BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

PANEL B

IN RE: CHARLES L. RUDD

ARKANSAS BAR ID #89087

CPC DOCKET No. 2001-077

FINDINGS AND ORDER

The formal charges of misconduct upon which this Order is premised arose from information coming to the attention of the Committee, by way of a Judicial Referral made by Honorable Phillip H. Shirron, Hot Spring County Circuit and Chancery Judge. The information related to certain of Charles L. Rudd's conduct in his representation of Brian K. Thacker in the case of Thacker v. Thacker, Hot Spring Chancery Court Case No. E-2000-414-2. Mr. Rudd is an attorney primarily practicing law in Hot Springs, Garland County, Arkansas.

Brian K. Thacker employed Mr. Rudd to represent him in a divorce case. In November 2000, Mr. Rudd filed on behalf of Mr. Thacker an Answer and Counterclaim. Judge Shirron set the matter for a temporary hearing for May 30, 2001. Mr. Rudd was provided a letter from the Court, dated May 8, 2001, notifying Mr. Rudd and his client of the date of temporary and final hearings. The letter notified Mr. Rudd and his client that an affidavit of financial means was due to be filed with the Court prior to the May 30 hearing and a list of property claimed to be exempt from the marital estate was to be filed prior to June 30. No affidavit of financial means or list of property claimed to be exempt was filed by the dates set by the Court.

On May 30, 2001, Mr. Rudd's client appeared in Hot Spring Chancery Court but Mr. Rudd failed to appear. Mr. Thacker informed the Court that he had one telephone conversation with Mr. Rudd. In the telephone conversation he said that Mr. Rudd told him that he would not be there and he should tell the Court that he had not received any paperwork from Mr. Rudd. Following inquiry into the attorney-client relationship, the Court issued an Order to Show Cause directing Mr. Rudd to appear before the Court on June 18, 2001. The Court mailed a copy of the Order to Mr. Rudd and, on June 13, 2001, faxed a copy of the Order to Mr. Rudd's office. The Court then proceeded with the temporary hearing and awarded temporary custody of the minor children to Mr. Thacker's spouse.

On June 18, 2001, neither Mr. Rudd nor his client appeared at the time set by the Court. The Court stated that it had not received any communication from Mr. Rudd concerning his inability to appear at the hearing. The Court found Mr. Rudd's failure to appear at the May 30 and June 18 hearings to be contemptuous and issued a body attachment to be brought before the Court.

On June 20, 2001, Mr. Rudd appeared before the Hot Spring County Chancery Court. Mr. Rudd admitted that he filed the Answer and Counterclaim on Mr. Thacker's behalf but that Mr. Thacker no longer wanted to be represented by him. Mr. Rudd admitted that he received a copy of a Motion for Contempt filed by the opposing party and asserted that he informed Mr. Thacker of the Motion for Contempt. Mr. Rudd denied that he was ever employed by Mr. Thacker to represent him in the divorce proceedings as Mr. Thacker failed to make payments as required of Mr. Rudd.

On July 6, 2001, the Hot Spring Chancery Court held a Show Cause Hearing. Testimony was heard and the Court found that Mr. Rudd's actions were inappropriate and improper, contemptuous, and in violation of the Model Rules of Professional Conduct. The Court referred the matter to the Committee on Professional Conduct.

Mr. Rudd was served with a Formal Complaint and filed a timely response. Mr. Rudd stated that Mr. Thacker came to his office with a copy of a Complaint for Divorce. Mr. Thacker was unsure of the date he was served and Mr. Rudd immediately prepared an Answer and Counterclaim for Mr. Thacker. Mr. Rudd stated that the next week, Mr. Thacker informed him that he and his wife had reconciled and his services were no longer needed. Mr. Thacker made an Mr. Rudd instructed his secretary to prepared a Motion to Withdraw which was prepared and signed but not filed with the Court.

Mr. Rudd admitted that he received a copy of the Motion for Contempt and had a discussion with Ms. Thacker's attorney. Based on that conversation, it was Mr. Rudd's understanding that if Mr. Thacker would sign a proposed Property Settlement Agreement, the Motion for Contempt would be resolved. Mr. Rudd informed Mr. Thacker of the situation and was assured that Mr. Thacker would go over the Property Settlement Agreement the next day. Mr. Thacker failed to keep his appointments with Mr. Rudd. Mr. Rudd stated that he had a telephone conversation with Mr. Thacker and informed Mr. Thacker that he did not consider himself to be Mr. Thacker's attorney. Mr. Rudd denied received a copy of the Order to Show Cause that was sent from Judge Shirron's office until after he appeared in Court on June 20, 2001.

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

1. That Mr. Rudd's conduct violated Model Rule 1.1 when he failed to appear at a temporary hearing on May 30, 2001 leaving his client, Brian Thacker, without adequate representation concerning temporary custody of his minor children. Model Rule 1.1 requires that a lawyer provide competent representation to a client. Competent representation requires that legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

2. That Mr. Rudd's conduct violated Model Rule 1.3 when he failed to provide timely notice to his client, Brian Thacker, of a scheduled hearing date. Model Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

3. That Mr. Rudd's conduct violated Model Rule 1.4(a) when he failed to keep his client, Brian Thacker, informed about the status of his pending divorce matter. Model Rule 1.4(a) requires, in pertinent part, that a lawyer keep a client reasonably informed about the status of a matter.

4. That Mr. Rudd's conduct violated Model Rule 1.16(b)(4) when he failed to withdraw from representation of his client, Brian Thacker, when he failed to pay the fees Mr. Rudd required of him. Model Rule 1.16(b)(4) provides, in pertinent part, that a lawyer may withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the interests of the client or if the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services.

5. That Mr. Rudd's conduct violated Model Rule 3.3(a)(1) when he advised his client, Brian Thacker, to inform the Court that he had not received any papers relating to the divorce matter, knowing that the statement was a false statement. Model Rule 3.3(a)(1) requires that a lawyer not knowingly make a false statement of material fact to a tribunal.

6. That Mr. Rudd's conduct violated Model Rule 3.4(c) when he received a Notice of Hearing setting a temporary hearing for May 30, 2001 and failed to appear; when he received a Notice of Hearing requiring that he and his client prepare an Affidavit of Financial Means and he failed to do so; when he received a Notice of Hearing setting a final

hearing for June 18, 2001 and he failed to appear; and, having received a Notice of Hearing requiring that he and his client prepare a list of property claimed exempt prior to June 18, 2001 and he failed to do so. Model Rule 3.4(c) requires that a lawyer not knowingly disobey an obligation under the rules of a tribunal.

7. That Mr. Rudd's conduct violated Model Rule 8.4(d) when totality of his conduct in the matter resulted in prejudice to his client and when he caused the Hot Spring Chancery Court to expend additional time and resources which would not have been necessary otherwise. Model Rule 8.4(d) requires that a lawyer 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 that CHARLES L. RUDD, Arkansas Bar ID #89087, be and hereby is, SUSPENDED for a period of THREE (3) MONTHS for his conduct in this matter. The suspension shall become effective as of the date of the filing of this Order with the Clerk of the Arkansas Supreme Court.

ARKANSAS SUPREME COURT COMMITTEE

ON PROFESSIONAL CONDUCT

By: _____

Richard F. Hatfield

Panel B Chairman

Date:_____