

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

PANEL A

IN RE: JEFFREY C. ROGERS, RESPONDENT

Arkansas Bar ID#83150

CPC Docket No. 2004-002

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Harold and Faye Scott on October 6, 2003. The information related to the representation of Mr. and Mrs. Scott and also their son, James Scott, in various matters by Respondent beginning in the year 2000.

On January 12, 2004, Respondent was served with a formal complaint, supported by affidavit from Harold and Faye Scott. Respondent filed a timely response to the formal disciplinary complaint.

The information considered by the Committee in this manner revealed that during April 2000, Mozell Bell entered into a contract to transfer certain real property to Mr. and Mrs. Scott by way of a warranty deed. After the transfer, Mr. and Mrs. Scott received correspondence from an attorney advising them that Ms. Bell was not legally competent to have made the transfer. After receiving the letter, Mr. and Mrs. Scott contacted Jeffrey C. Rogers, an attorney practicing in Smackover, Arkansas, to assist them in addressing the issues. It was the immediate desire of Mr. and Mrs. Scott that a lawsuit be filed in order to require that the contract between the parties be honored. Mr. Rogers agreed to represent Mr. and Mrs. Scott. His first action on their behalf was to send a letter to the attorney representing the Bell family. Mr. Rogers requested evidence of a finding that Ms. Bell was incompetent. He also insisted that the consummation of the sales agreement occur within a reasonable time. No response was coming so Mr. Rogers again wrote Mr. Harrell, the attorney for the Bell family, advising him that all necessary paperwork for the closing of the sale should occur within 15 days to avoid litigation. Mr. Harrell sent a letter to Mr. Rogers in which he advised that Mr. Rogers should proceed with the lawsuit. Although this is what Mr. and Mrs. Scott had hired Mr. Rogers to do for them, he did not file

a lawsuit.

Instead on December 28, 2000, Mr. and Mrs. Scott were served with a lawsuit filed against them by W.R. Bell Products, Inc. and Mozell Bell, by William R. Bell, Jr., her next friend. After they were served, Mr. and Mrs. Scott contacted Mr. Rogers only to learn that he had never filed a lawsuit on their behalf as requested. Mr. Rogers did file an Answer and Counterclaim on behalf of Mr. and Mrs. Scott in a timely fashion.

As the legal proceeding prepared to go to trial, Mr. and Mrs. Scott attempted on numerous occasions to contact Mr. Rogers by telephone. The information received each time was that Mr. Rogers was unavailable. When they were finally able to reach Mr. Rogers, Mr. and Mrs. Scott requested he take various actions in the lawsuit on their behalf. Mr. Rogers did not take any of the actions requested by Mr. and Mrs. Scott with regard to the lawsuit. Mr. Rogers disputed the claims of Mr. and Mrs. Scott. Mr. Rogers advised that he met with Mr. and Mrs. Scott in his former office in Smackover, on a regular basis for consultations and preparations for trial. He also averred that Mr. and Mrs. Scott were kept well informed of the progress of the case, including on the occasions he went to their home for discussions and preparations in the legal proceeding.

After a trial which took approximately three (3) days to complete, Judge Singleton, the presiding judge, requested briefs from both attorneys. Judge Singleton made it clear that the briefs were due no later than September 12, 2001. On the day the briefs were due to be filed, Mr. and Mrs. Scott visited with Mr. Rogers in his office and learned that he had not completed the brief as directed. With Mr. and Mrs. Scott present in his office, Mr. Rogers completed the brief, which was then taken by Mr. and Mrs. Scott to the post office. Ultimately, Judge Singleton ruled in favor of the plaintiffs against Mr. and Mrs. Scott. The ruling was filed of record on September 26, 2001. After Mr. and Mrs. Scott were made aware of the ruling, Mr. Rogers was advised of their desire to appeal the decision. A transcript was obtained at a cost of \$1200 to Mr. and Mrs. Scott. Mr. Rogers' fee for the appeal process was quoted at \$1700, and was paid in full by Mr. and Mrs. Scott. The Notice of Appeal was timely filed on October 17, 2001, by Mr. Rogers.

Mr. and Mrs. Scott found that communication with Mr. Rogers during the appeal process was as difficult as it had been during the lower court proceeding. As such, Mr. and Mrs. Scott went to the Ouachita

County Courthouse to examine the record and Clerk's file in an attempt to learn the status of the appeal. It was at this time that Mr. and Mrs. Scott learned that Mr. Rogers had filed a Motion for Extension of Time to File the Record on December 12, 2001. The Motion was granted. Mr. and Mrs. Scott also discovered in the file an Order which had been filed on October 4, 2002, demonstrating that the Court of Appeals had granted the Motion of the Appellee to dismiss the appeal.

On August 11, 2003, Mr. and Mrs. Scott traveled to Little Rock to examine the file at the Arkansas Court of Appeals. While at the Clerk's office, Mr. and Mrs. Scott learned that Mr. Rogers had never filed a brief in the appeal and therefore it was dismissed. As a result of Mr. Rogers' failure, Mr. and Mrs. Scott paid approximately \$2900 for an appeal that was not pursued on their behalf. Mr. Rogers set forth that on the service that was true, but that the bill for legal services far exceeded what was paid. He also offered that he had not billed Mr. and Mrs. Scott for the time he did work on the appeal which was ultimately abandoned. Mr. and Mrs. Scott explained that they had never received a bill from Mr. Rogers nor been advised that they had an outstanding debt owed to him.

The initial due date for the brief to the Arkansas Court of Appeals was June 18, 2002. Mr. Rogers filed a Motion for Extension of Time to File the Brief on June 12, 2002. He was given until July 18, 2002, to file the brief. Mr. Rogers acknowledged that he was unable to complete the abstract because of his caseload and appearance requirements in the position as deputy prosecuting attorney for Union County, Arkansas. On that date, Mr. Rogers filed another Motion for Extension. Mr. Rogers' request was granted and he was given until August 2, 2002, to file the brief. No brief was filed on that date. On September 18, 2002, the appellee filed a Motion to Dismiss the appeal. Mr. Rogers did not file a response. The Court of Appeals granted the Motion and the appeal was dismissed on October 2, 2002.

In his response to the formal disciplinary complaint as to this particular issue, Mr. Rogers explained that Mr. and Mrs. Scott had secured an estimate of their likelihood of success on appeal from a different law firm without discussing the matter with Mr. Rogers. Mr. Rogers also advised that he discussed the unfavorable opinion in regard to the likelihood of success on appeal with Mr. and Mrs. Scott. Mr. and Mrs. Scott disputed

that Mr. Rogers ever discussed the matter with them. Mr. Rogers also offered to the Committee that he had advised Mr. and Mrs. Scott that the appeal be abandoned. The self described disaster of a computer hard drive failure created the need for requesting a second motion for extension of time to file the brief on appeal. According to Mr. Rogers, Mr. and Mrs. Scott were made aware of this fact. Given the circumstances, Mr. Rogers allowed the deadline for the second extension to pass without either filing a brief or requesting a third extension. Mr. Rogers stated that Mr. and Mrs. Scott were advised of this fact as well as the fact that the appeal was dismissed. Mr. and Mrs. Scott also disputed this fact and advised that had they known the appeal was dismissed they would have had no reason to drive to Little Rock to check the status of the appeal with the Clerk of the Court.

In addition to their civil matter, Mr. and Mrs. Scott had also hired Mr. Rogers to represent their son in a lawsuit against Jerry Milner to honor an agreement entered into between the two parties. Mr. Rogers was paid \$1000 to file the lawsuit. Mr. Rogers did so on May 16, 2001. An Answer and Counterclaim was filed on July 6, 2001. Thereafter, Mr. Rogers filed a Counterclaim. There was no additional action taken by Mr. Rogers in that matter. Mr. Rogers was paid \$1000 to pursue the matter but did not do so. Mr. Rogers admitted that there has been no action on the lawsuit.

The final service Mr. Rogers was hired to pursue for the Scott family was a bankruptcy proceeding for their son. Mr. Rogers was paid \$600 of his quoted fee of \$1000 for this filing. Mr. Rogers prepared the documents for James Scott but never filed the action on his behalf. The papers were signed and returned to Mr. Rogers during October 2001. Mr. Rogers advised that this was the last time he spoke with James Scott. According to Mr. Rogers, he will follow James Scott's directions as soon as they are given to him.

During the time period when Mr. Rogers failed to take action on behalf of the Scott family, Mr. and Mrs. Scott began to call to request information about the progress of paperwork. Mr. Rogers was never able to tell them anything specific. Many excuses were provided to Mr. and Mrs. Scott including that his secretary has misplaced the file or he had recently hired a new secretary; his ex-in-laws locked him out of his office in Smackover; or, it was not important to have done what Mr. and Mrs. Scott requested. Mr. Rogers never

returned Mr. and Mrs. Scott the money paid to him nor did he complete the services he was hired to perform.

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. Rogers' conduct violated Model Rule 1.2(a) when he failed to take the required action to perfect the appeal, desired by Mr. and Mrs. Scott in the matter involving Mozell Bell, and handle it to conclusion but instead allowed it to be dismissed; when he failed to take any action since 2001 in the lawsuit he was hired to pursue on James Scott's behalf against Jerry Milner; and when he failed to file James Scott's bankruptcy after being paid to do so and after preparing the documents to file. 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. Rogers' conduct violated Model Rule 1.3 when he did not timely file a brief on Mr. and Mrs. Scott's behalf, thereby allowing their appeal to the Court of Appeals to be dismissed; when he did not respond to the Motion to Dismiss filed by Mr. Harrell in the appeal matter he was to pursue on behalf of Mr. and Mrs. Scott; when he did not file the bankruptcy petition on James Scott's behalf after assuring the family of Mr. Scott that he was going to do so; when he failed to act with diligence and promptness in representing Mr. Scott in his lawsuit against Jerry Milner, as evidenced by the fact that no action has been no taken in the court file since the year 2001; and, when he did not file a lawsuit against Mozell Bell as hired to do by the Scotts, but instead allowed one to be filed against them. Model Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.
3. That Mr. Rogers' conduct violated Model Rule 1.4(a) when he did not keep Mr. and Mrs. Scott informed of the status of his actions, if any, which were being undertaken in the appeal he was hired to pursue on their behalf and when he failed to comply promptly with the requests for

information made by Mr. and Mrs. Scott with regard to the various legal actions he was hired to pursue for their family. 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. Rogers' conduct violated Model Rule 1.16(d) when he failed to return the papers and property to Mr. and Mrs. Scott and their son to which they were entitled with regard to their legal matters; when he failed to return the unused portion of the advanced payment of fee to Mr. and Mrs. Scott; and, when he failed to return to Mr. and Mrs. Scott the fee paid to him for pursuing the appeal which he abandoned. Model Rule 1.16(d) requires that upon termination of representation, a lawyer take steps to the extent reasonably practicable to protect a 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 advance payment of fee that has not been earned.
5. That Mr. Rogers' conduct violated Model Rule 8.4(c) when he allowed Mr. and Mrs. Scott to believe that the appeal was being pursued by failing to advise them for several months that their appeal had been dismissed because of his failure to file a brief. Model Rule 8.4(c) requires that a lawyer not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.
6. That Mr. Rogers' conduct violated Model Rule 8.4(d) because his failure to take action on behalf of James Scott in the Jerry Milner matter since 2001, resulted in unnecessary delay in that proceeding; because his failure to file the bankruptcy proceeding on James Scott's behalf has led to unnecessary delay in the pursuit of that matter for Mr. Scott; and because his failure to file a brief on Mr. and Mrs. Scott's behalf resulted in their appeal being dismissed by the Arkansas Court of Appeals and thereby deprived Mr. and Mrs. Scott of the opportunity to have Judge Singleton's ruling considered by the appellate court as they desired. 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 A, that JEFFREY C. ROGERS, Arkansas Bar ID# 83150, 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 (2002), Mr. Rogers is assessed the cost of this proceeding in the amount of \$50. Mr. Rogers is order to pay a fine in the amount of \$500 pursuant to Section 18.B. of the Procedures. Pursuant to Section 18.C. of the Procedures, Mr. Rogers is ordered to make restitution to Mr. and Mrs. Scott in the amount of \$1000. The cost, fine and restitution assessed herein, in the total amount of \$1550, 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 Hodge, Chair, Panel A

Date: _____