

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

**PANEL A**

IN RE: DALE W. FINLEY

ARKANSAS BAR ID #67017

CPC DOCKET NO. 2002-071

**FINDINGS AND ORDER**

The formal charge of misconduct is based on a complaint received from Sylvia Sue Boen. In 1993, Ms. Boen employed Dale Winston Finley, an attorney practicing law primarily in Russellville, Arkansas, to represent her in a divorce. The fee agreement between Mr. Finley and Ms. Boen was that Ms. Boen pay \$129 down and \$25 per month. Mr. Finley stated that he had represented Mr. Boen in a bankruptcy proceeding in 1992. When Ms. Boen employed him, not all of the fees from the bankruptcy case had been paid. Ms. Boen made payments of \$25 per month until May 3, 1994 when the agreed-upon amount of \$550.00 for the fee in the bankruptcy case was paid in full. Mr. Finley stated that nothing was paid on the divorce proceeding.

Mr. Finley filed a Complaint for Divorce on Ms. Boen's behalf on June 7, 1993. Mr. Finley appeared on behalf of Ms. Boen at a temporary hearing held on June 15, 1993. According to Mr. Finley, Mr. Boen had been served five (5) days prior to the hearing. During the hearing, Mr. Finley stated to the court that he would prepare a decree. Mr. Finley stated that he may have told Ms. Boen that she could not have a final decree until at least thirty days following service on her husband. Ms. Boen stated that although she had not received a decree, she believed that she was divorced.

Prior to the divorce, Ms. Boen had been receiving SSI disability. Ms. Boen continued to receive monthly SSI up through November 1998 when Ms. Boen was notified by the Social Security Administration that she had to repay \$15,000 for which she was not entitled to benefits as she was not divorced. Ms. Boen went to the Clerk's office and discovered that an Order was entered on August 30, 1996 which dismissed her divorce case pursuant to Rule 41(b) of the Arkansas Rules of Civil Procedure.

Upon knowledge that her divorce case had been dismissed, Ms. Boen contacted Mr. Finley to find out why her divorce was dismissed. Ms. Boen stated that she did not receive a response.

In March 2001, Ms. Boen received a letter from the United States Department of Treasury notifying her that it had applied \$1,985 to be paid to her by the Internal Revenue Service to the debt she owed the Social Security Administration. Ms. Boen received a second letter in August 2001 notifying her that it had applied \$600 that was to be paid to her by the Internal Revenue Service to the debt she owed the Social Security Administration. Ms. Boen stated that she called Mr. Finley in February, March, April, May, June, July and September 2001. Mr. Finley admitted that he heard from Ms. Boen in February 2001 and wrote Ms. Boen a letter apologizing for not having done his job eight years earlier. Ms. Boen stated that she received the letter from Mr. Finley dated July 12, 2001 which stated that he was firmly convinced that she was divorced following the June 15, 1993 hearing. Mr. Finley stated that after writing the letter he went to the courthouse and got a copy of the docket sheet which indicated that only a temporary hearing was held.

Mr. Finley denied that he violated the Arkansas Model Rules of Professional Conduct in this matter. Mr. Finley stated that he was informed by his secretary that Mr. and Ms. Boen had reconciled and were living together. The only thing Mr. Finley believed that he could have done would have been to send an order of dismissal to the court as, according to Mr. Finley, Ms. Boen could not have received a legitimate divorce.

Upon consideration of the formal complaint, Mr. Finley's response, and the Arkansas Model Rules of Professional Conduct, the Committee on Professional Conduct finds:

1. That Mr. Finley's conduct violated Model Rule 1.3 when he failed to prepare and file a divorce decree on behalf of his client, Sylvia Sue Boen. Model Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.
2. That Mr. Finley's conduct violated Model Rule 1.4(a) when his client, Sylvia Sue Boen, placed numerous calls to his office and left messages requesting information about the status of her divorce and Mr. Finley failed to respond to the requests; and when he failed to inform his client that her divorce was dismissed in August 1996 for failure to prosecute the matter. 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.
3. That Mr. Finley's conduct violated Model Rule 3.2 when he failed to prepare a divorce decree consistent with the findings of the Johnson County Chancery Court and conclude the divorce proceedings of his client, Sylvia Sue Boen. Model Rule 3.2 requires that a lawyer make reasonable efforts to expedite litigation consistent with the interests of the client.
4. That Mr. Finley's conduct violated Model Rule 3.4(c) when he voluntarily undertook the obligation of preparing a divorce decree consistent with the findings of the court on behalf of his client, Sylvia Sue Boen, and then failed to prepare and file said decree. Model Rule 3.4(c) requires, in pertinent part, that a lawyer not knowingly disobey an obligation under the rules of a tribunal.
5. That Mr. Finley's conduct violated Model Rule 8.4(d) when his failure to act resulted in unnecessary delay to the administration of justice on behalf of his client, Sylvia Sue Boen. 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 that DALE W. FINLEY, Arkansas Bar ID No. 67017, be, and hereby is, CAUTIONED for his conduct in this matter.

IT IS SO ORDERED.

ARKANSAS SUPREME COURT COMMITTEE

ON PROFESSIONAL CONDUCT - PANEL B

By: \_\_\_\_\_

Win A. Trafford, Chair - Panel A

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