

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL B

FILED

APR 18 2012

**LESLIE W. STEEN
CLERK**

IN RE: THOMAS WILLIAM BURNS, Respondent
Arkansas Bar ID#2002006
CPC Docket No. 2011-077

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information obtained through the Orders of the Arkansas Court of Appeals in the matter of *Capitol City Tree Service and Landscaping v. Martin Bowen*, CA11-51. The information related to the representation of Capital City Tree Service by Respondent in the appellate matter and the underlying matter which led to the attempted appeal.

On September 15, 2011, Respondent was served with a formal complaint. A timely response was filed. The matter then proceeded to ballot vote before Panel B of the Committee.

The factual background sent to the Committee was as follows:

On November 4, 2009, Thomas Burns, an attorney practicing primarily in Benton, Arkansas, filed a Complaint in Pulaski County Circuit Court after Martin Bowen appealed the District Court Judgment entered against him in favor of Capital City Tree Service and Landscape to the Pulaski County Circuit Court. A Motion to Dismiss was filed by Martin Bowen on November 12, 2009. The basis for the Motion to Dismiss was Mr. Burns' failure to comply with all the requirements of Rule 9(c)(1) of the Arkansas District Court Rules. Mr. Bowen asserted that Mr. Burns did not comply with Rule 9(c)(1) because he failed to serve Mr. Bowen within thirty (30) days after the appeal was perfected.

Mr. Burns denied that he failed to comply with the Rule and set out that the matter

was de novo from the District Court and that his client had 120 days from the day they filed the Complaint to perfect service. On September 15, 2010, Circuit Judge Chris Piazza's Order Granting the Motion to Dismiss was filed of record with the Pulaski County Circuit Clerk.

On October 15, 2010, Mr. Burns filed a Notice of Appeal to the Arkansas Court of Appeals. On January 13, 2011, Mr. Burns filed the record on appeal with the Clerk of the Arkansas Court of Appeals. The Appellant's brief was due no later than February 22, 2011.

On February 22, 2011, Mr. Burns received a seven (7) day Clerk's extension until March 1, 2011. On March 1, 2011, Mr. Burns filed a Motion to Enlarge Time. Mr. Burns explained that he had lost his assistant and was in the process of hiring a new one. While he was doing so, he had been unable to complete the brief, research and binding by March 1, 2011. The Court granted the Motion and gave Mr. Burns until March 31, 2011 to file Appellant's brief.

Giving the same reason, Mr. Burns filed a Second Motion for Extension of Time on March 31, 2011. The Court granted Mr. Burns until April 30, 2011 to file Appellant's brief.

On June 6, 2011, Appellee filed a Motion to Dismiss. Mr. Burns had not filed Appellant's brief after the extensions received to do so. Mr. Burns did not file a timely Response to the Motion to Dismiss but tendered one on June 20, 2011. In the tendered Motion, Mr. Burns advised that his client wished to dismiss the appeal anyway and that is why no brief had been filed. On June 29, 2011, the Court of Appeals dismissed the appeal.

Mr. Burns failed to comply with the Arkansas District Court Rules when the District Court matter was appealed to the Circuit Court. In failing to do so, his client's Complaint was dismissed, after having been found valid in District Court. The client had no opportunity to present its claim against Martin Bowen for the \$4,125 claimed to have been owed by him.

After the matter was dismissed, Mr. Burns did not file a brief after having requested multiple extensions of time to do so and advising the Court the reason was the loss of an assistant. When the Motion to Dismiss was filed, Mr. Burns tendered a Response setting out that his client did not wish to pursue an appeal. At no time prior to that tendered Response did Mr. Burns make the Court aware of that information.

Contact was made by the Executive Director with Mr. Burns' client, Charles Shaw, about the appellate matter. Mr. Shaw explained that he was not aware that Mr. Burns had withdrawn his appeal. This is contrary to the information provided to the Court in the tendered Response to the appellee's Motion to Dismiss.

In responding to the formal disciplinary complaint, Mr. Burns admitted that he did not handle the matter at issue as smoothly as he should have. He acknowledged that he missed the deadline set by the Court of Appeals and offered that he was going through a difficult time in his life at that time, but did accept responsibility for missing the deadline. Mr. Burns expressed regret for his mistakes in the matter and explained he planned to make his client, Charles Shaw, whole for the mistakes. Mr. Burns also admitted that he did not specifically seek Mr. Shaw's permission before dismissing the appeal because of their lengthy relationship, Mr. Burns understood that Mr. Shaw allowed him to handle litigation as he saw fit.

Mr. Burns agreed that his handling of the legal matter for Mr Shaw was inadequate. He also admitted that his missing deadlines violated Rule 1.3.

Mr. Burns explained that he did not mean to mislead the Court with regard to the Appellant wanting to dismiss the appeal and denied he violated Rule 8.4(c) but did concede that his phraseology could be interpreted to mean that he was not candid. He also conceded that

under the current interpretation of Rule 8.4(d), his inactions would be deemed prejudicial.

Upon consideration of the formal complaint and attached exhibit materials, the response to it, 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 Mr. Burns' conduct violated Rule 1.1 when Mr. Burns was not thorough enough in his representation of Capital City Tree Service and Landscape to be certain that he complied with all the requirements of Rule 9(c)(1) of the Arkansas District Court Rules, resulting in his client's Complaint being dismissed in Circuit Court. Rule 1.1 requires that a lawyer provide competent representation to a client, including the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

2. That Mr. Burns' conduct violated Rule 1.3 because he failed to file an Appellant's brief by April 30, 2011, the last extension given to his client, Capital City Tree Service and Landscape, to do so based on Mr. Burns' requests for extension. Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

3. That Mr. Burns' conduct violated Rule 8.4(c) when he provided false information to the Court of Appeals in his tendered Response to the Appellee's Motion to Dismiss Appeal when he stated his client did not wish to pursue an appeal of the matter; when he failed to advise his client that he had tendered a Response to a Motion to Dismiss Appeal setting out his client did not wish to pursue an appeal; and when as late as July 31, 2011, Mr. Burns had not advised his client, Mr. Shaw, that the appeal was no longer being pursued and had been dismissed. Rule 8.4(c) requires that a lawyer not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

4. That Mr. Burns' conduct violated Rule 8.4(d), because Mr. Burns failed to comply with all of the requirements of Arkansas District Court Rule 9(c)(1) to serve all parties within thirty (30) days of the filing of the certified copy of the District Court docket sheet, thereby causing his client's lawsuit against Mr. Bowen to be dismissed, and Mr. Shaw to lose a \$4,125 judgment he had obtained against Bowen in District Court, and, because Mr. Burns' failure to file a timely Appellant brief by the date given to him following his last request for extension of time to file a brief caused the appeal to be dismissed and denied his client the opportunity to appellate review of the Order dismissing the lawsuit in Circuit Court. Rule 8.4(d) requires that a lawyer not engage in conduct 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 THOMAS WILLIAM BURNS, Arkansas Bar ID# 2002006, be, and hereby is, CAUTIONED for his conduct in this matter. Mr. Burns is also assessed the costs of this proceeding in the amount of FIFTY DOLLARS (\$50), pursuant to Section 18.A. of the Procedures. The 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.

ARKANSAS SUPREME COURT COMMITTEE
ON PROFESSIONAL CONDUCT - PANEL B

By: 
Barry Deacon, Chair, Panel B

Date: Feb. 23, 2012