

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

IN RE: BYRON COLE RHODES

ARKANSAS BAR ID # 79186

CPC Docket No. 2002-043

FINDINGS & CONSENT ORDER OF DISCIPLINE

The formal charges of misconduct upon which this Consent Order is premised, involving respondent attorney Byron Cole Rhodes of Hot Springs, Garland County, Arkansas, arose from information brought to the attention of the Committee on Professional Conduct by Debra Southern of Chicago, Illinois.

In December 1999 Ms. Southern employed Mr. Rhodes to file an ancillary probate in Garland County for her deceased Illinois relative, Ms. Burrage. There was no written fee agreement, and Mr. Rhodes claims he quoted an hourly rate of \$250 for his services. Ms. Southern claims she thought the fees would be in line with those the attorney for the estate in Illinois had charged - \$1,000. There is no record of any ancillary probate proceeding being filed by Mr. Rhodes as of January 2002. In October 2000, Ms. Southern received a bill from Mr. Rhodes for \$1,286.00, which she paid, thinking it represented the total cost of Mr. Rhodes' services in the matter. In November 2000 she received a bill for an additional \$3,387.50. She asked for an explanation of this bill, and got a short response that basically explained billing in 1/10ths of hours.

Around November 19, 2001, Mr. Rhodes turned an account balance of \$3,313.00 on Ms. Southern over to a collection agency. As part of the consent offer, Mr. Rhodes has withdrawn the Southern collection account from the collection agency and stated he will not pursue it in the future.

Following Respondent Attorney's receipt of the formal complaint, the attorney entered into discussion with the Executive Director which has resulted in an agreement to discipline by consent pursuant to Section 20.B of the Arkansas Supreme Court Procedures Regulating Professional Conduct of Attorneys at Law (2002). Upon consideration of the formal complaint and attached exhibits, admissions made by the respondent attorney, the terms of the written consent, the approval of Panel C of the Committee on Professional Conduct, and the Arkansas Model Rules of Professional Conduct, the Committee on Professional Conduct finds:

1. That Mr. Rhodes' conduct violated Model Rule 1.3, as he failed, from the date of his employment by Ms. Debra Southern in December 1999, through January 2002, to file an ancillary probate estate matter for the Estate of Edith Burrage, late of Illinois, with the Garland County Clerk. Model Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.
2. That Mr. Rhodes' conduct violated Model Rule 1.5(a)(4), when he billed Ms. Debra Southern for \$4,937.00 for his legal services for an ancillary probate matter and no ancillary probate matter has been filed more than two years after he was employed. Model Rule 1.5(a)(4) requires that a lawyer's fee be reasonable. The factors to be considered in determining the reasonableness of a fee include the amount involved and the results obtained.

WHEREFORE, in accordance with the consent to discipline presented by the Respondent and the Executive Director, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct that Respondent, BYRON COLE RHODES, Arkansas Bar No. 79186, be, and he hereby is, CAUTIONED for his conduct in this matter.

ARKANSAS SUPREME COURT COMMITTEE

ON PROFESSIONAL CONDUCT - PANEL C

By _____

David Newbern, Chairperson

Date _____