

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

PANEL B

IN RE: RICHARD ATKINSON, Respondent
Arkansas Bar ID#88066
CPC Docket No. 2005-123

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 Timothy Ausbrooks in an Affidavit dated September 16, 2005. The information related to the representation of Mr. Ausbrooks by Respondent from November 2003 until December 2004.

On October 6, 2005, Respondent was served with a formal complaint, supported by affidavit from Timothy Mark Ausbrooks. A response was filed. The Respondent and the Executive Director negotiated a discipline by consent proposal, which was submitted to this Panel.

The information before the Committee reflected that during February 2003, Mr. Ausbrooks moved into a new home. Within a month of moving in, he began to have problems with the home. After checking with other professionals about the home, Mr. Ausbrooks contacted Richard W. Atkinson, an attorney then practicing law in Conway, Arkansas.

Mr. Ausbrooks' first consultation with Mr. Atkinson was on October 3, 2003. Mr. Atkinson reviewed all the documents and pictures then contacted Mr. Ausbrooks to advise that he believed he had a claim worth pursuing. As a result, Mr. Ausbrooks hired Mr. Atkinson on November 24, 2003, to pursue the action on his behalf. Mr. Ausbrooks paid Mr. Atkinson a total of \$1335 on the day he hired him.

Mr. Ausbrooks called Mr. Atkinson periodically after paying him to check on the status of the legal matter. Mr. Ausbrooks reported that he also dropped by Mr. Atkinson's office from time to time. E-mails were sent between Mr. Atkinson and Mr. Ausbrooks about the matter as well. Mr. Atkinson advised Mr. Ausbrooks on more than one occasion that they were just waiting on a trial date. On March 30, 2004, Mr. Ausbrooks received an e-mail from Mr. Atkinson. In the e-mail, Mr. Atkinson apologized for the delay and stated that the

case had not been set by the Court yet. Mr. Atkinson went on to state that he believed the date for the trial would be sometime in July or August.

Mr. Ausbrooks heard very little from Mr. Atkinson after that date. In December 2004, Mr. Ausbrooks received a letter from Mr. Atkinson. In the letter, Mr. Atkinson advised Mr. Ausbrooks that he was closing his private law practice. Mr. Ausbrooks was also informed that although Mr. Atkinson had prepared a complaint for Mr. Ausbrooks, it had never been forwarded to the Courthouse. The lawsuit was never filed. Mr. Atkinson also returned all the fees and costs paid with the letter advising Mr. Ausbrooks that no lawsuit had been filed on his behalf.

In mitigation, Mr. Atkinson explained to the Committee that although the information given to Mr. Ausbrooks was false, it was not an intentional act on his part to provide false information. He explained that he truly believed that the office staff had filed the complaint he had prepared. Mr. Atkinson admitted that he did not confirm that his office staff had taken the action of filing the complaint. He also offered that Mr. Ausbrooks was within his time to file the action when it was discovered that Mr. Atkinson had not actually filed the lawsuit.

Upon consideration of the formal complaint and attached exhibit materials, the response, 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. Atkinson's conduct violated Model Rule 1.3 when he failed to take diligent and prompt action after being hired by Mr. Ausbrooks and paid the full amount of the fee he quoted to being the representation of Mr. Ausbrooks with regard to the issues he was having with the home he purchased in or about February 2003 and when he failed to file a lawsuit on behalf of Mr. Ausbrooks after being hired to do so. Model Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.
2. That Mr. Atkinson's conduct violated Model Rule 1.4(a) when he failed to keep Mr. Ausbrooks aware of the efforts, if any, he was undertaking on his behalf after he was hired and paid in full

to assist him with his legal matter and when he failed to accurately and honestly respond to Mr. Ausbrooks' requests for information related to his legal matter following receipt of the fee payment from him. 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. Atkinson's conduct violated Model Rule 8.4(c) when he falsely advised Mr. Ausbrooks that he was waiting on a trial date in Mr. Ausbrooks' legal matter despite the fact that he had filed no lawsuit on Mr. Ausbrooks' behalf. Model Rule 8.4(c) requires that a lawyer not engage in conduct involving dishonesty, deceit, fraud or misrepresentation.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel B, that RICHARD W. ATKINSON, Arkansas Bar ID#88066, be, and hereby is, REPRIMANDED for his conduct in this matter. Further, pursuant to Section 18.A. of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law, Mr. Atkinson is assessed the costs of this proceeding in the amount of \$50. 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: _____

J. Michael Cogbill, Chair, Panel B

Date: _____

