

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

**PANEL A**

IN RE:       **BYRON COLE RHODES**  
              ARKANSAS BAR ID No. 79186  
              CPC Docket No. 2004-064

**CONSENT FINDINGS & ORDER**

The formal charges of misconduct upon which this Consent Order is premised, involving respondent attorney Byron Cole Rhodes of Hot Springs, Arkansas, arose from information brought to the attention of the Committee on Professional Conduct by Mary Webb, of Hot Springs, Arkansas, and others in 2003-04

Suzanne Clark and Johnny Clark were married in 1989 and separated January 1, 2001. Two children were born of the marriage. Johnny Clark suffered serious, permanent brain injury in a car wreck in July 1999, underwent rehabilitation, and was released with an intellectual functioning rated at 50-75% of task, in need of supervision in many areas, and with a stated need for a guardian to be with him at all times. Ms. Clark petitioned for appointment of herself as Johnny Clark's statutory guardian in December 2000, in Garland County Probate Court and she was so appointed. Ms. Clark states Johnny Clark's mental incapacity continues to this time, and that in her opinion he was not able to understand what he read as of the time they separated in early 2001. She hired attorneys Gary Green and Tab Turner to represent her husband and her in their claims for damages arising from Johnny Clark's wreck. Hot Springs attorney Margaret Beam was appointed attorney ad litem for Mr. Clark in December 2000.

In July 2002, Mr. Clark's father, Daniel Clark, was appointed successor guardian for Johnny Clark's person. At the same time Hot Springs attorney Angela Echols was substituted as Johnny Clark's attorney ad litem, and remains such to this date. On February 20, 2002, his mother, Mary Webb, was appointed successor guardian of Johnny Clark's person, and remains such to this date. All of these actions are memorialized in publicly-filed orders in the probate case in the Garland County courthouse.

Suzanne and Johnny Clark separated in January 2001. In August 2001 she corresponded with Judge Vicki Cook, the presiding judge in Johnny Clark's guardianship case, about him paying her child support. Judge Cook replied that the children got a Social Security allotment due to their father's complete disability, and that the separate Social Security benefits Johnny Clark received were for his care and maintenance and not to be considered income to him as a basis for calculating child support.

Ms. Clark hired Mr. Rhodes in the Spring of 2002 to secure an uncontested divorce for her from Johnny Clark. She states she told Mr. Rhodes about his wreck, his disability, their children receiving Social Security benefits based on his disability, and that Johnny Clark had a guardian at the time. She did not recall if she told him Johnny Clark had an attorney ad litem. She states that Mr. Rhodes had a Child Custody and Property Settlement Agreement and a Decree of Divorce prepared, and that both were signed by Suzanne and Johnny Clark and notarized at Rhodes' office, on a date which had to be not later than April 23, 2002, without Rhodes being present. Ms. Clark brought Johnny Clark to Mr. Rhodes' office that day for the purpose of getting him to sign the divorce documents. She states a lady on Mr. Rhodes' staff gave Johnny Clark the papers, told him they were "divorce papers," no one read the papers to Johnny Clark at the office, and he then signed them without being forced to do so by anyone. She thought Johnny Clark understood the papers because she thought Mr. Rhodes had mailed a copy to him at his home earlier and that Ms. Webb would surely have gone over them with her son. A Complaint for Divorce prepared by Mr. Rhodes was filed April 23, 2002, in the Clark matter, stating that Johnny Clark was "disabled," but failed to mention anything about his having a court-appointed guardian or an attorney ad litem or the nature of his disability. Ms. Clark stated she had no idea who David Cann was until he was identified to her by the Office of Professional Conduct. Ms. Clark states Mr. Rhodes is still her attorney in the pending divorce matter and she has not received a divorce.

Johnny Clark recalls being taken by Ms. Clark to a lawyer's office in the Spring of 2002, but does not remember meeting any lawyer. He was given papers and states he asked for a chance to take them home and read them before signing anything, but recalls being told "no." He is left handed but recalls he signed the papers with his right hand, which is why he says his signature on the papers does not look like his normal

signature. He states he has no recollection of any attorney named David Cann or of talking or meeting with a person by that name. He states he told his mother about signing the papers when he got home later and that his mother contacted Angela Echols and asked her to try to find out what the papers might be.

Mary Webb confirmed the history on Johnny Clark's condition, guardianships and attorneys ad litem. She stated that in the Spring of 2002, she contacted Mr. Rhodes and told him she had been appointed Johnny Clark's new guardian, because of the serious head injury he had suffered in the vehicle accident. She states that some time after Johnny Clark told her he had signed some papers in a lawyer's office, she contacted Ms. Echols and asked Ms. Echols to check out the matter of a possible divorce filing. She stated Ms. Echols reported back to her that she could find nothing filed at the courthouse. Ms. Webb stated she had no idea who David Cann was until he was identified to her by the Office of Professional Conduct.

David Cann stated he is a Hot Springs attorney who has occasionally acted as a "second attorney" or "sign-off attorney" for Mr. Rhodes on uncontested divorces Rhodes filed. In the Clark matter, Cann stated he was requested by Rhodes' office to pick up the Clark divorce file at the courthouse, which he did on April 26, 2002. Attached to the file was a "fee" check for \$35.00 from Mr. Rhodes' office account. He stated Johnny Clark's signature was already on the two documents in the file he obtained. Cann stated he left a call-back at a number provided with the file for Johnny Clark, who returned the call on April 29. Cann tried to get Mr. Clark to agree to come to Cann's office to review the file and papers he had signed, but Clark wanted to do it over the phone, which is what Cann stated happened. Cann stated he apparently asked Johnny Clark his "standard questions" for such a situation and apparently was satisfied with his responses, so Cann signed off on both documents. Cann returned the Clark file to Mr. Rhodes on April 30, retaining Rhodes' check as the fee for his services. Cann stated he had no information at the time that Johnny Clark suffered from a permanent brain injury and mental incapacity or had a guardian or an attorney ad litem. He stated he first learned this information from a letter dated May 29, 2002, from Judge Cook to Mr. Rhodes and Cann, to which he did not respond. Mr. Cann stated that if he had known at the time that Johnny Clark had a disability, or there was an issue about any disability, or that he had a guardian, he would not have signed off on the divorce papers Mr.

Clark signed without further investigation into the matter.

Judge Vicki Cook confirmed her handling of the probate and divorce files mentioned above, and Suzanne Clark's letter in 2001 and the judge's response letter of August 23, 2001, on child support. She also identified her letter of May 29, 2002, to Rhodes and Cann, that neither responded to it, and that the divorce case was still pending with no action as of February 2, 2004.

Angela Echols confirmed she had been the attorney ad litem for Johnny Clark since July 10, 2001, and that she had no contact with Mr. Rhodes or Mr. Cann about the subject of a divorce involving her client Johnny Clark until she wrote Mr. Rhodes on June 17, 2002, after receiving a copy of Judge Cook's letter of May 29 to both attorneys. Ms. Echols stated she had no response from Mr. Rhodes to her letter as of March 11, 2004. Ms. Echols stated she was contacted by Mary Webb and asked to check out a possible divorce case involving Johnny Clark in February 2002. Her time records show she checked at the Garland County Courthouse on February 14, 2002, and found nothing filed. As part of her duties as his attorney ad litem, Ms. Echols is in contact with attorney Tab Turner, the attorney for Suzanne and Johnny Clark in a major pending federal lawsuit arising from Johnny Clark's 1999 vehicle accident. She stated the property settlement agreement prepared by Mr. Rhodes and executed by the parties does not mention this item of property.

Following Respondent Attorney's receipt of the formal complaint, the Respondent entered 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).

A. Mr. Rhodes' conduct violated Model Rule 1.1 in that he prepared a Child Custody and Property Settlement Agreement for use by the parties in a divorce proceeding styled *Clark v. Clark*, Garland Circuit No. DR-2002-398-2, that did not address the issue of Social Security payments the minor children were receiving due to their father's disability. The judge refused to approve the divorce decree with this issue unaddressed. Rhodes prepared a property settlement agreement between Suzanne Clark and Johnny Clark that failed to mention or address a matter then and now in litigation for a claim for substantial damages they have arising

from Mr. Clark's permanent brain injury in a vehicle accident in 1999. 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. Rhodes' conduct violated Model Rule 1.7(b) in that while he represented Suzanne Clark in a divorce from her spouse Johnny Clark, he had her bring Mr. Clark, a mentally-disabled person with both a court-appointed guardian and attorney ad litem, in to Rhodes' law office to sign a custody and property settlement agreement and divorce decree Rhodes had prepared. Rhodes then selected and paid a fee to another lawyer, David Cann, to do a quick review of these documents with Mr. Clark after Clark had already executed them. By these actions Rhodes in effect assumed a "dual representation" of Suzanne Clark and Johnny Clark in the divorce matter, where they had clear adverse interests, without getting the consent of each after consulting with each of them and without a reasonable belief that the dual representation would not adversely affect his representation of either, or his responsibility to Johnny Clark as a third person. Model Rule 1.7(b) provides that a lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:

- (1) the lawyer reasonably believes the representation will not be adversely affected; and
- (2) the client consents after consultation.

WHEREFORE, in accordance with the consent to discipline presented by Mr. Rhodes and 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 hereby is, **reprimanded** for his conduct in this matter, fined \$1,000.00, and ordered to pay costs of \$50.00. 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 D. Hodge, Chairperson, Panel A

Date \_\_\_\_\_