

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

PANEL B

IN RE: LORI A. MOSBY

Arkansas Bar ID #94016

CPC Docket No. 2002-164

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Circuit Judge Darrell Hickman on November 7, 2002. The information related to conduct in his court in 2001-2002 by *pro se* litigants who had used certain services of Respondent Mosby. Respondent was served with a formal complaint, filed a timely response, and a rebuttal was filed. After a ballot vote, Respondent requested a public hearing, which was held October 17, 2003, before Panel B.

The facts before the Committee were as follows: Shortly before August 6, 2001, Carolyn Daniels of Beebe, AR, went to see Little Rock attorney Lori A. Mosby, a solo practitioner, about a divorce. Ms. Mosby also advertises her services as “Legal Assisting Management,” a service she testified is solely owned by her, operates from the same office as her law practice, and offers clients legal papers-only preparation services, in an effort to hold down costs of divorces. The pattern for such uncontested divorces at Legal Assisting Management generally is that clients are expected, and apparently instructed to some extent in the steps necessary, to go before the court as *pro se* litigants to attempt to take their own divorces. Ms. Mosby testified Legal Assisting Management usually collects the filing fee from the client, files the divorce complaint with the clerk, sometimes obtains the executed waiver of service from the defendant spouse, and delivers all necessary divorce papers to the client. Mosby does not attend the final hearing unless paid an additional fee, which Carolyn Daniels indicated by telephone to Judge Hickman was a requested \$500.00 in her case.

Mosby prepared and filed the Daniels divorce complaint in White County Chancery, as E-2001-769, on August 6, 2001, reciting the couple were the parents of one minor child, Quenton. The waiver from Mr. Alvin Daniels of Fort Worth, Texas, was filed August 31, 2001. On September 4, 2001, Mosby wrote

Ms. Daniels on her law firm letterhead, enclosing a proposed divorce decree, stating Daniels' hearing had been set for a certain time before Judge Hickman, and giving Ms. Daniels some very basic information on what Ms. Daniels needed to do in court, stating Ms. Mosby would not be attending the divorce hearing. The letter failed to provide Ms. Daniels with any real indication of the types of questions that would need to be addressed at her hearing or the proof that she would need to present to the court to obtain a divorce. The draft divorce decree also stated the parties had two minor children whose custody was given to Ms. Daniels. It also left a blank to be filled in with the amount of child support and showed some "attachment," but the record in this case never showed what the attachment was.

On September 18, 2001, Ms. Daniels appeared before Judge Hickman, who determined she had used the services of Ms. Mosby on her divorce. The judge told Ms. Daniels he would contact Ms. Mosby and advise she needed to come to court with her client. On September 19, 2001, Judge Hickman wrote Ms. Mosby, telling her she needed to make an official court appearance as attorney of record with Ms. Daniels. On September 24, 2001, Ms. Mosby wrote Judge Hickman, enclosing copies of her business "flyers" about "Legal Assisting Management," a discount service that helps people keep their costs down by preparing paperwork for them. She asked the judge to tell her what Rule of conduct the court thought she had violated. On October 4, 2001, Judge Hickman wrote Ms. Mosby back, stating that he believed her actions in sending people to court to try to get *pro se* divorces in such situations as that of Ms. Daniels violated Model Rule 8.4, and that she must make a court appearance. The court's case coordinator reported to the judge that Ms. Daniels called on October 5, 2001, leaving a message that she had asked Ms. Mosby if Mosby was going to represent her in court or if Daniels would get her money back. On October 8, 2001, by letter Judge Hickman notified Ms. Mosby of this contact with his office. According to Judge Hickman, on October 8, 2001, Ms. Daniels called and spoke with Judge Hickman, whose notes of the conversation reflect that Ms. Daniels stated she had received a letter from Mosby requesting another \$100.00 to appear in court with her. Judge Hickman stated that Ms. Daniels told him she had already paid Mosby \$500.00, mentioned a money order, and felt that was enough. She wanted to know if Mosby would be representing her or if she could get her money back. The case was set for hearing October 19, 2001, Ms. Mosby confirmed it by letter of October 10 to the court, and Mosby and Daniels appeared. The

divorce was taken. The decree Ms. Mosby used at the final hearing had been changed from the decree she mailed Daniels on September 4 to correctly state there was only one child born to the marriage. Since neither Ms. Daniels or Ms. Mosby offered any evidence as to Mr. Daniels' income, the court set child support at its standard, no-proof minimum of \$24.00 per week. Judge Hickman then had a conversation with Ms. Mosby, which was taken down by the court reporter, transcribed, and made a part of the record in this proceeding.

In their conversation, Judge Hickman and Ms. Mosby discussed the situation of *pro se* divorce clients coming to court to attempt to obtain a divorce after Ms. Mosby prepared only basic divorce paperwork for each. Ms. Mosby asserted that people like Ms. Daniels could not afford to pay a fee like \$500.00 for an uncontested divorce, so she did the paperwork for them for a minimum fee, which was represented by Ms. Mosby to be \$100.00 in the case of Ms. Daniels. When Judge Hickman asked Ms. Mosby about the telephone call to him from Ms. Daniels in which she asserted she had already paid Mosby \$500.00 for the divorce, Mosby responded that Daniels had told him a blatant lie, that she never charges \$500.00 for these simple divorces. The court commented that Ms. Mosby's letter (September 4, 2001) to Ms. Daniels sounded as though Ms. Mosby was going to show up [in court] but then decided not to. Judge Hickman advised Ms. Mosby his court would not take over the responsibility of helping *pro se* litigants, by asking them the questions necessary to elicit for the record the information needed to support granting a divorce, regardless of what may be happening in other courts.

In the part of the complaint involving Tera Fechter, three receipts were in evidence that she paid Mosby's office a total of \$245 in three payments in June 2002, being \$25.00 for "consultation (only)," \$100.00 for "divorce - prepare paperwork (only)," and \$120.00 for "divorce/waiver." According to Ms. Mosby's hearing testimony, her office prepared the divorce complaint, a letter to the White County Clerk about filing the Complaint, and probably issued a firm check to pay the filing fee. She was not sure if the client took the papers to the courthouse and filed them herself or if her office mailed them for filing. The Complaint was signed and notarized in Pulaski County on June 20, 2002, by the same notary who notarized the Daniels Complaint in 2001. The Fechter Complaint was filed June 21, 2002. The spouse's waiver was signed August 6,

2002, and filed September 10, 2002. On September 18, 2002, Ms. Mosby's office sent Ms. Fechter a letter, on plain paper, initialed at the end "LAM," giving Fechter copies of the proposed divorce decree and file-marked waiver. The letter advised Ms. Fechter she must call the court to schedule a hearing, that Ms. Mosby had only prepared paperwork for her, and would require an additional \$500.00 to come to court with her. On September 20 Ms. Fechter called the court's office requesting a hearing date, saying her attorney, Ms. Mosby, told her to do it. She was advised to have her attorney call for the setting. Fechter called back shortly, stating Ms. Mosby had told her to tell the court personnel that she was *pro se* and would need to get the setting herself. On September 26, Fechter again called the judge's staff and asked for an "uncontested" hearing date. She said that Mosby had told her it would cost an additional \$100.00 for Mosby to appear in court with her. Judge Hickman wrote Ms. Fechter on October 10, 2002, asking her to call his office to set her hearing, and that he would see that Ms. Mosby handled her case.

On October 16, 2002, Ms. Mosby's office sent Ms. Fechter an unsigned letter on plain paper asking if her divorce had been granted or did she "want to retain our services to attend Court with you." Ms. Fechter appeared on November 4, 2002, and Judge Hickman appointed a local attorney who happened to be in the courtroom at the time to assist her. Ms. Fechter's case for the uncontested divorce was presented and her divorce granted. During the divorce proceeding, Judge Hickman took sworn testimony from Ms. Fechter, which was part of this case record. She stated she found Ms. Mosby through her telephone book ad, in which Mosby advertised herself as a "Christian lawyer." Fechter stated she was not given any instructions by Mosby on how to proceed in her court hearing, other than to bring a witness.

In her Response to the Complaint, Ms. Mosby stated the discrepancies in the two Daniels divorce decrees prepared by her office, as to the number of children of the marriage, was a typographical error, not reflecting on attorney competence. She stated that she did not fail to advise client Fechter that Judge Hickman required an attorney to be present for an uncontested divorce because Mosby did not know that Judge Hickman had that requirement, only that he preferred an attorney to be present. She stated that in Arkansas a litigant has the absolute right to appear in court *pro se*, that she advised Ms. Fechter of this, and Fechter told the judge that

was her understanding. Ms. Mosby stated she did not disobey an obligation under the rules of a tribunal because a court could not have rules that are clearly contrary to established state law, here regarding *pro se* litigants appearing in court to present their own cases without counsel. She claimed Ms. Daniels only paid her \$100 for preparing the divorce paperwork and \$100 for the filing fee, and that no one had produced receipts to show additional payments, like the \$500.00 Daniels told the Judge on the telephone she had paid Mosby. Judge Hickman's notes of this telephone call show a "money order" was mentioned by Ms. Daniels. Alvin Daniels' affidavit states that, at her request, in the summer of 2001 he wired Carolyn Daniels funds, including \$500.00 specifically to be used to pay the attorney she was getting to handle their Arkansas divorce. At the October 17, 2003, hearing Ms. Mosby was asked if she had brought her office receipt books for the period of time covering the Daniels matter, to see what they might show as to monies paid to her office by Ms. Daniels. Ms. Mosby testified her office financial records for 2001 were at her accountant's office.

Ms. Mosby responded that nothing in the Model Rules prohibited her from limiting the services she provided to a client to only preparation of paperwork, which the client would then take *pro se* to the court proceeding. Although Judge Hickman had advised Ms. Mosby in the Daniels case in 2001 that he would not permit *pro se* divorce litigants in his court who appeared to actually be represented by attorneys, Ms. Mosby stated she had no personal knowledge as to which judge would be assigned Ms. Fechter's 2002 divorce case, so it would have been impossible for her to violate any Rule which required her to come to Judge Hickman's court on any divorce filed in White County. Judge Hickman testified that if Ms. Mosby had checked at the time, she would have found out he was being assigned most, if not all, divorce cases filed in White County. Ms. Mosby was asked what the extra \$120 fee (for "divorce/waiver") paid by Ms. Fechter, separate from the "consultation only" and the "paperwork only" fees, was for. She did not give a specific response other than to indicate it covered preparation of the waiver. In response to questions about the nature of "Legal Assisting Management" (LAM), Ms. Mosby stated she owned it, it was not a corporation or other form of business entity, and there was little real difference between her law firm and LAM, except that LAM prepared only paperwork for clients, to save on their legal fees. The only public advertising media she identified as using, the full page telephone book "yellow page" ads, carried her name and designation as attorney at law, and mixed

various legal services in with discount legal services and some “forms” areas. The evidence shows that Legal Assisting Management is essentially an “alter ego” of Lori Mosby, Attorney at Law and the Mosby Law Firm.

Upon consideration of the formal complaint and attached exhibit materials, the response to it, rebuttal, testimony of witnesses Darrell Hickman and Lori Mosby, hearing exhibits, and other matters before it, and the Arkansas Model Rules of Professional Conduct, Panel B of the Arkansas Supreme Court Committee on Professional Conduct finds:

A. Ms. Mosby’s conduct violated Model Rule 1.1, in the divorce case of her client Carolyn Daniels, *Daniels v. Daniels*, White County Circuit No. E-2001-769. Ms. Mosby filed a divorce complaint that alleged there was one child born of the marriage. In the draft, unused divorce decree she prepared and sent to Ms. Daniels to take to court *pro se* for her final hearing without Ms. Mosby being present, Mosby’s decree alleged the couple had two minor children, with Ms. Daniels to have custody of both. In the later, final divorce decree Ms. Mosby prepared and used when she came to court with Ms. Daniels at the direction of Judge Hickman, the decree correctly recited one child was born to the marriage. Model Rule 1.1 requires that a lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

B. Ms. Mosby’s conduct violated Model Rule 1.4(b) in that she failed to explain to her client Tera Fechter in 2002 that Judge Hickman required an attorney to be present for the final hearing on an uncontested divorce in his court, as he had explained to Ms. Mosby in the earlier *Daniels* case in the Fall of 2001, thereby depriving Mrs. Fechter of important information that would have allowed her to make a fully-informed decision on whether she desired to employ Ms. Mosby for her divorce or make other arrangements. Model Rule 1.4(b) requires that a lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

C. Ms. Mosby’s conduct violated Model Rule 3.4(c) in that in the case of *Daniels v. Daniels*, White County Circuit No. E-2001-769, her client, Mrs. Daniels, appeared in court without Ms. Mosby present, with just a letter from Mosby on how to do the divorce and a proposed decree prepared by Ms. Mosby. The court

advised Ms. Mosby by letter on September 19, 2001, that she was to appear in court with her client, who would not be permitted to proceed *pro se* under these circumstances. Ms. Mosby questioned the court's directive to appear. After phone calls and letters, she appeared on October 19, 2001, and her client was finally able to obtain her divorce. Further, in the case of *Fechter v. Fechter*, White County Circuit No. DR-2002-518, her client, Mrs. Fechter, called the court staff on September 20, 2002, asking for a setting for her divorce on a *pro se* basis, based on instructions Ms. Mosby gave her. She was advised Ms. Mosby needed to come to court under these circumstances. Ms. Mosby told Ms. Fechter it would cost her an additional \$500 if Mosby came to court with her. The court went ahead and held a hearing on Fechter's final divorce decree on November 4, 2002, but only after appointing a local attorney to assist her through the hearing. 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.

D. Ms. Mosby's conduct violated Model Rule 8.4(c) in that her conduct in implying to her second client, Tera Fechter, that she could accomplish a final divorce *pro se* before Judge Hickman, after Ms. Mosby's experience with Judge Hickman in the earlier *Daniels* case, misled Mrs. Fechter. Ms. Mosby's conduct in attempting to direct her second client, Tera Fechter, on how she could accomplish a final divorce *pro se* before Judge Hickman, after Ms. Mosby's contrary experience with Judge Hickman in the earlier *Daniels* case, was deceitful conduct toward the court. Model Rule 8.4(c) requires that a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

E. Ms. Mosby's conduct violated Model Rule 8.4(d) in that in attempting to direct Carolyn Daniels in efforts to obtain a final divorce decree by appearing *pro se* before the court required additional time and effort by the court and court staff to correct, to the end that Ms. Mosby's personal appearance was finally required for Mrs. Daniels to return to court and get her decree approved. Ms. Mosby's conduct in attempting to direct Tera Fechter in efforts to obtain a final divorce decree by appearing *pro se* before the court required additional time and effort by the court and court staff to correct, to the end that the court required Mrs. Fechter to return to court, and had to appoint another attorney to assist her during the hearing so her could get her decree approved.

Model 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 B, that Respondent Lori A. Mosby, Arkansas Bar ID# 94016, be, and hereby is, **REPRIMANDED** for her conduct in this matter, assessed a fine of \$2,500.00 pursuant to Section 18.B of the Procedures, ordered to pay costs of \$50.00, pursuant to Section 18.A of the Procedures. Ms. Mosby is also ordered to attend two (2) additional “ethics” hours of State-approved Continuing Legal Education not later than July 1, 2005, in addition to her annual requirement of one ethics hour per reporting period, and to document such attendance to the Office of Professional Conduct. The fine and 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 with 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: _____

John L. Rush, Chair, Panel B

Date: _____

