BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL B

IN RE: RALPH MYERS, III, Respondent
Arkansas Bar ID#84112
CPC Docket No. 2002-051

FILED
APR 19 2004
LESLIE W. STEEN
CLERK

CONSENT FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Peter Fore during December 2001. The information related to certain contact Mr. Fore had with Respondent during early 2001.

During May 2002, Respondent was served with a formal complaint, supported by affidavit from Peter Fore. A response was filed. The Respondent and the Executive Director negotiated a discipline by consent proposal, which was submitted to this Panel.

The information before the Committee revealed that on or about February 15, 2001, Peter Fore, the complainant, alleged that he hired Ralph Myers, III, an attorney practicing in McCrory, to settle a bank dispute with Merchants and Planters Bank in Newport, hereafter M&P. M&P also had a branch in McCrory, Arkansas. There was never any fee agreement presented to Mr. Fore by Mr. Myers. Mr. Fore also alleged that Mr. Myers did not explain the matter to him but rather stated that he would take care of the matter without further explanation. While he was in the office with Mr. Myers, Mr. Fore alleged that he was instructed to sign a document prepared by Mr. Myers. Mr. Fore testified that he did as directed, something he asserts he now should never have done. Mr. Myers disputed this presentation of the facts and stated that when Mr. Fore approached him at his office, it was to request a loan.

Mr. Fore explained that on February 10, 2001, he had a loan of $8000 with M&P. In addition, he had another account with the bank which was frozen because he still needed to make pay-off of the $8000 loan. The facts which were later developed demonstrated that Mr. Fore had taken a loan for an

taken a loan for an automobile, returned the automobile to the dealership, continued to pay on the loan, without advising the bank that he no longer had possession of the collateral. Realizing that he needed assistance with this matter, Mr. Fore went to see his regular attorney, Joe Peacock. Mr. Peacock was unable to represent Mr. Fore because he had a conflict since he represented the bank from time to time. Mr. Fore left Mr. Peacock's office and went across the street to Mr. Myers' office. Mr. Fore alleged that Mr. Myers had never previously represented him in legal matters. Mr. Myers presented information to the Committee that he had in fact prepared a Last Will and Testament for Mr. Fore. In addition, he represented Mr. Fore in a dispute with family members over some property. Mr. Myers denied that Mr. Fore ever asked him to be his lawyer or to represent him in any legal capacity with regard to his controversy with M&P. According to Mr. Myers, Mr. Fore merely needed assistance in obtaining funds to pay off the loan to M&P and get his other accounts out of the "frozen" status.

Mr. Fore asserted his belief that he went to Mr. Myers' office five (5) times. During one of the meetings, Mr. Myers asked Mr. Fore if he wanted to increase his loan and whether he would agree to mortgage his home. It was Mr. Fore's understanding that although the loan was coming from the bank, that Mr. Myers was actually the one who was loaning Mr. Fore the money to clear up the situation he was facing at the time. When Mr. Fore agreed to this arrangement, he thought that the loan was taken out to pay the $8000 he still owed. Mr. Fore did receive an additional amount of $17,405.46. Mr. Myers received $5,000 at the time of the loan. Mr. Myers denied that the loan was his suggestion but rather it was Mr. Fore who requested it be done. According to Mr. Myers, Mr. Fore was desperate for money and needed money to "get back on his feet". As such, Mr. Myers prepared an agreement whereby he would purchase Mr. Fore's home for $30,000 and there were conditions agreed upon by which Mr. Fore could repurchase the home from Mr. Myers.

Mr. Fore was to make the monthly payments to M&P which he did in the amount of $322.38 per month from March 2001 through December 2001.

During December 2001, Mr. Fore entered into an agreement to sell his home. Donald Cain, the real estate agent facilitating the sale, prepared a contract for the home to sale for a price of $65,000. Mr. Cain contacted Mr. Myers about obtaining a release of mortgage. It was at this time that Mr. Myers explained that he owned the home. Mr. Fore alleged that he did not understand how this could be, so he contacted Mr. Peacock to ascertain what had occurred. Mr. Peacock wrote Mr. Myers a letter about the situation and then spoke with him to obtain a payoff amount. Mr. Myers replied that there would be no payoff because he owned the home. Mr. Myers denied that Mr. Cain ever contacted him about obtaining a release of mortgage.

Mr. Fore admitted that the signature on the Warranty Deed conveying the home to Mr. Myers is his signature but he denied that he knowingly agreed to sell his home to Ralph Myers III. Mr. Fore explained that he would never have agreed to sell his home for approximately $26,000 when he knew it was worth at least $60,000. Mr. Fore was under the impression from Mr. Myers that Mr. Myers was fronting the loan for him and that the deed was merely a formality which would be returned to him as soon as he paid off the loan. At no time did Mr. Fore understand that he was actually signing his home over to Mr. Myers. Mr. Myers also explained that he prepared and executed a Warranty Deed conveying the property back to Mr. Fore in the event of his death. The Deed was executed and maintained in a file in Mr. Myers' office.

Mr. Fore alleged that he did not go to see Mr. Myers to enter into a business arrangement with him. He went to him to request his assistance as an attorney because Mr. Peacock could not assist him with the matter.

The Committee was also made aware of a civil lawsuit being filed in the underlying matter

in this situation between Mr. Fore and Mr. Myers. The settlement of that matter resulted in Mr. Myers purchasing Mr. Fore's home for the amount of $70,000. The net result to Mr. Fore was that he received a check in the amount of $41,632.75 and his attorney was paid $3,000 in attorney's fees by Mr. Myers.

Upon consideration of the formal complaint and attached exhibit materials, the response, the consent proposal, 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. Myers' conduct violated Model Rule 1.4(b) when he failed to explain to Peter Fore, when Mr. Fore contacted him about assistance with a legal issue he (Mr. Fore) was facing with Merchants and Planters Bank, the specifics of the arrangement he (Respondent) proposed to Mr. Fore in enough detail so that Mr. Fore was able to understand, thereby denying him the opportunity to make an informed decision about whether he wished to use Respondent's services or whether he preferred to seek other counsel. Model Rule 1.4(b) requires that a lawyer explain a matter to the extent reasonably necessary to permit the client to make informed decisions concerning the representation.

2. That Mr. Myers' conduct violated Model Rule 1.8(a) when he entered into an arrangement with Mr. Fore whereby Respondent obtained ownership of Mr. Fore's home. Respondent did not provide Mr. Fore with the opportunity to seek independent counsel's advice concerning the arrangement. Model Rule 1.8(a) requires that a lawyer not enter into a business transaction with a client and knowingly obtain an ownership, possessory, security, or other pecuniary interest adverse to a client, unless (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which can be reasonably understood by the client; (2) the client is

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel B, that RALPH MYERS, III, Arkansas Bar ID# 84112, be, and hereby is, REPRIMANDED for his conduct in this matter. Pursuant to Section 18.A. of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law (2002), Mr. Myers is assessed the costs of this proceeding in the amount of $548.14. Mr. Myers is also ordered to pay a fine in the amount of $5000. The fine is imposed by this Panel pursuant to Section 18.B. of the Procedures. $2,500.00 of the costs and fine 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, and the remaining amount paid out in installments as agreed upon by the Executive Director and counsel for Mr. Myers.

ARKANSAS SUPREME COURT COMMITTEE ON
PROFESSIONAL CONDUCT - PANEL B

By: J. Michael Cogbill
J. Michael Cogbill, Chair, Panel B

Date: April 19, 2004

(13.M, Rev.1-1-02)