

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL B

IN RE: CHARLES T. MULVEY, Respondent
Arkansas Bar ID#92172
CPC Docket No. 2009-103

FILED

DEC 28 2010

**LESLIE W. STEEN
CLERK**

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information coming to the attention of the Committee in an Order and Opinion of Honorable Robin L. Mays in the matter of Cook v. Mulvey, Franklin County Circuit Court, CV2007-146. The information related to certain misconduct of Charles T. Mulvey, an attorney formerly practicing in Fort Smith, Arkansas, now residing in the Dallas, Texas, area.

On September 30, 2009, Respondent was served with a formal complaint, supported by information from the above-mentioned Franklin County Circuit Court action. Mr. Mulvey filed a Response to the formal disciplinary complaint and the matter proceeded to ballot vote before Panel A of the Committee. After the ballot vote decision, Mr. Mulvey requested a public hearing before Panel B. The hearing panel on December 10, 2010, consisted of Barry Deacon, Panel B Vice-Chair and Acting Hearing Chair, Valerie Kelly, Sylvia Orton, James Dunham, Henry Hodges, Carolyn Morris, and Scott Stafford from Panel C, sitting in place of Panel B Chair Steve Crane who was absent.

The information before the hearing Panel shows that on November 2, 2007, Craig Cook, an attorney in Ozark, Arkansas, filed a lawsuit against Charles Mulvey regarding the dissolution of Mr. Mulvey's association with Mr. Cook's law firm, an association that began in mid-2006

and concluded in October 2007. The original complaint by Mr. Cook sought an injunction against Mr. Mulvey and an accounting of legal fees from various cases.

Judge Mays' letter opinion states both Mr. Cook and Mr. Mulvey left other law firms and entered into an agreement whereby Mr. Mulvey, as an independent contractor attorney, would handle all social security and workers' compensation claims within Mr. Cook's new law firm. The agreement, which was not signed, set out that Mr. Mulvey would begin work on June 8, 2006. Both Mr. Cook and Mr. Mulvey agreed that Mr. Mulvey left the law firm in early October 2007.

In the proceeding before Judge Mays, an Agreed Order was read into the record and then filed with the Clerk on January 17, 2008, by which Mr. Cook and Mr. Mulvey agreed to a division of the firm's files on pending social security and workers' compensation claims. The Order also reflected how all fees would be split regarding those files. The files were listed in Exhibits to the Agreed Order.

Based on information which Mr. Cook began to receive shortly after the Agreed Order was filed of record, he caused a motion for contempt to be filed. In seeking a contempt finding, Mr. Cook explained that former employees of Mr. Mulvey had reported to Mr. Cook that Mr. Mulvey was not accurately and honestly dividing the attorney's fees with Cook. In addition, there was an allegation that Mr. Mulvey engaged in fraudulent activity by removing approximately 200 files from Mr. Cook's law firm prior to Mr. Mulvey's departure in October 2007. At hearings on April 14 and August 4, 2008, Judge Mays heard the testimony of witnesses, including Mr. Mulvey, two former Mulvey employees, Mary (Angie) Barnett and Wendy Corbin, along with the testimony of Jacqueline Horn, an ex-employee and ex-girlfriend of

Mulvey. Following the continuance of the hearing, Mr. Mulvey filed a Petition for Contempt Citation and Sanctions against Mr. Cook. Mr. Cook also filed an Amended Complaint for Contempt and a Second Amended Complaint for Contempt for Fraud and/ or deception on June 5, 2008.

On her letter opinion dated December 1, 2008, Judge Mays specifically set out, that she did not find Mr. Mulvey credible. She found also that most of the witnesses who worked for Mr. Mulvey or with him had credibility problems. Judge Mays explained that Mr. Mulvey's attempt to blame another employee, who had nothing to gain since Mr. Mulvey was the person who retained the funds, rendered Mr. Mulvey's testimony even more untrustworthy. Judge Mays also made note of the fact that many checks at issue were deposited into Mr. Mulvey's personal account, not his business account, providing more evidence that he was attempting to hide the fees from Mr. Cook. Some of the checks were deposited into Mr. Mulvey's personal account before he left Mr. Cook's law firm.

With regard to the first set of claims made by Mr. Cook, Judge Mays stated that Cook's allegations were that Mr. Mulvey made copies of two of the fee checks Mulvey actually received, the check copies were then altered by a "cut and pasted" process to show lesser amounts than the true amounts of the checks. Mulvey then mailed to Mr. Cook less money than Mr. Cook was due, based on the altered amounts shown on the check copies. After subpoenas were issued for Mr. Mulvey's known checking accounts, both business and personal, the deposit documentation of these two checks, for the Henneck and Price cases, could not be located. Without stating the name of any specific person she found to have altered the check copies that Mulvey provided to Cook, Judge Mays found the alterations occurred and that Cook had proved by clear and

convincing evidence that Mulvey had defrauded Cook regarding the payment of owed attorney's fees. She awarded Cook judgment for \$8,623.50 against Mulvey.

The first disputed fee claim dealt with client Cynthia Henneck. According to the Notice of Award of Social Security, the award of attorney's fees for Ms. Henneck was \$1,888.50, less \$77.00, or \$1,811.50. The copy of the Social Security check presented to Mr. Cook by Mr. Mulvey by cover letter dated December 20, 2007, was in the amount of \$673.30, represented by Mulvey to be Cook's 50% of the actual fee received. The altered check copy presented to Mr. Cook showed \$1,138.20 less ($\$1,811.50 - \$673.30 = \$1,138.20$) than the actual amount of the attorney's fee award by Social Security to Mulvey.

The second disputed fee claim involved client Randy Price, who testified in the hearing before Judge Mays. The attorney's fee awarded in Mr. Price's Social Security matter was \$5,223.00. The copy of the check for attorney's fees that Mr. Mulvey presented to Mr. Cook in December 2007, was \$2,762.00. The underpayment to Cook on Price was \$1,230.50, one-half of the \$2,461.00 difference between the actual fee award of \$5,223.00 to Mulvey less the \$2,762.00 Mulvey reported to Cook. Mr. Mulvey's testimony to Judge Mays that attorney's fees were not always paid at the same time and that he only received partial payment was found to not be credible by her.

The trial judge made findings regarding fees involving clients Soto, VonTersch, Long, See, Payton, Gates, and Rhoades, but the hearing panel did not find and vote Rule violations related to those findings and counts of the Complaint.

There were four other claims made by Mr. Cook which were not found to be substantiated by Judge Mays. With regard to the various Motions for Contempt filed in the

matter, Judge Mays made no order containing a contempt finding.

Judge Mays specifically found that Mr. Mulvey produced altered copies of the fee checks on Cynthia Henneck and Randy Price in an attempt to defraud Mr. Cook of attorney's fees to which he was entitled. Because of these two checks and the numerous checks withheld from Mr. Cook by Mr. Mulvey, Judge Mays found that Mr. Cook had proven by clear and convincing evidence that Mr. Mulvey had defrauded Mr. Cook regarding the payment of attorney's fees owed to Cook.

After entry of the Court's Order, and after the time had expired for filing a Notice of Appeal, Mr. Cook began contacting Mr. Mulvey's counsel about Mr. Mulvey's compliance, or lack thereof, to the requirements of Judge Mays' Order. Mr. Mulvey continued to ignore his court-ordered obligations. Mr. Cook, through counsel, then filed a Complaint for Contempt on July 29, 2009. Mr. Cook alleged that in May 2009 Mr. Mulvey sent him a check for \$5,551.24 that was returned by Mulvey's bank unpaid, for insufficient funds.

In his Response to the formal disciplinary Complaint, Mr. Mulvey stated that neither he nor Mr. Cook could trust each other and that the break-up of their agreement was less than amicable. He asserted that Mr. Cook received all money to which Cook was entitled, other than one payment, and that Mulvey was the one cheated out of much. He also stated that the situation was not based on fact. Mulvey blamed the situation on ex-employees, his ex-wife, his stepdaughter, and an ex-girlfriend.

Mr. Mulvey denied all the allegations made in the formal Complaint with regard to violations of Rule 8.4(c), with the exception of a few he admitted in part and denied in part. He offered that all of his testimony to Judge Mays was true, complete, and correct. Mr. Mulvey

stated that he had a good faith belief in many instances that Mr. Cook was not entitled to any of the fees in certain client matters.

With regard to the allegations of Rule 8.4(d) violations, Mr. Mulvey denied that a civil action would have been necessary to compensate Mr. Cook for his interest in an attorney fee for a client Brian See. Mr. Mulvey denied that the appointment of a Special Judge was necessitated by his conduct, but rather by the recusal of the presiding judge in Franklin County before whom Mr. Cook regularly appears. Mr. Mulvey did admit that due to various circumstances - personal, professional, and financial - he had been unable to fully comply with the continuing nature of Judge Mays' January 13, 2009, Order.

At the hearing, Craig Cook and Charles Mulvey testified. Among other matters, Mr. Cook identified a letter dated June 1, 2007, he had written and submitted to the Committee in support of Mr. Mulvey in a prior attorney discipline case involving Mr. Mulvey. Mr. Cook also stated that the \$5,551.24 check #1037 dated in May 2009 from Mulvey to Cook and dishonored for insufficient funds by Mulvey's bank has never been made good by Mr. Mulvey.

Mr. Mulvey testified that he altered no checks and knew nothing about any such alterations, he owed Cook a fee on one case (Soto) that was not originally paid, and that he had an idea who at Mulvey's law office may have made the two altered check copies in late December 2007 and why she did it. He stated he had never found any evidence that he had actually received the Henneck and Price original fee checks. He stated he had not sought criminal prosecution of any person for alleged theft of funds from his law office. He stated he had not attempted, since Cook sued him in late 2007, to obtain copies of the Henneck and Price fee checks from the Social Security Administration. He testified he had lived in Texas since the fall

of 2009.

Upon consideration of the formal complaint and attached exhibit materials, the response to it, and other hearing matters before it, and the Arkansas Rules of Professional Conduct, Panel B of the Arkansas Supreme Court Committee on Professional Conduct finds:

1. By a unanimous panel vote that the charge of violation of Rule 8.4(c) set out in para. A.1 of the Complaint is not proven.
2. By a unanimous panel vote that the charge of violation of Rule 8.4(c) set out in para. A.2 of the Complaint is not proven.
3. By a unanimous panel vote that the charge of violation of Rule 8.4(c) set out in para. A.3 of the Complaint, that Mr. Mulvey altered the Social Security attorney's fee check of Cynthia Henneck by changing the amount of the check from \$1,811.50 to \$673.30, is proven.
4. By a unanimous panel vote that the charge of violation of Rule 8.4(c) set out in para. A.4 of the Complaint, that Mr. Mulvey presented an altered Social Security attorney's fee check with regard to Cynthia Henneck's claim to Mr. Cook as true and accurate, is proven.
5. By a unanimous panel vote that the charge of violation of Rule 8.4(c) set out in para. A.5 of the Complaint, that Mr. Mulvey was dishonest with Mr. Cook when he told Cook the amount of attorney's fee in the Cynthia Henneck Social Security matter was \$673.30, when it was really \$1,811.50, is proven.
6. By a unanimous panel vote that the charge of violation of Rule 8.4(c) set out in para. A.6 of the Complaint, that Mr. Mulvey was not honest when he testified to Judge Mays that he only received partial payment of the Randy Price attorney's fee, is proven.
7. By a unanimous panel vote that the charge of violation of Rule 8.4(c) set out in para.

A.7 of the Complaint, that Mr. Mulvey altered the Social Security attorney's fee check of Randy Price by changing the amount of the check from \$5,223.00 to \$2,762.00, is proven.

8. By a unanimous panel vote that the charge of violation of Rule 8.4(c) set out in para. A.8 of the Complaint, that Mr. Mulvey presented an altered Social Security attorney's fee check with regard to Randy Price's claim to Mr. Cook as true and accurate, is proven.

9. By a unanimous panel vote that the charge of violation of Rule 8.4(c) set out in para. A.9 of the Complaint, that Mr. Mulvey was dishonest with Mr. Cook when he told him the amount of attorney's fee in the Randy Price Social Security matter was \$2,762.00 when it was really \$5,223.00, is proven.

10. By a unanimous panel vote that the charge of violation of Rule 8.4(c) set out in para. A.10 of the Complaint is not proven.

11. By a unanimous panel vote that the charge of violation of Rule 8.4(c) set out in para. A.11 of the Complaint is not proven.

12. By a unanimous panel vote that the charge of violation of Rule 8.4(c) set out in para. A.12 of the Complaint is not proven.

13. By a unanimous panel vote that the charge of violation of Rule 8.4(c) set out in para. A.13 of the Complaint is not proven.

14. By a unanimous panel vote that the charge of violation of Rule 8.4(c) set out in para. A.14 of the Complaint is not proven.

15. By a unanimous panel vote that the charge of violation of Rule 8.4(c) set out in para. A.15 of the Complaint is not proven.

16. By a unanimous panel vote that the charge of violation of Rule 8.4(c) set out in para.

A.16 of the Complaint is not proven.

17. By a unanimous panel vote that the charge of violation of Rule 8.4(c) set out in para.

A.17 of the Complaint is not proven.

18. By a unanimous panel vote that the charge of violation of Rule 8.4(c) set out in para.

A.18 of the Complaint is not proven.

19. By a unanimous panel vote that the charge of violation of Rule 8.4(d) set out in para.

B.1 of the Complaint is not proven.

20. By a unanimous panel vote that the charge of violation of Rule 8.4(d) set out in para.

B.2 of the Complaint is not proven.

21. By a unanimous panel vote that the charge of violation of Rule 8.4(d) set out in para.

B.3 of the Complaint is not proven.

WHEREFORE, it is the unanimous decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel B, that the law license of **CHARLES T. MULVEY, JR., Arkansas Bar ID# 92172**, be, and hereby is, **SUSPENDED FOR A PERIOD OF TWELVE (12) MONTHS** for his conduct in this matter. The suspension shall become effective on the date this Findings and Order is filed of record with the Clerk of the Arkansas Supreme Court. Further, pursuant to Section 18.A. of the Procedures, Mr. Mulvey is assessed the costs of this proceeding in the amount of \$256.48, which includes a \$125.00 court reporter's appearance fee and \$131.48 for the witness fee (\$25.00) and mileage (\$106.48) of OPC witness Craig Cook from Ozark, Arkansas. 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: Barry Deacon
Barry Deacon, Acting Hearing Chair, Panel B

Date: Dec. 28, 2010