

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

PANEL B

IN RE: Shane Roughley, Respondent
Arkansas Bar ID # 95021
CPC Docket No. 2004-162

CONSENT FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Ida M. Finney on May 12, 2003. The information related to the representation of Mrs. Finney's husband, Eugene Finney, by Respondent Shane Roughley beginning in 1999.

On November 2, 2004, Respondent was served with a formal complaint, supported by an affidavit from Mrs. Finney. Respondent filed a timely response on December 3, 2004.

The facts giving rise to the Complaint were that on August 5, 1999, Eugene Finney's brother, Phoenix B. Finney, died at Sparks Regional Medical Center in Fort Smith. Mr. and Mrs. Eugene Finney believed the death was brought on by nursing home neglect at Sequoyah East Nursing Home in Oklahoma. Attorney Charles Karr saw the death in the newspaper and contacted Mrs. Finney and asked to handle the case for them. Mr. Karr never provided the Finneys with a fee agreement and never discussed his fee with them. About two years later, on June 15, 2001, Respondent Shane Roughley, an associate attorney working with Mr. Karr, filed a complaint in the Circuit Court of Sebastian County Arkansas against the nursing home, Washington Regional Medical Center, Virginia Insurance Reciprocal and John Does number 1-5. Mrs. Finney said she did not understand why the lawsuit was filed in Arkansas since the nursing home was the liable party and they were in Oklahoma and she said she informed Mr. Karr that the nursing home was the responsible party and not the hospital. On July 11, 2001, Mr. Karr sent Mrs. Finney and her husband a letter stating that another law firm which had successfully sued a nursing home, might be interested in their case. The other law firm stated in its letter that they did not think the hospital should be a part of the lawsuit. Thereafter Mr. Karr dismissed the action against all parties except for the nursing home. On November 5, 2001, after receiving a motion to

dismiss filed by the nursing home, Mr. Roughley sent the Finneys a letter stating their case was going to be dismissed because Arkansas lacked jurisdiction over the nursing home. On December 12, 2001, the circuit court entered the order dismissing the lawsuit. The Finneys then fired Mr. Karr and Mr. Roughley and hired Attorney Fred Stoops out of Oklahoma to take over the case. Mr. Stoops filed the action in Sequoyah County Oklahoma but it was dismissed on October 25, 2002, because the statute of limitations had run. The dismissal order said the case had to have been filed within two years of the date Phoenix Finney died which means it should have been filed in Oklahoma by August 27, 2001, just two months after Mr. Karr and Mr. Roughley filed the lawsuit in Arkansas. By the time Arkansas action was dismissed it was too late to file the action in the proper jurisdiction.

In his Response to the Complaint by the Office of Professional Conduct, Mr. Roughley stated that the case proceeded in a timely manner because there were delays caused by family dissent among other matters in the case.

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 A of the Arkansas Supreme Court Committee on Professional Conduct finds:

1. That Mr. Roughley's conduct violated Model Rule 1.3 when he was hired in August 1999, to file a lawsuit and he waited until June 2001, to file the action, only two months prior to the expiration of the statute of limitations and not enough time for the correct action to be filed in Oklahoma. Model Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.
2. That Mr. Roughley's conduct violated Model Rule 1.5(b) when he failed to provide the Finneys with a fee agreement after accepting the case and failed to even discuss his fee with the Finneys. Model Rule 1.5(b) requires a lawyer who has not regularly represented a client, to communicate the basis or rate of the fee to the client, preferably in writing, before or within a reasonable time after commencing the representation.

3. That Mr. Rougley's conduct violated Model Rule 1.5(c) when he failed to provide the Finneys with a written fee agreement in what was obviously a contingency matter. Model Rule 1.5(c) provides in pertinent part that a contingency fee agreement shall be in writing and shall state the method by which the fee is to be determined.
4. That Mr. Rougley's conduct violated Model Rule 3.2 when he waited until December 2001 to file an action for which he was hired in August 1999 and when he failed to inform his clients of the Oklahoma statute of limitations in time for them to have the proper action filed in Oklahoma. Model Rule 3.2 requires a lawyer to make reasonable efforts to expedite litigation consistent with the interests of the client.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel A, that Shane Roughley, Arkansas Bar ID# 95021, be, and hereby is, CAUTIONED and FINED \$250 for his conduct in this matter and pursuant to Section 18.A of the Procedures, Mr. Roughley is ordered to pay costs in the amount of \$50. The costs assessed herein shall be payable by cashier's check or money order to the "Clerk, Arkansas Supreme Court", and 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: _____

H.T. Moore, Vice Chair, Panel B

Date: _____