

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL B

IN RE: F. Scott Straub, Respondent
Arkansas Bar ID# 98019
CPC Docket No. 2003-042

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Cookie C. Pierce on July 30, 2002. The information related to the representation of Mrs. Pierce by Respondent, F. Scott Straub, an attorney primarily practicing in Louisiana, beginning September 14, 2001.

On April 10, 2003, Respondent was served with a formal complaint, supported by an affidavit from Mrs. Pierce. Respondent filed a timely response on May 27, 2003, and Mrs. Pierce filed a rebuttal on June 23, 2003.

The allegations giving rise to the formal complaint are that on September 6, 2001, Mrs. Pierce was served with a summons and motion to modify custody and child support. Mrs. Pierce, a resident of Louisiana, hired Respondent because the case was in Arkansas and Respondent was licensed in Arkansas. Mrs. Pierce gave Respondent the pleadings with which she had been served and Respondent gave her a contract regarding his services and fees. Mrs. Pierce paid Respondent \$750 and agreed that if he could not settle the case she would pay him \$165 hourly for the balance of the work. Mrs. Pierce stated that Respondent advised her and her husband that they did not need to respond to the summons because the court had no jurisdiction over them since they did not reside in Arkansas. Mrs. Pierce requested that Respondent file the entry of appearance anyway because she wanted to pay the proper amount of child support. She also advised him that she did not want her paycheck garnished. She also explained to Respondent what she wanted regarding visitation and that her daughter whom she was paying support for would turn eighteen the next year. Respondent told her he would take care of everything and that he knew the plaintiff's attorney, Bruce Condit of Texarkana.

Respondent promised Mrs. Pierce that he would keep her updated on all matters. Three months later Mrs. Pierce's paycheck was garnished so she contacted Respondent. She also had a copy of the wage assignment delivered to Respondent that same day. Respondent told Mrs. Pierce's husband that he would have the matter cleared up within a few short months. Mrs. Pierce later found out that a default judgment had been entered against her on December 11, 2001, for failure to answer the petition and failure to appear. Mrs. Pierce stated that she then asked Respondent to file a motion to modify and that she called Respondent's office several times for an update but she always had to leave a message. She stated she requested copies of documents but she was not provided any. Respondent sent Mr. Condit a letter on April 9, 2002, stating among other things that they had agreed to a continuance. Mr. Condit responded to Respondent's letter and stated that Respondent misrepresented the facts and that Mr. Straub had not in fact contacted him until after the default judgment was already entered. Respondent had not filed anything else on behalf of Mrs. Pierce by May 14, 2002, and therefore she sent him a letter terminating his services.

In his response to the formal complaint, Respondent stated that during the initial consultation he informed Mrs. Pierce that he would not be able to appear or cause any pleadings to be filed prior to January 2, 2002, due to his upcoming wedding and honeymoon. Respondent further stated that during that meeting he contacted opposing counsel and spoke with a legal assistant and was assured that there would be no problem continuing the matter until then. Respondent stated that once the default judgment was entered he concluded that its terms and conditions were identical to that which would have been contained in a consent order, including the wage assignment. Respondent said he further discussed with Mrs. Pierce the possibility, if her former husband was willing, to negotiate a voluntary payment of child support. Respondent denied that he did not maintain communication with Mrs. Pierce. He asserted that there was only one instance where he failed to provide a requested document and that was due to his computer network being disabled. Respondent also stated that he refunded all fees to Mrs. Pierce except for \$375.

Mrs. Pierce filed a rebuttal on June 23, 2003, and stated that Respondent never made any statement to her that he would have to delay things due to an upcoming wedding or honeymoon. She stated that her current

husband was with her at the initial consultation and that he would not have allowed her to hire Respondent had they been informed no work could be performed until January 2002. She stated that it was made clear before she left Respondent's office that day that he must file the notice of appearance and that they all knew it had to be done within thirty days.

Upon consideration of the formal complaint and attached exhibit materials, the response to it, 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:

1. That Mr. Straub's conduct violated Model Rule 1.1 because after Mrs. Pierce hired him to represent her in a child support modification action and he failed to answer the pleadings or file any other pleadings or appear to defend the action, thereby causing a default order to be entered. After the default order and wage assignment were entered he also failed to take any remedial actions on behalf of his client. Model Rule 1.1 requires that a lawyer provide competent representation to a client. Competent representation requires the legal knowledge, thoroughness and preparation reasonably necessary for the representation.
2. That Mr. Straub's conduct violated Model Rule 1.3 when he failed to file any pleadings or appear at the scheduled hearing and when he failed to file a petition to modify after the default judgment was entered. Model Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.
3. That Mr. Straub's conduct violated Model Rule 1.4(a) when he failed to comply with Mrs. Pierce's requests for an update on her legal matter or for copies of documents. 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.
4. That Mr. Straub's conduct violated Model Rule 1.4(b) when he advised Mrs. Pierce that she did not need to file an answer or appear after being served with the summons and as a result a default judgment was entered. Mr. Straub also violated this rule when he failed to provide the

requested updates or copies of documents. 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.

5. That Mr. Straub's conduct violated Model Rule 1.16(d) when after Mrs. Pierce terminated him on May 14, 2002, he failed to comply with her request for a refund of unearned fees. Model Rule 1.16(d) requires that upon termination of representation, an attorney shall take steps to the extent reasonably practicable to protect the client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advanced payment of fee that has not been earned.
6. That Mr. Straub's conduct violated Model Rule 3.2 when he failed to respond to the summons and motion to modify or appear at the scheduled hearing in Mrs. Pierce's matter. Model Rule 3.2 requires that a lawyer make reasonable efforts to expedite litigation consistent with his client's interest.
7. That Mr. Straub's conduct violated Model Rule 4.1(a) when he claimed to have consulted with opposing counsel regarding an extension of time when in fact he had not spoken with opposing counsel as claimed. Model Rule 4.1(a) requires that in the course of representing a client, a lawyer shall not knowingly make a false statement or material fact of law to a third person.
8. That Mr. Straub's conduct violated Model Rule 8.4(a) when he failed to answer the pleadings served on his client, or file any other pleadings or appear to defend the action, thereby causing a default order to be entered. Additionally, he sent correspondence to opposing counsel claiming he had consulted with opposing counsel regarding an extension of time when in fact he had not. Model Rule 8.4(a) requires that a lawyer not violated or attempt to violate the rules of professional conduct, knowingly assist or induce another to do so, or do so through the acts of another.

9. That Mr. Straub's conduct violated Model Rule 8.4(c) when he billed his client for a consultation with opposing counsel on September 14, 2001, however, that consultation did not in fact take place. Additionally, he sent a petition to modify to Mr. Condit claiming he had consulted with him regarding an extension of time when in fact, he had not. Model Rule 8.4(c) requires that a lawyer not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.
10. That Mr. Straub's conduct violated Model Rule 8.4(d) when he failed to answer the summons and motion to modify or file any other pleadings or appear to defend the action, thereby causing a default judgment to be entered against Mrs. Pierce. 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, acting through its authorized Panel B, that F. Scott Straub, Arkansas Bar ID# 98019, be, and hereby is, CAUTIONED, for his conduct in this matter. Pursuant to Section 18A of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct for Attorneys at Law Mr. Straub is ordered to pay costs in the amount of \$50. In addition, Mr. Straub is ordered to remit restitution in the amount of \$375 pursuant to Section 18.C of the Procedures. The fine, restitution 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: _____