

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

IN RE: ROBERT L. DEPPER, JR., Respondent
 Arkansas Bar ID#81046
 CPC Docket No. 2006-110

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 Ruby Lee in an Affidavit dated September 12, 2006. The information related to the representation of Ms. Lee by Respondent beginning in 2003 through 2006.

During September 2006, Respondent was served with a formal complaint, supported by affidavit from Ms. Lee. Respondent filed a timely response. The matter then proceeded to ballot vote before Panel B of the Committee pursuant to the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law (2002). Respondent timely requested a *de novo* hearing. Following request for the hearing, the Respondent and the Executive Director negotiated a discipline by consent proposal, which was submitted to this Panel.

The information provided by Ms. Lee revealed that during February 2003, Ms. Lee hired Robert L. Depper, an attorney practicing in El Dorado, Arkansas, to represent her in seeking recovery for injuries suffered as a result of an automobile accident which occurred January 5, 2003. On February 24, 2003, Mr. Depper sent a letter to Chad McRae of Farm Bureau Mutual Insurance Company. In the letter, Mr. Depper acknowledged the representation of Ms. Lee in the matter. Three (3) days later, Mr. Depper wrote Tom Floyd of Farmers Insurance Group about the representation. Then, in April 2003, Mr. Depper sent letters to Ms. Lee's medical providers and

to the body shop where photos of her automobile were located. On April 8, 2003, AHC, a collection company hired by Medical Center of South Arkansas contacted Mr. Depper about the account Ms. Lee owed the Medical Center. Mr. Depper promptly wrote the agent for AHC, Inc., back on April 18, 2003.

On October 21, 2003, Mr. Depper sent a representative for Farmers Insurance a copy of Ms. Lee's medical expenses incurred to that date. Then on December 8, 2003, Mr. Depper made a settlement demand for policy limits of Mr. Eaton who was driving the vehicle which caused the accident in which Ms. Lee was involved.

In May 2005, Ms. Lee received a letter from Farmers explaining that a settlement offer was made in December 2004 for \$7,000. In the letter, it is pointed out that Farmers had received no response from Mr. Depper to the settlement offer. Three (3) months later another letter was sent to Mr. Depper about the settlement offer of December 2004. On August 24, 2005, Mr. Depper wrote Farmers back and advised that Ms. Lee would not settle for \$7,000 but would settle for \$20,000.

Ms. Lee spoke with Mr. Depper on February 6, 2006. The call was initiated by Mr. Depper upon learning of the error and the running of the statute of limitation. During the conversation, Mr. Depper offered to pay Ms. Lee an out of pocket settlement because a cause of action was not filed before the statute of limitation expired. The offer was for Ms. Lee to receive what she would have netted from a recovery of \$12,500 in the Eaton matter, if settlement had been reached with Mr. Eaton's insurance company. Ms. Lee accepted the offer extended to her by Mr. Depper. Mr. Depper paid the monies to Ms. Lee in installment payments.

However, Mr. Depper did not comply with Rule 1.8(h)(1) and Rule 1.8(h)(2) which

require that before settling a claim for his personal liability, Mr. Depper was to inform Ms. Lee in writing of the right and priority of being represented by independent counsel in settling a claim with him as her lawyer. Mr. Depper never disputed that he failed to discuss with Ms. Lee the need to speak with independent counsel about the matter or the release he sent to her.

In the consent negotiations, Mr. Depper acknowledged that he was retained by Ms. Lee for purposes of representing her interests in a car collision case. However, the complaint in the cause of action was not filed prior to the running of the statute of limitation, which caused Ms. Lee's claim to be barred. He also agreed that failing to file a client's complaint prior to the running of the statute of limitation is a violation of Rule 1.1 of the Rules of Professional Conduct.

Upon consideration of the formal complaint and attached exhibit materials, the response, the consent proposal, and 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. Depper's conduct violated Rule 1.1, because he was not thorough enough in his representation of Ms. Lee to be certain that he settled or filed a legal action on her behalf prior to the expiration of the statute of limitation to do so. Rule 1.1 required 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. Depper's Conduct violated Rule 1.8(h)(1), when he prepared a Release for Ms. Lee to sign which released him from liability in the handling of her personal injury matter against William O. Eaton, when Ms. Lee was not represented by independent counsel. Rule 1.8(h)(1) requires that a lawyer not make an agreement prospectively limiting the lawyer's

liability to a client for malpractice unless the client is represented by independent counsel.

3. That Mr. Depper's conduct violated Rule 1.8(h)(2), when he did not advise Ms. Lee in writing of the desirability of her seeking the advice of independent counsel with regard to the settlement of a claim or potential claim against him, nor did he give her a reasonable opportunity to seek the advice of independent counsel. Rule 1.8(h)(2) requires that a lawyer not settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in connection therewith.

5. That Mr. Depper's conduct violated Rule 8.4(d), because his failure to take timely and appropriate action on her behalf prior to January 5, 2006, resulted in Ms. Lee losing any right to pursue her claims against William O. Eaton in legal action. Rule 8.4(d) requires that a lawyer shall not engage in conduct that is prejudicial to the administration of justice.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel A, that ROBERT L. DEPPER, JR, Arkansas Bar ID#81046, be, and hereby is, REPRIMANDED for his conduct in this matter. Pursuant to Section 18.A. of the Procedures, Mr. Depper is assessed the costs of this proceeding in the amount of \$250. In addition, Mr. Depper is fined in the amount of \$500 in accordance with Section 18.B. of the Procedures. Mr. Depper is ordered to make restitution to Ms. Lee in the amount of \$8500. Mr. Depper shall be given credit for the payments already made to Ms. Lee in the amount of \$8,210.93, leaving a balance of \$289.07, due to Ms. Lee pursuant to this Order. The fine, restitution, and costs assessed herein, totaling \$1039.07, 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: _____
Jerry D. Pinson, Chair, Panel A

Date: _____

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