BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL A

FILED
JUN 24 2010
LESLIE W. STEEN
CLERK

IN RE: CECILY PATTERSON SKARDA, Respondent
Arkansas Bar ID#98114
CPC Docket No. 2010-007

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Dena Rogers in an Affidavit dated January 11, 2010. The information related to the representation of Dena Rogers by Respondent Skarda beginning in September 2008.

On January 28, 2010, Respondent was served with a formal complaint, supported by affidavit from Dena Rogers, correspondence to and from Ms. Skarda obtained during the investigation of this matter, letter from Traci LaCerra, and final billing statement from Ms. Skarda to Ms. Rogers. A timely response was filed, rebuttal was submitted, and the matter proceeded to ballot vote pursuant to the Arkansas Supreme Court Procedures Regulating Professional Conduct of Attorneys at Law.

During September 2008, Ms. Rogers hired Cecily Patterson Skarda to represent her in a post decree matter involving her ex-husband, Brooks Rogers. Ms. Rogers had previously been represented by Kim Bosshart, who had filed a Motion for Contempt for Ms. Rogers, but was not able to complete the representation because she accepted employment outside the private practice of law.

Ms. Skarda had not previously represented Ms. Rogers. In spite of this, there was no written fee agreement or letter of engagement sent to Ms. Rogers by Ms. Skarda. Ms. Skarda

requested a retainer fee of $2,500 which would have included costs associated with the representation. Ms. Rogers paid the retainer. Ms. Skarda failed to place the retainer in an IOLTA trust account until earned.

Ms. Rogers was anxious to have action taken in the post-Decree matter and to get her ex-husband served and a hearing set. Ms. Skarda was aware of this as she was aware that a Motion for Contempt had been filed prior to her having been retained to represent Ms. Rogers. In spite of this knowledge, weeks turned into months with no substantive action being taken on Ms. Rogers' behalf. Ms. Skarda's bill alone demonstrates that for several weeks the file was unattended.

After several months of unreturned telephone calls, canceled appointments and excuses for there having been no action taken, Ms. Rogers terminated Ms. Skarda's representation. Ms. Skarda then found time to meet with Ms. Rogers. Ms. Skarda's version of events is that during the final meeting, she and Ms. Rogers discussed the contempt matter and at the end of the conversation Ms. Rogers still wanted to terminate the representation. Ms. Rogers advises that during the final meeting, Ms. Skarda just offered more excuses for why she had not been able to attend to the legal matter as Ms. Rogers desired.

Although Ms. Rogers is upset over the amount of refund sent to her in the amount of $630, the main grievances are the lack of services she was provided and the lack of communication. Ms. Skarda's lack of diligence in attempting to assist Ms. Rogers caused a delay in her being able to pursue action against her ex-husband. Ms. Rogers is left with having paid an attorney $2,500 for services which appear to include e-mails responding to requests for updates on the status of any action on several occasions, along with Ms. Skarda allegedly

researching issues and determining if more information was necessary to pursue a Motion for Contempt that had already been filed.

In responding to the formal disciplinary complaint, Ms. Skarda denied violating any Rules of Professional Conduct. She specifically denied that there was any lack of diligence and asserts that she took time to determine the facts of the matter before filing a claim which she explains is generally thought to be diligence and not its absence. Ms. Skarda asserted that at no time did she and Ms. Rogers discuss "expedited" service and if they had, she would have requested a considerable amount more for a retainer.

Ms. Skarda admits that she told Ms. Rogers that she would bill her at the rate of $200 per hour but that she would consider the retainer fee "earned" immediately. She also advises that she never requested a deposit for costs in the matter.

It is Ms. Skarda's response that she began a thorough review of the case file and documents at the time of hire. Ms. Skarda points out the total time of the representation was five (5) months. She then points out information concerning the court proceeding after she was terminated from representing Ms. Rogers. She also denies that she failed to keep her client informed.

Ms. Skarda also denies that she failed to hold her funds separate from her client because there were no costs to be incurred in this matter. She offered that the $2,500 was fee only and that she anticipated earning it in the initial stages of familiarizing herself with the file, which is why she deposited the fee in an account other than her IOLTA trust account.

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

Arknsas Supreme Court Committee on Professional Conduct finds:

1. That Ms. Skarda's conduct violated Rule 1.3, when she did not take action with regard to the legal matter for Ms. Rogers for a period of months after being hired in September 2008 to pursue a previously filed Motion for Contempt and because there was no action taken on Ms. Rogers' behalf from September 16, 2008 through December 5, 2008, and again from December 5, 2008 through February 6, 2009. Those weeks of no activity demonstrate a lack of diligence in the representation of Ms. Rogers. Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

2. That Ms. Skarda's conduct violated Rule 1.4(a)(3), because during the five months Ms. Skarda was to represent Ms. Rogers in the post Decree matter, she failed to keep Ms. Rogers reasonably informed of the actions, if any, Ms. Skarda undertook on her behalf. Rule 1.4(a)(3) requires that a lawyer keep the client reasonably informed about the status of the matter.

3. That Ms. Skarda's conduct violated Rule 1.15(a)(1), because upon receipt of the $2,500 retainer from Ms. Rogers, which was for services to be rendered in the future and also any costs and expenses associated with the representation, Ms. Skarda failed to place the funds in her IOLTA trust account. Ms. Rogers' funds were not kept separate in a trust account. Rule 1.15(a)(1) requires that a lawyer hold property of clients or third persons, including prospective clients, that is in a lawyer's possession in connection with a representation separate from the lawyer's own property.

4. That Ms. Skarda's conduct violated Rule 1.15(b)(2) when she failed to deposit the $2,500 advanced payment of fee made to her by Ms. Rogers in September 2008, in her IOLTA trust account. Rule 1.15(b)(2) requires that a lawyer shall deposit into a client trust account legal

fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

5. That Ms. Skarda's conduct violated Rule 8.4(d), because her failure to actively pursue the matter which was entrusted to her by Ms. Rogers created an unnecessary delay in Ms. Rogers' pursuit of any remedies she may have had available to her. Rule 8.4(d) 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 A, that CECILY PATTERSON SKARDA, Arkansas Bar ID#98114, be, and hereby is, CAUTIONED for her conduct in this matter. In addition, pursuant to Section 18.C. of the Procedures, Ms. Skarda is ordered to make restitution for the benefit of Ms. Rogers in the amount of TWO THOUSAND FIVE HUNDRED DOLLARS ($2500), less credit for any amount already paid prior to the filing of the formal complaint. Ms. Skarda is assessed the costs of this proceeding in the amount of FIFTY DOLLARS ($50), pursuant to Section 18.A. of the Procedures. The restitution ans costs assessed herein, totaling TWO THOUSAND FIVE HUNDRED FIFTY DOLLAR ($2550), 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.