BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL B

FILED
JUN 23 2008
LESLIE W. STEEN
CLERK

IN RE: CHARLES M. MOONEY, JR., Respondent
Arkansas Bar ID#83131
CPC Docket No. 2007-078

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 Barbara Schwartz in an Affidavit dated June 30, 2007. The information related to the representation of Ms. Schwartz by Respondent beginning in 1996, and specifically dealing with certain matters which occurred post Decree.

During July 2007, Respondent was served with a formal complaint, supported by affidavit from Barbara Schwartz. A response was filed. The Respondent, through counsel, and the Executive Director negotiated a discipline by consent proposal, which was submitted to this Panel.

During May 1996, Barbara Schwartz hired Charles M. Mooney, Jr., an attorney practicing primarily in Jonesboro, Arkansas, to represent her in a divorce proceeding. The Divorce Decree was entered on June 13, 2000.

Ms. Schwartz' ex-husband owed her back support, which he paid in the amount of $2400 during the last court appearance before entry of the Decree of Divorce. Ms. Schwartz signed over the back support check to Mr. Mooney for any fees that were due. At that time, it was determined that there would be funds left over and Ms. Schwartz understood that the funds would be set up in an escrow account for any further representation that she might need.

During the beginning of the divorce proceeding, Ms. Schwartz was sent activity

statements from the Mooney Law Firm and then they became balance statements, with no breakdown of activity, including payment activity. Over the years, Ms. Schwartz requested on numerous occasions for the break down on the billings and for return of the funds paid into the escrow account. She did not receive funds, nor was there ever a finding that Mr. Mooney owed any funds to her.

In June 2003, Ms. Schwartz was informed that her ex-husband was retiring. She was required to send the Decree of Divorce to Defense Finance and Accounting Service (DFAS) for her portion of the retirement. She completed the paperwork and mailed it to DFAS. After returning the forms, she was informed by DFAS that the Decree of Divorce was not sufficient and that there would have to be a clarification to it. Since the military's retirement is calculated by years in service and how much the service member was making at the time of divorce, there had to be some clarification made to the Decree of Divorce. After being advised of this fact, Ms Schwartz contacted Mr. Mooney to inquire whether he could assist her with this issue. Ms. Schwartz' recollection was that Mr. Mooney returned the call and advised that he would represent her. Based on this understanding, Ms. Schwartz faxed 12 pages of documents to Mr. Mooney on August 18, 2003. The documents were those that she had received from DFAS. She spoke with Mr. Mooney a couple of weeks later concerning the figures required by DFAS. On September 3, 2003, Ms. Schwartz faxed Mr. Mooney the configurations and wording that she had developed from her understanding of the DFAS documents. Ms. Schwartz asked Mr. Mooney to contact her after receiving the fax. The fax was received and Mr. Mooney advised that he would call after reviewing the information.

Ms. Schwartz reported that she called Mr. Mooney several times after this and left

messages for him to call her. He did not do so for quite a while. When he finally contacted Ms. Schwartz, he advised that she needed to give him a couple more weeks and he would address the issue. Ms. Schwartz made several calls from the months of August to November 2003 with no success in communicating with Mr. Mooney. She did hear from his secretary in December 2003. The secretary wanted the ex-husband's address. At that time, the secretary advised that Mr. Mooney would call Ms. Schwartz the next day but she never heard from him.

During January 2004, Ms. Schwartz called Mr. Mooney and left a message for him to call. She never heard back from him. She sent a certified letter requesting some response and received no reply to that either. With no response or communication from Mr. Mooney, Ms. Schwartz ultimately hired other counsel to complete the legal matter for her.

Mr. Mooney did not believe that he ever undertook to represent Ms. Schwartz in her post decree retirement matter. He thought of her as a former client not a present client. In the interest of fairness with Ms. Schwartz, Mr. Mooney agreed to return to her $817.85. This amount was the amount last showing on any statement that Ms. Schwartz received from Mr. Mooney. There is no argument that Mr. Mooney provided services after the date of that statement, however, he has agreed to deliver those funds to her as a part of the conclusion of this disciplinary matter.

Upon consideration of the formal complaint and attached exhibit materials, the consent proposal, 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 Mr. Mooney's conduct violated Model Rule 1.3 when he failed to take action on Ms. Schwartz' behalf after being contacted by her in 2003 and assuring her he would do so. Model Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in

representing a client.

2. That Mr. Mooney's conduct violated Model Rule 1.4(a) when he failed to return telephone calls left for him by Ms. Schwartz concerning the issues with her portion of her ex-husband's military retirement. 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.

3. That Mr. Mooney's conduct violated Model Rule 1.4(b) when he failed to advise Ms. Schwartz for several months that he was not going to be able to help her with the assistance she needed in connection with her ex-husband's military retirement, and thereby caused a delay in her seeking other counsel to assist her.

4. That Mr. Mooney's conduct violated Model Rule 1.15(b) when he failed to promptly provide Ms. Schwartz with an accounting of the funds held in escrow after being requested to do so by her for many months. Model Rule 1.15(b) requires, in pertinent part, that upon receiving funds or other property in which a client or third person has an interest, shall upon request by the client or third person, promptly render a full accounting regarding such property.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel B, that CHARLES M. MOONEY, JR., Arkansas Bar ID# 83131, be, and hereby is, CAUTIONED for his conduct in this matter. In addition, pursuant to Section 18.A. of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law (2002), Mr. Mooney is assessed the cost of this proceeding in the amount of $100. Further, Mr. Mooney is to pay a refund of disputed fee to Ms.

Schwartz in the amount of $817.85. The costs and refund assessed herein, **totaling $917.95**, 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: Valerie L Kelly
Valerie Kelly, Chair, Panel B

Date: 6/20/08

(13.M, Rev.1-1-02)