

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

PANEL A

IN RE: RODERICK H. WEAVER, Respondent

Arkansas Bar ID#74153

CPC Docket No. 2002-143

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 Joann Collins by way of Affidavit dated July 22, 2002. The information related to the representation of Ms. Collins in her divorce matter by Respondent beginning in June 1999.

On October 28, 2002, Respondent was served with a formal complaint, supported by affidavit(s) from Ms. Collins. A timely response was filed and Respondent and the Executive Director negotiated a proposal for discipline by consent, which was submitted to this Panel.

The information presented to the Committee disclosed that Ms. Collins hired Roderick H. Weaver, an attorney practicing primarily in Clarksville, Arkansas, to represent her in a divorce proceeding. The divorce proceeding had been initiated by Ms. Collins' estranged husband, John H. Collins. Mr. Weaver agreed to represent Ms. Collins and thereafter filed a timely Answer on her behalf and the case proceeded in a normal course through February of 2000. It was about that time that Ms. Collins reports that the attorney / client relationship between Mr. Weaver and her began to sour. Although the relationship was strained, Ms. Collins opted not to begin again with a new attorney but to see the matter through to conclusion with Mr. Weaver since she had already paid him attorney's fees for his representation.

On April 16, 2001, the final hearing in the divorce proceeding was held and the final agreement on property division was entered. Part of the Trial Court's Order handed down orally from the bench on April 16th related to a Qualified Domestic Relations Order (Q.D.R.O.) in favor of Ms. Collins, but the formal written Order was not presented to the Court for signature until August 6, 2001, almost four (4) months after the conclusion of the hearing. Mr. Weaver and Ms. Collins discussed the Q.D.R.O. during June 2001 at which time she presented him with information concerning her own Individual Retirement Account in which her portion of the Q.D.R.O. could be placed.

On June 25, 2001, Mr. Weaver wrote to Ms. Collins advising her that he had possession of the executed Quitclaim Deed from her ex-husband which was part of the final property agreement, also enclosing a statement for services rendered. On July 9, 2001, Ms. Collins called Mr. Weaver and requested that he mail her the Quitclaim Deed, and although Mr. Weaver assured Ms. Collins he would do so, he did not. Mr. Weaver did send Ms. Collins a letter, which she received on July 11, 2001, but the Quitclaim Deed was not contained therein. In the letter, Mr. Weaver explained again that he had the deed and again explained that she had a balance owing to him and therefore needed to pay her attorney's fee balance of \$975 within the next ten (10) days. The only correspondence Ms. Collins received following that letter was additional correspondence in which he advised that he would sue Ms. Collins if she did not pay the balance of his fees.

Ms. Collins delivered a check to Mr. Weaver's office on August 23, 2001, for the amount she believed she owed, which was \$350, and noted the check as "payment in full". Because of that notation, Mr. Weaver returned the check to her but still did not deliver the Quitclaim Deed to her. Ms. Collins replaced the check with another on September 4, 2001, which was deposited by Mr. Weaver on September 6, 2001.

During October 2001, Ms. Collins became frustrated with the lack of progress on the Q.D.R.O. presentation to her ex-husband's company so she contacted her ex-husband's attorney to obtain a copy so that she could send it to the company herself. On November 21, 2001, Ms. Collins paid Mr. Weaver an additional \$150 on the outstanding balance. She thought that perhaps when he received that money, Mr. Weaver would release the Quitclaim Deed to her, but he did not do so. Ms. Collins wished to obtain the Quitclaim Deed so she could file it at the Courthouse and eliminate her ex-spouse's claim on her home. After Ms. Collins sent the Q.D.R.O. to her ex-husband's company, she received a letter from Mr. Weaver, on December 6, 2001, explaining that a new or Amended Order had to be prepared and sent to the company because all of their requirements had not been met so that the Q.D.R.O. would be accepted by the company. As of July 22, 2002, an Amended Q.D.R.O. had not been prepared or accepted by Ms. Collins' ex-husband's company so she did not have her portion of the retirement to which she was entitled nor had Mr. Weaver provided her with the Quitclaim Deed which was her property.

After being served with the formal disciplinary complaint, Mr. Weaver forwarded the Quitclaim Deed to Ms. Collins and it was received by her on November 7, 2002. In addition, following receipt of the formal disciplinary complaint, Mr. Weaver submitted a revised Q.D.R.O. to the plan administrator for the company where Mr. Collins is employed, but the revised Q.D.R.O. was rejected by the plan administrator. As of February, 2003, a second revised order had been submitted and was under consideration by the plan administrator.

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 A of the Arkansas Supreme Court Committee on Professional Conduct finds:

That Mr. Weaver's conduct violated Model Rule 1.3 because, despite having knowledge that an Amended Order was required for B.P. Amoco in order to place disbursement restrictions back on the account of Ms. Collins' ex-husband and to ensure protection and transfer of her funds, as awarded to her by the Court in the Decree of Divorce, he took no action to prepare or submit an Amended Order to B.P. Amoco until after served with the formal disciplinary complaint, and because he failed to make certain that an Amended Order was filed and sent to B.P. Amoco before the November 9, 2001, deadline, of which he was given notice by the Administrator of the Plan for B.P. Amoco. Model Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

That Mr. Weaver's conduct violated Model Rule 1.4(a) when he failed to advise Ms. Collins of the situation involving the Q.D.R.O. and the need to have an Amended Order prepared, and when he failed to advise Ms. Collins that he did not intend (prior to receipt of the formal disciplinary complaint) to prepare an Amended Order for B.P. Amoco and that she might wish to consult with another attorney in private practice about preparing the same for her, nor did he give her the opportunity to discuss with the Court the failure to prepare an Amended Order, since he did not advise Ms. Collins of the situation. Model Rule 1.4(a) requires that a lawyer keep a client reasonably informed about the status of matter and promptly comply with reasonable requests for information.

That Mr. Weaver's conduct violated Model Rule 1.15(b) when, upon receipt of the executed Quitclaim Deed which was the property of Ms. Collins pursuant to the Decree of Divorce and order of the Court, he failed to deliver the deed to her promptly, but maintained it in his office in spite of her requests that he send the deed to her so that she could properly file it. Model Rule 1.15(b) requires, in pertinent part, that upon receiving property in which a client has an interest, a lawyer promptly deliver to the client the property that the client is entitled to receive except as stated in this Rule or otherwise permitted by law or by agreement with the client.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel A, that Roderick H. Weaver, Arkansas Bar ID# 74153, be, and hereby is, CAUTIONED for his conduct in this matter. In addition, Mr. Weaver is assessed costs in this matter pursuant to Section 18.A of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law (2002) in the amount of \$50. Further, pursuant to Section 18.B of the Procedures, Mr. Weaver is ordered to pay a fine in the amount of \$500. The fine and 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: _____

Gwendolyn Hodge, Chair, Panel A

Date: _____

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