

**BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT  
PANEL B**

IN RE: Joseph D. Hughes, Respondent  
Arkansas Bar ID# 97021  
CPC Docket No. 2005-129

**CONSENT FINDINGS AND ORDER**

The formal charges of misconduct upon which this Findings and Order is based arose from information received from Doris A. Scott on December 10, 2004. The information related to the representation of Ms. Scott in case number LR-C-2001-390SMR filed in the United States District Court, Eastern District of Arkansas in June 2001 against the United States Postal Service et al.

On October 12, 2005, Respondent was served with a formal complaint.. A response was filed. The Respondent and the Executive Director negotiated a discipline by consent proposal, which was submitted to this Panel.

The facts upon which this complaint is based are that on February 9, 2001, Ms. Scott hired Attorney Joseph D. Hughes to represent her in a case against the United States Post Office. She paid Mr. Hughes a \$5,000 retainer. Mr. Hughes filed the complaint against the postal service on June 18, 2001, in the United States District Court for the Eastern District of Arkansas. On November 30, 2001, the Defendants filed a motion for partial dismissal or in the alternative a motion to strike and a supporting brief. Mr. Hughes never filed a response to the motion for partial dismissal and on January 4, 2002, the Court entered an Order directing Mr. Hughes to file a response that day. The Order was filed on January 7, 2002. Mr. Hughes did not comply with the Order. The Court entered another Order on May 22, 2002, dismissing most of Ms. Scott's claims and the Order also states that Plaintiff had failed to file a response to the motion for partial dismissal. All Ms. Scott's claims for relief were dismissed except for the claim for reinstatement to her job.

The claims under the Arkansas Civil Rights Act were dismissed because the Court held that Title VII and the Rehabilitation Act are the exclusive remedies for a federal employee's claims of discrimination. The claims under the American With Disabilities Act were dismissed because the Court held that United States does not come within the definition of "employer" under that Act. Ms. Scott's claim for sex discrimination was dismissed because the Court said she had failed to exhaust her administrative remedies. The Court held the same thing in regard to her claim for compensatory damages. The claim for punitive damages was dismissed because such damages are not recoverable against a governmental agency. Because Ms. Scott was not eligible for compensatory or punitive damages, her demand for a jury trial was stricken. Not only did Mr. Hughes incorrectly plead these issues in the complaint, he also failed to respond to the Defendant's motion for partial dismissal and motion to strike

On June 3, 2002, the Defendants filed an Answer to the Complaint. On May 23, 2003, the Defendants filed a Motion for Summary Judgment and Statement of Uncontested Facts and Memorandum of Law. On August 7, 2003, the Court entered an Order stating Plaintiff had not filed a Response to the Motion for Summary Judgment and ordered the Plaintiff to due so by August 22, 2003. On August 25, 2003, the Court entered an Order stating that Plaintiff had orally requested a one week extension to respond to the Defendant's Motion for Summary Judgment. The Court gave Plaintiff until August 29, 2003, to file a response. Mr. Hughes did not file a Response to the Motion for Summary Judgment until September 2, 2003. Mr. Hughes attached an affidavit to his Response purportedly containing Ms. Scott's signature. It is notarized by someone who works in Mr. Hughes' office. Ms. Scott denied the signature was hers and said the Response contained many erroneous and completely fabricated facts. She also stated was never asked to review the facts of the document. Mr. Hughes admitted in his Response to the Office of Professional Conduct that he signed the affidavit, but denied the facts were fabricated.

On March 31, 2004, a Judgment was entered in favor of the Defendants in the case. On that same day a Memorandum and Order on Defendant's Motion for Summary Judgment was entered granting the Defendant's Motion for Summary Judgment. On May 6, 2004, Mr. Hughes appealed the case to the Eighth Circuit Court of Appeals, Ms. Scott stated that it was without her knowledge. On June 7, 2004, Mr. Hughes filed a motion with the Court to withdraw as my Ms. Scott's counsel. Ms. Scott said by the time she discovered Mr. Hughes had filed an appeal, she had only two weeks to file her brief. The Eighth Circuit affirmed the lower Court. The lower Court held that Ms. Scott had failed to exhaust her administrative remedies and the Eighth Circuit affirmed. Ms. Scott stated that Mr. Hughes should have informed her of the jurisdictional issues prior to accepting her \$5,000 to represent her in a case which had no merit.

Mr. Hughes stated that he was completely in error for signing an affidavit for Ms. Scott. He also stated that he included all the claims which were dismissed in Ms. Scott's case as a tactical determination for two reasons: first, if they survived until trial, there would be an opportunity to reserve those issues on appeal and perhaps change the existing laws and, secondly, to ensure that Ms. Scott's claim included some claims which could ultimately be tried.

Upon consideration of the formal complaint and attached exhibit materials, the response, the consent proposal, and 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. Hughes' conduct violated Arkansas Rule of Professional Conduct 1.1 when he filed a complaint for Ms. Scott and charged her \$5,000 even though she had failed to exhaust all of her administrative remedies, a fact of which he was aware, or should have been aware if he had used the preparation reasonably necessary for such representation. Model Rule 1.1 requires that a lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.
2. That Mr. Hughes' conduct violated Model Rule 3.3(a)(1) when he filed a Response to the Defendant's Motion for Summary Judgment and attached an Affidavit purportedly signed by Ms. Scott but which in fact did not contain her signature. Model Rule 3.3(a)(1) provides that a lawyer shall not make a false statement of material fact or law to a tribunal.
3. That Mr. Hughes' conduct violated Model Rule 3.3(a)(4) when he filed a Response to the Defendant's Motion for Summary Judgment and attached an Affidavit purportedly signed by Ms. Scott but which in fact did not contain her signature but was notarized as her signature by a notary public in your office. Model Rule 3.3(a)(4) requires that a lawyer shall not knowingly offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures.
4. That Mr. Hughes' conduct violated Model Rule 4.1(a) when he submitted a false affidavit, supporting the Response to Defendant's Motion for Summary Judgment, to the Court and to the Defendants. Model Rule 4.1(a) requires that in the course of representing a client, a lawyer shall not knowingly make a false

statement or material fact of law to a third person.

5. Mr. Hughes' conduct violated Model Rule 8.4(c) when he filed a false affidavit with the Court and gave it to the Defendants in support of the Response to Defendant's Motion for Summary Judgment. Model Rule 8.4(c) requires that a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

6. Mr. Hughes' conduct violated Model Rule 8.4(d) when he filed a Complaint for Ms. Scott even though she had not exhausted her administrative remedies and created unnecessary proceedings in the federal court system and when he charged, and received from, Ms. Scott \$5,000 for a civil proceeding which you should have recognized would fail due to her failure to exhaust the required administrative remedies. Model Rule 8.4(d) requires that a lawyer shall 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 Joseph D. Hughes, Arkansas Bar ID# 97021, be, and hereby is, REPRIMANDED for his conduct in this matter and ordered to pay Restitution to Ms. Scott in the amount of \$5,000 and costs of \$50. 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. Mr. Hughes has requested and shall receive additional time to pay the Restitution in this matter. The Restitution 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 six (6) months 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: \_\_\_\_\_  
H.T. Moore, Chair, Panel B

Date: \_\_\_\_\_