

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL A

IN RE: STEPHEN GREGORY HOUGH

Arkansas Bar ID # 84077

CPC Docket No. 2005-116

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Clara Ashburn on February 28, 2005. The information related to the representation of Ms. Ashburn in 2004-2005 by Respondent Stephen G. Hough, an attorney practicing primarily in Fort Smith, Sebastian County, Arkansas. In September 2005, Respondent was served with a formal complaint, supported by affidavits from Clara Ashburn, attorney Steven Whitaker, and attorney Gina Smith.

Clara Ashburn, a passenger in Harris's vehicle, was injured in a motor vehicle collision with a vehicle owned by Smith in Crawford County, AR, on May 11, 2002. Robert Hough, Respondent's late brother and law partner, signed up Robert and Clara Ashburn as firm clients on May 20, 2002, to a contingent fee employment contract on the May 11, 2002, matter. On June 23, 2003, Smith's carrier offered his policy limits of \$25,000 in settlement of Clara Ashburn's claims. This offer was repeated in letters to the Hough firm dated January 30, 2004, and August 3, 2004. Robert Hough died in January 2004, and Respondent was the remaining attorney in Hough & Hough, and therefore responsible for the Ashburn file thereafter. The firm, and Respondent, failed to communicate this \$25,000 offer to Clara Ashburn. During this period, Mrs. Ashburn moved to Virginia to care for her parents. Her repeated requests of Mr. Hough and the firm for information on the status of her personal injury claim were generally unsuccessful. On one occasion when she was able to contact him, Mr. Hough told her he had filed suit for her on the matter. She and her Virginia attorney, Mr. Whitaker, checked with the clerks in Crawford and Sebastian Counties and were unable to find any such suit filed.

The Ashburns separated and a Virginia divorce proceeding ensued. She was required to provide information about the pending personal injury claim in Arkansas as part of her discovery obligation in the divorce. Mr. Whitaker wrote Respondent at least on January 28 and February 8, 2005, specifically requesting this information. They were unable to timely obtain this information from Respondent and Ms. Ashburn incurred additional and unnecessary costs in the divorce as a result of Respondent's failure to provide her this information.

Mr. Hough had a major personal crisis on March 31, 2005, and continuing for some undetermined time thereafter, which apparently affected his then-ability to practice law.

With her three year statute of limitations in Arkansas fast approaching on May 11, 2005, and, unable to learn from Respondent the status of her Arkansas personal injury claim, by letter of March 23, 2005, Ms. Ashburn discharged Respondent and directed him to transfer her file to Gina Smith at the Sexton & Sanders law firm in Fort Smith. By March 31, 2005, Gina Smith had contacted the Smith's carrier and learned of the long-standing \$25,000 settlement offer. By early April 2005, Ms. Smith had obtained Ms. Ashburn's case file from another local attorney who was attempting to assist Respondent. To protect Ms. Ashburn's interests, on May 10, 2005, Ms. Smith filed suit on the May 11, 2002, injury. On May 11, 2005, Smith's carrier paid the \$25,000 settlement offer to Gina Smith. Ms. Smith is also pursuing an underinsured motorist claim against Ashburn's own carrier, a claim which Respondent and the Hough & Hough Firm apparently did not understand or appreciate during their several years of representation of Ms. Ashburn, especially in light of the low policy limits of the other driver, Smith. Respondent's failure to act on Ms. Ashburn's claim from the time of the death of his brother in early 2004 until Respondent was discharged in late March 2005, created an unnecessary delay in recovery of the \$25,000 settlement that had been offered through his firm for almost two years when she discharged Respondent as her lawyer in the matter, and which offer had not been communicated to her.

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:

- A. Mr. Hough's conduct violated Model Rule 1.1, in that he failed to communicate a policy limits settlement offer to his firm's client Clara Ashburn. He failed to pursue an underinsured motorist insurance claim for his firm's client after he became aware of a low policy limit for the at-fault driver, when his client had major medical bills that the at-fault driver's policy limits would not adequately cover. Upon the death of his law partner, Respondent failed to thoroughly review the firm's Clara Ashburn file to determine what action needed to be taken in it. Model Rule 1.1 requires that a lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.
- B. Mr. Hough's conduct violated Model Rule 1.3, in that for almost two years he failed to communicate a policy limits settlement offer to his firm's client Clara Ashburn, an offer she had to first learn about from the attorney who succeeded Respondent in the Ashburn representation. For almost three years Respondent's firm and he failed to file suit or take other action to protect Clara Ashburn's interest in the personal injury claim she entrusted to his firm on May 20, 2002. Model Rule 1.3 requires that a lawyer shall act with reasonable diligence and promptness in representing a client.
- C. Mr. Hough's conduct violated Model Rule 1.4(a), in that he failed to appropriately and timely respond to repeated requests from Clara Ashburn, and later from her Virginia divorce attorney, for information about her pending personal injury claim in Arkansas being handled by Respondent's law firm. Model Rule 1.4(a) requires that a lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.
- D. Mr. Hough's conduct violated Model Rule 1.4(b), in that if he had advised Clara Ashburn at or after the time of his brother's death in early 2004 that circumstances and situations not involving her might cause his law firm to not pursue her personal injury claim or to fail to disclose to her the June 2003 \$25,000 settlement offer, the client would have had an opportunity to consider employing other counsel to represent the client in the claim and possibly receive the relief the client sought, including the opportunity to receive the settlement funds almost two years before she actually received them. Model Rule 1.4(b) requires that a lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.
- E. Mr. Hough's conduct violated Model Rule 8.4(c), in that he told Clara Ashburn he had filed suit for her on her May 2002 personal injury claim, when in fact he had not filed, and never filed, such a suit. Model Rule 8.4(c) requires that a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

F. Mr. Hough's conduct violated Model Rule 8.4(d), in that his failure to timely supply Clara Ashburn and her Virginia divorce attorney information about her Arkansas personal injury suit, in spite of several requests for such information by them, resulting in her being responsible for additional and unnecessary costs in the Virginia divorce case. Model Rule 8.4(d) requires that a lawyer shall 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 A, that Stephen Gregory Hough, Arkansas Bar ID# 84077, be and his privilege and Arkansas license to practice law is hereby suspended for six (6) months for his conduct in this matter. He is ordered to pay Committee costs of \$50.00. Respondent is also referred to, ordered to report within thirty (30) days to, and ordered to participate in the Arkansas Lawyer Assistance Program (ArLAP), and to authorize ArLAP to provide to the Committee, through the Office of Professional Conduct, all information in his ArLAP file. Failure to comply with the ArLAP referral order and the ArLAP program designed for Respondent may be treated as a contempt of this Committee Order and of the Supreme Court under Section 27 of the Supreme Court's Procedures Regulating Professional Conduct of Attorneys at Law. The suspension shall become effective on the date this Findings and Order is filed of record with the Clerk of the Arkansas Supreme Court. 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 with 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 A

By: _____
Phillip D. Hout, Chair, Panel A

Date: _____