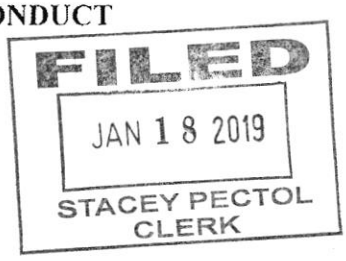
BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL A



IN RE: DANA A. REECE
ARKANSAS BAR ID No. 87142
CPC Docket No. 2017-003

CONSENT FINDINGS AND ORDER

Dana A. Reece is an attorney licensed in 1987 to practice law in the State of Arkansas and assigned Arkansas Bar Number 87142. Justin Phillips ("Phillips") is an inmate at the Arkansas Department of Correction having been sentenced in 2008 to a term of 396 months on a charge of kidnapping and 240 months on a rape conviction. Phillips is also serving a sentence of 120 months on a sexual assault, second degree conviction, also from 2008.

On July 9, 2013, Connie Phillips, Justin's mother, employed Reece to represent her son in a post-conviction matter arising in Pulaski County. The fee agreement stated that Reece would represent Phillips in both state and federal court. The fee was $10,000 as a flat fee for state court and an additional $5,000 if the case were to go to federal court. There would be an additional fee if an expert witness was needed. Connie Phillips paid $9,500 to Reece on July 9, 2013, and was given credit for a $500 consultation fee paid at a previous meeting. The fees were deemed nonrefundable according to the fee agreement.

No post-conviction pleadings were filed on Phillips' behalf by Reece in state court. Reece stated that because Phillips had diminished mental capacity, he had not proceeded with any timely post-conviction relief in state court. As no timely post-conviction relief had been filed, any new filing would be dismissed without a hearing. For that reason, Reece decided to forego the state proceedings and pursue the matter in federal court. She stated that the decision was based upon her legal analysis and was discussed in consultation with Phillips. Ms. Reece stated that she met with Phillips once while he was an inmate at the Wrightsville Unit and once while he was at the East Arkansas Regional Unit. Reece stated she provided Phillips with a copy of the draft petition

she prepared for federal court and he approved it. Reece stated that Phillips agreed with her selection of her decision on where to file the petition and instructed her to file it. On March 23, 2016, Reece filed a Petition for Writ of Habeas Corpus in the United States District Court for the Eastern District of Arkansas. The issue raised in the petition was Phillips' lack of mental capacity at the time his guilty plea was entered. The case was assigned to Magistrate Jerome T. Kearney. On June 23, 2016, Justin wrote the Arkansas Supreme Court Criminal Justice Coordinator and copied the U.S. District Court. In his letter, Phillips stated that his attorney had not been in contact with him and he had not received any copies of pleadings filed on his behalf. On July 6, 2016, the U.S. District Court directed its clerk to provide Phillips with certain documents and directed Reece to contact her client to prevent any potential issue in the future.

On July 8, 2016, the U.S. District Clerk received a letter from Phillips wherein he stated that he had written Reece on several occasions without a response. He stated that he had placed Reece's telephone number on his phone list but was informed that she had not sent in the proper paperwork for the telephone number to be added. Phillips requested the court to remove her as his attorney of record and appoint legal counsel. On July 8, Judge Kearney entered an order denying Phillips' request for appointed counsel but directed Reece to contact Phillips within thirty days if she had not already done so. Reece was also directed to provide the court with a response to Phillips' statements about her lack of communication. Reece did not provide a response to the court's order.

On October 13, 2016, Judge Kearney issued an order stating that Reece had not responded to his order and directed her to comply with the order within ten days or be subject to an order to show cause. Reece stated that she requested permission to place a telephone call to Phillips and provided the Committee with a copy of an October 21, 2016, letter to Lauren Brown of the East

Arkansas Regional Unit of the Department of Correction. The letter was not provided to Judge Kearney and there was no response by Reece to the court's October 13 order.

On November 10, 2016, Judge Kearney issued an order directing Reece to appear in his court on November 17, 2016, at 2:00 p.m. to show cause why she should not be held in contempt of court and sanctioned for her conduct. On November 16, 2016, Reece filed a Notice of Compliance and a Motion to Continue, citing conflicts with matters scheduled in state court. Judge Kearney continued the case to November 22, 2016.

Reece appeared before Judge Kearney on November 22, 2016, and testified. On November 30, 2016, Judge Kearney issued an order finding Reece had failed without sufficient justification to comply with his orders and that her failure to comply with those orders was a gross violation of the practice expected of counsel admitted to the United States District Court. Judge Kearney did not find Reece to be in contempt of court but did state that it was his opinion that Reece's behavior was a violation of the Arkansas Rules of Professional Conduct as her lack of candor, diligence, and communication with her client and the court caused unnecessary expenditure of court resources. Judge Kearney then referred the matter to the Arkansas Supreme Court Office of Professional Conduct ("OPC").

In his response to questions from OPC, Phillips stated in a letter dated January 12, 2017, that he had not spoken to Reece between June 13, 2016, when he first wrote the court and requested information about his case, and November 15, 2016, when he spoke to Reece on the telephone. Phillips recalled the conversation as Reece telling him that she was waiting for the court to set a hearing and that he had a good case. Phillips stated that he had not spoken to Reece since the November 15, 2016, telephone call. He also stated that he was not satisfied with Reece as his attorney but that he could not afford a new attorney. Phillips stated that he was not advised whether Reece had a new telephone number or a new mailing address. Reece disputed that Phillips was

not informed about her new telephone number and stated that she had received many telephone calls from him on her cell phone. Reece stated that she provided Phillips with a draft of the petition to be filed with federal court by mail and that her office mailing address was on the envelope. Reece conceded that the telephone number listed on the court's docket sheet was not a telephone number in service.

Reece was charged with violation of Rule 1.3 in that she: (1) was advised to make contact with her client, Justin Phillips, by a July 6, 2016, order of the United States District Court, and failed to do so; (2) was directed by a July 8, 2016, order of the United States District Court to make contact with her client within thirty days and failed to do so; (3) was directed by a July 8, 2016, order of the United States District Court to provide the court within thirty days a response to Mr. Phillips' allegations of lack of communication and contact and assure the court that the contact was made, whether in person or by mail, and failed to do so; and, (4) was directed by the October 13, 2016, order of the United States District Court to comply within ten days of the order or be subject to an order to show cause and Reece failed to do so. Reece admitted that the did not contact Phillips within the thirty-day period following the July 8 order and did not provide the court with a response to Phillips' allegations of lack of communication. Reece denied that she failed to comply with the October 13, 2016, order, as she requested permission to place a telephone call to Phillips within the ten-day period following the entry of the order. She provided a copy of an October 21, 2016, letter, as proof, though she admitted that she did not provide the Court with a copy of that letter. She stated that she did speak to Phillips on November 15, 2016.

Reece was charged with violation of Rule 1.4(a)(3) in that she (1) failed to keep Phillips informed about the status of his legal matter when, on March 23, 2016, she filed a petition with the federal court and failed to inform him of the filing; (2) failed to keep Phillips informed about the status of his legal matter when, on or after March 23, 2016, she failed to provide him with a

copy of the filed petition; (3) failed to communicate with Phillips from March 23, 2016, when she file the petition through June 23, 2016, when he wrote the court about the status of his matter; (4) failed to communicate with Phillips within thirty days of the July 8, 2016, order of the United States District Court; (5) failed to communicate with Phillips within ten days of the October 13, 2016, order of the United States District Court; and (6) failed to communicate with Phillips until November 15, 2016. Reece denied the allegations and stated that she had informed Phillips that she had filed the petition, that he was provided with a copy of the draft of the petition, and that she met with Phillips on two occasions. Reece stated that she intended to provide Phillips with a signed, file-marked copy of the petition that was filed on his behalf. Reece admitted that she did not write Phillips or have an in-person conference with him from March 23, 2016, until June 23, 2016. She stated that he may have called her during that period but that did not recall whether they spoke. Reece admitted that she did not contact Phillips within the thirty days following the July 8, 2016, Order and did not provide the court with a response to Phillips' allegations concerning a lack of communication. Reece denied that she failed to contact Phillips after the October 13, 2016, Order. Reece stated that she requested permission to place a call to Phillips as evidenced in a letter dated October 21, 2016, which was addressed to Lauren Brown at the Arkansas Department of Correction. Reece denied that she failed to communicate with Phillips after the October 13, 2016, Order until the telephone call of November 15, 2016. Reece stated that she met with Phillips on two occasions, provided Phillips with a draft of the petition she was to file, and received his approval of her decision concerning venue selection.

Reece was charged with violation of Rule 1.4(a)(4) in that it took action of the United States District Court to get Reece to comply with requests for information about Phillips' legal matter. Reece agreed that Phillips wrote the United States District Court to get a copy of the court's file.

Reece was charged with violation of Rule 3.4(c) in that she was (1) advised by the United States District Court to make contact with Phillips and failed to do so; (2) directed in a July 8, 2016 Order of the United States District Court to make contact with Phillips within thirty days of the order and failed to do so; (3) directed in a July 8, 2016, Order of the United States District Court to provide the court within thirty days of the order a response to Phillips' allegations of lack of communication and to assure the court that contact was made; and (4) directed in an October 13, 2016, Order of the United States District Court to comply with its July 8, 2016, Order within ten days of October 13, 2016, or be subject to an order to show cause, yet failed to do so. Reece admitted that she did not contact Phillips within the thirty-day period following the July 8 order and did not provide the court with a response to Phillips' allegations of lack of communication. Reece denied that she failed to comply with October 13, 2016, order, as she requested permission to place a telephone call to Phillips within the ten-day period following the entry of the order. She provided a copy of an October 21, 2016, letter, as proof, though she admitted that she did not provide the court with a copy of that letter. She stated that she did speak to Phillips on November 15, 2016. Reece denied that she failed to comply with the October 13, 2016, Order. Reece stated that within ten days of the October 13, 2016, Order, she requested permission to call Phillips as evidenced in a letter dated October 21, 2016, and addressed to Lauren Brown at the Arkansas Department of Correction.

Reece was charged with a violation of Rule 8.4(d) when (1) the United States District Court had to respond to *pro se* requests from Phillips regarding the status and pleadings filed in his case that it otherwise may not have had to do but for the lack of communication between Reece and her client; (2) the United States District Court, on July 6, 2016, had to take time out of its schedule to address the lack of communication between Reece and her client; (3) the United States District Court on July 8, 2016, had to take time out of its schedule to address the lack of communication

between Reece and her client; (4) the United States District Court on October 13, 2016, had to take time out of its schedule to address the lack of communication between Reece and her client; (5) Reece did not give the federal court notice of her state court conflicts until November 16, 2017, one day before the scheduled hearing, requiring the court to continue the hearing to November 22, 2017; (6) Reece failed to update her contact information with the United States District Court, preventing the court from contacting Reece about the November 17, 2016 hearing; (7) the United States District Court had to take time out of its schedule to hold a show cause hearing on November 22, 2016, for Reece's failure to comply with its orders. Reece denied that she violated Rule 8.4(d). She stated that the court's July 8, 2016, and October 13, 2016, Orders addressed the lack of communication between her and Phillips. Reece stated that the failure to provide the court with notice of her state court conflicts until the day before the scheduled hearing did not violate Rule 8.4(d) as the court agreed to continue the hearing until November 22, 2016. Reece stated that the failure to maintain updated contact information with the court did not violate Rule 8.4(d) as her telephone number was not in service occasionally during 2016 and early 2017 because she could not afford to pay her bill. Reece stated that she did not violate Rule 8.4(d) when the court had to schedule a show cause hearing on November 22, 2016, as the court did hold the hearing as scheduled.

After the ballot vote and decision was provided to Reece, she and her counsel entered into discussion with the Executive Director which has resulted in an agreement to discipline by consent pursuant to Section 20.B of the Arkansas Supreme Court Procedures Regulating Professional Conduct of Attorneys at Law (2011). Upon consideration of the formal complaint and attached exhibits, admissions made by the respondent attorney, the terms of the written consent, the approval of Panel A of the Committee on Professional Conduct, and the Arkansas Rules of Professional Conduct, the Committee on Professional Conduct finds:

Upon consideration of the formal complaint and attached exhibits, the response filed by Reece, and the Arkansas Rules of Professional Conduct, Panel B of the Committee on Professional Conduct finds:

1. Dana A. Reece violated Rule 1.3 when she was advised by a July 6, 2016, Order of the United States District Court to contact her client, Justin Phillips, and she failed to do so. Reece was directed by a July 8, 2016, Order of the United States District Court to contact her client within thirty days of the order and to provide the court with a response to the Phillips' allegations, and she failed to do so. Reece was directed by an October 13, 2016, Order of the United States District Court to comply with its previous order within ten days of October 13, 2016, or be subject to an order to show cause, and she failed to do so. Rule 1.3 states that a lawyer shall act with reasonable diligence and promptness in representing a client.
2. Dana A. Reece violated Rule 1.4(a)(3) when she failed to keep Phillips informed about the status of his legal matter filed on March 23, 2016. Reece failed to keep Phillips informed about the status of his legal matter when, on or after March 23, 2016, she failed to provide him with a copy of the filed petition. Reece failed to communicate with Phillips from March 23, 2016, when she filed the petition, through June 23, 2016, when he wrote the court about the status of his matter. Reece failed to communicate with Phillips within thirty days of the July 8, 2016, order of the United States District Court. Reece failed to communicate with Phillips within ten days of the October 13, 2016, order of the United States District Court. Reece failed to communicate with Phillips until November 15, 2016. Rule 1.4(a)(3) states that a lawyer shall keep the client reasonably informed about the status of a matter.

3. Dana A. Reece violated Rule 1.4(a)(4) when Justin Phillips, a client of Reece, had to get the United States District Court to act in having Reece comply with requests for information about his legal matter. Rule 1.4(a)(4) states that a lawyer shall promptly comply with reasonable requests for information.

4. Dana A. Reece violated Rule 3.4(c) when she was advised by a July 6, 2016, Order of the United States District Court to contact her client, Justin Phillips, and she failed to comply with the order. Reece was directed by a July 8, 2016, Order of the United States District Court to contact Phillips and provide the court with a response to Phillips' allegations about the lack of communication, both within thirty days of the order, and she failed to comply. Reece was directed by an October 13, 2016, Order of the United States District Court to comply with its July 8, 2016, Order within ten days of the order of be subject to a show cause order, and she failed to comply. Ruel 3.4(c) states, in part, that a lawyer shall not knowingly disobey an obligation under the rules of a tribunal.

5. Dana A. Reece violated Rule 8.4(d) when the United States District Court had to respond to *pro se* requests from Phillips regarding the status and pleadings filed in his case that it otherwise may not have had to do but for the lack of communication between Reece and her client. The United States District Court, on July 6, 2016, had to take time out of its schedule to address the lack of communication between Reece and her client. The United States District Court on July 8, 2016, had to take time out of its schedule to address the lack of communication between Reece and her client. The United States District Court on October 13, 2016, had to take time out of its schedule to address the lack of communication between Reece and her client. Reece did not give the federal court notice of her state court conflicts until November 16, 2017, one day

before the scheduled hearing, requiring the court to continue the hearing to November 22, 2017. Reece failed to update her contact information with the United States District Court, preventing the court from contacting Reece about the November 17, 2016 hearing. The United States District Court had to take time out of its schedule to hold a show cause hearing on November 22, 2016, for Reece's failure to comply with its orders. Rule 8.4(d) states that it is professional misconduct for a lawyer to 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 DANA A. REECE, Arkansas Bar No. 87142, be, and hereby is, SUSPENDED for a period of THIRTY-SIX MONTHS for her conduct in this matter.

IT IS SO ORDERED.

ARKANSAS SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT - PANEL A

By: _____
T. Benton Smith, Jr., Chairperson

Date: 1/8/19