

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

PANEL A

IN RE: T. DAVID CARRUTH

Arkansas Bar ID #87027

CPC Docket No. 2002-092

FINDINGS AND CONSENT ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by North Little Rock attorney Keith Grayson. The information related to the representation of Mr. Chang Ho by Respondent in 1997-2001 and events thereafter.

Following Respondent Attorney's receipt of the formal complaint, he 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). 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 A of the Committee on Professional Conduct, and the Arkansas Model Rules of Professional Conduct, the Committee on Professional Conduct finds:

On or about January 30, 1997, Respondent Carruth began representation of Mr. Chang Ho of New Jersey in an action for Mr. Ho's damages arising out of a motor vehicle accident in Prairie County, Arkansas. A contract for legal services with Mr. Carruth was executed by Mr. Ho on January 31, 1997. Respondent filed suit as Prairie Circuit No. CIV-99-53 for Mr. Ho on November 16, 1999. Mr. Ho terminated Carruth's services not later than June 4, 2001, but Mr. Carruth remained his attorney of record in the case until the court granted Carruth's motion to be relieved on August 27, 2001. On June 28, 2001, Mr. Carruth filed a *pro se* Complaint on Attorney's Lien as a third party plaintiff in Mr. Ho's pending suit, which Carruth had initiated for Ho almost two and one-half years before. Mr. Carruth claimed a lien in the amount of \$22,366.42 for legal services, at the rate of \$150 per hour, and for expenses paid for Mr. Ho, based on the 1997 contact with him. However, Mr. Carruth's 1997 contract provided his services would be billed at a rate of \$100.00 per hour, if the contract was terminated. Mr. Carruth's "Client Billing Worksheet" for Chang Ho's case dated July 29, 1997, marked in hand in the upper right "Do Not Release," reflected that Mr. Carruth was charging \$100 per hour for legal services to that file. A later bill to Mr. Ho, the one attached to Mr. Carruth's Complaint on Attorney's Lien, was clearly based on \$150 per hour.

Mr. Carruth's Complaint on Attorney's Lien contains statements that are contrary to his former client's interest in the pending litigation and involve disclosure of matters normally protected by attorney-client confidence. Mr. Carruth had already filed his attorney lien claim in the manner provided by law, and it was unnecessary for him to also file it as an adversarial party in his former client's own litigation, which Mr. Carruth had filed while representing him.

The Order entered August 27, 2001, directed Mr. Carruth to deliver a complete copy of his case file to plaintiff or his designated representative, as a condition of Carruth being relieved in the case as Mr. Ho's attorney. This was not done. Attorney Keith Grayson later took up Mr. Ho's representation, and made several efforts starting in mid-September 2001 to obtain a copy of Mr. Ho's case file from Mr. Carruth, so he could effectively represent Mr. Ho. Mr. Carruth still did not deliver a copy of his case file to Plaintiff's new counsel, as ordered in August 2001, as shown by the exchange of correspondence between Mr. Grayson and Carruth. Mr. Carruth required Mr. Grayson to pay Carruth \$.50 per page for copying the file, if he came to Carruth's office in Clarendon and used Carruth's copier to make the copies of the file the court had ordered Carruth to provide to his former client six (6) months earlier.

Only after the Office of Professional Conduct brought to Mr. Carruth's attention that he had filed his attorney's lien based on \$150.00 per hour, when his contract with Mr. Ho only allowed \$100.00 per hour, did Mr. Carruth file an Amended Complaint on Attorney's Lien on January 16, 2002, quietly reducing his lien claim accordingly, down to \$15,953.92.

A. Mr. Carruth's conduct violated Model Rule 1.6 in that he filed a personal pleading, as a third party plaintiff, in his then-client's pending litigation, and in it, without client consent, revealed information potentially adverse and harmful to his client, which type information would normally be expected by clients to not be disclosed by their counsel. Model Rule 1.6(a) provides that a lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation.

B. Mr. Carruth's conduct violated Model Rule 1.9(a) when, after his representation of Mr. Ho was terminated by the client but before he was relieved by the court, Mr. Carruth represented the materially-adverse interest of another party in his pending litigation - himself - and Mr. Ho had not consented to his former attorney doing this. Model Rule 1.9(a) provides that a lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client consents after consultation.

C. Mr. Carruth's conduct violated Model Rule 1.9(c) by filing his personal Complaint on Attorney's Lien in his client's pending litigation while still his attorney of record in June 2001, and in using and revealing information protected from disclosure under Model Rule 1.6 confidentiality in a manner adverse to his client. Although he was not delivered a copy of the court order terminating his representation, he continued in this posture after the court relieved him from representing Mr. Ho in August 2001, and Mr. Ho became his former client. Model Rule 1.9(c) provides that a lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as Rule 1.6 or Rule 3.3 would permit or require with respect to a client, or when the information has become generally known; or

(2) reveal information relating to the representation except as Rule 1.6 or Rule 3.3 would permit or require with respect to a client.

D. Mr. Carruth's conduct violated Model Rule 1.16(d) in that upon his representation of Mr. Ho being terminated, he failed to surrender or provide a copy of his file without payment of copying costs in his case to Mr. Ho or his new counsel, even though required to do so by court order as a condition of Mr. Carruth being relieved as his counsel. 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.

E. Mr. Carruth's conduct violated Model Rule 3.3(a)(1) when he filed a Complaint for Attorney's Lien that stated his client owed Carruth \$22,237.50 for 148.25 hours at \$150.00 per hour, when the client contract prepared by Carruth only allowed an hourly rate of \$100.00, which would result in a charge of \$14,825.00. Only when the Office of Professional Conduct pointed out this inaccurate statement, did Mr. Carruth amend his pleading to use the correct hourly rate. Model Rule 3.3(a)(1) provides that a lawyer shall not make a false statement of material fact or law to a tribunal.

F. Mr. Carruth's conduct violated Model Rule 3.4(c) when he failed to comply with the court order entered August 27, 2001, that required him to deliver to plaintiff or plaintiff's counsel a complete copy of his case file, as a condition of his being relieved as plaintiff's counsel in the Chang Ho case. As late as February 2002, Mr. Carruth was demanding that plaintiff's new counsel come to Carruth's law office in Clarendon and copy the file there at plaintiff's expense at \$.50 per page. Model Rule 3.4(c) requires that a lawyer shall not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists.

G. Mr. Carruth's conduct violated Model Rule 8.4(c) in that his conduct in basing his claimed attorney's lien on a rate of \$150.00 per hour, rather than the \$100.00 per hour allowed in the legal services contract Carruth drafted, was a misrepresentation of a material fact. Model Rule 8.4(c) requires that a lawyer shall not engage in conduct involving misrepresentation.

H. Mr. Carruth's conduct violated Model Rule 8.4(d) when his conduct in delaying plaintiff's new counsel in obtaining a copy of the case file for six (6) months delayed plaintiff's ability to pursue his pending case in court. His conduct in filing a false attorney's lien complaint required the filing of additional motions and additional court time and resources to deal with the issue. Model Rule 8.4(d) requires that a lawyer shall not engage in conduct that is prejudicial to the administration of justice.

WHEREFORE, on the discipline by consent proposal before it, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel A, that T. David Carruth, Arkansas Bar ID#87027, be, and he hereby is, CAUTIONED for his conduct in this matter, and ordered to pay restitution in the amount of \$400.00 for the benefit of Keith Grayson, pursuant to Section 18.C of the Supreme Court's Procedures Regulating Professional Conduct of Attorneys at Law. The restitution assessed herein has been tendered this date by trust check from respondent's counsel.

ARKANSAS SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT - PANEL A

By: _____

Gwen Hodge, Chair, Panel A

Date: _____