

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL A

IN RE: RICK C. SHUMAKER, Respondent
 Arkansas Bar ID#82211
 CPC Docket No. 2003-144

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Cesar De Los Reyes on January 16, 2003. The information related to the representation of Mr. De Los Reyes by Respondent, Rick C. Shumaker, an attorney practicing in Texarkana, during 2002.

On October 22, 2003, Respondent was served with a formal complaint, supported by affidavit from Mr. De Los Reyes. Mr. Shumaker filed a timely response to the formal complaint on November 24, 2003.

The information before the Committee reflected that on August 26, 2002, Mr. De Los Reyes hired Mr. Shumaker to represent him with regard to a speeding ticket which was issued to him in Miller County, Arkansas. Mr. De Los Reyes sent the information related to the ticket to Mr. Shumaker on August 26, after speaking with Mr. Shumaker on the telephone about the matter. During the telephone conversation, Mr. Shumaker advised Mr. De Los Reyes that the fee for his representation would total \$250. On September 11, 2002, Mr. De Los Reyes sent a check in the amount of \$250 to Mr. Shumaker after receiving the physical address from the legal assistant. The endorsement on the back of the check indicates that Mr. Shumaker cashed the check on September 13, 2002. In the note which accompanied the check to Mr. Shumaker, Mr. De Los Reyes requested that Mr. Shumaker provide him a receipt and keep him informed of the results of the matter. Mr. Shumaker acknowledges that he was hired to represent Mr. De Los Reyes. He asserts that Mr. De Los Reyes sent him a copy of the ticket and his \$250 fee by letter dated September 12, 2003.

Mr. De Los Reyes reported that Mr. Shumaker did not contact him after receiving the check for payment of the fee. On the occasions Mr. De Los Reyes attempted to contact Mr. Shumaker, he was

unsuccessful. According to Mr. Shumaker, upon receipt of the ticket he had his legal assistant call the Miller County Municipal Court and advise them of his representation of Mr. De Los Reyes. She was also to request that the case be reset. Mr. Shumaker advised that there was a mixup in the Clerk's Office and his office so the matter did not get reset which led to the Notice of Failure to Comply being sent to Mr. De Los Reyes.

Mr. De Los Reyes received a notice on October 20, 2002, that he had failed to comply with the terms of the citation he was issued. On that same date, Mr. De Los Reyes sent Mr. Shumaker a note requesting information about what had occurred. Mr. De Los Reyes received no response. According to Mr. De Los Reyes, he called approximately fourteen (14) times before he was able to make contact with Mr. Shumaker. When he finally spoke with Mr. Shumaker, Mr. De Los Reyes was assured by Mr. Shumaker that everything was being taken care of by him. Mr. Shumaker reported that after he received the Notice, he contacted the Clerk's Office and inquired as to what happened. The Clerk advised that there was in fact some confusion over the ticket and that she would get the matter resolved and send another Notice of Trial Date. However, two months later, Mr. De Los Reyes received a Notice of Revocation from the Texas Department of Public Safety. His Texas Driver's License had been revoked based upon his failure to comply with the conditions of the citation received in Miller County, Arkansas. Mr. De Los Reyes faxed the information to Mr. Shumaker on December 30, 2003, but again he received no reply. Mr. Shumaker disputed this and stated that he did advise Mr. De Los Reyes that everything would be taken care of.

On Friday, January 3, 2003, Mr. De Los Reyes forwarded to Mr. Shumaker the Order of Revocation he had received from the Texas Department of Public Safety. Mr. De Los Reyes explained to Mr. Shumaker that without a driver's license he could not work. Mr. Shumaker did not reply to the note from Mr. De Los Reyes. As a result of the lack of communication, Mr. De Los Reyes went from Dallas to Texarkana and Mr. Shumaker's office on January 6, 2003.

Mr. De Los Reyes, his mother and son met with Mr. Shumaker on that date at 8:05 a.m. Mr. Shumaker advised Mr. De Los Reyes that someone from his office had gone to the Sheriff's Department on Friday, January 3, 2003, and had taken care of everything. Mr. Shumaker told Mr. De Los Reyes that he would fax the

paperwork to him that afternoon by 3:30 p.m. When Mr. De Los Reyes inquired of the paperwork from Austin, Mr. Shumaker advised that he would take care of that as well. Mr. Shumaker also advised Mr. De Los Reyes that he was cleared to drive. To make sure everything was okay, Mr. De Los Reyes and his family went to the Courthouse and then on to the Sheriff's office. At the Sheriff's Office, Mr. De Los Reyes spoke with Carrie. Carrie advised him that the ticket remained unpaid. The next day, Mr. De Los Reyes again spoke with Carrie who advised him that she had located all the paperwork on his ticket and was going to clear everything for him. Mr. Shumaker finally paid the initial costs on the ticket and the remaining ones were waived because it was not Mr. De Los Reyes' fault that the delay occurred. Mr. De Los Reyes, due to the help Carrie provided to him, did not have to pay the \$100 reinstatement fee in Texas. Later the afternoon after everything had been handled, Mr. De Los Reyes received a telephone call from Mr. Shumaker's secretary advising him that they were still trying to get in touch with Carrie but had been unable to do so. On January 17, 2003, a letter was sent to Mr. De Los Reyes advising him that his driving privileges had been reinstated. Mr. Shumaker did not address the meeting with Mr. De Los Reyes and his family but did advise that Mr. De Los Reyes was confused about dealing with the Sheriff's Office because it was actually the District Clerk's office.

Mr. Shumaker explained in his Response that he received a Notice from the Court Clerk of Miller County that the matter was being set for hearing on January 27, 2003. Since he could not be in court that date, the matter was reset for February 10, 2003. Mr. Shumaker also stated that it appeared to him that the initial confusion on the court date is what led to the erroneous notices being sent to Texas and the resulting notices from Texas.

With respect to the \$250 fee, Mr. Shumaker admitted that he advised Mr. De Los Reyes that the total charge would be \$250. According to Mr. De Los Reyes, at that time he did not know what the court cost would be as they constantly varied so he did not deposit any funds for the court costs. Mr. Shumaker advised further that the check was cashed and then deposited into his operating account, from which a check was subsequently written for the probation fee.

Mr. Shumaker set out in his response that at no time did Mr. De Los Reyes sustain any harm. He averred that there was no intentional disregard of the ticket by his office.

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

1. That Mr. Shumaker's conduct violated Model Rule 1.2(a) because although he was hired to take timely action on behalf of Mr. De Los Reyes with regard to a speeding ticket he received in Miller County, Arkansas, he did not do so and thereby allowed his Texas Driver's License to be revoked for a period of time. Model Rule 1.2(a) requires that a lawyer abide by a client's decisions concerning the objectives of representation, subject to paragraphs (c), (d), and (e), and consult with the client as to the means by which they are to be pursued.
2. That Mr. Shumaker's conduct violated Model Rule 1.3 when he failed to take action with regard to Mr. De Los Reyes' speeding ticket prior to the court date of September 23, 2002; when he failed to take action on behalf of Mr. De Los Reyes after receiving notice of the failure to comply with terms of citation and, when he did not take action on behalf of Mr. De Los Reyes in order to prevent the Order of Revocation of his Texas driver's license. Model Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.
3. That Mr. Shumaker's conduct violated Model Rule 1.4(a) because during the course of his representation of Mr. De Los Reyes, he failed to keep him informed of what efforts, if any, he was taking with regard to the speeding ticket he received in Miller County, Arkansas; he failed to respond to the numerous requests for information by his client as to the status of his speeding ticket and the actions taken to undo the damage caused by the failure to meet the deadline placed on the citation; and he failed to advise Mr. De Los Reyes when he missed the September 23, 2002, court date set forth in the speeding ticket. 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. Shumaker's conduct violated Model Rule 1.15(a)(1) because although a portion of the \$250 paid to him by Mr. De Los Reyes during September 2002 was for payment of fees or fines, he did not deposit any of the funds in his IOLTA trust account but instead cashed the check upon receipt. Model Rule 1.15(a)(1) requires all lawyers hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property with funds of a client being deposited and maintained in one or more identifiable trust accounts in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel A, that RICK C. SHUMAKER, Arkansas Bar ID# 82211, be, and hereby is, CAUTIONED for his conduct in this matter. Mr. Shumaker is also assessed the costs of this proceeding in the amount of \$50 pursuant to Section 18.A. of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law. 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 within 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, Chair, Panel A

Date: _____