BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL A

FILED
JUN 24 2010
LESLIE W. STEEN
CLERK

IN RE: GREGORY FERGUSON, Respondent
Arkansas Bar ID#80043
CPC Docket No. 2009-129

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Donald and Elizabeth Dickey in Affidavits dated October 29, 2009. The information related to the representation of the Dickeys by Respondent beginning in 2005.

On November 17, 2009, Respondent was served with a formal complaint, supported by affidavit from Donald and Elizabeth Dickey and pleadings from the Pulaski County Circuit Court action Mr. Ferguson filed on behalf of the Dickeys. After extensions of time to do so, Mr. Ferguson filed a timely response. Rebuttal was submitted by the Dickeys. The matter then proceeded to ballot vote before Panel A in accordance with the Arkansas Supreme Court Procedures Regulating Professional Conduct of Attorneys at Law.

The information before the Committee reflected that Elizabeth and Donald Dickey were involved in an automobile accident in June 2004. Both suffered injuries. They had no insurance to cover the medical bills that they incurred. The other driver was ticketed at the scene.

Shortly after the accident, Gregory Ferguson, an attorney practicing primarily in Pulaski County, Arkansas, who is also a neighbor to the Dickeys, approached them and offered to help them. Initially, the Dickeys were uncertain whether they needed assistance and they did not want to hire an attorney. Mr. Ferguson acknowledged that after the Dickeys told him about the

accident, he did tell them if they was anything he could do, he would be glad to help them and for them to contact him.

In January 2005, Mrs. Dickey asked Mr. Ferguson if he was still willing to assist them. He agreed to do so. Mr. Ferguson agreed to represent the Dickeys for a fee of one-fourth of any recovery made in their matter. Although the Rules of Professional Conduct require that all contingent fee agreements be placed in written form, there was no written fee agreement signed reflecting this contingent fee arrangement. Mr. Ferguson provided a document signed by Mrs. Dickey, not Mr. Dickey, setting out a percentage recovery for attorney's fees in the legal matter.

Mr. Ferguson explained that Mrs. Dickey provided him information during the time she was receiving medical treatment. At some point, Mrs. Dickey did provide Mr. Ferguson with the name of the insurance company, list of doctors she had seen, etc.

From 2005 through 2006, numerous phone calls were made to Mr. Ferguson by the Dickeys to see if any actions had been taken and whether they needed to do anything. Both medical providers and their own insurance company's representative continued to advise the Dickeys that Mr. Ferguson had made no contact with them.

In June 2007, Mr. Ferguson filed a Complaint against the party responsible for the accident. He filed the lawsuit the day before the statute of limitation expired. Mr. Ferguson explained that the reason the Complaint was filed just before the statute expired was because Mrs. Dickey was still under her doctor's care, still receiving treatment and there was no total amount of damages because they were ongoing. However, he did not take action to have the Defendant properly served with process in the matter. Mr. Ferguson explained that he sent the Complaint to the defendant by both a first class letter and a certified letter. The defendant

received the first class letter but did not sign for the certified mail letter. The defendant filed an answer which contained information about improper service, which Mr. Ferguson acknowledges he took as boilerplate because the defendant had also answered the complaint on the merits.

Mr. Ferguson goes on to explain that the defendant's attorney had been in touch with him about discovery matters and had advised he needed information on the Dickeys' medical information before settlement could be reached. Based on these conversations, Mr. Ferguson believed that the defendant's counsel was pursuing the automobile accident case in a straightforward manner.

The Dickeys were unaware of the pleadings and what was happening in the matter other than receiving notice of the Amended Medical Liens which were filed in the matter. Mr. Ferguson continued to advise the Dickeys that he was handling everything and that they did not need to do anything in the matter. Mr. Ferguson advises that he and Mrs. Dickey talked on numerous occasions about the proceeding.

No other information was received from Mr. Ferguson until before Thanksgiving 2008. At this time, Mr. Ferguson explained that there was a court date, that there was a "loophole," and the opposing party was seeking to have the lawsuit dismissed. The Dickeys inquired of Mr. Ferguson whether they needed to hire another lawyer. This was not the first time Mr. Ferguson had been asked this question. He assured the Dickeys that he would handle it and that they did not need to seek other representation.

In late November or early December 2008, there was a hearing before Judge Proctor concerning the Motion to Dismiss filed by the Defendant's counsel. During the hearing, Andy Turner, the defendant's attorney, presented evidence regarding the insufficient service of the

complaint. Mr. Ferguson advised that he thought service had been made because Mr. Turner's office had contacted him about the lawsuit. There was no proof of valid service. An Order of Dismissal was entered of record on December 18, 2008. According to Mr. Ferguson, Judge Proctor, the presiding judge, signed the Order prepared by opposing counsel, Andy Turner, which was crafted in such a way so that no appeal would prevail, instead of using the Order Mr. Ferguson submitted to him.

Mrs. Dickey called Mr. Ferguson within a week of the hearing. During the conversation, Mr. Ferguson told Mrs. Dickey that the courthouse was closed for the holidays and nothing could be done but he would get back with them later. Mrs. Dickey understood from Mr. Ferguson that he was going to appeal to the Supreme Court but he did not do so.

Mrs. Dickey called Mr. Ferguson again in February 2009, and asked for a letter stating what had happened because she hoped that the bill owed to St. Vincent would be forgiven. Mr. Ferguson said he would put it on the Dickeys' front porch but he did not do that either. Mrs. Dickey continued to call his office and leave messages but he did not respond. Request was made for the file contents but those documents were not returned either. According to Mr. Ferguson, he does not remember being asked to write such a letter to St. Vincent's. He also denies that the Dickeys requested a copy of their file from him and goes on to explain that a copy of the file had already been provided to Jacy Daugherty. According to Mrs. Dickey, she requested that Jacy Daugherty contact Mr. Ferguson to find out what was happening and explain it to her and that he only received 4 documents from the file not the entire file contents.

In late April 2009, the Dickeys contacted Gary Holt and Associates, P.A., f/k/a Gary Eubanks and Associates to see if they could help get the file contents and maybe represent them

in a case against Gregory Ferguson. The firm made efforts to contact Mr. Ferguson regarding the file, but he never delivered the file to them. Mr. Ferguson denies this and states that his secretary was instructed to deliver a copy of the file to the Eubanks Law Firm and his understanding is that the firm received a copy.

Mr. Ferguson's failure to act in a diligent manner has caused the Dickeys to not be able to present their claims in court against the person responsible for the accident.

In responding to the formal disciplinary complaint, Mr. Ferguson described the matter as an unfortunate situation for which he bears responsibility. Mr. Ferguson begins by offering that he should have done more to be alert to shady tactics by the other side but he does not believe he committed unprofessional conduct in the matter. He did offer that he feels awful about what happened to the Dickeys.

Upon consideration of the formal complaint and attached exhibit materials, the response to it, other matters before it, and the Arkansas Rules of Professional Conduct, Panel A of the Arkansas Supreme Court Committee on Professional Conduct finds:

1 That Mr. Ferguson's conduct violated Rule 1.1, because he was not thorough enough in his representation of Donald and Elizabeth Dickey to be certain that he obtained sufficient service of process upon the Defendant, Ben I. Baggett, within the time allowed by law for doing so. Rule 1.1 required that a lawyer provide competent representation to a client, including the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

2. That Mr. Ferguson's conduct violated Rule 1.2(a), because Mr. Ferguson failed to abide by the objective of his clients, Donald and Elizabeth Dickey, to pursue to settlement or

judgment for their claims arising from the June 22, 2004, motor vehicle collision in which they were involved, and in which they believed Ben I. Baggett to be at fault. Mr. Ferguson's failure to obtain proper service of the Defendant defeated the objective of Donald and Elizabeth Dickey. Rule 1.2 (a) requires subject to paragraphs (c) and (d), that a lawyer shall abide by a client's decisions concerning the objectives of representation, subject to paragraphs (c), (d) and (e), and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued.

3 That Mr. Ferguson's conduct violated Rule 1.3, when Mr. Ferguson failed to properly serve Ben I. Baggett with the lawsuit he filed on Donald and Elizabeth Dickey's behalf within the time allowed by law causing their claims for injuries to be dismissed with prejudice. Rule 1.3 requires that a lawyer shall act with reasonable diligence and promptness in representing a client.

4. That Mr. Ferguson's conduct violated Rule 1.5(c), because Mr. Ferguson agreed to represent Donald and Elizabeth Dickey with a contingent fee agreement but failed to place the contingent fee agreement in writing. Rule 1.5(c) requires, in part, that a contingent fee agreement be in writing.

5. That Mr. Ferguson's conduct violated Rule 1.16(d), when Mr. Ferguson failed to deliver the file maintained with regard to the Dickeys personal injury claim to them, or to their representative, after his representation of them ceased. Rule 1.16(d) requires, in pertinent part, that upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as surrendering papers and property to which the client is entitled.

6. That Mr. Ferguson's conduct violated Rule 8.4(d), because his failure to take timely and appropriate action on Donald and Elizabeth Dickey's behalf with regard to obtaining sufficient service on Ben I. Baggett in the lawsuit he filed in Pulaski County Circuit Court caused the Dickeys to lose the opportunity to pursue their remedies against Mr. Baggett in a civil action. Rule 8.4(d) requires that a lawyer shall 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 GREGORY FERGUSON, Arkansas Bar ID# 80043, be, and hereby is, REPRIMANDED for his conduct in this matter. Pursuant to Section 18.A. of the Procedures, Mr. Ferguson is also assessed the costs of this proceeding in the amount of FIFTY DOLLARS ($50). The 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: T. Benton Smith, Jr.
T. Benton Smith, Jr., Chair, Panel A

Date: June 2, 2010