

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

IN RE: STEPHEN L. CURRY, Respondent
 Arkansas Bar ID#81041
 CPC Docket No. 2004-030

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 Toni R. Holderfield in an Affidavit dated March 1, 2004. The information related to the representation of Ms. Holderfield by Respondent in 2001 and 2002.

On March 19, 2004, Respondent was served with a formal complaint, supported by affidavit from Ms. Holderfield. A response was filed. The matter proceeded to ballot vote. Respondent timely requested a *de novo* hearing. Prior to the scheduled time for the *de novo* hearing, the Respondent and the Executive Director negotiated a discipline by consent proposal, which was submitted to this Panel.

The information before the Panel reflected that during April 2001, Ms. Holderfield hired Stephen L. Curry, an attorney practicing in Little Rock, to represent her in a wrongful termination matter. Mr. Curry had never previously represented Ms. Holderfield in any other legal matter. Ms. Holderfield reported that she and Mr. Curry communicated many times in 2001 about her legal matter and the litigation Mr. Curry was going to file on her behalf.

Beginning in 2002, Ms. Holderfield reported that she began to have great difficulty contacting Mr. Curry. When she did finally make contact with him in late 2002 or early January 2003, Ms. Holderfield learned that Mr. Curry was no longer with the firm of Kemp, Duckett, Curry and Arnold. Ms. Holderfield scheduled a meeting with Mr. Curry during February 2003. She met with another attorney at the time and learned that her litigation had been dismissed in October 2002. When she obtained her file after that meeting, Ms. Holderfield found paperwork in the case file which had never been sent to her.

The pleadings and Orders which Ms. Holderfield became aware of when she obtained her file included a Final Scheduling Order which was entered on May 15, 2002. The records indicated that Mr. Curry continued to perform services for Ms. Holderfield until sometime in May 2002. On May 24, 2002, the opposing counsel in the federal litigation wrote Mr. Curry and requested information about a proposed settlement offer. It seemed that Mr. Curry never approached opposing counsel with a settlement offer although Ms. Holderfield and Mr. Curry had discussed one.

During June 2002, Mr. Curry was served with Defendants' First Set of Interrogatories to Plaintiff and Request for Production of Documents. Ms. Holderfield was never provided copy of the documents, as such the discovery requests were never responded to by Ms. Holderfield or Mr. Curry. As a result of the failure to take action, opposing counsel filed a Motion to Compel Discovery. Mr. Curry did not respond to the Motion. During that time period, Mr. Curry did contact Ms. Holderfield and her husband about a possible settlement but he did not advise them that there was an issue with discovery. On August 23, 2002, Honorable Susan Weber Wright entered an Order compelling responses to discovery. Mr. Curry never made Ms. Holderfield aware of the Order. Since Mr. Curry did not take action with regard to the Order, the opposing counsel filed a Motion to Dismiss. Mr. Curry neither prepared Ms. Holderfield with a copy of the Motion nor responded to it. The Court granted the Motion to Dismiss on October 7, 2002. Mr. Curry did not make Ms. Holderfield aware of the dismissal at the time of entry of the Order.

Upon consideration of the formal complaint and attached exhibit materials, the response, the consent proposal, 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. Curry's conduct violated Model Rule 1.1 when he failed to be thorough enough in his representation of Ms. Holderfield to be certain that the civil litigation was pursued in a competent and timely manner; failed to be thorough enough to be certain that he complied with the time requirements set forth in the federal court's scheduling orders; failed to be thorough enough in his representation of Ms. Holderfield to take necessary action to keep her lawsuit

from being dismissed without prejudice; failed to be certain that he responded to the discovery requests of opposing counsel; and, failed to be thorough enough to respond to the Motion to Dismiss filed by opposing counsel. Model Rule 1.1 requires that a lawyer provide competent representation to a client, including the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

2. That Mr. Curry's conduct violated Model Rule 1.3 when he did not diligently or promptly pursue any relief on Ms. Holderfield's behalf with regard to her civil lawsuit from June 2002 until the lawsuit was dismissed in October 2002; when he did not timely file the required Rule 26 F disclosures in the lawsuit; when he did not file responses to the discovery requests served on him by opposing counsel; and, when he did not respond to the Motion to Dismiss the lawsuit filed by opposing counsel in Ms. Holderfield's matter and allowed the federal court to believe Ms. Holderfield no longer wished to pursue the matter. Model Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.
3. That Mr. Curry's conduct violated Model Rule 1.4(a) when he failed to keep Ms. Holderfield informed of the actions taken on her behalf, if any, or the status of her federal lawsuit against her former employer; when he failed to return telephone messages left by Ms. Holderfield requesting information about her legal matter; when he failed to advise Ms. Holderfield that there were discovery requests which needed to be responded to in her civil lawsuit; when he failed to advise Ms. Holderfield that opposing counsel had filed a Motion to Dismiss; and, when he failed to advise Ms. Holderfield when the federal court dismissed her civil lawsuit during October 2002. 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.
4. That Mr. Curry's conduct violated Model Rule 1.5(b) because although he had never previously represented Ms. Holderfield, he failed to explain to her the rate or basis of his fee for representation of her, nor did he ever place the fee agreement in written form. Model Rule

1.5(b) requires 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, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel A, that STEPHEN L. CURRY, Arkansas Bar ID# 81041, be, and hereby is, CAUTIONED for his conduct in this matter. Further, pursuant to Section 18.A. of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law, Mr. Curry is assessed the costs of this proceeding in the amount of \$250. 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: _____

Bart F. Virden, Chair, Panel A

Date: _____

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