

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

IN RE: STEPHEN FISHER, Respondent
 Arkansas Bar ID#91073
 CPC Docket No. 2006-143

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Chris and Janetta Porter in an Affidavit dated October 24, 2006. The information related to the representation of Mr. and Mrs. Porter by Respondent in 2005 and 2006.

On or about November 1, 2006, Respondent was served with a formal complaint, supported by affidavits from Mr. and Mrs. Porter and Denise Parks, Deputy Clerk, Office of the Arkansas Supreme Court Clerk. Respondent filed a timely response. Thereafter, the matter continued in accordance with the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law (Procedures) to a ballot vote before a Panel of the Committee.

The information before the Panel reflected that during February 2005, the Porters were referred to Stephen Fisher, an attorney practicing primarily in Little Rock, Arkansas, to represent them in a civil lawsuit involving discrimination. Mr. Fisher was referred by a prepaid legal plan. After meeting with Mr. Fisher, he requested a fee of \$3000 to represent the Porters in the matter.

The retainer agreement between Mr. Fisher and the Porters was signed on February 22, 2005. Mr. Fisher wrote the Porters on March 2, 2005 and advised that he could not represent them until he received the quoted retainer. The Porters met with Mr. Fisher on March 10, 2005,

and paid him \$1500. The Porters agreed to pay him \$50 every other week in order to pay the remaining balance. Mr. Fisher was paid a total of \$2450.

On April 20, 2005, Mr. Fisher sent the Porters a letter about filing the lawsuit on their behalf. On April 22, 2005, the Porters called Mr. Fisher to see if he had filed the Complaint on their behalf against their former employer. Mr. Fisher advised that he had not done so because the Porters had not brought him the \$250 for the filing fee. The Porters inquired of him what the \$1500 was for and he responded for him to work the case. On that same date, the Porters delivered to Mr. Fisher \$250 to file the papers. Mr. Fisher filed the Complaint in Federal Court on the last date to do so.

Mr. and Mrs. Porter called Mr. Fisher several times during the course of his representation of them. He rarely returned their calls promptly. While representing the Porters, Mr. Fisher missed discovery deadlines. Mr. Fisher appeared to ask for numerous extensions to file pleadings in federal court.

Mr. Fisher filed the initial complaint on April 25, 2005, but he had no Summons issued at the time. Thereafter on August 23, 2005, he filed a Motion for Extension of Time for service, and finally had Summons issued. There was no explanation to the Porters as to why he did not obtain service in the first four (4) months after he filed the Complaint, until he sent a letter on September 23, 2005. One (1) month after he filed the first Motion for Extension of Time to Serve the Defendant, Mr. Fisher asked for another extension of time to perfect service. In the next two months, Mr. Fisher's correspondence to the Porters was about payment of his fees and not about the services being provided in the legal matter.

After Mr. Fisher finally secured service, discovery was served on him by the defendant.

The discovery was served on Mr. Fisher on November 16, 2005. He did not send the discovery to the Porters until December 1, 2005. Mr. and Mrs. Porter delivered the information to him as requested. Instead of filing Answers in a timely manner, Mr. Fisher allowed the time to elapse and a Motion to Compel was filed. On February 7, 2006, Mr. Fisher finally provided the Porters with a copy of the Responses that he prepared from information submitted to him. Their depositions were taken in March 2006. Mr. Fisher was upset over the way in which the depositions went. During April, the Porters asked Mr. Fisher to file a Motion for Continuance in the matter because they did not believe he was ready for trial. Mr. Fisher responded to them in writing.

After the depositions, a Motion for Summary Judgment was filed on behalf of the Defendants. Mr. Fisher did not file a Response. Instead he once again filed a Motion for Extension of Time to File Response. The presiding Judge granted Mr. Fisher until June 5, 2006, to file a response. On June 5, 2006, instead of filing a response, Mr. Fisher filed another Motion for Extension of Time. On June 14, 2006, Mr. Fisher filed yet another Motion For Extension of Time to Respond to Motion for Summary Judgment. On the same date that he filed the third Motion for Extension of Time, Mr. Fisher filed a Motion to Withdraw as Counsel.

Mr. and Mrs. Porter thereafter hired Sheila Campbell to represent them. After she was hired and entered her appearance, Ms. Campbell filed a Motion to Amend Complaint in order to list the appropriate defendants, because Mr. Fisher had failed to do so. On September 12, 2005, the presiding Judge granted Ms. Campbell's Motion to Amend Complaint and also her request to have additional time to respond to the Motion for Summary Judgment was granted. The Amended Complaint was thereafter filed on September 22, 2006. Ms. Campbell was

subsequently able to secure a confidential settlement with the defendants on behalf of the Porters.

At the time, Mr. Fisher met with the Porters in his office in Little Rock and accepted fees, his license to practice law was suspended for failure to pay his annual license fees. Mr. Fisher was suspended from March 2, 2005 through June 10, 2005. In addition, Mr. Fisher did not pay his annual license fee in 2006 until July 13, 2006. As such, he was suspended from the practice of law from March 2, 2006 until July 13, 2006.

In responding to the formal disciplinary complaint, Mr. Fisher explained that Mr. and Mrs. Porter did not keep their word with regard to the contract they signed and never finished paying the quoted retainer. Mr. Fisher denied that he did not return the Porters' telephone calls and asserted that nothing could be further from the truth because he spoke with them often during the course of his representation of them.

Mr. Fisher blamed the delay of service of the Complaint on the Porters. He offered that they never complied with his requests for them to review the Complaint, after it was filed, and let him know if there were inaccuracies. Mr. Fisher also stated that the Motions for Extension of Time to Serve the Complaint were based on errors in the address by the Secretary of State and due to the registered agent not claiming the letter of service.

According to Mr. Fisher, he was out of his office during the last part of November 2005 due to health issues and therefore did not receive the discovery requests from the opposing counsel until he returned to the office. Mr. Fisher stated that even though he asked the Porters to get the information to him within ten (10) days, it was some time before they provided the information to him.

Following the depositions of the Porters, which Mr. Fisher stated were damaging to the

case, Mr. Fisher advised the Porters that they should explore the possibility of settlement. At this time, he said the Porters became suspicious of him.

Mr. Fisher stated that he did not get the Motion for Summary Judgment in a timely fashion because he had moved and the Motion was sent to his old address. He did not file a response because Mr. Porter wanted to hire other counsel to do so.

He acknowledged that he failed to pay his annual license fees in 2005 and 2006. According to Mr. Fisher the failure was inadvertent and an oversight on his part. He denied knowing that his license had been suspended during the periods in question, and when discovered promptly paid the fees.

Upon consideration of the formal complaint and attached exhibit materials, the response to it, and other matters before it, and the Arkansas Rules of Professional Conduct, Panel A of the Arkansas Supreme Court Committee on Professional Conduct finds:

1. That Mr. Fisher's conduct violated Rule 1.1, when he was not thorough enough in his representation of Chris and Janetta Porter to be certain that he sued all appropriate defendants in the matter; when he was not thorough enough in his representation of Chris and Janetta Porter to be certain that he responded to the discovery served on him by opposing counsel in a timely manner and in accordance with the rules of discovery; and, when he was not thorough enough in his representation of Chris and Janetta Porter to be certain that he responded to the Motion for Summary Judgment filed by opposing counsel. Rule 1.1 requires that a lawyer provide competent representation to a client, including the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

2. That Mr. Fisher's conduct violated Rule 1.3, when he did not act with diligence in his representation of Mr. and Mrs. Porter in that he failed to pursue their matter promptly; when he failed to promptly serve the defendant after he filed the Complaint on behalf of Chris and Janetta Porter in April 2005; when he failed to respond to the discovery requests served on him by opposing counsel in the Porter litigation within the time allowed by law; when he did not send the discovery requests to his clients until two weeks after the discovery requests were served on him by opposing counsel for the defendant in the lawsuit he filed on behalf of Chris and Janetta Porter; and when he did not respond to the Motion for Summary Judgment filed by opposing counsel in the lawsuit he filed on behalf of Chris and Janetta Porter. Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

3. That Mr. Fisher's conduct violated Rule 3.2, when he failed to expedite the litigation he filed on behalf of Mr. and Mrs. Porter after he filed the initial complaint in April 2005. Instead of expediting the litigation, he requested extensions of time to serve the defendant, failed to timely respond to discovery, and requested extensions of time in order to respond to Motion for Summary Judgment filed by the opposing counsel in the matter. Rule 3.2 requires that a lawyer make reasonable efforts to expedite litigation consistent with the interests of the client.

4. That Mr. Fisher's conduct violated Rule 3.4(c), because despite having been a lawyer for fourteen years in 2005, he failed to comply with Rule VII of the Rules Governing Admission to the Bar when he failed to pay his annual license fee by March 1, 2005 and because despite having been a lawyer for fifteen years in 2006, he failed to comply with Rule VII of the Rules Governing Admission to the Bar when he failed to pay his annual license fee by March 1,

2006. Pursuant to Section 22 of the Procedures of the Arkansas Supreme Court Regulating the Professional Conduct of Attorneys at Law, he was not to be in an office where the practice of law is conducted during any period of suspension. His law license was suspended from March 2, 2005 through June 10, 2005, and from March 2, 2006 through July 13, 2006. During both periods of suspension, he was practicing law in his office. Rule 3.4(c) requires that a lawyer not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists.

5. That Mr. Fisher's conduct violated Rule 5.5(a), because he continued to practice law between March 2, 2005, and June 10, 2005, during which time his license to practice law was suspended as a result of his failure to comply with the Court Rule governing payment of annual license fee of attorneys licensed to practice law in Arkansas and because he continued to practice law between March 2, 2006, and July 13, 2006, during which time his license to practice law was suspended as a result of his failure to comply with the Court Rule governing payment of annual license fee of attorneys licensed to practice law in Arkansas. Rule 5.5(a) requires that a lawyer not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel A, that STEPHEN FISHER, Arkansas Bar ID#91073, be, and hereby is, CAUTIONED for his conduct in this matter. Further, pursuant to Section 18.A. of the Procedures, Mr. Fisher is assessed the costs of this proceeding in the amount of \$50. The 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

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: _____
Jerry D. Pinson, Chair, Panel A

Date: _____