

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

IN RE: PAMELA FISK, Respondent
Arkansas Bar ID#2001179
CPC Docket No. 2006-138

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Sherry A. Wise in an Affidavit dated October 9, 2006. The information related to the representation of Ms. Wise by Respondent in 2003 and 2004.

On October 19, 2006, Respondent was served with a formal complaint, supported by affidavit from Ms. Wise. Respondent filed a timely response. The matter thereafter proceeded to ballot vote before Panel B pursuant to the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law. (2002).

The information before the Committee reflected that during April 2003, Ms. Wise hired Pamela Bradshaw Fisk, an attorney practicing primarily in Texarkana, to file a bankruptcy action in order to prevent a foreclosure on her home. Ms. Wise's home had been damaged due to defective materials and she was having difficulty keeping up with the payments in a timely fashion. Therefore, she was in need of some protection afforded by the bankruptcy statutes. Ms. Fisk was paid a total of \$500 for the representation.

When Ms. Wise first spoke with Ms. Fisk, she asked her if Ms. Fisk knew of anyone who could represent her in filing a bankruptcy. Ms. Fisk assured Ms. Wise that she could handle it. At that time, Ms. Fisk also instructed Ms. Wise to have anyone contacting her to contact Ms.

Fisk instead, as her counsel.

Ms. Fisk and Ms. Wise spoke on May 8, 2003. Ms. Fisk advised that she would be filing a Chapter 7 bankruptcy petition. She explained that Ms. Wise could not file pursuant to Chapter 13. Between May and July 2003, Ms. Wise continued to receive telephone calls and letters from creditors, despite her advising all of them that she was represented in a bankruptcy matter by Ms. Fisk. Ms. Wise had also completed the initial paperwork to start the bankruptcy process and had returned all the documents to Ms. Fisk's office.

On July 24, 2003, Ms. Wise received notice from Wilson and Associates that her home was being sold on August 26, 2003. She provided this notice to Ms. Fisk's secretary on July 25, 2003. Later on July 25, 2003, Ms. Wise was called by Anita, Ms. Fisk's secretary, and advised to meet with Ms. Fisk on July 28, 2003. Ms. Wise was instructed to bring \$400 to that meeting. During the meeting, Ms. Wise provided Ms. Fisk with \$400, part of which was in the form of a \$200 postdated check. Ms. Fisk advised Ms. Wise that she had not started the bankruptcy process because she did not have the initial paperwork. Once Ms. Wise advised her that she had returned all of it to her office, Ms. Fisk searched her secretary's office and located it in a different file folder, still in the envelope unopened.

On August 13, 2003, Ms. Wise signed all the bankruptcy papers in Ms. Fisk's office. Ms. Fisk did not file the bankruptcy petition until September 3, 2003. On October 13, 2003, a hearing was held in bankruptcy court in Texarkana. Another hearing was scheduled for November 14, 2003, but Ms. Fisk advised Ms. Wise not to attend. She informed Ms. Wise that she and Richard Cox, the Trustee in my bankruptcy proceeding, had determined that there was no reason to go to court. Ms. Fisk also advised that Mr. Cox was only requesting an extension

because of her pending lawsuit with Ondura. Ms. Wise was suing Ondura because of the damage to her home.

Ms. Wise was served with Notice to Vacate papers by the Sheriff's Department from Wilson and Associates on November 20, 2003. She immediately took the Notice to Ms. Fisk's office on November 21, 2003. Ms. Fisk did not call to discuss this matter after Ms. Wise left the Notice at her office. On December 13, 2003, Ms. Wise received a Notice of Motion for Relief from Stay filed by Wells Fargo with regard to her home. On December 30, 2003, Ms. Wise received Ms. Fisk's response to the Motion.

The next communication Ms. Wise received was a telephone call from Anita, Ms. Fisk's secretary, who told Ms. Wise that she needed to meet with Ms. Fisk after work to discuss the matter scheduled for January 16, 2004, in Little Rock. Ms. Fisk advised Ms. Wise that she did not need the civil attorney to be present nor did she require him to provide anything for Court or the meeting. Ms. Fisk instructed Ms. Wise to bring the photos of her damaged home and copies of the results of the Air and Mold testing done on the house. Ms. Fisk also informed Ms. Wise during the meeting that she was still waiting to hear from Richard Cox and that she needed him in their corner to keep Ms. Wise's home in the automatic stay protection of the bankruptcy process. Ms. Fisk stated that the offer was still on the table for Ms. Wise to leave her home and take the \$2000 mentioned in the Notice to Vacate served in November 2003. Ms. Wise informed Ms. Fisk that she needed her house to remain under the protection of the automatic stay, pending the lawsuit against Ondura and Lowe's. Ms. Fisk's advice was that Ms. Wise could abandon the house, take the money offered and then buy the home back at a reduced price. Ms. Wise explained to her that this was not something she could or wanted to do. The day before the

January 16, 2004, court appearance, Ms. Wise received a telephone message from Anita that the hearing in bankruptcy court would be rescheduled.

On January 24, 2004, Ms. Wise received notice that the bankruptcy court hearing had been rescheduled for February 4, 2004. Ms. Wise was present at the Courthouse on that date. Ms. Fisk never appeared. Ms. Wise called her office and was told by Anita that Ms. Fisk was with a client. Ms. Wise explained that she was at the courthouse. Ms. Wise was told to go to work. Anita explained that Ms. Fisk had taken care of everything the previous day after business hours and they forgot to call her. Later that afternoon when Ms. Wise spoke with Ms. Fisk, she told her that the attorney for the mortgage company had requested that she send documentation demonstrating the condition of the house in order to conduct their own review. Ms. Fisk also told Ms. Wise that the attorney was to consider not proceeding with the foreclosure sale and just wait on the outcome of the lawsuit against Ondura. Ms. Fisk assured Ms. Wise that she would contact her when she heard from the attorney. Ms. Wise was informed that Wells Fargo could still continue with the foreclosure and that the Stay could be lifted. Ms. Wise again expressed her desire to appear before the Judge to state her case as to why the house should stay under the protection of the automatic stay. Ms. Wise specifically asked Ms. Fisk if the court date was going to be rescheduled. She replied in the affirmative. She also stated that the attorney for the mortgage company had requested the name and phone number for Mr. Thomas, who represented Ms. Wise in the matter concerning the damage done to her home. Finally, Ms. Fisk told Ms. Wise that she would be receiving a discharge from Mr. Cox soon and told her to expect it in the mail. She offered that Mr. Cox did not want to keep the house under the protection of the automatic stay and that he did not want to be involved in the lawsuit. A week later Ms. Wise

wrote Ms. Fisk a letter and delivered it to her. Ms. Fisk did not respond to Ms. Wise's concerns in this letter.

On April 10, 2004, Ms. Wise received a copy of a letter sent to Ms. Fisk by Judge Hudson advising that Court for April 12, 2004, had been rescheduled for June 8, 2004. After Ms. Wise received the letter, she called Ms. Fisk's office and was left with speaking with Anita again as Ms. Fisk was not available. Ms. Wise informed Anita that she was not aware of a Court date scheduled for April 12, 2004. Anita explained that they had elected not to tell Ms. Wise because they knew it was going to be rescheduled. Anita told Ms. Wise that this was a civil matter which she needed to attend. After speaking with Anita, Ms. Wise called Mr. Thomas and advised him of the June 8, 2004, court date. Mr. Thomas did not understand what hearing this was and did not know what this "civil matter" was either. At this time, Mr. Thomas advised Ms. Wise that Mr. Cox had retained him to make sure all debts in bankruptcy were paid when a settlement was reached with Ondura. Mr. Thomas informed Ms. Wise that he would call Mr. Cox to find out about the June 8, 2004, hearing. Ms. Fisk did not return Ms. Wise's telephone message about this matter.

Ms. Wise received a letter on May 7, 2004, about eviction from her home. Ms. Wise faxed the letter to Ms. Fisk and Mr. Thomas. Ms. Wise called Ms. Fisk on May 12, 2004, and asked if she understood why Ms. Wise had received the eviction notice. Ms. Wise also asked her if she was aware that Mr. Cox had retained Mr. Thomas to make sure that the bankruptcy debts were paid from any settlement reached. Ms. Fisk replied that she was aware of this fact. At this time, Ms. Fisk informed Ms. Wise, for the first time, that her home and land were no longer included in the automatic stay. Ms. Fisk explained that the Order had been granted to remove

them from the stay. Ms. Wise asked her how this happened when she had not gone to Court and what happened with the Court date being rescheduled as she had previously been told. Ms. Fisk replied that she did not know, but that the Order had been signed. Ms. Fisk would not say when it had been signed. Ms. Fisk again advised that the offer was still available for Ms. Wise to leave her home prior to June 8, 2004. She said Ms. Wise would be better off taking that offer and buying the house back at a reduced rate because it could not be sold nor placed on the market because of its condition with the mold and other damage. Ms. Wise then called Mr. Thomas and advised him of conversation with Ms. Fisk. Mr. Thomas was not aware that the house had been removed from the stay, as Mr. Cox had not mentioned this to him when he was retained.

On May 21, 2004, because she still had not seen the Order removing her home and land from the automatic stay Ms. Wise wrote Ms. Fisk a letter and requested that she send Ms. Wise a copy. Ms. Wise actually faxed the letter to her on May 24, 2004. A few days later Ms. Wise received the Order. It had been signed February 9, 2004, five days after the scheduled court date which Ms. Fisk told Ms. Wise was being rescheduled. At no time between February 9, 2004 and May 12, 2004, did Ms. Fisk make Ms. Wise aware of this Order.

Ms. Wise attended a hearing in LaFayette County Courthouse on June 8, 2004. This was a foreclosure hearing, not just a "civil matter" as Ms. Fisk and Anita had referred to it. Ms. Fisk asked Ms. Wise if she had moved or found another place to stay. Ms. Wise told her no, that she was not aware that this was something that she was supposed to have done. An Order was signed by Judge Hudson that date with regard to the foreclosure of Ms. Wise's home.

One month later Ms. Wise was served with papers by a Sheriff's Deputy. Ms. Wise was informed that someone would be at her home on July 15, 2004, to change the locks so she needed

to vacate within a week.

On August 9, 2004, Ms. Wise received notice of rescheduled settlement hearing from September 13, 2004, to August 11, 2004, in the Texarkana courthouse in her civil proceeding. She also received a letter from Ms. Fisk advising that she was withdrawing as Ms. Wise's attorney.

Ms. Wise attended the settlement conference on August 11, 2004, with Mr. Thomas. No settlement was reached. The defense attorney made the statement since Ms. Wise did not have ownership of the home, she was not entitled to the damages sought which were caused by the roofing material installed on the home. Ms. Wise was advised at this time that she could end up with nothing because the bank now owns the home.

On October 6, 2004, Ms. Wise attended court for the hearing on her request to be allowed to withdraw from bankruptcy. On July 16, 2004, Ms. Wise had sent Judge Mixon a request to withdraw from bankruptcy, which was denied. It was Ms. Wise's understanding in court that Ms. Fisk should have filed a Chapter 13, and not a Chapter 7, bankruptcy proceeding. During the course of the hearing, Judge Mixon made the following statements concerning Ms. Fisk's representation of Ms. Wise:

1. Had she showed up, Ms. Fisk would have had a pretty good defense to the motion for relief from the automatic stay had she showed up, given his testimony that that adversely impacted the case to let the house go.
2. I'm going to do an order to show cause on Ms. Fisk as to why she didn't appear in court and why she didn't oppose the motion for relief from the stay.
3. You might also consider talking to counsel about filing a malpractice suit against Ms. Fisk because from the record I've heard, she may have committed several malpractices.
4. You were eligible to file a Chapter 13.
5. You could have filed a Chapter 13. You could have preserved your house

- very easily.
6. You could have resisted the motion for relief from the stay. You had a reasonable defense to it.
 7. What you've told me here under oath is that she told you to show up and you did, but she didn't. So you may have a malpractice suit worth a lot of money, at least worth your house, because this thing has been gummed up pretty bad by her, based on what I've heard. Now, I haven't heard her side of it. She may have a different story, but I'm going to listen to it.

No Order to Show Cause was ever entered by Judge Mixon in the matter.

Settlement was reached between the Trustee and Ondura in 2005. Ms. Wise's second bankruptcy counsel objected to the settlement agreement. The Court denied the objection. After all of this was concluded, Ms. Wise's new counsel wrote Ms. Fisk and asked her about malpractice insurance. She wrote back and advised that she did not have malpractice insurance and virtually no assets. When the new counsel learned this, he advised Ms. Wise that he would not pursue the matter since Ms. Fisk has no malpractice insurance.

In responding to the formal disciplinary complaint, Ms. Fisk denied that she advised Ms. Wise that she could not file Chapter 13. Ms. Fisk stated that if Ms. Wise had paid the mortgage payments, as she was advised to do, the creditor would not have filed for relief from the automatic stay.

According to Ms. Fisk, she met with Ms. Wise on January 13, 2004, to discuss the Motion for Relief from Stay. She stated that she explained that they might not go to the hearing. Further, Ms. Fisk also stated that she told Ms. Wise that the Stay would be lifted, not could be lifted.

As to Judge Mixon's comments about not presenting a defense to the Motion for Relief from Stay, Ms. Fisk stated that Judge Mixon was relying on Mr. Thomas' testimony which was

inconsistent with the facts. Ms. Fisk affirmatively stated that Mr. Thomas told her that Ms. Wise not having possession of the home would not hurt the case he was pursuing on Ms. Wise's behalf. Mr. Thomas testified that it would certainly hurt his case and that he told Ms. Fisk this fact. Ms. Fisk asserted that Judge Mixon must have agreed that there was nothing she could do since he did not enter an Order to Show Cause for her.

Ms. Fisk denied that her office did not send Ms. Wise a copy of the Order with regard to the Motion for Relief from Stay. She alleged that it was sent on February 20, 2004.

Ms. Fisk explained that she was not hired by Ms. Wise until July 28, 2003. She stated that Ms. Wise was made aware of all that was being done on her behalf. Ms. Fisk offered that she is very sorry that Ms. Wise's case did not turn out the way she wanted but believes that Ms. Wise must take responsibility for her actions. Ms. Fisk believed that she did everything she could to help Ms. Wise.

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:

1. That Ms. Fisk's conduct violated Model Rule 1.1, because she was not thorough enough in her representation of Ms. Wise to determine that she was eligible for bankruptcy relief pursuant to Chapter 13 of the Bankruptcy Code, which would have benefitted her much more than the Chapter 7 filed on her behalf; because she was not thorough enough in her representation of Ms. Wise to appear at the hearing on the Motion for Relief from Stay filed by the company seeking to foreclose on Ms. Wise's home; because she was not thorough enough in her representation of Ms. Wise to present her defense to the Motion for Relief from Stay before

Judge Mixon, when, according to Judge Mixon, she had a valid defense to the Motion for Relief from Stay but her failure to appear at the hearing prohibited her from presenting it. Model 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 Ms. Fisk's conduct violated Model Rule 1.3, because she did not act with diligence in her representation of Ms. Wise, in that she did not appear at the hearing in bankruptcy court on the Motion for Relief from Stay although she had notice and had instructed her client to be present. Model Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

3. That Ms. Fisk's conduct violated Model Rule 1.4(a), when she did not advise Ms. Wise of the Order granting the relief from stay related to her home after the same was entered of record in February 2004. 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.

4. That Ms. Fisk's conduct violated Model Rule 8.4(d) because her failure to take appropriate action on Ms. Fisk's behalf with regard to the ownership of her home caused her to not be able to seek the full amount of damages, which were limited because of her loss of her home, she would have otherwise been able to seek since she was no longer in the home; and, because her failure to appear at the hearing scheduled with regard to the Motion for Relief from Stay prevented her from presenting Ms. Wise's defense to the Motion before Judge Mixon and in a later proceeding, Judge Mixon advised that there was a valid defense to the Motion had she been in court as notified to present it to him. 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 PAMELA FISK, Arkansas Bar ID#2001179, be, and hereby is, CAUTION for his conduct in this matter. Pursuant to Section 18.A of the Procedures, Ms. Fisk is assessed the costs of this proceeding in the amount of \$50. In addition, pursuant to Section 18.B. of the Procedures, Ms. Fisk is ordered to pay a fine in the amount of \$500. The costs assessed and fine imposed herein, totaling \$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: _____
Harry Truman Moore, Chair, Panel B

Date: _____