BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL B

FILED
JUL 29 2008
LESLIE W. STEEN
CLERK

IN RE: MICHAEL WILLIAM FREY
ARKANSAS BAR ID NO. 96022
CPC DOCKET NO. 2008-032

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Travis E. Johnston. The information related to the representation of Travis E. Johnston by Michael William Frey, Attorney at Law, Camden, Arkansas.

Travis E. Johnston of Camden, Arkansas, was experiencing financial problems in September 2007. Mr. Johnston went to the office of Michael Frey for legal assistance concerning his financial situation and met with Mr. Frey on September 17, 2007. Mr. Johnston told Mr. Frey that he wanted to file for bankruptcy protection. At that time, Mr. Johnston told Mr. Frey that he had previously filed bankruptcy some time ago. According to Mr. Johnston, Mr. Frey looked up his file on the computer and stated that it had been eight years since Mr. Johnston had filed and that he was eligible to file for bankruptcy. Mr. Johnston had previously filed for Chapter 7 Bankruptcy Relief on September 27, 2000, and received a discharge on January 4, 2001.

Mr. Frey stated that his fee, including filing fees, would be One Thousand One Hundred Fifty Dollars ($1,150.00). Mr. Frey told Mr. Johnston that he needed to stop paying his creditors as of that date. Mr. Johnston gave Mr. Frey a check for the $1,150.00 on September 17, 2007, and provided Mr. Frey with all of his creditor information. Mr. Johnston then waited for the bankruptcy petition to be prepared.

Mr. Frey prepared a Chapter 7 Bankruptcy Petition for Mr. Johnston and filed it with the

Bankruptcy Court on November 30, 2007.

As to Mr. Johnston's 2007 Bankruptcy Petition, the Bankruptcy Court issued an Order on December 3, 2007, requiring certain required documents to be filed within a set number of days following the issuance of the order or the case would be dismissed. Nothing was filed on Mr. Johnston's behalf. On December 11, 2007, the Honorable James G. Mixon dismissed Mr. Johnston's bankruptcy action for failure to timely file schedules.

Approximately two weeks before Christmas, Mr. Frey called Mr. Johnston to tell him that he could not file for bankruptcy until September, 2008, because he had filed bankruptcy less than eight years prior to the 2007 filing. 11 U.S.C. §727(a)(8) states, "The court shall grant the debtor a discharge unless the debtor has been granted a discharge under this section, under section 1141of this title, or under section 14, 371, or 476 of the Bankruptcy Act, in a case commenced within 8 years before the date of the filing of the petition." As Mr. Johnston had filed for Chapter 7 Bankruptcy Relief on September 27, 2000, and received a discharge on January 4, 2001, he could not file for Chapter 7 bankruptcy relief until September 27, 2008.

Mr. Johnston believed that Mr. Frey should have known that he could not file for bankruptcy until September, 2008. Mr. Johnston stated that he is now way more in debt than before he went to Mr. Frey and was told by him not to pay his creditors. Mr. Johnston asked Mr. Frey for a refund but had not received any refunds as of the date he filed his affidavit with the Office of Professional Conduct, April 14, 2008.

Upon consideration of the formal complaint and attached exhibit materials, Mr. Frey's failure to timely respond to the formal complaint, 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. Michael William Frey's conduct violated Rule 1.1 when he knew or should have known that the bankruptcy code as it existed in September, 2007, barred the filing of a Chapter 13 bankruptcy proceeding within eight years of a prior filing and that his client, Travis E. Johnston, filed for bankruptcy protection in September, 2000. Rule 1.1 requires that a lawyer provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness an preparation reasonably necessary for the representation.

2. Michael Williams Frey's conduct violated Rule 1.3 when he failed to file required documents on behalf of his client, Travis Johnston, within a specified period of time after he was notified in an Order dated December 3, 2007, that certain documents must be filed within the specified number of days from the date of filing or the case would be dismissed. Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

3. Michael William Frey's conduct violated Rule 8.4(d) when he failed to file required documents as required by the Court resulted in dismissal of his client's bankruptcy matter and when he failed to file required documents as required by the Court which required the Court to expend additional time and effort which would not have been necessary otherwise. Rule 8.4 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 B, that MICHAEL WILLIAM FREY, Arkansas Bar ID No. 96022, be, and hereby is, REPRIMANDED; fined the sum of FIFTEEN HUNDRED DOLLARS ($1500.00); assessed costs in the amount of FIFTY DOLLARS ($50.00) and directed to pay restitution in the amount of ONE THOUSAND ONE HUNDRED FIFTY

DOLLARS ($1,150.00) for his conduct in this matter. Panel B further imposes a separate sanction of CAUTION and a fine in the amount of FIVE HUNDRED DOLLARS ($500.00) for his failure to respond to the formal complaint as required by Section 9.B. The separate sanction is permitted under Section 9(c) of the Procedures Regulating Professional Conduct of Attorneys at Law. The fines, restitution, 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.

IT IS SO ORDERED.

ARKANSAS SUPREME COURT COMMITTEE ON
PROFESSIONAL CONDUCT - PANEL B

By: Valerie L. Kelly
Valerie L. Kelly, Chairperson, Panel B

Date: July 7, 2008