

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

IN RE: OSCAR STILLEY

ARKANSAS BAR ID #91096

CPC DOCKET No. 2001-037

FINDINGS AND ORDER

The formal charges of misconduct arose from the Arkansas Supreme Court case of Ortho-Neuro Medical Associates v. Tonya M. Jeffrey, 2000-1480. Oscar Stilley, an attorney practicing law in Fort Smith, Arkansas, represented Ortho-Neuro. On December 28, 2000, Mr. Stilley filed a Motion for Rule on the Clerk. In his Motion for Rule on the Clerk, he stated that a notice of appeal was filed on September 20, 2000, making the deadline for filing the record December 19, 2000. Mr. Stilley admitted that Airborne Express delivered a package containing the record. According to Mr. Stilley, Airborne Express attempted delivery on December 19, 2000 which, according to Mr. Stilley, constituted a tender of the record prior to the deadline. Mr. Stilley attributed the nondelivery of the record due to a move by the Supreme Court Clerk's office. On January 25, 2001, the Arkansas Supreme Court issued a Per Curiam Order denying Mr. Stilley's Motion for Rule on the Clerk. On February 6, 2001, Mr. Stilley filed a Motion for Rehearing on the denial of the Motion for Rule on the Clerk. In his Petition for Rehearing of Motion for Rule on the Clerk, Mr. Stilley stated the following:

"It is not my fault that the package was not delivered on the first attempt. I don't know why the package was not delivered that day. It really does not matter"

...

"If I could prove that the Clerk's personnel were not available when the Airborne Express delivery man entered, would that change the equation? How could that be done and why would it matter anyway? Should a citizen's appeal rights turn on the circumstances of a delivery attempt that the litigant knew nothing about and over which the litigant had no control? Would an affidavit from the deliveryman help? It is almost incontrovertible that the deliveryman walked in, found no one to sign for the package, and left."

...

"Is it too much to ask the Court to consider this question, despite the fact that a deliveryman found no one to sign for the package? Surely justice is not so scarce and dear that Appellant cannot have a small amount of the Court's time to decide this question."

...

"Is it too much to expect that the Court will not punish a litigant for something that is totally out of his control? This Court cannot reasonably expect counsel to accompany their packages to ensure safe delivery, or to hand deliver every package, or to just generally doubt that an overnight carrier with a success rate of 99% plus is going to fail, for whatever reason, on a specific occasion."

...

"Each time that the Court acts in a way that is not rational, predictable, or reasonable, the Court loses part of its referent power. When a court deprives a citizen of rights that would otherwise accrue, based upon events which are not reasonably or logically within the control of that citizen, the court loses part of its referent power. "

...

"Therefore, the Court's published opinion stating that the record was not delivered to the Clerk's office on the 19th of January is inaccurate. The record was delivered then, but it was not left. A perfect tender was made, but it was not accepted for the apparent reason that no one could be found."

On March 1, 2001, the Arkansas Supreme Court denied the Petition for Rehearing on Motion for Rule on the Clerk. In addition, the Arkansas Supreme Court referred the matter to the Committee on Professional Conduct.

Mr. Stilley filed a response to the formal complaint. Concerning the alleged violation of Model Rule 1.3, Mr. Stilley stated that he did not understand the charge and therefore denied the same and requested clarification of the charge. Concerning the alleged violation of Model Rule 3.1, Mr. Stilley stated that the accusation was clear and understood but denied violating the rule as he did not mean the pleading to be "argumentative" or "devoid of any legal or factual basis for reversing a previous decision of the court." Concerning the alleged violation of Model Rule 3.2, Mr. Stilley stated that he did not understand the charge and denied violating the rule by stating that he was unaware of any law or rule that provides for rule on clerk in civil cases upon "acceptance of responsibility" and, unless there is some such law, undersigned counsel is puzzled how "acceptance of responsibility" had anything to do with the case. Concerning the allegation of violation of Model Rule 3.4, Mr. Stilley stated that he did not understand the charge and denied violating the rule by stating that he was unaware of any law or rule that provides for rule on clerk in civil cases upon "acceptance of responsibility" and, unless there is some such law, undersigned counsel is puzzled how "acceptance of responsibility" had anything to do with the case. Concerning the alleged violation of Model Rule 8.4(d), Mr. Stilley stated that he did not understand the charge and therefore denied the same and requested clarification of the charge.

Upon consideration of the formal complaint, the response herein, and the Arkansas Model Rules of Professional Conduct, the Committee on Professional Conduct finds:

1. That Mr. Stilley's conduct violated Model Rule 1.3 when he knew that a record of the lower court proceedings was due to be filed with the Arkansas Supreme Court on or before December 19, 2000, he failed to have the record filed in a timely manner. Model Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.
2. That Mr. Stilley's conduct violated Model Rule 3.1 when the Arkansas Supreme Court found his Petition for Rehearing of Motion for Rule on the Clerk to be argumentative and devoid of any legal or factual basis for reversing a previous decision of the Court. Model Rule 3.1 requires, in pertinent part, that a lawyer not bring or defend a

proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous.

3. That Mr. Stilley's conduct violated Model Rule 3.2 when he failed to accept

responsibility in having the transcript of the lower court proceedings filed in a timely manner caused unnecessary delay to his client's case. Model Rule 3.2 requires that a lawyer make reasonable efforts to expedite litigation consistent with the interests of the client.

4. That Mr. Stilley's conduct violated Model Rule 8.4(d) when he refused to accept responsibility in his December 28, 2000 Motion for Rule on the Clerk knowing the Arkansas Supreme Court requires an acceptance of responsibility on the moving party in Motions for Rule on the Clerk and when he failed to accept responsibility in his February 6, 2001 Motion for Rehearing of Motion for Rule on the Clerk knowing that the Arkansas Supreme Court requires an acceptance of responsibility on the moving party in Motion for Rule on the Clerk. Model Rule 8.4(d) requires that a lawyer 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 that OSCAR STILLEY, Arkansas Bar ID No. 91096, be, and hereby is, CAUTIONED for his conduct in this matter.

ARKANSAS SUPREME COURT COMMITTEE

ON PROFESSIONAL CONDUCT

By: _____

Bart Virden

Chairman

Date: _____