

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

PANEL B

IN RE: RICKEY H. HICKS, Respondent
 Arkansas Bar ID#89235
 CPC Docket No. 2005-013

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Lillian Glenn in an Affidavit dated January 24, 2005. The information related to the representation of Ms. Glenn by Respondent from 2003 and 2004.

On March 30, 2005, Respondent was personally served with a formal complaint, supported by affidavit from Lillian Glenn. Pursuant to the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law (2002), Respondent filed a timely response and the matter proceeded to ballot vote before Panel B of the Committee.

The information before the Committee reflected that on September 7, 2000, Ms. Glenn filed a federal court action against Alltel Communications. In January 2002, Rickey H. Hicks, an attorney practicing primarily in Little Rock, volunteered to represent Ms. Glenn. An Order appointing him to do so was entered on January 29, 2002.

A Scheduling Order was entered by the federal court on March 17, 2003. After it was entered, Ms. Glenn contacted Mr. Hicks to see what, if anything, she needed to do with regard to the requirements of the Order. According to Ms. Glenn, Mr. Hicks advised her that there was nothing for her to worry about with regard to that document.

Ms. Glenn reported to the Committee that during the course of his representation of her, Mr. Hicks never sent her any correspondence. She also reported that her communication with him was limited. She did advise that they met many times to discuss the matter but nothing beneficial seemed to come out of the meetings. Ms. Glenn provided Mr. Hicks with a list of witnesses but he failed to depose any of them.

Ms. Glenn's matter was scheduled for non-jury trial before Judge Steven Reasoner on September 15, 2003. Mr. Hicks scheduled an appointment for Ms. Glenn the Sunday prior to that date to discuss the testimony and trial. Mr. Hicks did not keep the appointment. Another attorney advised Ms. Glenn that Mr. Hicks was in Africa and had not left any information about the matter. There was actually no trial to be had on September 15, 2003, because the lawsuit had been dismissed on September 10, 2003. Mr. Hicks did not advise Ms. Glenn of the dismissal. The reason for the dismissal was because Mr. Hicks had not promptly complied with requests for information. The Court documentation indicated that out of ten (10) requests for production of documents, Mr. Hicks responded to only three, and according to Judge Reasoner's Order, those were "wholly deficient." Mr. Hicks advised in his response to the formal disciplinary complaint that he could not respond to the discovery requests because Ms. Glenn would not cooperate with him. There were Motions which Mr. Hicks did not respond to at all on her behalf. Mr. Hicks responded to the Court that there was no requirement in the Federal Rules of Civil Procedure that he respond to any particular motion, if he was willing to allow the Court to enter an appropriate Order against him. Mr. Hicks also failed to file a Pretrial Conference Information Sheet. Mr. Hicks offered that he responded to the significant pleadings in Ms. Glenn's lawsuit. He also explained that he often sees it as a matter of trial strategy not to file a Pre-Trial Conference Information Sheet if he is going to use the same witnesses and documents as the defendant.

The Court records on file demonstrated that on June 16, 2003, a Motion to Compel was filed by the Defendant. The information in the Motion explained that Mr. Hicks had not responded to discovery requests which were due on or before April 16, 2003. The Defendant's counsel explained that Mr. Hicks was contacted by letter May 28, 2003, but that he failed to respond to that correspondence. On August 7, 2003, an Order was entered giving Mr. Hicks until August 13, 2003, to file the responses. The responses were filed on August 13, 2003, but they were apparently not served on opposing counsel because a Motion to Dismiss was filed on August 18, 2003. Opposing counsel received the responses on August 22, 2003. Thereafter, on September 3, 2003, a Motion in Limine and to Exclude Witnesses was filed by the defendants.

Judge Reasoner dismissed Ms. Glenn's lawsuit on September 10, 2003. In the Order, it was mistakenly set out that the discovery had not been answered. Judge Reasoner accurately pointed out that no response to the Motion to Compel and no Pretrial Conference Information sheet had been filed. After learning of this dismissal, Ms. Glenn wrote to Mr. Hicks and asked about settling her claim against him since he caused the dismissal of the lawsuit which he had voluntarily agreed to pursue on Ms. Glenn's behalf.

Mr. Hicks filed a Motion for Relief from Judgment on September 22, 2003. In closing the Motion, Mr. Hicks offered that he was appointed to the case and had not received any compensation to date. A Response was filed the following day. The Order on the Motion was filed December 5, 2003. In the Order, the Court held that the discovery responses were wholly deficient. The Order mandated that the responses and a Pretrial Conference Information Sheet be filed by December 10, 2003. On that date another order was entered extending the time to file the documents until December 12, 2003. The extension was granted because attorney John Walker contacted the Court and requested an extension since Mr. Hicks was out of the country. After the pleadings were filed, Ms. Glenn's litigation was reopened by Order of the Court.

On May 4, 2004, Ms. Glenn sent Mr. Hicks correspondence setting out her frustration over the fact that he had not taken any action on her behalf since the Order reopening the litigation. Mr. Hicks advised Ms. Glenn that he would file a Motion to Be Relieved but he did not do so until after Ms. Glenn wrote the Court and requested that another attorney be appointed to represent her. On August 6, 2004, an Order was entered allowing Mr. Hicks to withdraw from representation.

Mr. Hicks denied that he acted in any way as to cause a delay in Ms. Glenn's legal proceeding. He explained that many of the things which Ms. Glenn was unhappy about were decisions for the lawyer, not decisions for the client. He also explained that Ms. Glenn was a client who would not cooperate with him.

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 B of the Arkansas Supreme Court Committee on Professional Conduct finds:

1. That Mr. Hicks' conduct violated Model Rule 1.1 because he was not thorough enough in his representation of Ms. Glenn to be certain that he timely filed responses to discovery served on him; when he was not thorough enough in his representation of Ms. Glenn to be certain that he responded to pleadings which might affect her lawsuit; and when he was not thorough enough in his representation to be certain that he timely filed a required Pretrial Conference Information Sheet. Model Rule 1.1 requires that a lawyer provide competent representation to a client, including the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.
2. That Mr. Hicks' conduct violated Model Rule 1.2(a) because although he was appointed, after volunteering, to pursue Ms. Glenn's claims for her, he failed to diligently pursue those claims, even though that was the objective of his representation of Ms. Glenn. Ms. Glenn wished for her claims to be pursued in a timely and diligent manner, but he failed to do so after being appointed to represent Ms. Glenn. 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 requires that a lawyer consult with a client as to the means by which they are to be pursued.
3. That Mr. Hicks' conduct violated Model Rule 1.3 when his representation of Ms. Glenn in her lawsuit against Alltel Communications was neither diligent nor prompt; when he did not timely respond to the discovery requests propounded to him by the defense in Ms. Glenn's litigation against Alltel; when he did not file a response to the Motion to Compel filed by Alltel in the litigation wherein he was appointed to represent Ms. Glenn; when he did not file a response to the Motion to Dismiss filed by Alltel in *Glenn v. Alltel Communications*; when he did not file a timely Pretrial Conference Information Sheet as required by the Scheduling Order directed to him following his acceptance of the appointment to represent Ms. Glenn; and, when he did not take action in *Glenn v. Alltel Communications* after Judge Reasoner reopened the case in December 2003 until he filed his Motion to Be Relieved in May 2004. Model Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

4. That Mr. Hicks' conduct violated Model Rule 1.4(a) when he did not keep Ms. Glenn informed of the actions, if any, he was taking with regard to the lawsuit he was appointed to pursue on her behalf in federal district court; when he failed to advise Ms. Glenn that he had not responded to the discovery requests which had been served on him by the defendant in her lawsuit; when he failed to advise Ms. Glenn that a Motion to Dismiss had been filed in her lawsuit, due to his failure to comply with Court Orders; and when he did not advise Ms. Glenn that her lawsuit had been dismissed. 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.

5. That Mr. Hicks' conduct violated Model Rule 8.4(d) because his lack of action on Ms. Glenn's behalf after he was appointed to pursue the civil litigation and protect her claims and interests therein caused an unnecessary delay in the proceedings and the conclusion of the same. 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 RICKEY H. HICKS, Arkansas Bar ID# 89235, be, and hereby is, CAUTIONED, for his conduct in this matter. Further, pursuant to Section 18.A. of the Procedures, Mr. Schwander is assessed the costs of this proceeding in the amount of \$50. Mr. Hicks is also ordered to pay a fine in the amount of \$500 pursuant to Section 18.B. of the Procedures. The costs assessed and fine ordered 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 B

By: _____

J. Michael Cogbill, Chair, Panel B

Date: _____

