

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

PANEL B

IN RE: FARRIS MERRITT, Respondent
Arkansas Bar ID#2001133
CPC Docket No. 2005-106

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 Michael Green in an Affidavit dated August 5, 2005. The information related to the conduct of Farris Merritt in connection with representation he agreed to undertake for Mr. Green and for Mr. Green's wife, Marsa.

On or about August 30, 2005, Respondent was served with a formal complaint, supported by affidavits from Michael Green and Leslie W. Steen, Clerk of the Arkansas Supreme Court. A response was filed. The Respondent and the Executive Director negotiated a discipline by consent proposal, which was submitted to this Panel.

The information before the Committee reflected that during February 2004, Mr. Green's wife, Marsa, contacted Farris Merritt, an attorney practicing in Hot Springs, Arkansas, concerning a child support matter involving her ex-husband. Mrs. Green hired Mr. Merritt to pursue several thousand dollars in unpaid child support and medical bills. Mr. Merritt advised Mr. and Mrs. Green that the retainer for his representation in such a matter would be \$3000. The funds were delivered to Mr. Merritt that same month.

Mr. Merritt had never previously represented either Mr. or Mrs. Green in any legal matter. Despite this fact, he did not provide them with a written fee agreement. Mr. Green assumed the payment was for attorney's fees to be earned in the future. Mr. Merritt never advised Mr. Green to the contrary.

The following month, Mr. Green hired Mr. Merritt to assist him with a legal issue he was having with his mobile home park and a land dispute which had arisen with an adjacent landowner. Mr. Merritt met Mr. Green at the mobile home park, discussed the problem and advised that he would take care of everything with

regard to the problems Mr. Green was experiencing. Mr. Merritt advised that it would cost \$3,000 for this representation as well. Mr. Green paid Mr. Merritt on March 5, 2004.

With the exception of one or two telephone calls and, possibly, one letter, no progress was made on either legal matter with which Mr. Merritt has been entrusted. According to Mr. Green every time he called or went to Mr. Merritt's office, nothing was accomplished. Mr. Green finally requested reimbursement of the advanced fee payments so that he could hire other counsel. Although on numerous occasions, Mr. Merritt advised that he would refund the advanced payments, he never did so. Mr. Green went to Mr. Merritt's home to demand the money. The situation did not resolve itself through that contact either.

Mr. Green and his wife hired counsel to pursue their civil remedies against Mr. Merritt. Two lawsuits were filed, one for Mrs. Green and one for Mr. Green. Mr. Merritt filed an Answer in each one. He admitted that he had been paid \$3,000 in each instance. On the day before the scheduled trial, Mr. Merritt entered into an Agreed Order in both matters admitting that he was indebted to each of the Greens in the amount of \$3,000. He also agreed not to include either one of them in any bankruptcy proceeding he might file in the future.

The Affidavit of Leslie W. Steen demonstrated that Mr. Merritt did not pay his 2005 annual license fee until May 10, 2005. This failure to pay was in violation of Rule VII.A. of the Arkansas Supreme Court Rules Governing Admission to the Bar. As such, Mr. Merritt was suspended from the practice of law within the State of Arkansas for the period of time from March 2, 2005 through May 9, 2005.

In his proposal to consent to discipline in this matter, Mr. Merritt tendered a cashier's check in the amount of \$3,000 for the benefit of Michael and Marsa Green. The cashier's check has been delivered to the Greens. Mr. Merritt also averred to the Committee that he would personally present the Greens the balance of their funds.

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

1. That Mr. Merritt's conduct violated Model Rule 1.3 when he failed to take

diligent and prompt action after being hired by Mr. Green and paid the full amount of the fee and costs he quoted to begin representation in the matter involving the property dispute he was experiencing and when he failed to take diligent and prompt action after being hired by Marsa Green and paid the full amount of the fee and costs he quoted to being representation in the child support matter with which she entrusted you. Model Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

2. That Mr. Merritt's conduct violated Model Rule 1.4(a) because he failed to keep Mr. Green aware of the efforts, if any, he was undertaking on Mr. Green's behalf after he was hired and paid in full to assist with Mr. Green's legal matter; when he failed to respond to Mr. Green's requests for information related to his legal matter following receipt of the fee payment; when he failed to keep Mrs. Green aware of the efforts, if any, he was undertaking on her behalf after being hired and paid in full to assist her with a child support matter; and, when he failed to respond to the Greens' requests for information related to Mrs. Green's legal matter following receipt of the fee payment. 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.

3. That Mr. Merritt's conduct violated Model Rule 1.5(b) because although he had not regularly represented Mrs. Green, he failed to communicate the basis or rate of the fee to her, in writing or otherwise, before or within a reasonable time after commencing the representation and because although he had not regularly represented Mr. Green, he failed to communicate the basis or rate of the fee for representation to him, in writing or otherwise, before or within a reasonable time after commencing the representation. Model Rule 1.5(b) requires that when a lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.

4. That Mr. Merritt's conduct violated Model Rule 1.15(a) when he failed to deposit the funds delivered to him by Michael Green for payment of fees to be earned in the future and for costs in Mr. Green's legal matter in his IOLTA trust account despite the fact that those remained the funds of Michael

Green until used for the appropriate costs or earned by him; when he failed to deposit the funds delivered to him by Marsa Green for payment of fees to be earned in the future and for costs in her legal matter in his IOLTA trust account despite the fact that those remained the funds of Marsa Green until used for the appropriate costs or earned by him; when he failed to maintain Mr. Green's property separate from his in one or more identifiable trust accounts, as evidenced by the fact that he was paying Mr. Green his advanced fee back to him in installments; and, when he failed to maintain Mrs. Green's property separate from his in one of more identifiable trust accounts, as evidenced by the fact that he was paying Mrs. Green her advanced fee back to her in installments. Model Rule 1.15(a)(1) requires that all lawyers shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from a lawyer's own property, with funds of a client being deposited and maintained in one or more identifiable trust accounts in the state where the lawyer's office is situated.

5. That Mr. Merritt's conduct violated Model Rule 1.16(d) when he did not promptly return Mr. Green the advance payment of fee paid to him after Mr. Green began making requests for him to do so as he had terminated Mr. Merritt's representation of him and when he did not promptly return to Mrs. Green the advance fee paid to him after she terminated Mr. Merritt's representation of her in her child support matter. Model Rule 1.16(d) requires, in pertinent part, that upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned.

6. That Mr. Merritt's conduct violated Model Rule 3.4 (c) because he failed to pay his annual license fee for 2005 until May 10, 2005, in violation of Rule VII.A., Arkansas Supreme Court Rules Governing Admission to the Bar which requires all Arkansas licensed attorneys to pay an annual license fee as set by the Court not later than March 1 of each year. 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 based 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 B, that FARRIS MERRITT, Arkansas Bar ID# 2001133, be, and hereby is, CAUTIONED for his conduct in this matter. Further, pursuant to Section 18.A. of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law, Mr. Merritt is ordered to pay costs in this matter in the amount of \$50. 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, Chair, Panel B

Date: _____

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