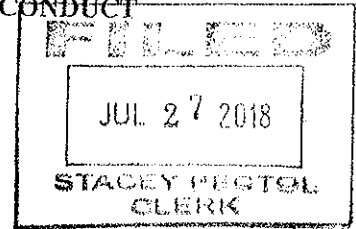


BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT  
PANEL B

IN RE: CHARLES DWAIN OLIVER  
ARKANSAS BAR ID #2001009  
CPC Docket No. 2018-003



FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from Charles Dwain Oliver's involvement in a probate matter. Mr. Oliver is an Arkansas licensed attorney practicing primarily in Hampton, Arkansas.

1. Ms. Jimmie Sue Bryant Roark hired Mr. Oliver to draft a will for her. The first Will was drafted in 2015. This first Will appointed two of her daughters, Cecilia and Cindy, as co-executrix and gave real estate, retirement, and monetary assets to her four children and grandchildren. Roark also appointed Oliver to probate her Will.

2. Several months later, in 2016 Roark returned to Oliver and made changes to her Will. This amended Will, executed on November 1, 2016, removed her daughter Cindy as co-executrix. In this Will changes were made to the amounts and distribution of assets of the estate. Oliver was still appointed to probate the Will. After receiving the second Will from Oliver, Roark apparently took the Will to the Calhoun County Circuit Clerk, where the Will was put in their vault.

3. A few days after making the changes to the Will, Roark appeared again at Oliver's office, apparently this time with her daughter Cindy, to make additional changes to her Will. This third Will was executed on November 10, 2016, with the daughter Cecilia as executrix. In this Will additional changes were made to the distribution of assets of the estate, while still appointing Oliver as attorney to probate the Will.

4. On January 1, 2017, Roark passed away. After her death, her daughter Cindy hired Attorney J. Michael Stuart to represent her regarding the estate. Stuart contacted Oliver by letter on January 11, 2017, to advise Stuart had the third Will, executed on November 10, 2016, in his

possession. Stuart also suggested that Oliver start the probate proceedings as soon as possible as Oliver was appointed in the Will to probate the Will.

5. On January 19, 2017, Oliver opened a probate case for the Estate of Jimmie Sue Bryant Roark in the Circuit Court of Calhoun County. When filing the Petition for Probate of Will and Appointment of Executrix, Oliver attached the second Will executed on November 1, 2016.

6. On January 24, 2017, the court entered its Order Probating Will and Appointing Executrix accepting the Will and naming the daughter Cecilia as executrix. Letters of Testamentary were issued and Acceptance of Appointment was filed.

7. When Cindy received a copy of the documents, her attorney, Stuart motioned for the court to set aside the January 24 order pursuant to Arkansas Rule of Civil Procedure 60. With her petition, Cindy attached a copy of the last will executed by Roark on November 10, 2016. Cindy also filed a Contest of Will Petition on the same day.

8. Cindy alleged in her petition that Oliver was put on notice by Attorney Stuart that they had possession of the final Will and that Oliver still presented the prior November 1 Will for probate to the court. The petition alleged that Oliver made false representations to the court, and failed to list or give notification of the probate of the estate to all heirs included in the Will. A hearing was set for March 31, 2017, on the petition, however, Oliver unsuccessfully filed for a continuance of that hearing.

9. The main difference between the November 1 Will and the November 10 Will comes in Article II, Section 4, numbered paragraph 4 of the November 10 Will. In the November 1 Will, Roark left her IRA at Woodmen of the World, her Valic account, and her Arkansas Teacher Retirement system proceeds to Cecilia and her two grandsons. In the November 10 Will, Roark changed it to leave the proceeds of those accounts to her four daughters, also the grandsons were added to receive \$1,000.00 each.

10. On March 20, 2017, Cindy filed a Petition for Probate and Appointment of Personal Representative. In her petition, Cindy requested the appointment of an independent estate administrator and estate probate attorney. The petition included the attached November 10 Will. Oliver filed a general denial response to the Petition.

11. At the March 31 hearing, Oliver appeared on behalf of the Executrix Cecilia and the Estate and Stuart appeared on behalf of the other three sisters. After a brief recitation of the facts and issues by the judge, there was back and forth colloquy between the court, Oliver, and Stuart. Oliver alleged that the November 10 Will was invalid and that is the reason why he filed the November 1 Will. Oliver was not a witness at the hearing.

12. Oliver alleges that at the time he drafted the November 10 Will Roark "was not herself", and he filed the November 1 Will because "that is the way she [Roark] wanted it." Oliver explained to the court that Roark came to his office with her daughter Cindy and asked him to make changes to the November 1 Will. According to Oliver, after making the changes to the Will, he looked up at Roark and asked her if she was okay with the changes. Roark looked over at Cindy and nodded her head yes.

13. Oliver brought into question Roark's mental state at the time he made changes to the November 1 Will on November 10. The following conversation occurred between the court and Oliver:

COURT: Okay. All right. So you are saying that on November the 1<sup>st</sup>, that Jimmie Sue Roark was acting with sound mind --

OLIVER: Yes, sir.

COURT: -- in her legal capacity to execute the will, but that she was not on November 10<sup>th</sup>?

OLIVER: Yes, she was, Your Honor. Your honor, I would like to --

COURT: Wait. Wait. Stop. All right. Is that what you're saying to me?

OLIVER: Yes, sir.

COURT: So nine days difference between November 1<sup>st</sup> and November 10<sup>th</sup>, somehow she became where she was incapacitated and was not able to make this will?

OLIVER: She was under a lot of medication, Your Honor and she had lost weight.

COURT: Then why -- She had lost weight in nine days.

OLIVER: She lost weight really fast, Your Honor.

COURT: So why didn't you just refuse to make the changes?

OLIVER: I just did the changes, because they weren't given to me by Ms. Roark. They were given to me by the daughter.

COURT: Okay. Then why did you make the changes?

OLIVER: Your Honor, at the date, I did not understand and I should have objected. But Ms. Roark was with her and I was caught by surprise. I wasn't expecting them. I work alone. They come in the office and I made the changes.

COURT: Who paid you for the change?

OLIVER: Nobody paid me to change it.

COURT: You just did it for free?

OLIVER: Well, I had done the will for free. Not free. I mean, I did the original will for Ms. Roark and I did change it, yes, sir.

COURT: So you were paid for the first will, but not the second one?

OLIVER: That's correct.

COURT: And when you filed the will for probate on January the 19<sup>th</sup>, did it not occur to you that you might be put in a position of being a witness in this case to testify as to what you say her capacity was on November the 10<sup>th</sup>?

OLIVER: It did occur to me, Your Honor.

COURT: So why did you still file it?

OLIVER: Your Honor, in my state, I had known Mr. Roark and Jimmie Roark for many years. (Inaudible). (Inaudible) daughters. She came to me with a situation and we -- I did tax returns. I did a lot of tax returns. (Inaudible). And when she asked me to do that will, Your Honor, which I think I first did September the 15<sup>th</sup>, '16, she was --

14. As to why Oliver filed the November 1 Will after being put on notice by Stuart that he had the November 10 Will, the following exchange took place:

COURT: Okay. And when you filed the November 1<sup>st</sup>, 2016, will on January the 19<sup>th</sup> of 2017, you were aware of Mr. Stuart's involvement in the case. Correct?

OLIVER: I was aware of that, Your Honor.

COURT: And were you aware that Mr. Stuart was aware of the November 10, 2016, will. Correct?

OLIVER: I was aware of that, Your Honor.

COURT: Okay. In light of all that, did it not give you pause to file the January 1<sup>st</sup> -- I'm sorry -- the November 1<sup>st</sup> will?

OLIVER: Your Honor, it did give me pause, but I followed the will of my client. I did, indeed, file it, had worked with me to prepare it. And I had been warned, if I might state, that there would be a lot of people contesting and trying to change that will. But the will I filed, Your Honor, was the will that I prepared with Ms. Jimmie Roark when there was no one in the room but she and I. And there's (inaudible). That's the will she wanted filed and that's the will I filed, Your Honor.

15. On April 13, 2017, Cecilia, through her personal attorney, filed a petition to contest the November 10 Will and have the November 1 Will declared the last Will and Testament of Roark. A response was filed April 26, 2017, by Stuart on behalf of the three sisters.

16. On May 1, 2017, the court entered its Order from the March 31 hearing. The court found (a) Oliver failed to give notice to the beneficiaries or Stuart Law Firm of the probate of the November 1 Will; (b) Oliver failed to notify the court of the November 10 Will, which revoked the November 1 Will; (c) Cecilia failed to file any objections to the Contest, Motion to Set Aside the Order; and (d) no contest of the November 10 Will had been filed pursuant to Arkansas statute. The court set aside the January 24, 2017, order appointing Cecilia as Executrix and probating the November 1 Will. Cecilia was removed as Executrix and an independent administrator was appointed. Oliver was also removed as attorney for the estate.

Upon consideration of the formal complaint and attached exhibit materials and the Arkansas Rules of Professional Conduct, Panel B of the Arkansas Supreme Court Committee on Professional Conduct finds:

1. That Mr. Oliver's conduct violated Rule 1.1 when (a) he filed the November 1 Will in the probate matter despite having drafted the November 10 Will that made significant changes to the November 1 Will, and (b) he filed the November 1 Will despite being put on notice by Attorney J. Michael Stuart that the executed November 10 Will, drafted by Oliver, existed. Arkansas Rule 1.1 states 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.

2. That Mr. Oliver's conduct violated Rule 1.16(a) when he failed to withdraw from representing the Roark Estate when he realized that he could be called as a witness in the matter as he was the attorney who drafted both the November 1 and November 10 Wills, thereby violating Arkansas Rule of Professional Conduct 3.7. Arkansas Rule 1.16 (a) states that a lawyer shall not represent a client, or where representation has commenced, shall withdraw from the representation of the client if the representation will result in violation of the rules of professional conduct or other law.

3. That Mr. Oliver's conduct violated Rule 3.1 when (a) he opened a probate case and filed the November 1 Will in the probate matter despite having drafted the November 10 Will that made significant changes to the November 1 Will, and (b) he filed the November 1 will despite being put on notice by Attorney J. Michael Stuart that the November 10 will, drafted by Oliver, existed. Arkansas Rule 3.1 states a lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law.

4. That Mr. Oliver's conduct violated Rule 3.3(a)(1) when he failed to file or make the court aware of the November 10 Will that made significant changes to the November 1 Will Oliver drafted for his now deceased client Roark. Oliver instead opened the probate case and filed the November 1 Will as the deceased's Last Will and Testament. Arkansas Rule 3.3(a)(1) states 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.

5. That Mr. Oliver's conduct violated Rule 3.3(a)(3) when (a) he filed the November 1 Will in the probate matter as the Last and Will and Testament of the decedent despite having drafted a Will executed by Roark on November 10 that made significant changes to the November 1 Will, and (b) he filed the November 1 will in the probate matter as the Last Will and Testament of the decedent despite having been put on notice by Attorney J. Michael Stuart of the November 10 Will. Arkansas Rule 3.3(a)(3) states that a lawyer shall not knowingly offer evidence that the lawyer knows to be false. If the lawyer, the lawyer's client, or witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures including, if necessary, disclosure to the tribunal.

6. That Mr. Oliver's conduct violated Rule 3.4(a) when he failed to give the other heirs of the estate and Attorney J. Michael Stuart notice of the November 1 Will prior to and when he opened the probate estate. Arkansas Rule 3.4(a) states that a lawyer shall not unlawfully obstruct another party's access to evidence or unlawfully alter, destroy, or conceal a document or other material having potential evidentiary value.

7. That Mr. Oliver's conduct violated Rule 3.4(c) when he failed to give the other heirs of the estate and Attorney J. Michael Stuart notice of the November 1 Will prior to and when he opened the probate estate. Arkansas Rule 3.4(c) states 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.

8. That Mr. Oliver's conduct violated Rule 3.7(a) when he opened a probate estate and filed the November 1 Will while having firsthand knowledge of the existence of the November 10 Will, having drafted the November 10 Will and being put on notice of the Will by Attorney J. Michael Stuart. Oliver advised the court at the March 31, 2017, hearing that he was aware that he may be called as a witness at the time he filed the November 1 Will. Arkansas Rule 3.7(a) states that a lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness.

9. That Mr. Oliver's conduct violated Rule 8.4(a) when (a) he opened a probate estate and filed the November 1 Will while having firsthand knowledge of the existence of the November 10 Will, having drafted the will and being put on notice of the November 10 Will by Attorney J. Michael Stuart, and (b) he advised the court at the March 31, 2017, hearing that he was aware that he may be called as a witness at the time he filed the November 1 Will. Arkansas 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 to do so, or do so through the acts of another.

10. That Mr. Oliver's conduct violated Rule 8.4(c) when (a) he opened a probate case and filed the November 1 Will in the probate matter despite having drafted the November 10 Will that made significant changes to the November 1 Will, (b) he filed the November 1 Will despite being put on notice by Attorney J. Michael Stuart that the November 10 Will existed, and (c) he failed to give the other heirs of the estate and Attorney J. Michael Stuart notice of the November 1 Will prior to and when he opened the probate estate. Arkansas Rule 8.4(c) states that it is professional misconduct for a lawyer to engage involving dishonesty, fraud, deceit or misrepresentation

11. That Mr. Oliver's conduct violated Rule 8.4(d) when (a) he opened a probate case and filed the November 1 Will in the probate matter despite having drafted the November 10 Will that



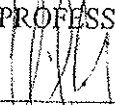
made significant changes to the November 1 Will, (b) he filed the November 1 Will despite being put on notice by Attorney J. Michael Stuart that the November 10 Will existed, and (c) he failed to give the other heirs of the estate and Attorney J. Michael Stuart notice of the November 1 Will prior to and when he opened the probate estate. Arkansas Rule 8.4(d) states it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

12. That Mr. Oliver was served with the Formal Complaint and Summons in this matter on January 10, 2018. He failed to file a response and pursuant to §9.C(1) of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law, all allegations are deemed admitted and Mr. Oliver has waived any right to a public hearing in this matter.

**WHEREFORE**, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel B, that **CHARLES DWAIN OLIVER**, Arkansas Bar ID #2001009, be, and hereby is, **SUSPENDED FOR A PERIOD OF SIXTY (60) MONTHS** for his conduct in this matter. In assessing this sanction, Mr. Oliver's prior disciplinary record was a factor. Charles Dwain Oliver shall pay costs in this matter in the amount of **FIFTY DOLLARS (\$50.00)** in accordance with Section 18.A of the Procedures. In addition, §9.C(1) of the Procedures provide that the failure to provide a written response to a formal complaint may result in the separate imposition of a sanction less than a suspension of license. The Panel imposes a separate sanction of **REPRIMAND** for Oliver's failure to respond to the formal complaint. The costs assessed herein totaling **FIFTY DOLLARS (\$50.00)** 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.

Pursuant to Section 17E.3(c)(iii) of Procedures, the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel B, hereby directs that an interim suspension be entered by separate order in this matter.

ARKANSAS SUPREME COURT COMMITTEE  
ON PROFESSIONAL CONDUCT - PANEL B

  
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Michael E. Mullally, Chair, Panel B

Date: June 26, 2018