

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

IN RE: CHERYL KATHLEEN SMITH MAPLES, Respondent

Arkansas Bar ID#87109

CPC Docket No. 2000-117

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 John Caldwell. The information related to the representation of Mr. Caldwell by Respondent in March 1999.

On October 18, 2000 and again on May 29, 2002, Respondent was served with a formal complaint, supported by affidavit from Mr. Caldwell. A response was filed. The Respondent and the Executive Director negotiated a discipline by consent proposal, which was submitted to this Panel.

The formal complaint and attachments thereto demonstrate that Mr. Caldwell hired Ms. Maples, an attorney practicing primarily in North Little Rock, during March 1999, to assist him with two medical issues he was facing during his period of incarceration. The first medical issue dealt with Mr. Caldwell's desire to have an independent blood test conducted. All Mr. Caldwell requested of Ms. Maples was that she assist him in locating a lab and help him get the blood to the lab for testing. The other issue involved Ms. Maples assisting Mr. Caldwell in obtaining the services of an orthopedic physician. After discussing the issues with Mr. Caldwell, Ms. Maples quoted him a fee of \$750 for her services. Following their consultation, Ms. Maples took Mr. Caldwell's paperwork related to the two issues with her as she left the Department of Corrections. Within a few days of their consultation, Mr. Caldwell forwarded to Ms. Maples the \$750 requested fee. There was no further contact with Ms. Maples after the initial consultation. Ms. Maples sent no correspondence nor did she attempt any telephone contact. Certified mailings to her were returned unclaimed.

Finally, a representative on behalf of Mr. Caldwell contacted a Deputy Prosecuting Attorney in Lincoln County about the matter. Phillip Green, the Deputy Prosecuting Attorney, confirmed with Mr. Caldwell that he had contacted Ms. Maples and that she had admitted being paid but asserted that she had been unable to perform any services because of her health issues. Since no communication with Ms. Maples was of any help to Mr. Caldwell, he sued Ms. Maples. On April 17, 2000, a default judgment was granted to Mr. Caldwell by Municipal Court Judge Vincent Harper. The Office of Professional Conduct contacted Ms. Maples following receipt of the information related to the default judgment. Ms. Maples failed to respond to that communication or any other with regard to Mr. Caldwell. In addition, she failed to comply with Judge Harper's Order that she return Mr. Caldwell's paperwork to him.

According to Ms. Maples, she has no memory of John Caldwell being a client of hers. She explained that at the time Mr. Caldwell alleges to have hired her, she was suffering from severe congestive heart failure. Ms. Maples asserted that she remembered very little about that period of her life since she was placed on life support systems during that time, was in a coma, and had renal cell carcinoma resulting in loss of a kidney. Ms. Maples has been unable to locate a file on Mr. Caldwell.

Upon consideration of the formal complaint and attached exhibit materials, the response, the consent proposal, and other matters before it, and the Arkansas Model Rules of Professional Conduct, Panel C of the Arkansas Supreme Court Committee on Professional Conduct finds:

That Ms. Maples' conduct violated Model Rule 1.2(a) since one of the objectives of her representation of Mr. Caldwell was to secure an independent blood test for him but she failed to do so, and since she was hired to assist Mr. Caldwell in obtaining the treatment of an orthopedic physician but she never did so. Model Rule 1.2(a) requires, in pertinent part, that a lawyer abide by a client's decisions concerning the objectives of representation.

That Ms. Maples' conduct violated Model Rule 1.3 when she did not pursue Mr. Caldwell's matters with which she was entrusted. Model Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

That Ms. Maples' conduct violated Model Rule 1.4(a) when she failed to respond to Mr. Caldwell's requests for information concerning his two (2) legal matters which she was hired to pursue. Model Rule 1.4(a) requires that a lawyer keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

That Ms. Maples' conduct violated Model Rule 1.4(b) since at no time did she explain to Mr. Caldwell that she was facing serious medical issues which might prohibit her from effectively and timely pursuing his matters. Model Rule 1.4(b) requires that a lawyer explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

That Ms. Maples' conduct violated Model Rule 1.5(a) since she received \$750 as a fee to represent Mr. Caldwell on two (2) specific matters but she never performed any services related thereto. Model Rule 1.5(a) requires, in pertinent part, that a lawyer's fee be reasonable.

That Ms. Maples' conduct violated Model Rule 1.16(d) because since her representation of Mr. Caldwell was terminated, she has not returned his original paperwork to him and she has failed to refund the unearned fee to Mr. Caldwell. Model Rule 1.16(d) requires, in pertinent part, upon termination of representation, that a lawyer take steps to the extent reasonably practicable to protect a client's interests, such as surrendering papers to which the client is entitled and refunding any advance payment of fee that has not been earned.

That Ms. Maples' conduct violated Model Rule 3.4(c) because despite being ordered to pay Mr. Caldwell \$800 by Judge Harper, she has failed to do so and she did not return Mr. Caldwell's original paperwork to him although she was ordered to do so by Judge Harper on July 28, 2000. Model Rule 3.4(c) requires that a lawyer not knowingly disobey an obligation under the rules of a tribunal except for an open refusal on an assertion that no valid obligation

exists.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel C, that CHERYL KATHLEEN SMITH MAPLES, Arkansas Bar ID# 87109, be, and hereby is, REPRIMANDED for her conduct in this matter. In addition, pursuant to Section 18 A of the Procedures of the Arkansas Supreme Court Regulating the Professional Conduct of Attorneys at Law (Procedures), Ms. Maples is ordered to pay costs in the amount of \$50. Pursuant to Section 18 B of the Procedures, Ms. Maples is ordered to pay a fine in the amount of \$500. Finally, pursuant to Section 18 C of the Procedures, Ms. Maples is ordered to pay restitution to Mr. Caldwell in the amount of \$800.

ARKANSAS SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT - PANEL C

By: _____

David Newbern, Chair, Panel C

Date: _____

(13.M, Rev.1-1-02)