



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

IN RE: **ROBERT ALSTON NEWCOMB**, Respondent
Arkansas Bar No. 73087
Docket No. CPC-2020-021

CONSENT FINDINGS & ORDER

The formal charges of misconduct upon which this Consent Order is premised, involving respondent attorney Robert A. Newcomb of Little Rock, Arkansas, arose from information brought to the attention of the Committee on Professional Conduct by Christopher Young. The Respondent agrees and Panel B finds the facts as follows:

1. Christopher Young (Young) was a policeman for the City of Little Rock. Young was under investigation by the Little Rock Police Department (LRPD) in 2016, and hired Newcomb to represent him. Young received a termination letter from LRPD on January 13, 2017. Newcomb then represented Young before the Little Rock Civil Service Commission ("LRCSC") in Young's effort to gain relief. After a hearing on July 13, 2017, the LRCSC upheld the termination. On August 22, 2017, Newcomb filed an appeal to Pulaski Circuit Court, as No. 60CV-17-4502.

2. On March 22, 2018, the circuit court issued an order with a briefing schedule, requiring Young's brief to be filed by April 25, 2018. Newcomb failed to file a brief, and on April 30, 2018, the City filed its motion to dismiss. Newcomb then filed Young's Brief on May 10, 2018. The City filed its Response on May 22, 2018. On June 20, 2018, the court filed its Order affirming the City's agency decision and closing the file.

3. On June 26, 2018, Newcomb filed a motion for new trial and brief. The City filed a response and brief. On July 23, 2018, the court filed its Order denying Young's motion for new trial.

4. As shown by texts between them, Young contacted Newcomb, inquired about an appeal, and delivered to Newcomb the \$800 Newcomb requested to start the appeal. Newcomb filed the Notice of Appeal on August 8, 2018, and the Young appeal was docketed as No. CV-18-917 on November 5, 2018. A filing fee of \$165 is shown as being paid by or for appellant Young. Appellant Young's brief is shown as being due by December 15, 2018. Newcomb failed to file any brief for Young.

5. On November 2, 2018, after Young's wife Cristie Young ("Cristie") received a \$40,000 lump sum retirement settlement from LOPFI, Young and Cristie asked Newcomb to give them a number that represented each of their several legal matter obligations to Newcomb for Newcomb's legal services in all their matters to that point and an estimate of what more was needed to cover expected future legal services. Newcomb told them \$9,800, the Youngs met with him, and provided Newcomb a check for that amount.

6. On or about April 5, 2019, Chris Young and Newcomb spoke by telephone. According to Young, Newcomb told him that Newcomb was sorry that he messed up, and did not get filings done on time due to his going through some personal issues. Newcomb told Young there was nothing that could be done about Young's appeal. Young stated that Newcomb told him that Newcomb owed them (Young and his wife) a lot of money.

7. Despite several efforts to contact Newcomb after April 5, that was the last substantive communication Young had with Newcomb about Young's legal matter.

8. Young filed his grievance with the Office of Professional Conduct (OPC) on June 13, 2019. OPC emailed Newcomb the Young grievance on June 25, 2019, using the email address Newcomb has registered with the Arkansas Supreme Court Clerk, and requested an informal response by July 15, 2019. When no response was received, OPC emailed Newcomb on July 17, 2019, again requesting a response. When no response was received, OPC again emailed Newcomb on August 24, 2019, requesting a response. Newcomb sent OPC an email on August 24, stating he would get a response in soon.

9. On August 21, 2019, the Court of Appeals issued a Formal Order dismissing Young's appeal for failure to file a brief.

10. On August 27, 2019, Newcomb sent OPC a letter, as his informal response, in which he admitted he was at fault in the failure of Young's appeal.

11. According to Young, Newcomb has failed to refund to Young any unexpended amounts for appeal expenses or any unearned fees paid by Young to Newcomb.

Following Respondent Attorney's receipt of the formal complaint, the attorney entered into discussion with the Executive Director which has resulted in an agreement to discipline by consent pursuant to Section 20.B of the Arkansas Supreme Court Procedures Regulating Professional Conduct of Attorneys at Law (2012). Upon consideration of the formal complaint and attached exhibits, admissions made by the respondent attorney, the terms of the written consent, the approval of Panel B of the Committee on Professional Conduct, and the Arkansas Rules of Professional Conduct, the Committee on Professional Conduct finds:

- A. The conduct of Newcomb violated Rule 1.1 in that by failing to file the initial appellate brief in No. CV-18-917 for his client Chris Young in December 2018, or thereafter, Newcomb caused the Young appeal to be dismissed in August 2019.

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 Newcomb violated Rule 1.3 in that by failing to file Chris Young's initial appellate brief in No. CV-18-917, Newcomb failed to act with reasonable diligence and promptness in representing Young.

Arkansas Rule 1.3 requires that a lawyer shall act with reasonable diligence and promptness in representing a client.

C. The conduct of Newcomb violated Rule 1.4(a)(3) in that in late 2018-early 2019, Newcomb failed to keep his client Christopher Young reasonably informed about the status of Young's appeal in CV-18-917, thereby preventing Young from being able to take action to ensure that his appeal brief was filed by some lawyer and his appeal was preserved.

Arkansas Rule 1.4(a)(3) requires that a lawyer shall keep the client reasonably informed about the status of the matter.

D. The conduct of Newcomb violated Rule 1.4(a)(4) in that in April-July 2019, Newcomb failed to promptly comply with reasonable requests for information from his client Christopher Young, thereby depriving Young of the opportunity to take action, including engaging another lawyer to try to save Young's appeal in No. CV-18-917.

Arkansas Rule 1.4(a)(4) requires that a lawyer shall promptly comply with reasonable requests for information.

E. The conduct of Newcomb violated Rule 1.16(d) in that since the end of Newcomb's representation of Christopher Young in August 2019, Newcomb has failed to provide

an accounting of Newcomb's use of the \$9,800 paid to Newcomb by Mr. and Mrs. Young in November 2018 for their various legal matters, or to refund any unearned portion of those funds.

Arkansas Rule 1.16(d) requires that, upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

F. The conduct of Newcomb violated Rule 8.4(d) in that Newcomb's failure to file Christopher Young's initial appeal brief in No. CV-18-917 caused Young's appeal of his termination by the LRPD to be dismissed.

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, in accordance with the consent to discipline presented by Mr. Newcomb and the Executive Director, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct that Respondent Robert A. Newcomb, Arkansas Bar No. 73087, be and hereby is, **CAUTIONED** for his conduct in this matter; ordered to pay costs of \$250.00; and ordered to pay \$2,000.00 restitution to Christopher Young. The restitution and 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.

The sanction ordered was based, in part, on the attorney's prior disciplinary record.

ARKANSAS SUPREME COURT COMMITTEE
ON PROFESSIONAL CONDUCT - PANEL B

By Stephen R. Crane
Stephen R. Crane, Chairperson

Date 12-30-20