

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

IN RE: **FRANK E. SHAW**

Arkansas Bar ID #79255

CPC Docket No. 2003-099

FINDINGS & CONSENT ORDER OF DISCIPLINE

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Jeremiah Holland in October 2002. The information related to the representation of Mr. Holland by Respondent in 1993. On July 28, 2003, Respondent was served with a formal complaint, supported by affidavits from Jeremiah Holland, court reporter Deborah Willock, and the Supreme Court Clerk.

Mr. Shaw represented Jeremiah Holland as retained private counsel in a murder case in Searcy County in May 1993 when Holland was barely eighteen; Holland paid Shaw \$8,000.00 for his fee for the trial and any appeal. Shaw filed his notice of appeal and ordered the transcript. Shaw failed to file the record of Holland's trial on appeal, as Holland requested Shaw do, thereby denying Holland any direct appeal of his life sentence in prison, which he is now serving. \$8,825.00 of Holland's funds were transferred to Shaw pursuant to court order in mid-May 1993. Pursuant to court approval, Shaw paid \$500.00 of his client's funds toward the overall cost of the appeal transcript. Shaw has failed to account to Mr. Holland for the \$325.00 balance of his funds in Shaw's possession, after deducting payment of the transcript charge and Shaw's legal fee.

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), in lieu of a public hearing. 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 B of the Committee on

Professional Conduct, and the Arkansas Model Rules of Professional Conduct, the Committee on Professional Conduct finds:

A. Mr. Shaw's conduct violated Model Rule 1.2(a), in that it was his client's decision to pursue a direct appeal of his May 1993 criminal conviction and life sentence. Shaw acknowledged this decision by filing his notice of appeal and ordering the record. Shaw abandoned his client's appeal in December 1993 without notice to the client. Model Rule 1.2 (a) requires that a lawyer shall abide by a client's decisions concerning the objectives of representation, ..., and shall consult with the client as to the means by which they are to be pursued.

B. Mr. Shaw's conduct violated Model Rule 1.3 in that he filed a timely notice of appeal for his client, ordered the transcript, and then thereafter inexplicably failed to file the record in an appellate court. Model Rule 1.3 requires that a lawyer shall act with reasonable diligence and promptness in representing a client.

C. Mr. Shaw's conduct violated Model Rule 1.4(a) in that he has failed since December 1993; to keep his client reasonably informed on the status of his criminal appeal Shaw was paid and entrusted to handle and pursue. Model Rule 1.4(a) requires that a lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

D. Mr. Shaw's conduct violated Model Rule 1.4(b) in that he failed to sufficiently explain his plans for the appeal matter to his client so that the client might make an informed decision as to whether he wanted Shaw to handle his direct appeal, or get other counsel. Model Rule 1.4(b) requires that a lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

E. Mr. Shaw's conduct violated Model Rule 1.16(d) in that his representation of Holland was apparently terminated by Shaw in late 1993, yet Shaw has failed to refund to him any unearned or unspent balance for the \$8,825.00 of his funds Shaw held at the time, being \$325.00. Model Rule 1.16(d) requires that upon termination of representation, an attorney shall take steps to the extent reasonably practicable to protect the client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advanced payment of fee that has not been earned.

F. Mr. Shaw's conduct violated Model Rule 3.2 in that he failed to take reasonable, timely and necessary steps to see that his client's record was filed with the appellate court in 1993 so he could have the direct appeal he desired on his life sentence. Model Rule 3.2 requires that a lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel B, that Frank E. Shaw, Arkansas Bar ID# 79255, be, and hereby is, **Reprimanded** for his conduct in this matter; ordered to make restitution of \$825.00 for the benefit of Jeremiah Holland, and ordered to pay costs of \$50.00. The 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 Consent 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 _____