

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

PANEL B

IN RE: LANE H. STROTHER

ARKANSAS BAR ID #79121

CPC DOCKET NO. 2003-032

**FINDINGS AND ORDER**

The formal charges of misconduct upon which this Order is premised arose from the Complaint of Janet B. Bodoh. Lane H. Strother, an attorney practicing in Mountain Home, Baxter County, Arkansas, was initially contacted during November 2001, concerning an issue Mrs. Bodoh had involving her late mother's estate. Mr. Strother was initially contacted by Mrs. Bodoh's Ohio counsel, Richard G. Zellers. When they first spoke the issues presented were whether Mr. Strother would represent Mrs. Bodoh in the contest of her mother's will and trust and to seek an accounting of her mother's checking and savings accounts. Following their initial discussion, Mr. Zellers provided Mr. Strother with correspondence containing details of the relief Mrs. Bodoh was seeking, including a statement of her grievances, the names of fact witnesses and copies of various other documents. Mr. Strother replied to Mrs. Bodoh two (2) weeks later. In his correspondence to Mrs. Bodoh, Mr. Strother explained that she would have a difficult time challenging the testamentary documents of her mother. Mr. Strother requested a retainer of \$2500.

After she consulted with Mr. Zellers, the decision was made not to proceed until Mr. Strother had interviewed all of the available witnesses, preserved their testimony and then she would be able to satisfy herself whether she had a valid cause of action. The decision was conveyed to Mr. Strother in a letter from Mr. Zellers dated January 11, 2002. In this same correspondence, Mr. Zellers inquired of Mr. Strother how much of a retainer he would require for handling the matter through the witness interview stage. Mr. Strother did not respond right away so Mr. Zellers called him on January 28, 2002. During their conversation, Mr. Strother acknowledged receiving the letter but advised that he had not looked at the file since receiving the correspondence. At this same time, there was discussion about the fact that one of the key fact witnesses had cancer and was very ill so her statement needed to be taken soon and preserved for later use. Mr. Strother did not respond to the correspondence or the discussion with Mr. Zellers until February 12, 2002. After receipt of Mr. Strother's correspondence, another telephone call was made to Mr. Strother regarding the amount necessary for a retainer for taking witness statements. Mr. Strother requested \$1000. Approximately one (1) week later, a check for \$1000 was sent to Mr. Strother pursuant to his request. At this time, Mrs. Bodoh believed that Mr. Strother would undertake to preserve the testimony of the fact witnesses. Requests were made to Mr. Strother to preserve Opal Banning's testimony as she was becoming more and more ill and Mrs. Bodoh desperately wanted to have her information preserved in some form. Mr. Strother did not acknowledge these requests.

By April 15, 2002, when no information had been received from Mr. Strother, Mr. Zellers again wrote to him. The letter was sent by facsimile transmission because of the critical nature of the request being made about Opal Banning's testimony. Ms. Banning died on April 24, 2002, without her testimony ever being preserved. The day after Ms. Banning died, Mr. Strother sent Mrs. Bodoh a letter in which he admitted that he had not interviewed two of the witnesses that she wished to have interviewed. Further, there is no indication from Mr. Strother that he ever preserved Ms. Banning's testimony for use at a later date if Mrs. Bodoh had chosen to pursue an action. In a letter dated May 16, 2002, in response to a letter explaining their disappointment with the way Mrs. Bodoh's legal matter was handled, Mr. Strother stated that he knew in March 2002, that she did not have a valid cause of action. At no time prior to May 16, 2002, did Mr. Strother advise Mrs. Bodoh of this fact. By not advising her of this fact, Mr. Strother effectively denied Mrs. Bodoh the opportunity to seek someone else's services to preserve Ms. Banning's testimony for her.

Mr. Strother did not address the failure to preserve the testimony of Opal Banning other than to state that by the time he received the retainer from Mr. Zellers, Ms. Banning was already in the hospital. Mr. Strother did acknowledge that he did not write Mrs. Bodoh about his conversation with James C. Johnson, the attorney who prepared her mother's trust documents, until the April 25, 2002, although he took Johnson's statement March 7, 2002. In addressing this issue and time factor, Mr. Strother pointed out that he wrote Mrs. Bodoh in approximately fifty (50) days from receipt of the retainer which was less time than it took for him to receive his retainer.

Upon consideration of the formal complaint, the response herein, and the Arkansas Model Rules of Professional Conduct, the Committee on Professional Conduct, Panel B, finds:

1. That Mr. Strother's conduct violated Model Rule 1.4(b) when he failed to advise Mrs. Bodoh in March, prior to the death of Opal Banning, that he had determined that she did not have a valid cause of action pursuant to his conversation with the attorney who drafted Mrs. Bodoh's mother's trust documents, thereby depriving her of the opportunity to seek other counsel to preserve the testimony of Mrs. Banning, as Mrs. Bodoh had requested from the onset. Model Rule 1.4(b) requires that a lawyer explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, Panel B, that LANE H. STROTHER, Arkansas Bar ID #79121 be, and hereby is, CAUTIONED for his conduct in this matter. Further, pursuant to Section 18.A of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law (2002), Mr. Strother is ordered to pay costs in the amount of \$50. The costs assessed herein shall be paid in the form of a money order or cashier's check made payable to the Office of Professional Conduct and delivered to the Office of Professional Conduct within thirty (30) days of the filing of this Findings and Order with the Clerk of the Arkansas Supreme Court.

ARKANSAS SUPREME COURT COMMITTEE

ON PROFESSIONAL CONDUCT

By:

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Date:

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