

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

**PANEL A**

IN RE: MARK B. CHADICK

ARKANSAS BAR NO. 77030

CPC DOCKET NO. 2004-072

**CONSENT FINDINGS AND ORDER**

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Roy L. Thompson. The information related to the representation of Thompson by Mark B. Chadick, Attorney at Law, Pine Bluff, Arkansas.

Roy L. Thompson was injured while working for Union Pacific Railroad in March 1996 which prevented Mr. Thompson from gainful employment in October 1996 and thereafter. Mr. Chadick began representation of Mr. Thompson in a personal injury claim based under the Federal Employers' Liability Act (FELA) in 1996. As to the FELA claim, Chadick was able to obtain a settlement in 2000 for Mr. Thompson with his employer in excess of \$200,000.

In 1998, Mr. Thompson applied for disability benefits through the United States of America Railroad Retirement Board. Mr. Chadick began representation of Mr. Thompson in the disability matter in February, 1999. On May 3, 2002, Mr. Thompson received a notice from the Railroad Retirement Board that he had been granted disability effective September 6, 2001. The notice did not provide Thompson disability from October 1996 through September 6, 2001. Mr. Chadick indicated to Mr. Thompson that he would file an appeal to have disability cover the period from October 1996 to September 6, 2001. No notice was filed within the time limitations set forth in the notice provided by the Railroad Retirement Board. Mr. Chadick admitted that he failed to file a timely Notice of Appeal from a decision of the Railroad Retirement Board concerning the back pay from the date of the disability, March 1996, to the effective date of the Railroad Retirement Board decision, September 2001. Mr. Chadick has admitted that his conduct, as set forth above, violated Model Rule 1.3 of the Model Rules of Professional Conduct by failing to file a timely Notice of Appeal on behalf of his

client.

Mr. Chadick stated that he discovered in July, 2002, that he had not filed the Notice of Appeal. On August 2, 2002, Mr. Chadick wrote a letter to Mr. Thompson wherein he stated that “I discovered approximately sixty days ago that your appeal on the disability matter request for hearing had not been sent in.” Further, the letter stated that there was “still a legal procedure to ask for reinstatement of the claim. If this is denied, I do have malpractice insurance.” Mr. Chadick stated that he met with Mr. Thompson and advised him what had happened and what he was going to do about the matter.

Mr. Chadick filed a request for reconsideration with the Bureau of Hearings and Appeals of the Railroad Retirement Board. Mr. Chadick provided Mr. Thompson with a copy of an HA-1 appeal form, dated October 29, 2002. The Railroad Retirement Board sent a letter dated February 21, 2003, to Mr. Chadick and stated that the initial decision notice was dated May 3, 2002 and the request for reconsideration was received on November 18, 2002, which was more than sixty (60) days from the initial decision notice. As a result, Mr. Thompson’s request for reconsideration was denied. The letter provided Mr. Thompson with an opportunity to appeal the February 21, 2003, decision to the Director of Hearings and Appeals, if an appeal was filed within sixty (60) days of February 21, 2003. Mr. Chadick filed a timely notice of appeal of the February 21, 2003, decision. On the notice of appeal, Mr. Chadick stated that the reasons for reconsideration included “1. [Thompson was] unable to work” and “2. Late filing of request for reconsideration should be allowed, due to attorney error and for other considerations.”

Deborah Starzec, a Hearings Officer for the Bureau of Hearing and Appeals, wrote Mr. Chadick on May 1, 2003, and requested that he provide what “other considerations” existed which would support a finding that there was good cause for his failure to timely request reconsideration. Mr. Chadick responded to the letter from Ms. Starzec by letter dated May 6, 2003. In his letter to Ms. Starzec, he stated “I have no other reason other than previously stated.”

On May 30, 2003, the Railroad Retirement Board Bureau of Hearing and Appeals Hearing Officer issued a decision. In the decision, the Hearings Officer stated that “[Thompson]’s right to request

reconsideration expired on July 3, 2002, and his request was received four months later on November 18, 2002. Since [Thompson] has not established good cause for his failure to file a timely request for reconsideration, he has forfeited his right to further review of the notice dated May 3, 2002.” The May 30, 2003, decision of the hearing officer provided an appeal process which must be protected within sixty days of the May 30, 2003, decision. Mr. Chadick filed a timely Notice of Appeal of the decision of the Hearing Officer.

On March 18, 2004, the Railroad Retirement Board entered its decision. In the decision, the Railroad Retirement Board affirmed the decision of the Hearings Officer. The cover letter to the Railroad Retirement Board decision stated that Thompson could seek judicial review of the Board’s decision by filing a petition for review of the decision of the Railroad Retirement Bureau by filing a petition for review with the appropriate United States Court of Appeals within one (1) year from the date of the Board’s decision.

Mr. Chadick admitted that his failure to file a timely Notice of Appeal following the May, 2002, decision of the United States Railroad Retirement Board resulted in his client, Mr. Thompson being barred from pursuing any appeal of the denial of disability benefits for the period from October 1996 to September 2001.

The matter proceeded to ballot vote pursuant to Arkansas Supreme Court Procedures Regulation Professional Conduct of Attorneys at Law. Respondent was advised of the ballot vote decision and thereafter requested a public *de novo* hearing. Prior to the scheduled *de novo* hearing, the Respondent and the Executive Director negotiated a discipline by consent proposal.

Upon consideration of the formal complaint and attached exhibit materials, the response and attached exhibits, the consent proposal, 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 Mark Braden Chadick violated Model Rule 1.3 when he failed to file a timely Notice of Appeal on behalf of his client, Roy L. Thompson, from a decision of the Railroad Retirement Board denying disability benefits from October 1996 to September 2001, to his client. Model Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

2. That Mark Braden Chadick violated Model Rule 8.4(d) when his failure to file a timely Notice of Appeal on behalf of his client, Roy L. Thompson, resulted in his being barred from pursuing any appeal of the denial of disability benefits for the period from October 1996 to September 2001. Model Rule 8.4(d) requires a lawyer to 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 A, that MARK BRADEN CHADICK Arkansas Bar ID No. 77030, be, and hereby is, REPRIMANDED for his conduct in this matter; fined the sum of FIVE HUNDRED DOLLARS (\$500.00); and assessed costs in the amount of FIFTY DOLLARS (\$50.00). The fine 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.

IT IS SO ORDERED.

ARKANSAS SUPREME COURT COMMITTEE ON  
PROFESSIONAL CONDUCT - PANEL A

By: \_\_\_\_\_

Bart Virden, Chair, Panel A

DATE: \_\_\_\_\_