

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

PANEL A

IN RE: Rickey H. Hicks, Respondent

Arkansas Bar ID#89235

CPC Docket No. 2002-139

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 Myrtle "Merle" Smith in an Affidavit executed October 18, 2002, relating to her representation by Respondent, Rickey H. Hicks, beginning in January 2000.

On or about October 30, 2002, Respondent was served with a formal complaint, supported by affidavit(s) from Myrtle "Merle" Smith. A response was timely filed and Respondent and the Executive Director negotiated a proposal for discipline by consent, which proposal was submitted to this Panel.

The information before the Panel disclosed that during January of 2000, Ms. Smith hired Rickey H. Hicks, an attorney practicing primarily in Little Rock, to represent her in an employment discrimination lawsuit against the Department of Human Services and certain of its staff members. Mr. Hicks filed the lawsuit for Ms. Smith on April 12, 2000, against the Arkansas Department of Human Services, Kurt Knickrehm, Diane O'Connell and Elizabeth McGee. According to Ms. Smith, Mr. Hicks only filed the lawsuit after much badgering and repeated telephone calls by her to his office. Mr. Hicks did not make Ms. Smith aware of the filing of the lawsuit until May of 2000. The Answer of the defendants was filed June 21, 2000, along with their First Set of Interrogatories and Request for Production of Documents propounded to the Plaintiff, Ms. Smith. Mr. Hicks did not call Ms. Smith to pick up the documents until the first week of July, 2000. Ms. Smith prepared a rough draft of responses and returned the same on computer diskette to Mr. Hicks' office for his review and editing, and was told later that the responses had been prepared and served on the defendants. During the subsequent three (3) months, Ms. Smith called Mr. Hicks repeatedly requesting information on the status of her lawsuit and inquiring whether any notice of a hearing or trial or other proceeding had been received. Ms. Smith was not aware, at that time, that Mr. Hicks had not requested a setting in her case. Mr. Hicks rarely returned telephone calls to Ms. Smith but would mention to her at church, where he was pastor, that he was going to call or that she should call him to schedule an appointment to come in and visit with him about her legal proceeding.

Mr. Hicks did advise Ms. Smith of the setting of her trial date during early November, 2000. After receiving notice of the setting, Ms. Smith went to Mr. Hicks' office and obtained a copy of the Scheduling Order. Ms. Smith was not informed that the Court had also sent a notice that she had the option of appearing before a Magistrate for possible early resolution of the legal proceeding. The possibility had existed that an equitable solution could be reached through the use of a Magistrate. Only in May of 2001, did Ms. Smith become aware that any alternative possibility of early resolution had existed. Mr. Hicks later stated, in his response to Ms. Smith's petition to have him removed as legal counsel, that he, unilaterally, without consulting her, made the decision he wanted a jury trial.

Through February of 2001, Ms. Smith reported that she made calls to Mr. Hicks almost on a weekly basis, concerning the progress of her lawsuit. Ms. Smith reported that she often got no response other than the briefest of remarks in the church hallway or for a minute after Bible study. When her eldest brother passed away, Ms. Smith went to California for a month and had no contact with Mr. Hicks. When she returned in April of 2001, Ms. Smith contacted Mr. Hicks and, because she was out of a job, even performed some work at Mr. Hicks' office. During May, 2001, while helping out at Mr. Hicks' office, Ms. Smith discovered that the discovery requests intended to be served upon the defendants had been neither filed nor served. Mr. Hicks did, however, obtain an extension of time to complete discovery.

Finally in June of 2001, Ms. Smith contacted the law clerk for the Judge presiding over her lawsuit concerning the lack of development in her legal proceeding. The law clerk explained different options available to Ms. Smith and suggested that Ms. Smith try to resolve her issues with Mr. Hicks before requesting the Court allow her to substitute counsel. On June 7, 2001, Ms. Smith wrote Mr. Hicks and explained her concern over the way he was handling her case. Soon after her letter to him, Mr. Hicks filed a Joint Motion for Continuance with the agreement of the defendants' counsel. Ms. Smith was unable to obtain information from Mr. Hicks about the decision on the continuance so she contacted the Court's Clerk and learned that the Motion had been denied. Finally, on July 5, 2001, Ms. Smith filed a Petition to have Mr. Hicks relieved as her counsel and she asked the Court to appoint counsel for her. Her Motion was granted in both parts, thereby terminating the attorney / client relationship between Ms. Smith and Mr. Hicks.

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. Hicks' conduct violated Model Rule 1.4(a) because during his representation of Ms. Smith, he failed to keep her adequately informed of the efforts, if any, he was undertaking on her behalf and when he failed to promptly respond to her requests about the status of her legal proceeding. 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.
2. That Mr. Hicks' conduct violated Model Rule 1.4(b) because at no time did he explain to Ms. Smith, his client, the option she had available to her to have her legal matter heard by a Magistrate or mediated in order to arrive at a quicker resolution to the matter, thereby denying her the opportunity to consider this possibility. 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.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel A, that RICKEY H. HICKS, Arkansas Bar ID# 89235, be, and hereby is, CAUTIONED for his conduct in this matter.

ARKANSAS SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT - PANEL A

By: _____

Gwendolyn Hodge, Chair, Panel A

Date: _____

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