

BEFORE THE ARKANSAS SUPREME COURT  
COMMITTEE ON PROFESSIONAL CONDUCT  
PANEL B

Received

IN RE: **BYRON COLE RHODES**, Respondent  
Arkansas Bar ID # 79186  
CPC Docket No. 2014-031

OCT 03 2016  
Arkansas Supreme Court  
Committee on Professional Conduct

**HEARING FINDINGS & ORDER**

The formal charges of misconduct upon which this Findings and Order is based were developed from information provided to the Committee by Robin Smith, Esq. In June 2013. The information related to the representation of Cindy Stovall by Byron Rhodes and of Richard Cole by Smith, as court-appointed attorney ad litem in a guardianship proceeding for Cole in Montgomery County, Arkansas in 2013. Respondent Rhodes is an attorney practicing in Hot Springs, Arkansas. The formal Complaint before the Committee was filed May 30, 2014, and served on Respondent, who filed a timely Answer. After a ballot vote decision by Panel A, Respondent requested a public hearing, which was conducted before Panel B on August 18-19, 2016, in Little Rock.

At the hearing Director Stark Ligon represented the Office of Professional Conduct. Don Bacon of Little Rock represented Respondent Rhodes. The hearing panel consisted of regular Panel B members Michael Mullally, Steve Crane, Henry Hodges, James Dunham, Carolyn Morris, and Elmer Ritchie. Panel C member Joe Hickey substituted for Panel B member Niki Cung who was not available. Panel B Vice Chair Mullally was the presiding chair at the hearing. At the hearing, evidence included the pleadings in the discipline case (Complaint and Rhodes Answer), additional exhibits admitted, and though testimony of Judge J. W. Looney, Robin Smith, Cynthia Stovall, Byron Rhodes, and Richard Cole (by deposition

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taken January 8, 2015, before his death two months later).

The facts established by the evidence and testimony are found by Panel B as follows:

1. In case No. PR-2012-15, ITMO Guardianship of Richard Cole, in Montgomery County Circuit Court, on March 26, 2012, Butch West, a nephew, was appointed Emergency Guardian of Richard "Hap" Cole, born in February 1933, after Cole's wife passed away that month. West's attorney was Josh Drake of Hot Springs. Cindy Stovall, Cole's daughter, sought and was granted the right to intervene soon thereafter. Stovall was represented by attorney Emily Reynolds.

2. Richard "Hap" Cole, was a retired career Navy man, who served for over twenty-seven years on active duty and served in the Korean and Vietnam conflicts.

3. From March 2012 until his death in mid-March 2015, at age eighty-two, at a nursing facility, Richard Cole had serious health issues and spent significant time in various hospitals and nursing homes. From May 10, 2013, until his death, he lived with his daughter Cindy Stovall, a retired L.P.N., at her home near Royal, Arkansas, where she was basically his daily care-giver.

4. On April 27, 2012, by agreement of West and Stovall, Mt. Ida attorney Robin Smith was appointed attorney ad litem for Cole. On July 20, 2012 a hearing was held, and pursuant to Smith's recommendation West was reappointed permanent guardian. A final order to this effect was entered on August 10, 2012.

5. On January 18, 2013, Ms. Reynolds' motion to withdraw from the matter was granted and an order entered.

6. At a hearing on February 15, 2013, the actions of guardian West were approved, as were his expenses. Smith was also relieved as attorney ad litem for Cole.

7. On February 19, 2013, Stovall employed Rhodes to represent her at \$175 per hour in the guardianship proceeding involving her father, Richard Cole.

8. On February 27, 2013, Smith was contacted by Hot Springs attorney Byron Rhodes, who said he was now representing Stovall. During April, Smith continued to receive calls from Rhodes, West, Stovall, Cole, and the Circuit Judge's assistant, regarding the matter and various difficulties the parties were experiencing which the court felt required Smith's attention.

9. In Early April, Judge Looney's assistant inquired if Smith would be willing to be reappointed, because their office was regularly receiving calls from Stovall seeking a hearing and had received letters from Cole and Stovall.

10. On April 5, 2013, on her own motion, Smith was reappointed as attorney ad litem for Cole, after West made his desire to withdraw known to Cole and Stovall. No motion to remove Smith as attorney ad litem for Cole was ever filed by Rhodes or anyone else.

11. On May 6, 2013, Smith began including Rhodes on the Certificate of Service on her pleadings, even though he never officially entered his appearance in the record in the Cole guardianship.

12. On May 10, 2013, at a hearing attended by Rhodes with his client Cindy Stovall. The judge terminated the guardianship over the person of Cole, but insisted on competent medical testimony before he would release the guardianship of Cole's estate. A letter

produced by Rhodes from a medical professional, Dr. Hoffman, stating Cole was competent was not admitted into evidence pursuant to a hearsay objection by Smith.

13. May 10, 2013, was the only hearing Rhodes attended as counsel for Stovall. Rhodes filed no pleadings or documents in the Cole guardianship while he represented Stovall.

14. Immediately after the May 10 hearing, Stovall gave Rhodes four estate planning type documents she had copied from resources at the Garland County library, being a will, a durable power of attorney, a living will, and an organ donation form. The four forms had been filled out by Stovall, based on her father's instructions, but had not been signed by Cole. Rhodes was to review the forms.

15. After the May 10 hearing, Stovall took her father, Cole, home to live with her, where he stayed, under her care, until his death on or about March 11, 2015, except for stays in hospitals and nursing homes.

16. On May 13, 2013, Smith drafted a proposed precedent regarding the May 10 hearing and shared it with Drake and Rhodes. On May 17, 2013, the Order was entered, which set out the requirements for Stovall to assume duties as guardian, including Stovall providing a \$200,000 bond. Rhodes approved the order.

17. On May 20, 2013, Stovall took Cole to Rhodes' office in Hot Springs. There Cole met privately with only Rhodes and executed the four documents Stovall had copied and provided to Rhodes earlier. Some of the documents were acknowledged by a notary in Rhodes' office. Cole and Stovall stated they were not provided with the originals or copies of the executed Cole documents until January 2015, at their depositions.

18. Stovall was never able to post the \$200,000 bond and never could formally accept the appointment as guardian of Cole's estate. Smith continued to correspond with Rhodes explaining the need for his client, Stovall, to file her bond and acceptance and to have letters issued. In the summer of 2013, Stovall had certain guardian documents prepared for her by Janet Moore, a Hot Springs attorney.

19. During May 2013, Smith regularly received calls from her client, Cole, complaining about her taking control of his life and the various obstacles Smith was creating for his daughter, Stovall, to qualify as his guardian, and complaining about his lack of funds for living expenses. Cole referred to various things Stovall's attorney, Rhodes, had said in Cole's presence while Rhodes talked with Stovall.

20. On May 21, 2013, Smith called Mr. Rhodes and told him in clear terms not to talk with her client Cole. Smith had her assistant send Rhodes appropriate guardianship forms.

21. Between the May 10 hearing and May 28, 2013, Cole and Stovall requested of Rhodes the amount of Stovall's account balance with Rhodes. Rhodes produced some form of documentation and told them the balance was about \$12,000. Neither Cole nor Stovall was provided any document then by Rhodes. Cole refused to make a payment for Stovall, demanding a proper statement to review.

22. On May 24, 2013, Rhodes personally typed a thirteen (13) page cumulative Stovall billing that showed a current balance due of \$22,228.54, for 112.45 hours of billed time since March 13, 2013, plus a small amount for expenses. This bill showed three separate billing periods from February 19, 2013, totaling about 133 hours of time. The document also gave Stovall credit for what appear to be two payments totaling \$753.90 through February 2013.

23. In his Answer and at the 2016 hearing, Rhodes stated that he billed as “research” to his client to be time he spent in consideration, evaluation, analysis, mental preparation (including thinking and worrying), reviewing or researching a case file, but that in the Cole/Stovall matter very few of the hours were for traditional legal research.

24. Rhodes claimed Stovall was a “high maintenance” client who called him frequently and unnecessarily during the representation. Rhodes claimed Stovall called him thirteen (13) times on April 1, 2013 alone, and he billed her accordingly. Stovall testified she was in Tunica with her mother, who was visiting her from Wisconsin on the date, and denied making the calls as described by Rhodes.

25. For services allegedly rendered on May 20, 2013, regarding the four Cole “estate” type documents Stovall copied at a public library, simple forms for a will, durable power of attorney, living will, and organ donation, Rhodes billed Cole a total of 12.70 hours for his review and research. Rhodes claimed he spent the time on more sophisticated, complex, and client-appropriate documents but he failed to produce any such work product when requested to do so at hearing.

26. At the 2016 hearing, Rhodes testified he was a “street lawyer” engaged in a general practice in Hot Springs since 1986. He stated that he rarely billed clients on an hourly basis.

27. On May 28, 2013, Stovall and Cole went to Rhodes’ office. In the parking lot he presented them with his May 24 billing and requested payment of \$25,000, which would cover the future work Rhodes stated he would spend on the matter. There was a discussion about the funds going into “trust.” Cole directed Stovall to fill out his check on his account at Diamond Bank for \$25,000, she did and wrote “paid in full” in the memo line, Cole signed it,

and the check was given to Rhodes. Rhodes deposited the check into his attorney trust account the same date. On or about that same date, Rhodes also received a call from the bank's attorney advising that the check would not be honored.

28. On May 29, 2013, Smith received a call from George Steel, Jr., attorney for Diamond Bank, regarding withdrawals from Cole's account. Steel was concerned enough to put a stop to all withdrawals from Cole's account. Steel informed Smith that Cole and Stovall had been by the bank after the May 10 hearing, had changed the mailing address for Cole's accounts, had obtained new checks, and Cole had been writing checks, which Cole claimed Rhodes told him was okay if the banks were letting him do so.

29. Smith and Cole spoke by telephone several times during May. Smith testified it was clear to her that someone was giving Cole legal advice contrary to that she was giving him. Cole eventually told Smith that Rhodes had told Cole the following: Cole should not talk to Smith; Cole had "won" the hearing on May 10 and could take care of his own business; Rhodes could get the guardianship over but it would probably cost Cole a lot; and Rhodes was not supposed to talk to Cole, but Cole was free to come to his office with Stovall and sit in on their meetings.

30. On June 4, 2012, Cole went to Smith's office at her request. Cole was again complaining about being broke and his need for money for food, cigarettes and Mountain Dew and blaming Smith. Cole stated he had checks that were bouncing and it was Smith's fault.

31. Smith showed Cole the Order reappointing her, as well as the statute which required the guardian's bond. Smith states Cole then apologized, began crying, and told Smith he had been getting bad information from Rhodes. Cole showed Smith his check book

and she saw that he had signed a \$25,000 check on May 28 to Rhodes for Stovall's attorney's fees to date with Rhodes. Smith was also shown a copy of the Rhodes billing to Stovall for at least \$22,228.54 in fees and expenses allegedly incurred by Rhodes between February 19 and May 24, 2013. By contrast, Smith's fees and expenses for her representation of Cole from February 27 - June 21, 2013, later approved by the court, totaled \$4,073.61 for 21.12 documented hours of time. Smith explained that Stovall and her attorney Rhodes were the ones holding up Stovall's appointment as Cole's guardian, that Cole should not be writing checks, and Smith took the check book away from Cole.

32. When Stovall returned to Smith's office to pick up Cole, Smith informed her neither she nor Cole were authorized to spend money until Stovall's appointment had been accepted formally, her bond was filed and approved, and Letters of Guardianship were issued. Smith suggested if Rhodes could not help her with those things that perhaps either of two attorneys in Hot Springs, including Janet Moore, could assist Stovall.

33. Because no one had access to his money and Stovall could not get Letters of Guardianship issued, on June 4, 2013, the court entered another order releasing \$20,000 from Cole's account to Smith's IOLTA account, so that Smith could pay Cole's bills and disperse funds to Stovall upon her presenting receipts for her expenses for Cole.

34. On June 5, 2013, Smith contacted OPC concerning Rhodes and his taking \$25,000 from her ad litem client Cole. OPC promptly contacted Rhodes about the matter.

35. By telephone on June 5, 2013, Stovall discharged Rhodes as her attorney in the Cole guardianship proceeding.

36. On June 10, 2013, Smith filed a motion seeking to hold Rhodes in contempt over

the \$25,000 check matter. At a hearing on July 12, 2013, Rhodes admitted depositing the Cole \$25,000 check into his trust account, and also claimed he never met with Smith's client Richard Cole.

37. Unable to secure a guardian's bond, Stovall and Cole went to Smith in early August 2013. She directed them to a local Mt. Ida insurance agency. There Stovall was able to obtain a commercial surety bond for \$200,000 the same day, filed it with the court clerk, and her letters of guardianship were issued; all of which took place on August 5, 2013.

38. In early September 2013, the guardianship and attorney ad litem appointment were all discharged.

39. At a hearing on February 14, 2014, it was revealed that since the previous hearing in July 2013 Rhodes had sent both Stovall and Cole a reduced bill on February 10, 2014, for \$11,296.04, about half of the Rhodes May 2013 billing, with a demand for payment and a threat to place the matter in collection. The court stated that neither Stovall nor Cole was not going to have to pay the Rhodes bill. At the hearing in August 2016, Judge Looney testified he did not have authority to deny Rhodes his right to pursue collection against his client Stovall in the matter. In 2016, Rhodes testified that before he sent the demand letter he checked with the court clerk's office, was informed the Cole guardianship was closed, and this turned out to be inaccurate information. He also testified that his \$11,296 billing basically represented his time representing Stovall and charges with the "research" time were deleted from the billing.

40. At hearing in August 2016, Rhodes was asked to produce any documentation to support his billed seventy-three (73) plus hours for "research" for Stovall from mid-February to May 24, 2013. He did not produce any document.

41. In his January 2015 deposition, Cole stated there were aspects of Rhodes' May 2013 billing statement which Cole believed to be false or fraud.

42. In the 2016 hearing, Stovall stated both her father and she had issues with the Rhodes account balance and billings in May 2013, but her father was insistent that his bills be paid promptly so he overrode her concerns and ordered her to prepare the \$25,000 check to Rhodes for Cole's signature.

43. At the hearing on August 2016, Stovall stated that the one attorney who, in her final opinion, did the most to advance the stated cause or objectives of her father and her in the guardianship proceeding was Robin Smith, his attorney ad litem.

Upon consideration of the formal complaint and attached exhibit materials, the response to it, and other matters, testimony and evidence before it, and the Arkansas Rules of Professional Conduct, Panel B of the Arkansas Supreme Court Committee on Professional Conduct finds:

A.1. On the charge that the conduct of Byron Cole Rhodes violated AR Rule 1.1 by Rhodes using an excessive amount of time for "research" billed by Rhodes on May 24, 2013, Statement to Cynthia Stovall indicating a basic lack of legal knowledge or skill by Rhodes necessary for this limited representation, the Panel voted 4-3 that this charge was not proven. Members Crane, Dunham, Hickey and Mullally voted in the majority. Members Hodges, Morris, and Ritchie voted in the minority.

B.1. On the charge that the conduct of Byron Cole Rhodes violated AR Rule 1.5(a) and its prohibition against unreasonable and unnecessary fees, by a unanimous vote the Panel found a violation and that the proof sustained a finding that between his employment as

counsel by and for Cynthia Stovall in mid-February 2013 and his final entries on May 24, 2013, representing her in her effort to become guardian of the estate of her father Richard Cole, Rhodes appears to have billed Stovall for a total of 133.80 hours at \$175 per, or \$23,415.00, plus expenses totaling \$220.44, or a total of about \$23,635.44, all in a guardianship case where Rhodes does not appear to have entered his appearance for anyone, or filed any pleadings, and attended only one hearing during this time period. Rhodes' charges for his time and especially his "research" are excessive and unreasonable under the circumstances. Arkansas Rule 1.5(a) requires that a lawyer's fee shall be reasonable. A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following: (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or by the circumstances; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and (8) whether the fee is fixed or contingent.

C.1. On the charge that the conduct of Byron Cole Rhodes violated AR Rule 4.2, which prohibits contact or communication by an attorney (Mr. Rhodes) with a person (Richard Cole) known to then be represented by counsel, the Panel unanimously found the charge not proven.

D.1. On the charge that the conduct of Byron Cole Rhodes violated AR Rule 8.4(c), by a vote of 6-1 the Panel found a violation, with members Crane, Hickey, Hodges, Morris, Mullally, and Ritchie voting in the majority and member Dunham voting in the minority, with the proof sustaining a finding that Rhodes “padded” his May 24, 2013, billing to Cynthia Stovall with either unnecessary or false legal services, or both, in a simple guardianship matter where Rhodes represented only the person attempting to be qualified as guardian of the estate of her father, Rhodes did not enter his appearance, Rhodes did not file any pleadings, and otherwise should have been able to properly serve his client Stovall with minimal time and attention, not almost daily work entries that totaled over \$22,000 for a three month period, conduct by Rhodes involving dishonesty, fraud, deceit or misrepresentation toward Stovall. Arkansas Rule 8.4(c) provides that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

D.2. On the charge that the conduct of Byron Cole Rhodes violated AR Rule 8.4(c), by a unanimous vote the Panel found the charge not proven, that by his letter of February 10, 2014, Rhodes improperly attempted to make a person not his client, Richard Cole, responsible paying for the Rhodes fee and expense billing of May 24, 2013, to Rhodes client Cynthia Stovall.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel B, finding the conduct voted proven is “serious misconduct” as defined in Section 17.B of the Procedures, the Panel unanimously voted that the Arkansas law license of **BYRON COLE RHODES**, Arkansas Bar ID# 79186, be, and hereby is, **SUSPENDED for EIGHTEEN (18) MONTHS** and he is

assessed \$2,002.75 for specific costs of the hearing proceeding as set out in the Petitioner's Motion for Hearing Costs. No fine or restitution is ordered. In assessing this sanction, the Panel found Respondent attorney's prior disciplinary record was a factor. 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.

By agreement of the parties and approval of the Panel, the suspension shall become effective on January 1, 2017. Respondent's time to comply with Section 21 of the Procedures shall begin on that effective date. In consideration of the granting of Respondent's request for this delayed effective date, so he may orderly wind down and close out his law practice, Respondent has agreed to writing to waive his right to appeal this decision to the Arkansas Supreme Court and to start his suspension on January 1, 2017. As part of this delayed effective date, Respondent agrees to, and the Panel orders that he provide his counsel, Mr. Bacon, within fifteen days of the approval of this Order by the Panel Chair, a list of all his open and active client matters, to be promptly provided to the Office of Professional Conduct, with the list being held in confidence by the Office of Professional Conduct. Respondent also agrees, and the Panel orders, that he shall accept no new clients or new client legal matters, whether from existing or new clients, from the date his counsel receives a copy of this Order signed by the Panel Chair. Any failure of Respondent to abide by the terms set out above during the interim period to January 1, 2017, may be grounds for separate disciplinary action or contempt of the Committee or the Arkansas Supreme Court.

ARKANSAS SUPREME COURT  
COMMITTEE ON PROFESSIONAL  
CONDUCT, PANEL B

By:   
Michael E. Mulhally, Vice-Chair, Panel B  
Presiding Hearing Chair

Date: 10/3/2016

Findings & Order prepared by: SL  
Stark Ligon, ABN 75077, Counsel for Petitioner

Approved as to form only:

  
Don Bacon, Counsel for Respondent