

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

PANEL B

IN RE: JAMES M. PRATT, JR.

Arkansas Bar ID #74124

CPC Docket No. 2002-173

CONSENT FINDINGS AND ORDER

The formal charges of misconduct upon which this Consent Findings and Order is based arose from information provided to the Committee by Charles M. Burdine, Jr. and Teresa Cagle in October 2002. The information related to the representation of them and their sister Cathy Walker by Respondent James M. Pratt, Jr. of Camden, Arkansas, in 2000-2005, and continuing, in the matter of their late father's probate administration. Respondent was served with a formal complaint, filed his response on January 22, 2003, and Mr. Burdine and Ms. Cagle filed rebuttal materials.

Probate administration in Columbia County Probate Court was opened in the estate of Charles M. Burdine on September 8, 2000, the date of his death. His three adult children, Charles M. Burdine, Jr., Teresa Cagle and Cathy Walker, all who live out-of-state, knew Camden attorney James M. Pratt, Jr., from 1977 in connection with Pratt's representation of their mother in her divorce from their father, when they later consulted with him in 1981 when their mother was murdered, and from his representation of Teresa Cagle in a divorce. They hired Pratt on or about September 11, 2000, to represent their interests in their father's estate, in which they discovered substantial assets (a house and a Cadillac) were left by two Wills executed August 7, 2000 (the Will admitted to probate) and August 24, 2000, by their father to his lady friend. His clients gave Mr. Pratt much written detail about the issues that concerned them and requested he take certain actions, especially with regard to the second, August 24, Will that showed up after the earlier-executed, August 7, Will was admitted to probate by the law firm where both Wills were prepared and executed. In June 2001 a petition, on

which Mr. Pratt signed off as approving, was filed which referenced a “family settlement agreement.” It was initially disputed by the three Burdine children whether they knew of or authorized the family settlement agreement. On September 12, 2001, the estate’s executor, William B. “Buster” Guthrie, a former attorney convicted of felony theft for stealing from a client and who subsequently surrendered his Arkansas law license in 1983, filed a First Annual Accounting. The attorney for the estate, David Talley, also employed the former attorney executor, Mr. Guthrie, as a paralegal in his law office from 1988 to May 7, 2004. Mr. Talley claims he sent Mr. Pratt a copy by letter. Mr. Pratt states he never received the September 2001 Accounting from Mr. Talley’s office. The Burdine heirs state they first knew of the Accounting when the Office of Professional Conduct found it in December 2001 and provided them copies. Charles Burdine started writing Mr. Pratt fairly regularly from April 29, 2002, including daily letters from July 1-9, 2002, requesting Pratt’s action. As set out in the Affidavits of Charles Burdine and Teresa Cagle, they got no action of which they are aware as of the dates of their affidavits in December 2002. The case went to Panel A for a ballot vote in March 2003. Respondent requested a public hearing, which has been reset several times for various reasons.

In August 2003, Mr. Talley filed a motion for executor’s fees (\$4,660.56) and attorney’s fees (\$4,712.74), to which Respondent filed an objection. The executor was ordered to file a final accounting by October 20, 2003, which he did. Respondent filed an objection to the final accounting. While awaiting public hearing and continuing to represent the Burdine heirs, Respondent became more active in the matter in late 2003, demanding additional accountings from the executor and copies of his bank statements. The executor did not comply, and Respondent was forced to pursue the matter through court. The attorney for the estate advised Mr. Pratt in February 2004 that the bank records were “lost,” forcing Respondent to obtain them from the bank. Upon receiving the bank records in May 2004, Respondent discovered that, without court authorization or disclosure on the Accounting or to the Burdine heirs and Respondent, the executor had written checks from the estate account to himself totaling about \$29,000 and two checks totaling \$7,000 to Talley for attorney’s fees, all between December 2000, and October 2001. The executor’s first accounting, filed September 12, 2001, listed as an estate asset a bank account with a balance of \$21,726.12, when the actual account balance on September 6, 2001, was only \$617.68. Mr. Pratt promptly notified Mr. Talley of his discovery of the

misappropriation by the executor, demanded an explanation, and demanded that Talley repay the \$7,000.00. Mr. Pratt, the district prosecuting attorney, reported the matter to the criminal authorities and made arrangements for a special prosecutor to be appointed to investigate the matter. Felony criminal charges have now been filed against Guthrie. Guthrie and Talley have resigned as executor and attorney for the Burdine Estate, and Charles Burdine, Jr. has been appointed executor. He has chosen to use Respondent as his attorney for the estate matter. Mr. Pratt has recovered the \$7,000.00 from Mr. Talley. Mr. Pratt has filed a civil suit for Mr. Burdine against Mr. Guthrie, seeking recovery of the balance of the misappropriated estate funds.

Upon consideration of the formal complaint and attached exhibit materials, the response, the rebuttal, the Arkansas Model Rules of Professional Conduct and other matters before it, Panel B of the Arkansas Supreme Court Committee on Professional Conduct finds:

A. Mr. Pratt's conduct violated Model Rule 1.2(a) in that his clients repeatedly told him what they wished him to do in this representation of their interests after they hired him in September 2000. He failed to challenge the second, later, Will when it surfaced in November 2000, failed to check the status and existence of Wal-Mart stock owned by the late Mr. Burdine, and failed to pursue these two matters for his clients after June 2001. Model Rule 1.2 (a) requires that a lawyer shall abide by a client's decisions concerning the objectives of representation, and shall consult with the client as to the means by which they are to be pursued.

B. Mr. Pratt's conduct violated Model Rule 1.3 in that in spite of many written and telephonic requests by various of these clients for action in the Burdine estate, he failed to take timely and appropriate action for them in their father's estate proceeding from July 2001 to August 2003. Model Rule 1.3 requires that a lawyer shall act with reasonable diligence and promptness in representing a client.

C. Mr. Pratt's conduct violated Model Rule 1.4(a) in that from July 2001 to August 2003 his clients made repeated collective and individual requests by telephone and letter for status reports on this matter and on very detailed and specific issues they raised with him and received almost no response. Model Rule 1.4(a) requires that a lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

D. Mr. Pratt's conduct violated Model Rule 1.4(b) in that he failed to explain to his clients how an earlier-executed Will (August 7) was admitted to probate in the face of a later-executed Will (August 24), especially where both Wills were prepared and executed in the same law office just a few weeks before the testator died, and when his clients have steadfastly and consistently told him they believe the August 24 Will to be questionable. His clients asked repeatedly for his explanations as to why the estate, of which they are the residuary beneficiaries, should have continued for many months to pay expenses and items charged to a residence and a Cadillac automobile left as gifts to their late father's lady friend, when she took sole possession of both items not long after the estate was opened. 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.

E. Mr. Pratt's conduct violated Model Rule 3.2 in that he took little or no action in this matter from the June 2001 partial distribution until August 2003. His clients urged him repeatedly during this time to take appropriate action on their behalf. He knew since at least February 2002 that an accounting was filed in September 2001, yet he took none of the actions requested by his clients to challenge certain charges in the accounting or to close the estate until August 2003. Model Rule 3.2 requires that a lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel B, that Respondent James M. Pratt, Jr., Arkansas Bar ID# 74124, be, and hereby is, **cautioned** for his conduct in this matter, and ordered to pay costs of \$250.00. The 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: _____

J. Michael Cogbill, Chair, Panel B

Date: _____