

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

PANEL A

IN RE: NEALON M. POMTREE

Arkansas Bar ID # 96004

CPC Docket No. 2004-109

CONSENT FINDINGS & ORDER

The formal charges of misconduct upon which this Consent Order is premised, involving respondent attorney Nealon M. Pomtree of Little Rock, Arkansas, arose from information brought to the attention of the Committee on Professional Conduct by the Opinion of the Arkansas Supreme Court delivered June 16, 2003, in No. 02-1302, *Nealon Pomtree Et Al. vs. State Farm Mutual Automobile Insurance Company Et Al.*, and the Order Granting Summary Judgment and Rule 11 Sanctions issued August 20, 2002, by Judge David Bogard in Pulaski Circuit Court Case No. CV-2001-12796, in the same case.

Following Respondent Attorney's receipt of the formal complaint, the attorney 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:

A. Mr. Pomtree's conduct violated Model Rule 3.1 in that he permitted an action to be initiated in his name in Pulaski County Circuit Court No. CV2001-12796 against State Farm Mutual Automobile Insurance Company (State Farm) on December 21, 2001, arising out of his claim of an attorney fee lien based on his contingency fee employment contract with Bobby New in a personal injury claim against State Farm filed in Cleburne County, Arkansas, Circuit Court. His suit failed to advise the Pulaski County Circuit Court that a suit on the very same cause of action was pending in Cleburne County Circuit Court as No. CIV-2001-69, *Bobby*

New and Linda New v. Mary Davis, and that a settlement of \$700,000.00 had been reached and funded in that case in a manner that fully protected Mr. Pomtree's maximum fee lien claim of \$233,333.33, an issue over which the Circuit Court of Cleburne County reserved jurisdiction. At hearings on motions to dismiss the Pulaski County action, he conceded that he wanted the entire \$700,000.00 settlement to his former client Mr. New placed into the registry of the Cleburne Circuit Court to give him more "leverage" over Mr. New in forcing him to settle the fee lien claim. The Pulaski Circuit Court granted summary judgment dismissing his suit there and found he filed, or allowed to be filed in his name, a frivolous complaint in Pulaski County, and that trial court sanctioned him under Rule 11, AR CivP, assessing him costs and attorneys fees totaling \$3,105.00. This ruling was affirmed on appeal by the Arkansas Supreme Court, which also found that he inappropriately attempted to manufacture venue in Pulaski County by claiming unwarranted costs and expenses. His action in permitting the filing of the Pulaski County action with him as plaintiff was frivolous, contrary to established Arkansas law, and not based on a good faith argument for an extension, modification or reversal of existing law, but was based on a purpose to increase the lawyer's leverage upon his former client to coerce a settlement from him favorable to counsel in a fee dispute with the client. Model Rule 3.1 provides that a lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law.

WHEREFORE, in accordance with the consent to discipline presented by Mr. Pomtree and the Executive Director, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct that Respondent Nealon M. Pomtree, Arkansas Bar No. 96004, be, and hereby is, **cautioned** for his conduct in this matter, fined \$500.00, and shall pay costs of \$50.00.

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 A

By _____

Gwendolyn D. Hodge, Chairperson, Panel A

Date _____