

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL B

IN RE: DAVID EMMITT MORRIS, Respondent
 Arkansas Bar ID#82114
 CPC Docket No. 2003-194

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Jon Roberts in an Affidavit executed December 15, 2003. The information related to the representation of Mr. Roberts and his wife by Respondent beginning in 1997.

On or about January 27, 2004, Respondent was served with a formal complaint, supported by affidavit from Jon Roberts. Respondent filed an Answer which consisted of a general denial to each Model Rule violation set forth in the formal disciplinary complaint.

The information before the Committee revealed that on April 23, 1997, Mr. Roberts hired David Emmitt Morris, an attorney practicing in Springdale, to represent him in a civil lawsuit. The lawsuit had been filed by Mr. Bowers prior to the time Mr. Roberts hired Mr. Morris. The lawsuit had been filed in Boone County Circuit Court and had case number CIV-95-163. The agreement reached with Mr. Morris was that he would receive 40% of any amount that Mr. Roberts might recover. A fee agreement reflecting that amount was signed and returned to Mr. Morris.

Five (5) days after Mr. Morris was hired, he filed a Motion to Add Attorney of Record, wherein it was requested that Mr. Morris be added as counsel with Mr. Bowers. Mr. Roberts and his wife, Natalie, believed at the time that Mr. Morris was hired that Mr. Bowers was no longer associated with the lawsuit and they did not continue to communicate with Mr. Bowers. All subsequent pleadings were sent to Mr. Morris after the Motion. The matter proceeded very slowly after Mr. Morris filed a Notice to Take Deposition of the three named defendants.

Trial was set for August 16, 1999, but was continued on the Motion for Continuance filed by the Defendants. In the Motion, it was explained that Mr. Morris had provided information about an expert witness who had not previously been disclosed. There were no other pleadings filed in the matter, nor did the trial occur on August 16, 1999. The docket sheet for the case demonstrates that on June 7, 2000, the matter was dismissed. Mr. Roberts was unaware of this fact. On July 7, 2002, Mr. Roberts wrote to Mr. Morris and requested information about the status of the lawsuit. Mr. Morris did not respond.

During a conversation with Mr. Morris at some point in 2002, Mr. Morris advised Mr. Roberts that he had requested a trial with Judge Carter's office in Marion County. There is no record with Judge Carter's office of Mr. Morris contacting them. For over a year, Mr. Roberts left messages for Mr. Morris which have not been responded to by Mr. Morris or anyone on his behalf.

Upon consideration of the formal complaint and attached exhibit materials, the response to it, other matters before it, and the Arkansas Model Rules of Professional Conduct, Panel B of the Arkansas Supreme Court Committee on Professional Conduct finds:

1. That Mr. Morris' conduct violated Model Rule 1.2(a) because he was hired to pursue a civil matter to conclusion for Jon Roberts and his wife, Natalie. Instead of pursuing the matter to conclusion, Mr. Morris allow it to be dismissed without informing his clients. Model Rule 1.2(a) requires that a lawyer abide by a client's decisions concerning the objectives of representation, subject to paragraphs (c), (d) and (e), and consult with the client as to the means by which they are to be pursued.
2. That Mr. Morris' conduct violated Model Rule 1.3 when he did not act with diligence in his representation of Mr. and Mrs. Roberts with regard to pursuit of the civil action involving Cash Enterprises, Inc., which he was hired to handle in connection with an accident in which Mr. Roberts was involved; when he did not promptly provide information regarding the experts he wished to have testify on his clients' behalf to the opposing counsel as demonstrated in the Motion for Continuance filed in 2000; and when he did not actively pursue a trial date for Mr.

and Mrs. Roberts after being added as attorney of record for them in the lawsuit which was initially filed during 1995. Model Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

3. That Mr. Morris' conduct violated Model Rule 1.4(a) when he did not keep Mr. and Mrs. Roberts informed of the status of his actions, if any, which were being undertaken in the civil action they hired him to pursue on their behalf; when he failed to comply promptly with the requests for information made by Mr. and Mrs. Roberts about the civil action against Cash Enterprises; and, when he did not inform Mr. and Mrs. Roberts when their lawsuit was dismissed during June 2000. 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. Morris' conduct violated Model Rule 1.4(b) because when Mr. and Mrs. Roberts' lawsuit was dismissed during June 2000, he failed to explain the dismissal without prejudice to them, thereby denying them the opportunity to consider refile within the year which might have been available to them. Model Rule 1.4(b) requires that a lawyer explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

5. That Mr. Morris' conduct violated Model Rule 8.4(c) because his act of omission in not advising Mr. and Mrs. Roberts that their lawsuit against Cash Enterprises had been dismissed is one of dishonesty. He allowed Mr. and Mrs. Roberts to believe that their action was still being pursued by him. He was not truthful with Mr. and Mrs. Roberts when he advised them that their lawsuit was pending in Marion County, Arkansas. Model Rule 8.4(c) requires that a lawyer not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

6. That Mr. Morris' conduct violated Model Rule 8.4(d) because his failure to take action on Mr. and Mrs. Roberts' behalf led to the dismissal of their lawsuit against Cash Enterprises, Inc. and

because his failure to advise Mr. and Mrs. Roberts of the fact that their lawsuit was dismissed without prejudice during June 2000, caused them to not have the opportunity to re-file within the year that they may have had available to do so. Model Rule 8.4(d) requires that a lawyer 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 B, that DAVID EMMITT MORRIS, Arkansas Bar ID# 82114, 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. Morris is ordered to pay costs in the amount of \$50. Mr. Morris is also ordered to make restitution to Mr. Roberts in the amount of \$1000, pursuant to Section 18.C. of the Procedures. The costs and restitution 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 B

By: _____

J. Michael Cogbill, Chair, Panel B

Date: _____