

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL A

IN RE: JOSHUA MCHUGHES, Respondent
 Arkansas Bar ID#67040
 CPC Docket No. 2005-098

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Robert G. Baird. The information related to the contacts Mr. McHughes had with Mr. Baird beginning in March 2004.

During August 2005, Respondent was served with a formal complaint, supported by affidavits from Mr. Mr. Baird and Michael Robbins, Attorney at Law. Respondent filed a timely answer to the formal complaint. Thereafter, the matter proceeded to ballot vote pursuant to the process set out in the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law. (2002)

The factual information before the Committee revealed that during March 2004, Mr. Baird received a Summons at his home address from Josh E. McHughes, an attorney with a primary office in Little Rock, Pulaski County, Arkansas. The accident report demonstrated that Robert G. Baird had no connection with the accident. The date of birth of the driver is different, the address is different and the automobile was not owned by Robert G. Baird. Mr. Baird immediately contacted Annette Richardson with Mr. McHughes' law office and advised her that he was not the Robert Baird in the lawsuit. Mr. Baird sent Mr. McHughes a copy of his driver's license, by certified mail, on March 26, 2004. It was Mr. Baird's belief that this matter was concluded since he clearly was not the defendant listed in the Complaint.

Mr. Baird was served with a Motion for Default Judgment in September 2004. The Motion was sent to his address even though he had previously explained and established that he was not the Robert Baird who was the defendant in the lawsuit. Since he believed he had no other alternative, Mr. Baird hired an attorney to assist him with the matter. Mr. Baird hired Michael G. Robbins after he obtained a copy of the accident report. Mr.

Robbins was paid \$300 for representation of Mr. Baird in the matter.

Mr. Robbins sent Judge Sutterfield a letter about the issue and the fact that Robert G. Baird was not the defendant named in the lawsuit. In the letter, which was copied to Mr. McHughes, Mr. Robbins asked that the proper date of birth and driver's license number be entered so that there would be no further confusion. Mr. Robbins also spoke with Mr. McHughes who agreed to put the proper Robert Baird's date of birth on the Default Judgment.

In early October 2004, Mr. McHughes provided Robert G. Baird, the complainant herein, a copy of the Default Judgment. Although the correct date of birth was on the Default Judgment, it still contained an incorrect address because it still contained Robert G. Baird's address. In addition, the transmittal letter was addressed to Robert G. Baird's address and advised him about garnishments. Mr. Robbins again contacted Mr. McHughes about these matters.

In January 2005, Robert G. Baird, the complainant herein, received notice at his mailing address from the Department of Finance and Administration that his driver's license was being suspended for the unsatisfied Final Judgment. The driver's license was not Robert G. Baird's but the address provided by Mr. McHughes to DFA again is his. Then, on May 1, 2005, another letter was sent. The contents of the letter reflect that a conversation was had that date about payments being made on a monthly basis. Robert G. Baird had no such conversation. Despite all of this, the letter came addressed to him. Mr. Baird made Mr. Robbins aware of this letter. Mr. Robbins wrote Mr. McHughes on May 13, 2005, and advised him to no longer contact his client, Mr. Baird, at Post Office Box 100, Dover, Arkansas about this matter. In the final letter to Mr. McHughes, Mr. Robbins explained that Mr. Baird had counsel and that Mr. McHughes knew of this fact and should not contact him directly again.

In response to the formal disciplinary complaint, Mr. McHughes explained that he obtained the address for Robert G. Baird through an electronic data base. He acknowledged that his office was contacted by Robert G. Baird and that when made aware he was the wrong Robert Baird, the file was so marked.

Mr. McHughes explained that the Default Judgment was erroneously mailed to Robert G. Baird at Post Office Box 100, Dover, Arkansas. After Mr. Baird contacted his office, Mr. McHughes advised that his staff

apologized and explained to Robert G. Baird that they knew he was the wrong Robert Baird and that they wanted nothing from him. Mr. McHughes acknowledged that he was contacted by Mr. Robbins as counsel for Robert G. Baird about the contacts and continuing notifications to him.

According to Mr. McHughes, the letter confirming payment was erroneously mailed to the Post Office Box 100 in Dover, Arkansas. Mr. McHughes does not dispute the contents of Mr. Robbins' letter of May 13, 2005. In explanation, Mr. McHughes stated that he does not use computers and is computer illiterate. He advised the Committee that this has all been very frustrating for him, because he knew that Robert G. Baird was the wrong man. Mr. McHughes averred that he had no intention of contacting Robert G. Baird or of harassing, embarrassing or collecting monies from Robert G. Baird. Mr. McHughes advised that the Post Office Box 100, Dover, Arkansas, address has now been removed from the data base at the law office so no additional documents will be generated to that address.

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. McHughes' conduct violated Model Rule 4.2 because after being contacted by Michael Robbins in September 2004, and being put on notice that Mr. Robbins represented Mr. Baird with regard to the matter wherein Mr. McHughes continued to incorrectly use Mr. Baird's address as the address of record for the defendant in the lawsuit *O'Reilly Auto Part v. Baird*, he directly contacted Mr. Baird again in October 2004, with correspondence advising of Judgment taken against him and also informing him of garnishment proceedings, and because after being contacted by Michael Robbins again in October 2004 about his representation of Mr. Baird and the fact that Mr. McHughes was still contacting the wrong Mr. Baird about the Judgment, Mr. McHughes directly contacted Mr. Baird again in May 2005, with correspondence about payments on the Default Judgment taken in September 2004. Model Rule 4.2 requires that a lawyer not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so.

2. That Mr. McHughes' conduct violated Model Rule 4.4 because after being provided clear evidence that Robert Baird of Dover, Arkansas, was not the defendant in the matter he was handling for O'Reilly Auto Parts in 2004 and 2005, he continued to contact Mr. Baird and to contact others about him and the Judgment taken in September 2004. The contacted amounted to harassment of Mr. Baird and also caused him the burden of having to hire counsel to provide the information to Mr. McHughes which Baird had already clearly provided. Model Rule 4.4 requires that a lawyer, in representing a client, shall not use means that have no substantial purpose other than to embarrass, delay or burden a third person.

3. That Mr. McHughes' conduct violated Model Rule 8.4(d) because his continuing contact of Mr. Baird along with threats of garnishment and driver's license suspension created the need for him to hire counsel to contact Mr. McHughes with information which Mr. Baird had already clearly provided to Mr. McHughes demonstrating that Robert G. Baird was not the individual in the automobile accident made the basis of the civil litigation Mr. McHughes was pursuing on behalf of O'Reilly Auto Parts. 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 JOSHUA E. MCHUGHES, Arkansas Bar ID#67040, be, and hereby is, CAUTIONED for his conduct in this matter. Further, pursuant to Section 18.A. of the Procedures, Mr. McHughes is assessed the costs of this proceeding in the amount of \$50. Pursuant to Section 18.C. of the Procedures, Mr. McHughes is ordered to make restitution to Mr. Baird in the amount of \$300. The costs and restitution assessed and 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 A

By: _____

Bart F. Virden, Chair, Panel A

Date: _____