

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

IN RE: ALVIN D. CLAY

ARKANSAS BAR ID No. 96075

CPC Docket No. 2005-042

**CONSENT FINDINGS AND ORDER**

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee from a referral by the Arkansas Supreme Court on February 10, 2005. The information related to the representation of Rodell Avery, Jr., by Alvin D. Clay, Attorney at Law, Little Rock, Arkansas, in 2003 and 2004.

Alvin D. Clay ("Clay" herein) represented Rodell Avery, Jr., at trial in Calhoun County Circuit Court wherein Mr. Avery was charged with three (3) counts of kidnapping, aggravated robbery, and one count of escape in the second degree. Avery was found guilty of aggravated robbery and kidnaping charges and was sentenced to three hundred sixty (360) months in the Arkansas Department of Correction. Avery was found guilty of escape and was sentenced to one hundred twenty (120) months in the Arkansas Department of Correction. A Judgment and Commitment Order was entered on September 16, 2003. No timely notice of appeal was filed within thirty (30) days from the filing of the Judgment and Commitment Order.

On October 14, 2003, Clay filed a motion to vacate the judgment pursuant to Rule 37.1 of the Rules of Criminal Procedure and a motion to dismiss the escape charge on jurisdictional grounds. On November 6, 2003, the Calhoun County Circuit Court denied the motions and an order reflecting the decision of the Calhoun County Circuit Court was filed on November 13. Clay filed a notice of appeal from the November 6, 2003, Order on November 20, 2003. In the notice of appeal, Clay stated that the matter being appeal was the decision of November 6, 2003.

On August 23, 2004, Clay filed a timely brief but cited three points for reversal of the judgment of conviction and one point concerning the merit of the motion to vacate the judgment. The State of Arkansas

filed a petition for writ of certiorari to complete the record with respect to one of the points for reversal that concerned the judgments of conviction. The Arkansas Supreme Court granted the petition for writ of certiorari and directed Clay to file a substituted brief no later than December 8, 2004. No substituted brief was filed by Clay. The State of Arkansas filed a reply brief on January 5, 2005.

On February 10, 2005, the Arkansas Supreme Court issued a Per Curiam Order finding that, as Clay failed to file the substituted brief as directed, the appeal was dismissed pursuant to Arkansas Supreme Court Rule 4-5, and referred the matter to the Office of Professional Conduct for disciplinary action.

Clay admitted that he filed the October 14, 2003, motion to vacate the judgment based on jurisdictional grounds. Clay believed that by doing so, the time for filing the notice of appeal from the judgment and commitment order would be extended. Upon the denial of the motion, Clay stated that he mistakenly indicated the appeal was from the November 6, 2003, denial of the motion. It was his intent to appeal from the denial of the motion and the judgment of conviction. Clay admitted that he erred in filing the notice of appeal from the denial of the motion rather than from the judgment and commitment order.

Upon consideration of the formal complaint and attached exhibit materials, the response to it, and 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 Alvin D. Clay violated Model Rule 1.3 when he failed to file a substituted brief no later than December 8, 2004, as directed by the Arkansas Supreme Court. Model Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

2. That Alvin D. Clay violated Model Rule 3.4(c) when he failed to comply with an order of the Arkansas Supreme Court and failed to file substituted brief. Model Rule 3.4(c) requires, in pertinent part, that a lawyer not knowingly disobey an obligation under the rules of a tribunal.

3. That Alvin D. Clay violated Model Rule 8.4(d) when he failed to file the brief with the Arkansas Supreme Court in a timely manner which resulted in dismissal of the appeal of his client, Rodell Avery, Jr. 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, acting through its authorized Panel B, that ALVIN D. CLAY, Arkansas Bar ID# 96075, be, and hereby is, CAUTIONED for his conduct in this matter and assessed costs in the amount of FIFTY DOLLARS (\$50.00). 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: \_\_\_\_\_

J. Michael Cogbill, Chairman, Panel B

Date: \_\_\_\_\_