

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

IN RE: KATHY CRUZ, Respondent
 Arkansas Bar ID#87079
 CPC Docket No. 2004-091

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Renae Whitmoyer in an Affidavit dated May 6, 2004. The information related to the representation of Frigidaire Financial Corporation, Ms. Whitmoyer's employer, by Respondent beginning in 1999.

On May 26, 2004, Respondent was served with a formal complaint, supported by affidavit from Ms. Whitmoyer. A timely response was thereafter filed by Respondent. The matter then proceeded to ballot vote pursuant to the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law.

The information before the Committee revealed that on or about June 1, 1999, Kathy A. Cruz, an attorney practicing primarily in Hot Springs, Garland County, Arkansas, began representing Frigidaire Financial Corporation. During the course of employment, Renae Whitmoyer contacted Ms. Cruz to pursue collection matters on behalf of Frigidaire. The two matters complained about before the Committee involved Bill's Appliances and Starlite Video, Inc.

The Starlite Video, Inc. representation began in June 2000. When Ms. Cruz accepted the representation on this particular collection matter, the documents from Frigidaire were sent to her by overnight delivery because time was of the essence in the matter. When Ms. Whitmoyer spoke with Ms. Cruz on August 31, 2000, she was advised that a replevin action was going to be filed following the Labor Day holiday. Ms. Whitmoyer explained that no one at the company heard anything from Ms. Cruz or anyone in her office for several weeks thereafter. During November 2000, Ms. Whitmoyer was advised by an employee, Karen, in Ms. Cruz' office that the debtor was still avoiding service, but that a private investigator was trying to locate him. No further contact was had until January 2001, when Ms. Whitmoyer was advised by the same employee that the debtor had moved to Missouri but was still coming to Arkansas everyday for work. Despite attempts to make contact with anyone in the office, Ms. Whitmoyer was unable to speak with anyone at the Cruz Law Firm until March 27, 2001, when she was advised that the debtor was in jail and the process server would serve him while he was incarcerated. Ms. Cruz explained to the Committee that she advised Ms. Whitmoyer that a replevin action could be filed, not that one would be filed.

The next contact with Karen was June 12, 2001. At that time Ms. Whitmoyer was advised that service had not occurred because the debtor had been released shortly after incarceration. The matter continued to linger for several months during which time, if Ms. Whitmoyer was able to speak with anyone, she was given excuses for the lack of action or results. When it was discovered that the debtor had filed bankruptcy and had been discharged, Ms. Whitmoyer immediately sent the information to Ms. Cruz. During December 2001, Ms. Cruz assured Ms. Whitmoyer she would check into the matter and would send a written status report. After months of excuses and no activity, Ms. Whitmoyer was finally able to speak with Ms. Cruz on April 10, 2002. During that telephone conversation, Ms. Cruz advised Ms. Whitmoyer that the closest they could get to the debtor would be through his ex-wife. However, since the only address they had was a post office box they could not serve a complaint there. As such, there was no other legal action that could be taken. Ms. Cruz assured Ms. Whitmoyer that they would send a letter advising this fact. No such letter was received as promised. More months elapsed with excuses but no close out letter. Finally, on December 6, 2002, a closing confirmation, not a letter, was received. When the document was finally received, Ms. Whitmoyer was able to complete a write-off request and forward the same for authorization.

Frigidaire's relationship with Ms. Cruz began in June 1999 with regard to Bill's Appliances account. During the first two (2) months of representation, Ms. Cruz kept Ms. Whitmoyer and others at Frigidaire informed of the status of actions taken in the matter and the progress of the bankruptcy proceeding. Then communication became difficult and minimal at best. Ms. Whitmoyer had dealings by telephone with Karen when she called the Cruz Law Firm. Written status reports were not regularly forthcoming in this collection matter either. The matter lingered for many months.

During January 15, 2003, Ms. Whitmoyer requested that Ms. Gorman, the attorney who had referred her to Ms. Cruz, review her notes and determine if anything was being done on the account. Ms. Gorman advised that she would contact Ms. Cruz' office directly to determine what was going on and what the chances of collection were. In April 2003, after being able to speak with Ms. Cruz once, Ms. Gorman advised that her subsequent requests to speak with Ms. Cruz had been ignored. Ms. Gorman suggested that Ms. Whitmoyer go forward with filing a complaint with the disciplinary agency in Arkansas. According to Ms. Cruz, she continued to work on this account through the bankruptcy proceeding until she was advised by Ms. Gorman to stop. Ms. Cruz offered that Ms. Gorman did not understand Chapter 13 bankruptcy procedures and therefore did not realize there was still time left to take action on this account.

On the issue of Karen, who was the point of contact many times for Ms. Whitmoyer, Ms. Cruz advised that she was not employed by the law firm. According to Ms. Cruz, she is associated with Cybertec, to which she out sources her

computer support, research and ministerial matters. In connection with communication, Ms. Cruz offered that she kept Frigidaire informed of the status of both accounts both in writing and verbally in the same manner as she had previously done. Further, she advised that she responded in what she thought was a timely fashion.

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 A of the Arkansas Supreme Court Committee on Professional Conduct finds:

1. That Ms. Cruz' conduct violated Model Rule 1.3 when she failed for nine (9) months to send Ms. Whitmoyer the requested letter so that Frigidaire could close out the account on StarLite Video, Inc. Model Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.
2. That Ms. Cruz' conduct violated Model Rule 1.4(a) when she did not keep Ms. Whitmoyer informed of the status of her actions, if any, which were being undertaken in the collection actions Frigidaire hired her to pursue on their behalf; when she failed to comply promptly with Ms. Whitmoyer's requests, made on numerous occasions, concerning information about the collection actions; and, when she failed to promptly provide written status reports on the accounts of Frigidaire as she was requested to do on numerous occasions. 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.
3. That Ms. Cruz' conduct violated Model Rule 1.4(b) when she failed to explain to Renae Whitmoyer or anyone else associated with Frigidaire that Karen, with whom they were dealing on the collection accounts, was a former attorney who was not to have contact with clients as she did from Ms. Cruz' office on the collection accounts. 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.
4. That Ms. Cruz' conduct violated Model Rule 8.4(c) when she was not honest with Ms. Whitmoyer on the several occasions when she advised her that a status report or closing letter would be forthcoming to her attention immediately. Model Rule 8.4(c) requires that a lawyer not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel A, that KATHY CRUZ, Arkansas Bar ID# 87079, be, and hereby is, CAUTIONED for her 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 (2002), Ms. Cruz is assessed the costs of this proceeding in the amount of \$50. 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: _____
Gwendolyn D. Hodge, Chair, Panel A

Date: _____