

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

IN RE: **PAT MARSHALL**
 ARKANSAS BAR ID #2001012
 CPC Docket No. 2013-001

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Ms. Linda Stokes. The information is related to Ms. Pat Marshall's representation of Ms. Stokes in Ms. Stokes' divorce action. Ms. Marshall is an Arkansas licensed attorney practicing primarily in Pulaski County, Arkansas. Respondent failed to file a response to the complaint, which failure to timely respond, pursuant to Section 9.C(4) of the Procedures, constitutes an admission of the factual allegations of the formal complaint and extinguishes Respondent's right to a public hearing.

On February 22, 2011, Ms Stokes paid Pat Marshall \$500.00, the first installment on the \$1,000.00 fee owed to Ms. Marshall, to represent her in a divorce matter. The final installment of \$500.00 was paid on April 5, 2011. Ms. Marshall entered her appearance in the divorce case March 3, 2011.

On July 5, 2011, Ms. Marshall received a proposed settlement agreement from opposing counsel. On July 19, 2011, Ms. Marshall notified Ms. Stokes by email that she had received a settlement proposal from opposing counsel. Ms. Marshall and Ms. Stokes met to discuss the proposed settlement, and it was decided that Ms. Marshall would draft a counter-offer after reviewing bank records that Ms. Stokes was to obtain. Ms. Stokes never received the counter-proposal to review.

On September 7, 2011, Ms. Marshall received a letter from opposing counsel regarding the counter-proposal Ms. Marshall was to prepare. In the letter opposing counsel advised Ms.

Marshall of the difficulty she and the Judge's clerk had in contacting Ms Marshall, and because of that difficulty, the matter was set for a final hearing on October 19, 2011. Ms. Stokes and Ms. Marshall exchanged several emails after Ms. Marshall's receipt of the September 7 letter from opposing counsel. Ms. Marshall failed to notify Ms. Stokes in any of these emails, or by any other means, of the pending October 19 court date.

On July 24, 2012, Ms. Marshall submitted a written response to the Office of Professional Conduct's investigation letter. In the response, Ms. Marshall stated that after she received the September 7 letter from opposing counsel, she contacted opposing counsel, and they discussed entering into a settlement agreement and presenting it during the October 19 court date. Ms. Marshall did not prepare or present a proposed settlement agreement to opposing counsel until October 18, 2011, the day before the scheduled hearing. In her October 18 counter-offer letter, Ms. Marshall advised opposing counsel that her client, Ms. Stokes, among other things, would not agree to joint custody of the minor child. When Ms. Marshall did not receive a response from opposing counsel, she submitted a Motion and Order for Continuance to the Court. The hearing was held on October 19, 2011, and neither Ms. Marshall nor Ms. Stokes appeared. The Court granted the divorce.

On November 9, 2011, opposing counsel submitted a proposed final Decree of Divorce to the Court with a "five day" letter and copy to Ms. Marshall for any objections. Ms. Marshall submitted letters of objection to the Court on November 14, 2011. In the letters, Ms. Marshall, on behalf of Ms. Stokes who already had primary custody of the child, objected to the award of joint/split custody of the minor to Ms. Stokes and her ex-husband. The Court responded in writing to Ms. Marshall's letter by facsimile on November 15, 2011, advising Ms. Marshall of the difficulty the Court had in contacting her. On November 22, 2011, the Court entered the Decree of Divorce as submitted by opposing counsel.

The Court made several findings in the final Divorce Decree. The Court awarded joint/split custody of the minor child to Ms. Stokes and her ex-husband, with custody shifting between the parents each school semester. The Court found that Ms. Marshall had faxed a Motion for Continuance to the Court at 6:26 p.m. on October 18, 2011, the evening before the scheduled October 19 hearing. The Court also found that the case coordinator had unsuccessfully made attempts to contact Ms. Marshall before the October 19 hearing. Finding that Ms. Marshall was provided notice of the October 19 hearing, the Court denied the Motion for Continuance.

Ms. Stokes was not notified by Ms. Marshall that her divorce was final. Ms. Stokes first got information that her divorce may be final from a co-worker. Ms. Stokes then contacted Ms. Marshall by email on December 5, 2011, inquiring as to whether there was a court date set in her case. Ms. Marshall responded by email on December 5, and answered in the affirmative and requested for Ms. Stokes to call her after 4:00 p.m. that day.

On December 6, 2011, Ms. Stokes again emailed Ms. Marshall advising Ms. Marshall that Ms. Stokes had attempted to call her several times on December 5, as requested by Ms. Marshall. Ms. Stokes then asked Ms. Marshall if they could meet to discuss her divorce case. Ms. Marshall replied, advising Ms. Stokes to meet her after 5:00 or so.

On December 8, 2011, Ms. Stokes wrote Ms. Marshall a letter terminating Ms. Marshall as her attorney and requesting a refund so that Ms. Stokes could hire another attorney. Ms. Stokes then hired a new attorney to represent her and paid him \$1,500.00 for his representation. Ms. Stokes' new attorney filed a Verified Motion for Change of Custody on Ms. Stokes's behalf on May 14, 2012, as Ms. Stokes was not happy with the custody determination. A hearing was held in the matter, and on December 10, 2012, the Court entered its order granting Ms. Stokes primary custody of the child and the ex-husband standard visitation.

Upon consideration of the formal complaint and attached exhibit materials, the response,

and 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 Pat Marshall's conduct violated Rule 1.3 when she (a) failed to timely prepare the counter-offer to the settlement proposal submitted by opposing counsel, having only prepared and submitted the proposed counter-offer to opposing counsel on October 18, 2011, the day before the scheduled court date of October 19, 2011, (b) waited until 6:26 p.m. on October 18, 2011, the night before the scheduled hearing of October 19, 2011, to fax a Motion for Continuance to the Court, (c) failed to contact the Court regarding the status of the Motion for Continuance she faxed to the Court on the evening of October 18, 2011, and (d) failed to contact the Court or appear for the hearing scheduled in her client's divorce action on October 19, 2011. Arkansas Rule 1.3 requires that a lawyer shall act with reasonable diligence and promptness in representing a client.

2. That Pat Marshall's conduct violated Rule 1.4(a)(1) when she failed to notify her client, Ms. Stokes, of the October 19, 2011, court date in her divorce matter, and failed to discuss continuing the hearing with Ms. Stokes before submitting a request for continuance to the Court. Arkansas Rule 1.4(a)(1) requires that a lawyer promptly inform the client of any decision or circumstance with respect to which the client's informed consent is required.

3. That Pat Marshall's conduct violated Rule 1.4(a)(3) when she (a) failed to inform her client, Ms. Stokes, that a hearing in her divorce case was set for October 19, 2011, (b) failed to inform her client, Ms. Stokes, that she requested a continuance of the hearing set in her divorce case for October 19, 2011, (c) failed to notify and discuss with her client, Ms. Stokes, that a final Decree of Divorce had been prepared and submitted by opposing counsel to the Court, and (d) until Ms. Marshall was contacted by Ms. Stokes, who received that information from a co-worker, Ms. Marshall failed to notify her client that the Court had granted the divorce and

entered a final Decree of Divorce on November 22, 2011. Arkansas Rule 1.4(a)(3) requires that a lawyer shall keep the client reasonably informed about the status of the matter.

4. That Pat Marshall's conduct violated Rule 1.4(a)(4) when after Ms. Stokes' requests for information on the status of her case, Ms. Marshall failed to advise her client of the pending October 19, 2011, court date. Arkansas Rule 1.4(a)(4) requires that a lawyer promptly reply with reasonable requests for information.

5. That Pat Marshall's conduct violated Rule 3.2 when having been aware since September 7, 2011, of the October 19, 2011 court date, Ms. Marshall only submitted a proposed settlement counter-offer on October 18, 2011, the day prior to the hearing date, and with no response from opposing counsel, submitted a Motion for Continuance to the Court on October 18, 2011, at 6:26 p.m. Ms. Marshall's client, Ms. Stokes, was unaware of the October 19, 2011, court date. Arkansas Rule 3.2 states that a lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

6. That Pat Marshall's conduct violated Rule 3.4(c) when having received notice of the hearing several weeks prior, Ms. Marshall failed to notify her client, Ms. Stokes, and failed to appear at the October 19, 2011, hearing scheduled in her client's divorce case. Arkansas Rule 3.4(c) states that a lawyer shall not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists.

7. That Pat Marshall's conduct violated Rule 8.4(d) when (a) she failed to provide the trial court with proper contact information, requiring the Court to attempt to contact her several times without success, including attempting to contact her on October 19, 2011, regarding the Motion for Continuance she filed late in the evening on October 18, 2011, and (b) having received notice of the hearing several weeks prior, Ms. Marshall failed to notify her client, Ms. Stokes, of the hearing, and failed to appear at the October 19, 2011, hearing scheduled in her

client's divorce case. Arkansas 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 Pat Marshall, Arkansas Bar ID# 2001012, be and hereby is, **REPRIMANDED** for her conduct in this matter. Pursuant to Section 18.A of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law (2011). Ms. Marshall is assessed the costs of this proceeding in the amount of **FIFTY DOLLARS (\$50.00)**. In addition, pursuant to Section 18.C of the Procedures, Ms. Marshall is ordered to pay restitution in the amount of **ONE THOUSAND DOLLARS (\$1,000.00)**. The cost and restitution 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: March 26, 2013

Original filed with the Arkansas Supreme Court on
June 4, 2013.

