

**BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT  
PANEL B**

IN RE:            WILLIAM MATTHEW STONE, Respondent  
                      Arkansas Bar ID#2001143  
                      CPC Docket No. 2010-101

**FILED**

MAR 29 2011

**LESLIE W. STEEN  
CLERK**

**FINDINGS AND ORDER**

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Charlene Acklin in an Affidavit dated November 1, 2010. The information related to the representation of Ms. Acklin by Respondent beginning in August 2005.

On November 10, 2010, Respondent was served with a formal complaint, supported by affidavit from Ms. Acklin. Respondent filed a timely response and the matter proceeded to ballot vote before Panel B of the Committee pursuant to the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law. (2002)

The information before the Panel reflected that on August 29, 2005, Charlene Acklin called the Law Office of Matthew Stone in Mountain Home, Arkansas, and spoke to Mr. Stone with regard to pursuing a breach of contract matter against a contractor who had been hired to apply latex siding to her home.

After the telephone conversation, Mr. Stone went to Ms. Acklin's home and reviewed the damage which she had earlier reported to him. Mr. Stone agreed to represent Ms. Acklin. She provided Mr. Stone with the original contract she had signed with the contractor along with several rolls of developed film showing the damage to her home. Mr. Stone advised Ms. Acklin that his fee to represent her was \$3500. She offered to write him a check while he was at her

home but he advised her that he only accepted cash. She went to her bank the following day, obtained the \$3500 in cash and delivered it to Mr. Stone's office where she was given a receipt demonstrating payment. There was no written fee agreement provided to Ms. Acklin by Mr. Stone. The trust account monthly statements provided to the Office of Professional Conduct by Mr. Stone from the period August 2005 until August 2010 demonstrate that Ms. Acklin's advance payment of fee was not placed in the IOLTA trust account until earned.

Weeks passed without Ms. Acklin receiving any information. She called Mr. Stone's office and spoke with the secretary. Ms. Acklin specifically inquired when the complaint against the contractor would be filed. The secretary was unable to provide Ms. Acklin with the requested information but did offer to provide Mr. Stone a message explaining that Ms. Acklin had called and the purpose of her call. Mr. Stone did not return Ms. Acklin's telephone call. Ms. Acklin then began to call Mr. Stone's office almost every business day in attempt to learn something about the legal matter for which she had paid Mr. Stone to represent her. Finally, one week before Christmas 2005, Mr. Stone called Ms. Acklin and told her the complaint had been filed and that he would be undertaking to serve the contractor. Mr. Stone went on to assure Ms. Acklin that he would let her know as soon as a court date was set. This was not true as no complaint was filed on her behalf until May 2007.

Ms. Acklin called Mr. Stone's office in February 2006, because she had not heard anything from him or his secretary. Again, the secretary told Ms. Acklin that Mr. Stone would be the one with the information. Mr. Stone did not call Ms. Acklin in spite of numerous messages she left for him. Ms. Acklin then began to go to the office but was still unable to make contact with Mr. Stone.

By October 2006, Ms. Acklin had resorted to calling Mr. Stone's office two or three times a day. On one occasion when Ms. Acklin was able to speak with Mr. Stone's secretary she requested a meeting with Mr. Stone. The secretary refused to schedule one until she spoke with Mr. Stone. Ms. Acklin did not receive an appointment with Mr. Stone until the next calendar year.

On April 5, 2007, Ms. Acklin met with Mr. Stone in his office. During the meeting, Mr. Stone advised Ms. Acklin that there was no court date because he was conducting discovery. When Ms. Acklin pressed to see the complaint which had been filed on her behalf, Mr. Stone admitted that no complaint had been filed. Mr. Stone explained to Ms. Acklin that Mr. Pendergrass, the contractor, had dissolved his business in August 2006 and sold the company assets. Ms. Acklin hired Mr. Stone in August 2005. He had opportunity to file a lawsuit before the dissolution of the business but he did not do so. During the same meeting, Mr. Stone requested money for a filing fee and process server fee. Ms. Acklin gave him a check for \$140. This check also was not placed into the IOLTA trust account to be safeguarded until such time as the complaint was actually filed.

From April 2007 through September 2007, Ms. Acklin was still not provided information. She called often and even went by the office. Mr. Stone did not address any of her concerns because he did not return any of her phone calls.

In late October 2007, Ms. Acklin met with Mr. Stone. Mr. Stone explained that there were problems with the lawsuit because of the closing of the business and that there were few assets left to repay the damages which Ms. Acklin was seeking. Ms. Acklin requested copy of the complaint and copy of the answer to be sent to her. They were not provided by Mr. Stone.

Nothing changed after the meeting. Ms. Acklin was still leaving messages and Mr. Stone was still not returning them or providing her any information. On one occasion when Ms. Acklin called and demanded return of her retainer, Mr. Stone's secretary called her and told her that Mr. Stone said he was very close to setting a court date and that she needed to be patient just a little longer. The secretary also told Ms. Acklin that Mr. Stone was a very busy man and had other clients so he could not return all her phone calls.

When Ms. Acklin called in May 2009 and left a message that she was going to file a complaint against Mr. Stone, the secretary called her back and set up an appointment with Mr. Stone. Mr. Stone apologized for the delay and assured Ms. Acklin that he was going to get her money back and if he did not, he would make it right.

With no other alternative in sight, Ms. Acklin paid another contractor \$17,000 in September 2009, to repair the damage to her home and to fix the siding on her house. She provided this information to Mr. Stone but he did not call her to discuss it with her.

Beginning in January 2010, Ms. Acklin began calling Mr. Stone's office nonstop. She left messages explaining that she was tired of the runaround and felt like a fool for letting the situation go on as long as she had. Ms. Acklin left another message demanding return of her funds. In response to the message, the secretary called and advised her that there was a court date set for April. Ms. Acklin called the Clerk's office in Baxter County and learned that there was no court date. When Ms. Acklin demanded to see Mr. Stone after learning of this, Mr. Stone advised her that the date had been continued.

The file maintained by the Boone County Circuit Clerk demonstrates that Mr. Stone filed the action for Ms. Acklin on May 29, 2007, did not have a Summons issued for Mr. Pendegrass

until September 26, 2007, had Interrogatories served in 2008, and then filed no pleadings until Requests for Admission in March 2010. The Requests for Admission indicate that there are issues with the statute of limitation and the timing of service of process of this matter. All these issues arose because of Mr. Stone's delay in pursuing Ms. Acklin's claims as hired and paid to do.

Mr. Stone has done nothing but string Ms. Acklin along for years. There has been no real effort undertaken on her behalf. She has been provided false information for years as well.

In responding to the formal disciplinary complaint, Mr. Stone admitted that he should have been more prompt and diligent with regard to Ms. Acklin's legal matter. He also acknowledged that there were times when the daunting challenge of piercing the corporate veil caused pause and procrastination.

With regard to Ms. Acklin's payment to Mr. Stone, he set out that she was provided a receipt and has received value for the same. He goes on to state that he remains committed to winning the case for her with a collectable judgment.

Mr. Stone denied that he ever provided false information to Ms. Acklin although he acknowledges that there were several mis-communications. Mr. Stone sets out his belief that Ms. Acklin still has opportunity to pursue her matter to Judgment.

Mr. Stone set out that the defendant in the lawsuit is a very wealthy and powerful man who owns a large realty company with his wife and barely lost an election for County Judge. Mr. Stone went on to say that he probably has no idea how undertaking Ms. Acklin's case has hurt his legal career in some circles.

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 B of the Arkansas Supreme Court Committee on Professional Conduct finds:

1. That Mr. Stone's conduct violated Rule 1.3, because Mr. Stone did not act with any promptness or diligence with regard to Ms. Acklin's legal matter for which he was hired and paid to perform services; because although hired in August 2005, Mr. Stone did not file a lawsuit on Ms. Acklin's behalf until May 29, 2007; because Mr. Stone filed the lawsuit on Ms. Acklin's behalf on May 29, 2007, but did not have Summons issued to the Defendant until September 26, 2007; because after an Answer was filed by Mr. Pendegrass on October 11, 2007, Mr. Stone failed to file any other pleadings until July 2008, when he sent discovery requests; and because Mr. Stone filed no pleadings on Ms. Acklin's behalf during calendar year 2009. Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

2. That Mr. Stone's conduct violated Rule 1.4(a)(3) when Mr. Stone failed repeatedly to keep Ms. Acklin informed of the actions, if any, he was undertaking on her behalf with regard to Mr. Pendegrass and the legal matter Ms. Acklin hired and paid Mr. Stone to handle for her against Mr. Pendegrass and his company. Rule 1.4(a)(3) requires that a lawyer keep the client reasonably informed about the status of the matter.

3. That Mr. Stone's conduct violated Rule 1.4(a)(4) because Mr. Stone failed to respond to many messages left for him by Ms. Acklin about the legal matter which he had been hired and paid to pursue on her behalf. Rule 1.4(a)(4) requires that a lawyer promptly comply with reasonable requests for information.

4. That Mr. Stone's conduct violated Rule 1.15(b)(1) because until earned by services provided by Mr. Stone, the \$3500 retainer paid to him by Ms. Acklin in August 2005,

remained the funds of Ms. Acklin. Mr. Stone failed to deposit those funds of his client, Ms. Acklin, into his IOLTA trust account and therefore also failed to maintain them in that account. Rule 1.15(b)(1) requires that funds of a client shall be deposited and maintained in one or more separate, clearly identifiable trust accounts in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person.

5. That Mr. Stone's conduct violated Rule 1.15(b)(2) because Mr. Stone did not deposit into a client trust account the \$3500 retainer paid to him by Ms. Acklin for future services and expenses to be provided with regard to Ms. Acklin's legal matter involving Mr. Pendegrass and his company and because Mr. Stone did not deposit into a client trust account the \$140 paid to him by Ms. Acklin remitted for the filing fee of the lawsuit. 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.

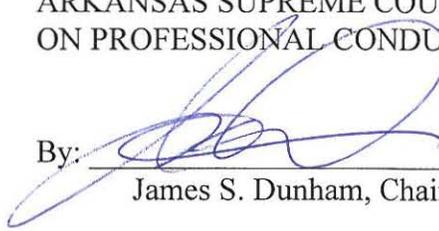
6. That Mr. Stone's conduct violated Rule 8.4(c) because on numerous occasions, as evidenced in Ms. Acklin's Affidavit, Mr. Stone provided false information to her about the status of her legal matter and the proceeding which he had been hired and paid to pursue on her behalf. Rule 8.4(c) requires that a lawyer not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

7. That Mr. Stone's conduct violated Rule 8.4(d) because Mr. Stone's lack of diligence on behalf of Ms. Acklin denied her the opportunity to timely seek recourse from Mr. Pendegrass or his company. Such delay on Mr. Stone's behalf was prejudicial to the administration of justice in that Ms. Acklin may very well be without available remedy against

Mr. Pendegrass at this late stage. 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 B, that WILLIAM MATTHEW STONE, Arkansas Bar ID# 2001143, be, and hereby is, REPRIMANDED for his conduct in this matter. In addition, Mr. Stone is assessed the costs of this proceeding in the amount of FIFTY DOLLARS (\$50), pursuant to Section 18.A of the Procedures. Pursuant to Section 18.B of the Procedures, Mr. Stone is ordered to pay a fine in the amount of ONE THOUSAND DOLLARS (\$1000), pursuant to Section 18.B of the Procedures. In accordance with Section 18.C of the Procedures, Mr. Stone is ordered to make restitution for the benefit of Ms. Acklin in the amount of THREE THOUSAND FIVE HUNDRED DOLLARS (\$3500). The fine, restitution, and costs assessed herein, totaling FOUR THOUSAND FIVE HUNDRED FIFTY DOLLARS (\$4,550), 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: 

James S. Dunham, Chair, Panel B

Date: February 25, 2011