

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

**IN RE: JERRY D. ROBERTS
ARKANSAS BAR ID No. 98208
CPC Docket No. 2011-053**

CONSENT FINDINGS AND ORDER

Jerry D. Roberts is an attorney licensed to practice law in 1998 in the State of Arkansas and was assigned Arkansas Bar Number 98208. Mr. Roberts was employed to represent Barrie Cobb in a personal injury matter concerning a motorcycle accident which occurred on November 7, 2004.

On August 29, 2005, Mr. Roberts filed a Complaint on Ms. Cobbs' behalf in St. Francis County Circuit Court. The case was styled as *Barrie Cobb and Jim Cobb v. Rex Jones and Mary Jones*, St. Francis County Circuit Court Case No. CIV-2005-268-2. The Joneses filed a timely answer and the matter was set for trial on April 27, 2006. The matter was later continued to November, 2007. After the matter was continued, Ms. Cobb began experiencing difficulties contacting Mr. Roberts. Mr. Roberts stopped returning telephone calls and, though he provided her with his cell phone number, when the number was called, Mr. Roberts would state that he was busy or would have to call her back. Mr. Roberts failed to call her back. The trial was rescheduled on two more occasions. Following the last rescheduling, Ms. Cobb wrote a letter to Mr. Roberts dated June 17, 2008. In her letter, Ms. Cobb asked when the matter might be concluded and the possibility of settlement.

On October 7, 2008, the Joneses filed a Motion to Dismiss. In the Motion to Dismiss, the Joneses' lawyer detailed in Paragraph 3 the difficulties he had in communicating with Mr. Roberts. The Joneses' lawyer attached to the motion six letters dated February 26, 2008; April

16, 2008; May 14, 2008; June 13, 2008; July 25, 2008; and August 12, 2008. Additionally, the Joneses' lawyer stated in the motion that telephone calls were made to Mr. Roberts on June 13, 2008; July 3, 2008; July 24, 2008; and September 18, 2008, to discuss discovery and trial setting. According to the statements in the motion by opposing counsel, Mr. Roberts failed to take or return any of the calls.

Meanwhile, Ms. Cobb sent Mr. Roberts an email on October 17, 2008, inquiring when the matter would be set for trial and whether settlement had been discussed. Unbeknownst to Ms. Cobb, a Motion to Non-Suit would be filed on October 22, 2008, by Mr. Roberts. On October 23, 2008, the St. Francis County Circuit Court granted the Motion to Non-Suit.

In March, 2009, Ms. Cobb saw Mr. Roberts in Wynne, Arkansas. Ms. Cobb inquired about the status of the lawsuit. Mr. Roberts stated that he would send her a letter advising her of the status of the lawsuit. Mr. Roberts never sent a letter to Ms. Cobb as he stated he would.

In March, 2010, Ms. Cobb placed calls to Mr. Roberts again as she received a letter from Blue Cross/Blue Shield ("Blue Cross") asking again for the status of her legal matter. When Ms. Cobb contacted Mr. Roberts, he stated that he, too, had received a letter from Blue Cross. When he checked his files, he realized that he had not "filed a paper when he should have." Mr. Roberts stated that he would notify his malpractice carrier. On April 19, 2010, Ms. Cobb wrote Mr. Roberts and expressed her dissatisfaction about the representation.

Mr. Roberts was served with a formal complaint and filed a timely answer. Mr. Roberts and his attorney, Jeff Rosenzweig, entered into discussions with the Executive Director which 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). Mr.

Roberts conditionally admitted to violation of Rules 1.1, 1.3, 1.4(a)(3), 1.4(a)(4), and 8.4(d) in exchange for a proposed sanction of caution. Mr. Roberts stated that he filed the lawsuit but had to nonsuit the case as he was unable to find an expert to corroborate the damages his client was seeking. After he nonsuited the case, he received a trial setting which led him to believe the matter had been re-filed. Mr. Roberts provided the Office of Professional Conduct with his malpractice carrier information. During the pendency of this matter, Ms. Cobb filed a claim with the carrier and settled her claim.

Upon consideration of the formal complaint and attached exhibits, admissions made by the respondent attorney, the terms of the written consent to discipline proposal, the approval of Panel A of the Committee on Professional Conduct, and the Arkansas Rules of Professional Conduct, the Committee on Professional Conduct finds:

1. Jerry D. Roberts violated Rule 1.1 when he demonstrated a lack of competent representation by failing to respond to inquiries made by opposing counsel in order to pursue the matter through to completion and by failing to re-file a lawsuit on behalf of his client, Barrie Cobb, within one year of the October 23, 2008, Order to Non-Suit. Rule 1.1 requires that a lawyer provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

2. Jerry D. Roberts violated Rule 1.3 when he failed to timely file re-file a lawsuit a lawsuit on behalf of his client, Barrie Cobb, within one year after seeking and obtaining a non-suit in the matter and when he failed to timely respond to information sought by opposing counsel. Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

3. Jerry D. Roberts violated Rule 1.4(a)(3) when, during representation of Barrie Cobb, he failed to communicate with his client, Barrie Cobb, in such a manner to keep her reasonably informed about the status of her legal matter or to advise her what actions, if any, he was undertaking on behalf of her and her husband. Rule 1.4(a)(3) requires that a lawyer keep the client reasonably informed about the status of the matter.

4. Jerry D. Roberts violated Rule 1.4(a)(4) when he failed to respond to the June 17, 2008, or October 17, 2008, requests of his client, Barrie Cobb, for information about the status of her legal matter. Rule 1.4(a)(4) requires that a lawyer promptly comply with reasonable requests for information.

5. Jerry D. Roberts violated Rule 8.4(d) when his failure to re-file a lawsuit on behalf of his client, Barrie Cobbs, within one year following the entry of an Order to Non-Suit, resulted in his client's opportunity to pursue claims for damages in court being barred. 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 JERRY D. ROBERTS, Arkansas Bar No. 98208, be, and hereby is, CAUTIONED, and assessed costs in the amount of FIFTY DOLLARS (\$50.00). All fines and 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.

ARKANSAS SUPREME COURT COMMITTEE

ON PROFESSIONAL CONDUCT - PANEL A

By: /s/ Danyelle J. Walker, Chair, Panel A

Date: January 18, 2013

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January 18, 2013