

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

PANEL B

IN RE: Daniel J. Kroha, Respondent

Arkansas Bar ID#75073

CPC Docket No. 96-112

CONSENT FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Theodore D. Smith. The information related to the representation of Theodore D. Smith by Respondent beginning in 1994. Following a request for a public *de novo* hearing, the Respondent and the Executive Director negotiated a discipline by consent proposal, which was submitted to this Panel.

The information before the Panel revealed that on or about August 4, 1994, Mr. Smith hired Mr. Kroha to represent him in an age discrimination matter against XTRALEASE, Inc., Mr. Smith's former employer. A \$500 retainer was paid to Mr. Kroha on that date and a contingent fee contract was also executed by Mr. Smith and Mr. Kroha.

During the initial communication related to this matter, Mr. Kroha advised Mr. Smith to wait six (6) months and then file a claim with the Equal Employment Opportunity Commission (EEOC). Mr. Smith did as he was instructed. When he received the documentation about his right to sue, he contacted Mr. Kroha and set up an appointment to meet and deliver the notice. Mr. Kroha assured Mr. Smith that he would file a complaint in federal court on Mr. Smith's behalf and then serve XTRALEASE, Inc. with the documents. In addition, Mr. Kroha assured Mr. Smith that he would send a copy of all correspondence to Mr. Smith so that Mr. Smith would be aware of any developments in the case. The next information Mr. Smith received was a copy of the Complaint Mr. Kroha filed on March 13, 1995. There was no communication from Mr. Kroha during the next two (2) months.

When Mr. Smith was able to finally speak with Mr. Kroha again, Mr. Kroha advised that because XTRALEASE, Inc. was a foreign corporation, documents had to be filed with the Secretary of State's office. Mr. Kroha assured Mr. Smith that everything was okay and advised that he would contact Mr. Smith again within thirty (30) days. The thirty (30) days came and went with no communication from Mr. Kroha. The next two times that Mr. Smith spoke with Mr. Kroha, there were additional excuses provided by Mr. Kroha for the failure to serve XTRALEASE, Inc. The excuses included the need to pay a filing fee to the Secretary of State and the mailing of the Complaint to the wrong address. Beginning in October 1995, Mr. Smith tried to contact Mr. Kroha several times a day with no success.

In January 1996, Mr. Smith contacted Lewis Littlepage, an attorney whose office was across the hall from Mr. Kroha's. Mr. Littlepage advised Mr. Smith that he would put a message on Mr. Kroha's desk for Mr. Kroha to contact Mr. Smith. No telephone call was forthcoming. In March 1996, Mr. Smith was notified by Mr. Littlepage that he would be taking over representation of Mr. Smith in his legal matter. On March 11, 1996, Mr. Smith learned for the first time that his lawsuit had been dismissed. According to the information he received from Mr. Littlepage, Mr. Kroha was too embarrassed to tell him of the dismissal. Following his meeting with Mr. Littlepage, Mr. Smith contacted the presiding Judge's office and learned that the lawsuit had been dismissed August 11, 1995. It was dismissed because there had been no service on the defendant. The dismissal was several months prior to Mr. Kroha assurances to Mr. Smith that everything was okay.

Upon consideration of the formal complaint and attached exhibit materials, the response, the consent proposal, 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:

That Mr. Kroha's conduct violated Model Rule 1.3 when he failed to represent Mr. Smith in his age discrimination matter in a prompt and diligent manner and when he failed to properly serve the defendant in Mr. Smith's lawsuit within the time allowed by law. Model Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

That Mr. Kroha's conduct violated Model Rule 1.4(a) when he failed to keep Mr. Smith informed of the status of his age discrimination lawsuit; when he failed to respond to Mr. Smith's requests for information related to his claims; and, when he failed to advise Mr. Smith that the lawsuit was dismissed for failure to perfect service on August 11, 1995. Model Rule 1.4(a) requires that a lawyer keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

That Mr. Kroha's conduct violated Model Rule 8.4(c) when he falsely advised Mr. Smith on several occasions that everything was going okay with his lawsuit even though the matter had been dismissed on August 11, 1995, for failure to properly serve the defendant. Model Rule 8.4(c) requires that a lawyer not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

That Mr. Kroha's conduct violated Model Rule 8.4(d) because his failure to timely act on Mr. Smith's claims caused his claim to be barred from being able to be pursued. Model 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 Daniel J. Kroha, Arkansas Bar ID# 75073, be, and hereby is, REPRIMANDED for his conduct in this matter. In addition, pursuant to Section 18.A. of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law, Mr. Kroha is ordered to pay costs in the amount of \$50. Further, Mr. Kroha is ordered to pay a fine in the amount of \$250 pursuant to Section 18.B. of the Procedures. The fine 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 with 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: \_\_\_\_\_

John L. Rush, Chair, Panel B

Date: \_\_\_\_\_

(13.M, Rev.1-1-02)