

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

IN RE: Phillip D. Cook, Jr., Respondent

Arkansas Bar ID#93085

CPC Docket No. 2001-126

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Stephen Sipes in an Affidavit dated November 26, 2001. The information related to the representation of John Bishop by Respondent in October and November 2000, following a period of suspension from the practice of law.

On December 17, 2001, Respondent was served with a formal complaint, supported by the affidavit from Stephen Sipes. Respondent submitted his response on January 22, 2002, after receiving an extension of time in which to respond.

The information before the Committee demonstrated that Mr. Sipes, in his employment as the Pulaski County Chancery Clerk, received a Notice of Suspension of Attorney's Privilege to Practice Law from the Office of Professional Conduct related to Phillip D. Cook, an attorney from Little Rock. Mr. Sipes entered the suspension into the Chancery Clerk's computer system on October 9, 2000. Thereafter, one of the deputy clerks notified Mr. Sipes that an attorney, identified as Phillip Cook, was in the Clerk's office attempting to take action in a case. Mr. Sipes then proceeded to the counter and advised Mr. Cook that he had recently received notice of his license suspension and as a result would not be able to process his requested action. Mr. Cook advised Mr. Sipes that he was not aware of the suspension and surmised that the suspension was likely related to continuing legal education requirements or perhaps license fee delinquency. Mr. Cook explained that he did not knowingly attempt to file a pleading with the Pulaski County Chancery Clerk while his license was suspended. He offered that when he attempted to file the pleading, he was not aware of the effective date of his suspension. Upon being informed by the deputy clerk of the suspension, he went back to his office and reviewed the Order from the Committee and realized the effective date had occurred.

After receiving this information, investigation was taken into other open matters on file in Pulaski County wherein Mr. Cook was the attorney of record. During the course of that investigation, the case of Kalley Beavers v. John Bishop, CIV 00-6932, was researched. Mr. Cook had submitted an affidavit in that legal proceeding dated December 7, 2000. In the affidavit, Mr. Cook sets out that on October 24, 2000, he contacted the case coordinator for Judge David Bogard to discuss his inability to represent Mr. Bishop in the legal matter any longer since his law license had been suspended. On October 31, 2000, Mr. Cook learned that Mr. Bishop was out of the country and would not be back until November 5, 2000, and would miss a scheduled court hearing. On November 1, 2000, Mr. Cook attempted to notify the case coordinator of this situation on behalf of his client, Mr. Bishop. Thereafter on November 7, 2001, Mr. Cook contacted the Pulaski County Circuit Clerk's office on behalf of his client Mr. Bishop and learned that a hearing was scheduled for November 24, 2000. In addition, Mr. Cook was informed that no default judgment had been entered at the time. Mr. Cook then relayed this information to Mr. Bishop. Subsequently, Mr. Cook learned that Mr. Bishop had been served with a copy of a Default Judgment on November 27, 2000. The Default Judgment, on file with the Pulaski County Circuit Clerk's office, reveals that Mr. Cook failed to file a timely response on behalf of Mr. Bishop. According to Mr. Cook, he filed an Answer as soon as Mr. Bishop delivered the summons and complaint to him. In addition, it reveals that Mr. Cook received notice of the hearing on the Motion for Default Judgment on October 24, 2001. The notice demonstrated that the hearing would be conducted on November 2, 2000. No one appeared on November 2, 2000, and no one advised the Court of the reason for the failure to appear. Mr. Cook's client, John Bishop, also filed an Affidavit in the legal proceeding. In his Affidavit, Mr. Bishop explains that he hired Mr. Cook to represent him after finding a copy of the Complaint in his mailbox. Mr. Bishop asserted that he did not know of the hearing scheduled for November 2, 2000, until Mr. Cook called him on November 1, 2000, while Mr. Bishop was on his father's farm in Mexico. There was no way for Mr. Bishop to attend the hearing. During the conversation, Mr. Cook assured Mr. Bishop that he would contact the Court and explain the situation. When Mr. Bishop subsequently spoke with Mr. Cook, he was advised by Mr. Cook that he had taken care of the problem. Later, when Mr. Bishop returned from Mexico, he contacted the Case Coordinator since he could not get in touch with Mr. Cook. Mr. Bishop was advised that he had missed his court date and that there was probably a judgment entered against him. It was during his conversation with the case coordinator that Mr. Bishop learned for the first time that Mr. Cook's license to practice law had been suspended. Mr. Cook never advised him. According to Mr. Cook, he did advise Mr. Bishop of his license suspension but he did not do so until Mr. Bishop returned from Mexico in early November. Mr. Cook did admit that there was a delay in his advising his client of the suspension. His reason for doing so, according to Mr. Cook, is that he wanted to wait until he could speak with Mr. Bishop in person. Thereafter, he referred Mr. Bishop to other counsel and provided the new counsel with all requested documents and information.

Upon consideration of the formal complaint and attached exhibit materials, the response to it, 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. Cook's conduct violated Model Rule 1.4(b) when he failed to explain to

Mr. Bishop that his law license was suspended by the Committee on Professional Conduct on October 6, 2000, thereby prohibiting Mr. Bishop from obtaining other counsel to protect his legal rights and defend him in the lawsuit brought by Kalley Beavers. 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.

- That Mr. Cook's conduct violated Model Rule 5.5(a) since after he was suspended

from the practice of law by the Committee, he continued to practice and attempted to file pleadings with the Pulaski County Chancery Clerk and he continued to advise Mr. Bishop in his legal matter. Model Rule 5.5(a) requires that a lawyer not practice law in a jurisdiction where doing so violates the regulation of the practice of law in that jurisdiction.

- That Mr. Cook's conduct violated Model Rule 8.4(c) when he provided false

information to Mr. Bishop about his efforts on Mr. Bishop's behalf and about the status of Mr. Bishop's legal matter. Model Rule 8.4(c) requires that a lawyer not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

- That Mr. Cook's conduct violated Model Rule 8.4(d) because his failure to

properly and promptly advise Mr. Bishop resulted in a default judgment against him and prevented him from presenting a defense to the lawsuit brought by Kalley Beavers. 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 Phillip D. Cook, Jr., Arkansas Bar ID# 93085, be, and hereby is, SUSPENDED for a period of EIGHTEEN (18) MONTHS for his conduct in this matter. In addition, pursuant to Section 18B of the Procedures, the Committee imposes a fine of ONE THOUSAND DOLLARS (\$1000). The suspension shall become effective on the date this Findings and Order is filed of record with the Clerk of the Arkansas Supreme Court. The fine 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: _____

Richard Hatfield, Chair, Panel B

Date: _____