

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL B

FILED

IN RE: FRANCES M. FINLEY, Respondent
Arkansas Bar ID#87059
CPC Docket No. 2009-120

DEC 11 2009

**LESLIE W. STEEN
CLERK**

CONSENT FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee in the Orders of the Arkansas Supreme Court denying the Motion for Rule on the Clerk filed in the matter of *Ben Sisler v. Chastine Bramlett, et al.*, 09-781. The information related to the representation of Ben Sisler by Respondent in 2009.

On October 23, 2009, Respondent was served with a formal complaint, supported by information from Supreme Court file no. 09-781. A response was filed. The Respondent and the Executive Director negotiated a discipline by consent proposal, which was submitted to this Panel.

On March 11, 2009, an Order was entered in Van Buren County Circuit Court which was adverse to Ben Sisler, who was represented by other counsel at the time. On April 9, 2009, Ms. Finley filed a timely Notice of Appeal.

Ms. Finley tendered the record on appeal to the Clerk of the Arkansas Supreme Court on July 9, 2009, as reflected on the Clerk's intake sheet. This was ninety-one (91) days following the filing of the Notice of Appeal. As such, the record was not timely filed. Ms. Finley was notified of this fact on July 9, 2009, by Renee Herndon, Deputy Clerk. On July 13, 2009, Ms. Finley filed a Motion for Rule on the Clerk. In the Motion, Ms. Finley explained that she miscounted the date for filing the record on appeal twice. She also explained the health issues she was facing at the time the record was to be filed in a timely manner.

On July 22, 2009, opposing counsel, John C. Aldworth, filed an Objection to Motion for Rule

on the Clerk. The Court considered the Motion and issued a Per Curiam denying it on September 10, 2009. The Court set out that they could not conclude that there existed the kind of “unavoidable casualty” that would warrant granting the motion for rule on the clerk.

The result of the Court’s ruling is that Ms. Finley’s client, Ben Sisler, is without the opportunity for appellate review of the Circuit Court’s Order to which he took exception. Ms. Finley has refunded to the family of Ben Sisler \$1500 of the \$2000 paid to her to handle the appeal process.

Upon consideration of the formal complaint and attached exhibit materials, the consent proposal, and 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 Ms. Finley’s conduct violated Rule 1.1, when she was not thorough enough in her representation of Ben Sisler to be certain that she filed the record on appeal in a timely fashion. 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. Finley’s conduct violated Rule 1.2(a) because in spite of the fact that her client wished to pursue an appeal of the lower court’s decision out of Van Buren County Circuit Court, she failed to comply with all the procedural rules to do so, in that she failed to calculate correctly the time for filing the record on appeal, subsequently failed to file the record in a timely manner, and therefore denied her client the opportunity to an appeal of the lower court’s decision to which he took exception. Rule 1.2(a) requires that subject to paragraphs (c) and (d), a lawyer shall abide by a client’s decisions concerning the objectives of representation, and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued.

3. That Ms. Finley’s conduct violated Rule 1.3, when she failed to file the record on appeal for Mr. Sisler within ninety (90) days from the date of the filing of the Notice of Appeal in the underlying matter. Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

4. That Ms. Finley's conduct violated Rule 8.4(d) because her failure to file the record on appeal for Mr. Sisler within ninety (90) days of the filing of the Notice of Appeal resulted in the record on appeal not being timely filed and further resulted in her client being denied the opportunity to appellate review of the Van Buren County Circuit Court's decision adverse to him. 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 FRANCES M. FINLEY, Arkansas Bar ID#87059, be, and hereby is, CAUTIONED for her conduct in this matter. Ms. Finley is also assessed the costs of this proceeding in the amount of \$100 pursuant to Section 18.A. of the Procedures. The costs 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 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 L. Kelly, Chair, Panel B

Date: 12/11/09

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