

**BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL A**

IN RE: EUGENE C. SAYRE, Respondent
 Arkansas Bar ID#75111
 CPC Docket No. 2006-154

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 Richard Brown in an Affidavit dated November 6, 2006. The information related to the representation of Mr. Brown by Respondent beginning in July 2003.

On November 15, 2006, Respondent was served with a formal complaint, supported by affidavit from Mr. Brown. A response was filed. The Respondent and the Executive Director negotiated a discipline by consent proposal, which was submitted to this Panel.

During July 2003, Mr. Brown hired Eugene G. Sayre, an attorney practicing primarily in Little Rock, Arkansas, to represent him and another individual in a legal matter involving the destruction of a section of State Highway. It was Mr. Brown's desire to have the Highway Department replace the section which had been destroyed by an individual. There was no fee contract signed between Mr. Brown and Mr. Sayre. Mr. Sayre had handled a tax issue for Mr. Brown successfully during 1998. When the Gurdon Highway issue came up, Mr. Brown asked Mr. Sayre for a referral to an attorney who handled Road, Highway and Right of Way matters. Mr. Sayre advised that he could handle the matter himself.

The background for the lawsuit was that during March 2003, Ralph Baxley and Mr. Brown bought a piece of property that is next to David Gary Deaton's property and Interstate 30

at the Gurdon Exit (Arkansas State Highway 53 Intersect). Mr. Deaton had dozed out of existence the road that provided access to Mr. Brown's property between two plats of his land. The previous owner had complained to the County Judge but received no relief. She sold the property to Mr. Baxley and Mr. Brown. Mr. Brown and Mr. Baxley met with the County Judge and Mr. Deaton. They eventually determined that the road was a portion of Highway 53 that still belonged to the Highway Department. It had been circumvented by the Arkansas Highway Transportation Department when the freeway had gone through in the late 1960's but the Department still owned the road and for which they were still responsible. They also determined that the road was still in use commercially and that the Highway Department was still responsible for its maintenance.

The Highway Department refused to do anything about Mr. Deaton dozing a portion of the State Highway System out of existence. The County Judge had no authority to do anything about it and was in fact a friend and business acquaintance of Mr. Deaton. When the AH&TD attempted to abandon the section of Highway 53, Mr. Baxley and Mr. Brown sued them. Mr. Sayre had been hired and filed the lawsuit on their behalf. Bob Sanders had been hired by Mr. Baxley and Mr. Brown to assist with any issues that might arise which should be handled in Clark County. At the time Mr. Brown retained Mr. Sanders, he was under the impression that the road in question was a county road and thought the issue would be easy to correct in Clark County. When he found out that the road was actually a portion of State Highway 53, Mr. Brown went to Mr. Sayre for a recommendation on how to proceed. At that time, Mr. Sanders was advised that Mr. Sayre would act as lead attorney on the matter, with Mr. Sanders providing local assistance as necessary.

After being served with the Complaint, the AH&TD filed a Motion to Dismiss on September 5, 2003. Mr. Deaton also filed an Answer and Motion to Dismiss during September 2003. For reasons unknown to Mr. Brown, Mr. Sayre did not respond to the Motions to Dismiss. The Court did not act on Mr. Deaton's Motion to Dismiss. However, on June 8, 2004, the Circuit Judge entered an Order granting the AH&TD's Motion to Dismiss. Mr. Sayre did not make Mr. Brown aware of this Order of Dismissal. The Docket Sheet demonstrates clearly that Mr. Sayre did not respond to either of the Motions to Dismiss.

For years Mr. Brown requested that Mr. Sayre obtain a Court date. At no time during all those months did Mr. Sayre advise Mr. Brown that all the defendants except Mr. Deaton had been dismissed from the lawsuit. It was not until Mr. Brown hired another attorney during June 2006 that he was informed that Mr. Sayre had not answered the Motions to Dismiss and that, in fact, an Order of Dismissal had been entered. Mr. Sayre's own billing statement demonstrates that after 2003, he did not take action on Mr. Brown's behalf in the lawsuit. During July and August 2003, there was a lot of contact from Mr. Sayre to Mr. Brown. However, after that time period obtaining information was difficult. Mr. Brown sent Mr. Sayre a few letters over the years requesting that a court date be set and that the matter be pursued with haste.

During early 2006 when Mr. Brown terminated Mr. Sayre's representation, there were a few e-mails wherein Mr. Brown was attempting to obtain documents from Mr. Sayre.

The result of all of the delay and not addressing the legal matter is that rather than have the AH&TD replace a legitimate piece of Arkansas Highway that a private individual dozed out of existence, Mr. Brown may eventually have to negotiate with the same individual for access to his land provided by the lost public right of way. At the time of filing his grievance with the

Office of Professional Conduct, Mr. Brown still did not have access to his property.

In his consent to discipline proposal, Mr. Sayre admitted that he violated Rules 1.3, 1.4(a) and 8.4(d) of the Model Rules of Professional Conduct as set forth in the disciplinary complaint. Mr. Sayre provided additional and clarifying factual details in order to provide mitigation to the Committee. Mr. Sayre explained that over the course of the time period from 2000 through 2005, he and Mr. Brown developed not only a professional attorney - client relationship but also a personal friendship.

Mr. Sayre explained that in June of 2002, he offered as a friend, not as an attorney, to contact Robert Wilson, the Chief Counsel of the Arkansas Highway and Transportation Department to introduce Mr. Brown and to request the assistance of the AH&TD in searching for records regarding the portion of “old” State Highway 53. Although helpful initially, the AH&TD indicated in late summer of 2003 that they intended to formally abandon any claim to the right of way by the filing of a “Minute Order” during a formal meeting of the Arkansas State Highway Commission on or about August 20, 2003. It was at this point in time that the Verified Complaint was filed against the AH&TD and Mr. Deaton. A Temporary Restraining Order was requested but not given as the Court indicated that he was not going to hold the AH&TD liable because the damage to the “old” right of way had been solely the responsibility of Mr. Deaton.

Mr. Sayre had many other events which took place in his professional and personal life in September and October of 2003, the months which followed the filing of the Motions to Dismiss. He was involved in very contentious litigation in Pulaski County. Then in October 2003, Mr. Sayre had to have four-way bypass surgery and was unable to return to normal working hours for approximately three months thereafter. By the time he returned to his regular practice, the time

within which to respond timely to the Motion to Dismiss had long since passed. Mr. Sayre candidly admits that he did not ask for an opportunity to file a belated response, nor did he do anything in response to the Offer of Judgment filed by counsel for Mr. Deaton or the Motion to Dismiss.

Mr. Sayre also explained that during 2004 and 2005, he was generally in contact with Mr. Brown and Mr. Baxley. He met with them and discussed remedies available. He advised them to voluntarily agree to an easement across the parking lot of the truck stop owned and operated by Defendant Deaton. Both Mr. Brown and Mr. Baxley refused to accept this resolution and wanted a totally restored easement along the right of way of “old” State Highway 53. Because Mr. Brown and Mr. Baxley will not voluntarily accept the “Offer of Judgment” by Mr. Deaton, they do not have a formal right of way to their acreage in rural Clark County, Arkansas.

Mr. Sayre acknowledged the facts as set out as being in violation of Model Rule 8.4(d) but explained that Mr. Brown has no defense that could have been asserted to the AH&TD’s right to “sovereign immunity”. According to Mr. Sayre, Mr. Brown still has the right to petition the Arkansas Claims Commission for redress if he believes he has a monetary claim against the AH&TD.

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:

1. That Mr. Sayre’s conduct violated Model Rule 1.3, because in the course of his representation of Richard L. Brown, he failed to file a response to the Motions to Dismiss filed by the defendants in the lawsuit he initiated on behalf of Mr. Brown in Clark County,

Arkansas; he did not notify Mr. Brown of the entry of the Order of Dismissal of the Clark County Circuit Court action; his conduct in the representation of Mr. Brown was not diligent or prompt at any time after 2003; and he did not seek a Court date for Mr. Brown as he repeatedly requested that Mr. Sayre do. Model Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

2. That Mr. Sayre's conduct violated Model Rule 1.4(a), because he failed to advise Mr. Brown when the Order of Dismissal was entered by the Clark County Circuit Court in June 2004, and he failed to keep Mr. Brown informed of the status of his actions, if any, he was taking with regard to the lawsuit he initiated on Mr. Brown's behalf. 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. Sayre's conduct violated Model Rule 8.4(d), because his failure to respond to the Motion to Dismiss filed by the AH&TD on behalf of the Department, the Director and the Commissioners thereof prevented consideration of any defense to the Motion to Dismiss which Mr. Brown might have had; his failure to respond to the Motion to Dismiss filed by the AH&TD or to take prompt action on Mr. Brown's behalf prevented Mr. Brown from having a court consider his claims against the AH&TD; and his failure to advise Mr. Brown that an Order of Dismissal had been entered in the lawsuit he filed on Mr. Brown's behalf in Clark County Circuit Court prevented Mr. Brown from seeking other counsel to determine what rights and remedies he might have available to him in a timely fashion. Model Rule 8.4(d) requires that a lawyer 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 EUGENE G. SAYRE, Arkansas Bar ID#75111, be, and hereby is, CAUTIONED for his conduct in this matter. In addition, pursuant to Section 18.A of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law (2002), Mr. Sayre is assessed the costs of this proceeding in the amount of \$100. 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 A

By: _____
Jerry D. Pinson, Chair, Panel A

Date: _____

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