

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

PANEL A

IN RE: CLARENCE PHIL SHOFFNER, Respondent
Arkansas Bar ID#76114
CPC Docket No. 2005-107

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Robert C. Burns, in an Affidavit dated August 4, 2005. The information related to the sale of certain property to Mr. Burns during July 28, 2003. Mr. Shoffner was attorney of record for the sellers of the property. He was also the Settlement Agent for the sale of the property.

On August 20, 2005, Respondent was served with a formal complaint, supported by affidavits from Robert C. Burns and Cynthia Nicholson of Independence County Abstract Company. Respondent filed a timely response to the formal disciplinary complaint. The matter then proceeded to ballot vote before Panel A pursuant to the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law.

The information before the Panel reflected that on July 28, 2003, Mr. Burns closed on certain property in Bradford, Arkansas. Clarence Phil Shoffner, an attorney practicing in Searcy, Arkansas, was the attorney of record for the sellers of the property. Mr. Shoffner was also the Settlement Agent for the closing of the sale of the property. Mr. Shoffner was the attorney who prepared the Executor's Deed for the property purchased by Mr. Burns.

Prior to the closing, which occurred in Mr. Shoffner's office, a Title Insurance Commitment was prepared setting out all the requirements for obtaining title insurance on the property. Mr. Burns believed when Mr. Shoffner closed the transaction that the requirements had been met since the fee had been paid for the title insurance. Mr. Burns did not receive an owner's title policy. Mr. Shoffner included a copy of a canceled check made payable to Jackson County Land Title for title insurance. The check was dated July 28, 2003, but was not

paid by Mr. Shoffner's bank until January 26, 2004. Mr. Shoffner also provided the Panel with a copy of a Quiet Title Action he had filed in June 2003 related to the property purchased by Mr. Burns. Mr. Shoffner explained that his then secretary handled the closing in his office and he was not directly involved.

Mr. Burns was unaware that title to the property was not good until he attempted to sell the property. It was at that time that Mr. Burns learned that title insurance could not be guaranteed because Mr. Shoffner had not taken care of all the matters entrusted to him. Cynthia Nicholson attempted to help Mr. Burns with the issues. However, he was forced to hire another attorney to assist him. Mr. Burns paid \$1768.56 to subsequent counsel to clear up the problems he was facing due to Mr. Shoffner failing to act.

Ms. Nicholson explained that in January 2005 when contacted by Mr. Burns, she learned that a title policy was never written on the property purchased by Mr. Burns because the requirements in Schedule B-1 of the commitment were never met. Ms. Nicholson contacted Mr. Shoffner's office for Mr. Burns and explained the problem to Mr. Shoffner's secretary. Mr. Shoffner did not contact Ms. Nicholson despite the messages left by her for him. Despite the telephone calls from Mr. Burns and from Ms. Nicholson, Mr. Shoffner advised the Panel that he was unaware that Jackson County Land Title Services had not issued a final policy of title insurance until the filing of the disciplinary Complaint.

Along with his response to the formal disciplinary complaint, Mr. Shoffner tendered for delivery to Mr. Burns a check in the amount of \$1,768.56 to reimburse him for the fees incurred in connection with the quiet title action Mr. Burns initiated with other counsel. The Panel members were made aware that the check had been delivered to Mr. Burns.

Upon consideration of the formal complaint and attached exhibit materials, the response to it, the fact that restitution had been made to Mr. Burns by Mr. Shoffner, other matters before it, and the Arkansas Model Rules of Professional Conduct, Panel A of the Arkansas Supreme Court Committee on Professional Conduct finds:

1. That Mr. Shoffner's conduct violated Model Rule 1.3 because while representing the Estate of David L. Cox, he failed to timely obtain a title policy for Robert Burns who was the purchaser

of property from the Estate, and because while acting as attorney for the Estate of David L. Cox, he failed to comply with the requirements given to him by Jackson County Land Title Services in order to secure title insurance for Robert C. Burns who was purchasing property from his client, the Estate of David L. Cox. Model Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

2. That Mr. Shoffner's conduct violated Model Rule 8.4(c) when he accepted funds at the time of the sale of the property from Mr. Burns for purchase of a title insurance binder but failed to obtain the title insurance and when he was dishonest with Robert Burns when he failed to advise him in the months following the sale of the property to him by his client that no title insurance commitment had been secured on Mr. Burns' behalf. Model Rule 8.4(c) requires that a lawyer not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.
3. That Mr. Shoffner's conduct violated Model Rule 8.4(d) because his failure to obtain a title insurance policy for Mr. Burns caused unnecessary delay for him and his wife when they entered into an agreement to sell the property which had been purchased from his client and because his failure to comply with the requirements given to him by Jackson County Land Title Services and the resulting failure to obtain title insurance for Mr. Burns, as he advised would at the time of the sale of the property, created the need for Mr. Burns to hire counsel to assist him in obtaining clear title to the property. The hiring of counsel resulted in attorney's fees paid by Mr. Burns in the amount of \$1,768.56. This corrective legal work would not have been necessary but for Mr. Shoffner's failure to complete his duties, in the sale of the property to Mr. Burns. Model Rule 8.4(d) requires that an attorney not 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 A, that CLARENCE PHIL SHOFFNER, Arkansas Bar ID# 76114, be, and hereby is, CAUTIONED for his conduct in this matter. Further, pursuant to Section 18.A of the

Procedures, Mr. Shoffner is assessed the costs of this proceeding in the amount of \$50. 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 A

By: _____

Bart F. Virden, Chair, Panel A

Date: _____