

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL B

IN RE: STEPHEN FISHER, Respondent
 Arkansas Bar ID#91073
 CPC Docket No. 2010-078

FILED

JAN 26 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 Brenda Diane Day in an Affidavit dated September 8, 2010. The information related to the representation of Ms. Day by Respondent in beginning in August 2007.

On September 30, 2010, Respondent was served with a formal complaint, supported by affidavit from Ms. Day. Respondent filed a timely Response. Rebuttal was received from Ms. Day. The matter proceeded to ballot vote before Panel B of the Committee pursuant to the Arkansas Supreme Court Procedures Regulating Professional Conduct of Attorneys at Law.

The information before the Committee reflected that Stephen Fisher was practicing law in Little Rock, Arkansas, during August 2007. Brenda Dianne Day had previously been represented by Mr. Fisher in an EEOC matter. She needed an attorney to represent her in attempting to secure guardianship over her sister who is bedridden and in a nursing facility. Ms. Day trusted Mr. Fisher and chose to hire him to assist her in seeking the guardianship of her sister.

After consultation with Mr. Fisher, an agreement was reached with regard to the representation and legal fees, although the same was not placed in written form. Based on their agreement, Ms. Day delivered \$1,000 cash to Mr. Fisher on August 31, 2007, as a retainer for representation in the guardianship matter. Mr. Fisher, admittedly, did not place those funds in a

trust account upon receipt. According to Mr. Fisher, the \$1,000 was a flat fee for preparation of guardianship document preparation and an appearance in Court. However, at the time of receipt of the \$1,000 cash, he had not prepared the documents and in one letter to Ms. Day (which she explains was not received), he speaks of keeping her fees down if the matter is handled as uncontested. Mr. Fisher advised in his response to the Committee that he immediately prepared a first draft of the Petition for Guardianship on the day he was hired and paid.

Ms. Day provided Mr. Fisher with the information he requested and sent the filing fee to him as requested. Mr. Fisher explained that he had no record of having received the filing fee from Ms. Day.

Her address never changed during the time of Mr. Fisher's representation of her, nor did her cell phone number. Ms. Day acknowledges that her home number did change but that the new information was provided to Mr. Fisher. Mr. Fisher advised that he did not know the home number had changed and that he had no way to contact her other than by letter. He also explained that Ms. Day never called him.

After Mr. Fisher moved to Fayetteville, and Ms. Day provided him all the information she had, including the fact that her nephews had refused to sign the consent forms, she heard nothing further from Mr. Fisher. No telephone calls were returned. She was simply abandoned by Mr. Fisher.

Mr. Fisher explained that he sent letters to Ms. Day in early 2008, and since she did not respond, he believed she did not want to pursue the matter so he took no further action. Ms. Day had no record of receiving the letters from Mr. Fisher. She explained that he did not respond to her and she did not know what had happened after hire.

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. Fisher's conduct violated Rule 1.4(a)(3), when he failed to stay in communication with Ms. Day about the guardianship matter which he was hired and paid to pursue in August 2007. Rule 1.4(a)(3) requires that a lawyer keep the client reasonably informed about the status of the matter.

2. That Mr. Fisher's conduct violated Rule 8.4(d), because his failure to take action on behalf of Ms. Day, including failing to file the guardianship petition as he had been hired and paid to do, created an unnecessary delay in Ms. Day's attempt to secure guardianship over her sister. 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 STEPHEN FISHER, Arkansas Bar ID# 91073, be, and hereby is, CAUTIONED for his conduct in this matter. Mr. Fisher is assessed the costs of this proceeding in the amount of \$50 pursuant to Section 18.A. of the Procedures. Pursuant to Section 18.B. of the Procedures, the Committee imposed a fine in the amount of \$500. Mr. Fisher is also ordered to make restitution for the benefit of Ms. Day in the amount of \$1,000, pursuant to Section 18.C. of the Procedures. The fine, restitution, and costs assessed herein, totaling \$1,550, 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: Steve Crane
Steve Crane, Chair, Panel B

Date: 12-15-10