promptness in representing a client.

D. The conduct of Bryan L. Powell violated Rule 1.4(a)(3) in that Powell failed to keep his client Garcia reasonably informed about the status of Garcia's appeal. Arkansas Rule 1.4(a)(3) requires that a lawyer shall keep the client reasonably informed about the status of the matter.

E. The conduct of Bryan L. Powell violated Rule 1.4(b) in that if Powell had advised his client Garcia before Powell was employed to do Garcia's appeal, or thereafter, that circumstances and situations not involving Garcia might cause Powell to fail to file Garcia's first brief for almost a year, the client would have had an opportunity to consider employing other appellate counsel or seek appointment of other appellate counsel and possibly receive the relief the client sought, that a brief get filed. Arkansas Rule 1.4(b) requires that a lawyer shall explain a

matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

F. The conduct of Bryan L. Powell violated Rule 3.4(c) in that Powell was ordered by the Court of Appeals to file his client's brief by certain deadlines, including two "final" deadlines, and Powell failed to obey these orders, without showing any good cause for his failure. Arkansas Rule 3.4(c) requires 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.

G. The conduct of Bryan L. Powell violated Rule 8.4(d) in that from March 17, 2014, to present [February 18, 2015] Powell failed to file his client Garcia's first brief, thereby substantially delaying the processing of the appeal, conduct by Powell 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 **BRYAN L. POWELL**, Arkansas Bar ID# 2003151, be, and hereby is, **REPRIMANDED** for his conduct in this matter and assessed \$50.00 costs. In assessing this sanction, Respondent's lack of a disciplinary record was a factor. The \$50.00 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 with thirty (30) days of the date this Findings and Order is filed of record with the Clerk of the Arkansas Supreme Court.

In addition to the foregoing sanctions, the Panel also orders Mr. Powell to maintain his participation in the Arkansas Judge's and Lawyer's Assistance Program (ArJLAP); that he

adhere to whatever contract and treatment plan may be appropriate between ArJLAP and him; that ArJLAP provide the Executive Director with at least quarterly reports of Mr. Powell's progress; and that if Mr. Powell does not remain in ArJLAP for the full period of his contract or fails to comply with the reasonable requirements of his program he will be brought back before this Panel for possible further action.

The Panel also strongly suggests that Mr. Powell refrain from any and all further appellate practice in view of his admission of the problems that arose herein.

ARKANSAS SUPREME COURT COMMITTEE ON  
PROFESSIONAL CONDUCT - PANEL B

By:/s/ Niki T. Cung, Chair, Panel B

Date: August 24, 2015

Original filed with the Arkansas Supreme Court Clerk  
on September 18, 2015.