

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL B

IN RE: **BYRON COLE RHODES**
 ARKANSAS BAR ID No. 79186
 CPC Docket No. 2002-121

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 provided to the Committee on Professional Conduct by James Elam of Hot Springs, Arkansas, in 2002.

Following Respondent Attorney's receipt of the formal complaint, and after a ballot vote by Committee Panel A, the Respondent entered into discussion with the Executive Director resulting 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).

Mr. Elam has bipolar affective disorder and is disabled. He had an appointed limited guardian, Melinda Williams, at the time of his dealings with Mr. Rhodes. On April 10, 2002, Mr. Elam consulted with Mr. Rhodes about representing him in a pending action in Garland County Circuit Court on a credit card debt claim. Mr. Elam had previously been represented in the case by Bob Donovan, an attorney from eastern Arkansas, who suggested to Mr. Elam that it might be better and less expensive for him if he got an attorney in Garland County to take over the matter. Mr. Elam claimed Mr. Donovan had done the substantial part of the legal work needed to that point in defending the action for Mr. Elam. Mr. Elam turned this file over to Mr. Rhodes. Mr. Elam stated he selected Mr. Rhodes based on Rhodes' ad in the telephone book "yellow pages."

Mr. Rhodes' billing statement to Mr. Elam reflects Rhodes contacted Elam's guardian the same day and got approval for the fee arrangement, which Mr. Elam understood to be for \$1,500.00, and which Elam paid that day. Mr. Elam stated he was told by Mr. Rhodes that the \$1,500.00 fee would take care of Mr. Rhodes' services through the hearing on the pending motion for summary judgment. Mr. Elam stated that Mr. Rhodes

did not provide Elam with a written fee agreement, with Rhodes stating he was “busy.” On April 15, 2002, Mr. Rhodes filed a two page Amended Answer (reciting, among other matters, that Mr. Elam had a guardian and Elam was therefore not a proper party to the action) and three page Amended Pre-trial Brief for Mr. Elam.

On April 15, 2002, Mr. Rhodes called Mr. Elam to come in and he presented Elam with a billing for \$3,962.50, at a rate of \$250 per hour, which credited Elam with the \$1,500.00 payment from five days earlier. Mr. Elam paid Mr. Rhodes an additional \$1,000.00. Mr. Elam returned home and told his guardian of the meeting. She sent Mr. Rhodes a letter that day demanding that Rhodes contact her, as Elam’s guardian, before performing any additional services to be charged to Elam. The guardian then obtained the services of attorney Daniel Becker for Mr. Elam, with Mr. Becker substituting for Mr. Rhodes on May 9, 2002. A hearing on a motion for summary judgment was set for June 17. Mr. Elam claims Mr. Rhodes was at the courthouse that date and encountered Elam. On June 18, 2002, Mr. Rhodes sent Mr. Elam a statement billing him for additional services performed between April 15, 2002, and June 18, 2002, in the amount of \$612.50, which bill Elam did not pay.

Mr. Rhodes responded that Mr. Elam had been sued for a VISA debt in excess of \$29,095.93; that he told Elam that the urgent matter Elam had brought to him “could run up a very substantial legal statement, possibly more than the approximately \$30,000 in dispute;” and that Elam responded that it was the “principal (sic).” Mr. Rhodes stated he advised Mr. Elam of Rhodes’ \$250 per hour fee and that the \$1,500 was a minimum retainer to start work immediately. Mr. Rhodes claims that if he had not acted immediately in this “emergency” situation, Mr. Elam’s case could have been lost, and that Rhodes faced substantial risk of malpractice if he had not worked the matter as hard as he did. Mr. Rhodes concluded that he had not attempted to collect the unpaid balance of Mr. Elam’s account, and had told Elam that he would not do so. Mr. Elam replied to Mr. Rhodes’ response that both his previous attorney, Bob Donovan of Marianna, and his new attorney, Daniel Becker of Hot Springs, had charged Elam \$125 per hour on this matter and had handled his legal matters promptly and professionally.

Upon consideration of the formal complaint and attached exhibits, admissions made by the Respondent, the terms of the written consent, the approval of Panel B of the Committee on Professional Conduct, and the Arkansas Model Rules of Professional Conduct, the Committee on Professional Conduct finds:

A. Mr. Rhodes' conduct violated Model Rule 1.5(a) in that from April 10, 2002 through April 15, 2002, when he represented James Elam, he submitted a bill for \$3,962.50 to Elam, as the substituted attorney in non-complex litigation, for services which consisted basically of the research and preparation of an Amended Answer and an Amended Pre-Trial Brief. Model Rule 1.5(a) requires that a lawyer's fee be reasonable. 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 service;
- (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.

B. Mr. Rhodes' conduct violated Model Rule 1.5(b) in that having never represented James Elam prior to April 10, 2002, Rhodes failed to provide either Mr. Elam or his court-appointed guardian with the basis or rate of his fee within a reasonable time after he agreed to represent Elam. Model Rule 1.5(b) requires, in pertinent part, that when a lawyer has not regularly represented the client, the basis or rate of the fee be communicated to the client, preferably in writing, before or within a reasonable time after commencing the

representation.

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, ordered to pay restitution of \$1,000.00 for the benefit of James Elam, fined \$500.00, and ordered to pay costs of \$50.00. The fine, restitution, 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 B

By _____

J. Michael Cogbill, Chairperson, Panel B

Date _____