

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

**PANEL B**

IN RE:       JOHNNY E. GROSS  
              ARKANSAS BAR ID #95156  
              CPC Docket No. 2003-129

**FINDINGS AND ORDER**

The formal charges of misconduct upon which this Order is premised arose from information coming to the attention of the Committee, by way of a Judicial Referral made by Honorable Richard D. Taylor, Bankruptcy Judge, United States Bankruptcy Court, Western District of Arkansas, Fayetteville Division. The information related to the conduct of Johnny E. Gross in his representation of Theresa Adams in the case of In Re: Theresa Adams, Debtor, Case No. 03-7003. Mr. Gross is an attorney previously practicing law in Bentonville, Benton County.

The information provided demonstrated that on January 2, 2003, Mr. Gross filed a Chapter 7 Voluntary Petition on behalf of Theresa Adams. Thereafter, on January 28, 2003, the United States Trustee filed a Motion to Dismiss Case for Failure to Provide Social Security Number. The following day, the Clerk entered an Order scheduling a hearing on the Motion. The hearing was scheduled for March 4, 2003, but was continued until April 8, 2003.

On April 2, 2003, the United States Trustee, acting through Jim Hollis, filed a Motion to Disgorge Fees Paid to Attorney by Debtor. The Motion included information that Mr. Gross called the office of the United States Trustee, shortly after 6:30 a.m. on March 4, 2003, and spoke with a legal clerk answering the telephone. Mr. Gross advised that he was filing an amendment to cure the deficiencies in the petition. Based on that assertion, the hearing was continued until April 8, 2003. Although the hearing was continued, Mr. Gross did not amend the Petition and schedules to include the social security number of Ms. Adams. Ms. Adams provided her own social security number when she appeared at her 341(a) meeting of creditors on March 20, 2003. Mr. Gross was not present with Ms. Adams at that hearing.

On April 25, 2003, Ms. Adams executed an Amended Affidavit for the bankruptcy proceeding. In the Affidavit, Ms. Adams confirmed that Mr. Gross was not present with her at the meeting of creditors. Ms. Adams also explained that the signature on the bankruptcy petition Mr. Gross filed for her was not in fact her signature. According to Ms. Adams, she had never seen the documents until she had another attorney obtain copies for her review.

On May 6, 2003, a hearing was held with regard to the Motion for Disgorgement of Fees. Mr. Gross failed to appear. An Order was entered reflecting Judge Taylor's decision. The Order was entered on May 13, 2003. Mr. Gross was ordered to return and pay over to Ms. Adams the amount of \$500 within fifteen (15) days of the entry of the Order and to file an Affidavit verifying that he had refunded the fees. Mr. Gross did not do so. Mr. Hollis filed a Motion for Judgment and a Motion for Order to Show Cause. Judge Taylor issued an Order to Show Cause. Pursuant to the Order, Mr. Gross was to appear before Judge Taylor on July 1, 2003, to show cause why he should not be held in contempt for failing to comply with Judge Taylor's Order of May 13, 2003. Judgment was entered against Mr. Gross on June 16, 2003, in favor of Ms. Adams.

Mr. Gross was found in contempt of court at the hearing on July 1, 2003. Pursuant to the contempt finding, Mr. Gross was ordered to pay \$1000 to Jean Rolfs, United States Bankruptcy Clerk for the Eastern and Western Districts of Arkansas. As of August 11, 2003, Mr. Gross had failed to remit the funds to his former client, Ms. Adams, or to the Clerk of the Bankruptcy Court, as directed by Judge Taylor.

In his response to the formal disciplinary complaint, Mr. Gross stated that the Petition and schedules were reviewed by Ms. Adams. According to him, they were reviewed with her by Mr. Gross and by his partner, Mr. Daniel Hash. Further, according to Mr. Gross, Ms. Adams moved from her residence without informing anyone in his office. Mr. Gross admitted that he prepared an Amended Petition for Ms. Adams and that he did advise the trustee's office of this fact, but because he could not contact Ms. Adams, he could not file the same. Mr. Gross denied that he was ever notified of any other proceedings in connection with Judge Taylor and the issues involved in Ms. Adams' bankruptcy proceeding. Mr. Gross pointed out that the address used by the Clerk's office for mailings was no longer his address. However, the Motion for Judgment filed by the United

States Trustee's Office was sent to Mr. Gross not only at an incorrect address but also the address of record for Mr. Gross. Despite the fact that the Motion was sent to the correct address, Mr. Gross did not respond to it. The same is true for the Motion for an Order to Show Cause. The Judgment which was entered during June 2003 was also mailed to the correct address, yet Mr. Gross did not comply with the provision to remit to Ms. Adams \$500 until after served with the formal disciplinary complaint herein. Further, despite the fact that Mr. Gross remained the attorney of record for Ms. Adams through May 2003, he did not keep himself apprised of the status of the matter.

Upon consideration of the formal complaint, the response thereto, and the Arkansas Model Rules of Professional Conduct, the Committee on Professional Conduct finds:

1. That Mr. Gross' conduct violated Model Rule 1.1 when he failed to be thorough enough in his representation of Ms. Adams to be certain that her social security number was included on the petitions and schedules and when he failed to be certain that he went over the petitions and schedules with her and actually had Ms. Adams sign the documents before he filed them with the Clerk of the Bankruptcy Court. Model Rule 1.1 requires that a lawyer provided competent representation to a client, including the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

2. That Mr. Gross' conduct violated Model Rule 1.4(a) when he failed to keep Ms. Adams informed of the status of her bankruptcy proceeding; of the fact that he, or someone on his behalf, had signed her name on the pleadings without explaining the documents to her or reviewing the information with her; and when he failed to advise Ms. Adams that he would not be appearing at the Meeting of Creditors with her, but that someone else would appear there with her. 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 Mr. Gross' conduct violated Model Rule 3.3(a)(1) when he submitted a Petition in Bankruptcy to Judge Taylor on behalf of Ms. Adams containing a signature which was purported to be hers, when he was aware that it was not her signature and that he had not gone over the Petitions and schedules with her. Model Rule 3.3(a)(1) requires that a lawyer not

knowingly make a false statement of material fact to a tribunal.

4. That Mr. Gross' conduct violated Model Rule 3.4(c) when he failed to comply with the notice of Judge Taylor to appear for a hearing on the Motion to Disgorge Fees which was held before Judge Taylor on May 6, 2003; when he failed to comply with Judge Taylor's Order of May 13, 2003, by failing to refund to Ms. Adams the amount of \$500 within fifteen (15) days of the date of the Order; by failing to appear for the show cause hearing held July 1, 2003; by failing to comply with the Order to Judge Taylor to refund \$500 to Ms. Adams, as of August 11, 2003; and by failing, as of August 11, 2003, to comply with the Order of Judge Taylor to remit to the Clerk of the Bankruptcy Court the amount of \$1000 which was the fine imposed for the finding that he was in contempt of court. Model Rule 3.4(c) requires that a lawyer 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.
5. That Mr. Gross' conduct violated Model Rule 4.1(a) because during the course of representing Ms. Adams, Mr. Gross advised a law clerk with the United States Trustee's Office that he would be amending the Petitions and schedules of Ms. Adams to cure the deficiencies in order to avoid the hearing which was set for the same date Mr. Gross made the statement to the law clerk. Mr. Gross never filed any amendments on behalf of Ms. Adams. Model Rule 4.1(a) requires that in the course of representing a client a lawyer not knowingly make a false statement of material fact to a third person.
6. That Mr. Gross' conduct violated Model Rule 8.4(c) when he falsely advised a law clerk with the Office of the United States Trustee that he would be filing an amendment to Ms. Adams' Petition and schedules to cure the deficiencies in the pleadings he initially filed; when he presented to the Bankruptcy Court a Petition with a signature on it which he purported to be that of Ms. Adams, although it was not her signature; and, when he presented to the Bankruptcy Court a Petition bearing a false signature of Ms. Adams thereby allowing the bankruptcy court

to believe that he had reviewed the documents with his client when, in fact, he had not done so. Model Rule 8.4(c) requires that a lawyer not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

7. That Mr. Gross' conduct violated Model Rule 8.4(d), when he submitted a Pet schedules to the Bankruptcy Court which purported to bear the signature of Theresa Adams. The signature was not that of Theresa Adams, which led to additional hearings and pleadings being necessary in the bankruptcy proceeding involving Ms. Adams. 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 that JOHNNY E. GROSS, Arkansas Bar ID #95156, be, and hereby is, REPRIMANDED 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. Gross is ordered to pay costs in the amount of \$50. The Committee also orders, pursuant to Section 18.B, that Mr. Gross pay a fine in the amount of \$1000 in this matter. Said costs and fine shall be due and payable within thirty (30) days of the date of filing this Findings and Order with the Clerk of the Arkansas Supreme Court. The costs shall be delivered to the Office of Professional Conduct by way of a money order or cashier's check made payable to "Clerk, Arkansas Supreme Court."

ARKANSAS SUPREME COURT COMMITTEE  
ON PROFESSIONAL CONDUCT

By:

John Rush, Chair, Panel B

Date: