BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL B

FILED
SEP 28 2007
LESLIE W. STEEN
CLERK

IN RE: **DAVID FRANKLIN MOREHEAD**
Arkansas Bar ID #89143
CPC Docket No. 2007-046

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based were developed from information provided to the Committee by John L. Franks, III, of Pine Bluff on February 26, 2007. The information related to the representation of Mr. Franks in 2005-2007 by Respondent David Franklin Morehead, an attorney practicing primarily in Pine Bluff, Jefferson County, Arkansas. On May 7, 2007, Respondent was served with a formal complaint, supported by affidavits from John Franks and Denise Parks. Respondent failed to file a timely 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.

John L. Franks, III, of Pine Bluff employed David Morehead in September-October 2005, to file a Chapter 7 bankruptcy for him, and paid him $210.00 for the filing fee and $200.00 for his attorney's fee on August 1 and September 12, 2005, respectively. Mr. Morehead filed Franks' Petition, as No. 05-bk-24533, on October 6, 2005, and sought and obtained an Order allowing him to pay his filing fee in installments, even though Morehead already had filing fee funds from him. In his filings with the court, Mr. Morehead also certified that he had received "$0.00" funds from his client as of that date, a false statement. The first meeting of creditors ("341 meeting") was set for November 17, 2005. He failed to timely pay the filing fee for Mr. Franks. On

November 25, 2005, an order was entered dismissing Mr. Franks's case, the file was closed, and there has been no action by Mr. Morehead on his behalf in bankruptcy court since then. Franks' filing fee was never paid. He contacted Mr. Morehead's office several times thereafter, unsuccessfully attempting to obtain information about the status of his case. Failing to obtain relief and protection from bankruptcy, GMAC auctioned off Mr. Franks's truck and is now pursuing him for a deficiency judgment of $16,265.00. Mr. Morehead has not refunded the unexpended $210 filing fee held by him since November 2005, or any unearned portion of the attorney fee he was paid for handling this matter to completion. Mr. Morehead abandoned his client.

Mr. Morehead failed to pay his 2006 Arkansas Supreme Court attorney's license fee, due by March 1, 2006, until June 6, 2006. He failed to pay his 2007 Arkansas Supreme Court attorney's license fee, due by March 1, 2007, until May 16, 2007. As a result of these actions, his Arkansas law license was in automatic suspension status from March 2 - June 6, 2006, and from March 2 - May 16, 2007. He practiced law in bankruptcy court during these periods.

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

A. Mr. Morehead's conduct violated Rule 1.1 in that by failing to pay Mr. Franks' his filing fee and causing his case to be dismissed shortly after he filed it for him, and by failing thereafter to pay his fee and get his case reinstated or reopened, Mr. Morehead failed to be thorough enough in his representation of John Franks III in his bankruptcy case to provide him competent legal representation. Arkansas 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.

B. Mr. Morehead's conduct violated Rule 1.3 in that after receiving notice from the court of the November 25, 2005, dismissal of John Franks, III's bankruptcy case due to his failure to pay the filing fee, he failed to act with reasonable diligence thereafter by not paying the filing fee, from the client's funds Mr. Morehead held, and getting his case reopened or reinstated so he might seek and obtain the legal relief he sought. Arkansas Rule 1.3 requires that a lawyer shall act with reasonable diligence and promptness in representing a client.

C. Mr. Morehead's conduct violated Rule1.4(a)(3) in that after November 25, 2005, he failed to keep John Franks, III, reasonably informed about the status of his bankruptcy matter. Arkansas Rule 1.4(a)(3) requires that a lawyer shall keep the client reasonably informed about the status of the matter.

D. Mr. Morehead's conduct violated Rule 1.4(a)(4) in that after November 25, 2005, he failed to comply with John Franks, III's reasonable requests for information about the status of his bankruptcy matter. Arkansas Rule 1.4(a)(4) requires that a lawyer shall promptly comply with reasonable requests for information.

E. Mr. Morehead's conduct violated Rule 1.16(d) in that since he abandoned John Franks, III, sometime after November 25, 2005, he has failed to refund to him the $210.00 he paid Mr. Morehead on August 1, 2005, for his bankruptcy case filing fee, funds which were never expended for that stated purpose. Arkansas Rule 1.16(d) requires that, upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other

counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

F. Mr. Morehead's conduct violated Rule 3.4(c) in that he failed to pay his 2006 Arkansas bar license fee by March 1, 2006, and he failed to pay his 2007 Arkansas bar license fee by March 1, 2007, both as required by Arkansas Supreme Court Rule VII.C, Rules Governing Admission to the Bar. Arkansas Rule 3.4(c) requires 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.

G. Mr. Morehead's conduct violated Rule 5.5(a) in that he failed to pay his 2006 Arkansas Bar license fee by March 1, 2006, as required by Arkansas Supreme Court Rule VII.C, Rules Governing Admission to the Bar, resulting in the automatic suspension of his Arkansas law license until June 6, 2006, when he paid his 2006 license fee. He practiced law while his license was suspended during this period. He failed to pay his 2007 Arkansas Bar license fee by March 1, 2007, as required by Arkansas Supreme Court Rule VII.C, Rules Governing Admission to the Bar, resulting in the automatic suspension of his Arkansas law license from March 2, 2007, until May 16, 2007, when he paid this annual fee. He practiced law while his license was suspended during this period. Arkansas Rule 5.5(a) provides that a lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

H. Mr. Morehead's conduct violated Rule 8.4(c) in that he engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, when he filed a statement on October 6, 2005,

with the bankruptcy court in the petition of John Franks, III, No. 05-bk-24533, that Franks was unable to pay his filing fee in full at the time Morehead filed Franks petition, a statement Morehead knew was false, since Franks had paid Morehead the full filing fee amount of $210 on August 1, 2005. He engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, in his bankruptcy filing for John Franks, III, on October 6, 2005, in No. 05-bk-24533, when Mr. Morehead falsely certified to the court that he had received "$0.00" funds from Mr. Franks, knowing Franks had already paid him $410.00 for his case. Arkansas Rule 8.4(c) provides that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

I. Mr. Morehead's conduct violated Rule 8.4(d) in that his failure to competently and timely pursue his bankruptcy petition and relief for John Franks, III, has resulted in Franks losing the opportunity to receive bankruptcy relief and debt discharge under the provisions of the former bankruptcy law that was superceded October 17, 2005, and now exposed him to collection efforts by a dischargeable creditor on a deficiency judgment of over $16,000. Arkansas Rule 8.4(d) provides 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 B, that the Arkansas law license of **DAVID F. MOREHEAD**, Arkansas Bar ID#89143, be, and hereby is, **SUSPENDED FOR TWO (2) MONTHS** for his conduct in this matter, he is **FINED $1,500.00**, he is **ORDERED TO PAY $410.00 RESTITUTION** for the benefit of John L. Franks, III, and he is assessed Committee case costs of $50.00. The suspension shall become effective on the date this Findings

and Order is filed of record with the Clerk of the Arkansas Supreme Court, and shall be concurrent from its effective date with any other suspension on Respondent now in effect. The fine, restitution, and costs assessed herein, totaling $1,960.00, 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 B

By: _____
Henry Hodges, Chair, Panel B

Date: August 29, 2007.