

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

PANEL A

IN RE: GERALD W. CARLYLE

ARKANSAS BAR ID #72019

CPC DOCKET NO. 2001-117

FINDINGS AND ORDER

The formal charges of misconduct upon which this Order is premised arose from the Complaint of Glenn Miller. Gerald W. Carlyle, an attorney practicing in Newport, Jackson County, Arkansas, was retained on November 28, 2000, to represent Mr. Miller in a civil lawsuit against Mr. Miller's neighbors. After agreeing to represent Mr. Miller, Mr. Carlyle quoted him a fee of \$650. The \$650 was to be for attorney's fees and for the filing and service fees related to the lawsuit which Mr. Miller wished to pursue. Mr. Miller paid Mr. Carlyle \$500 on November 28, 2000 and the remaining \$150 on December 5, 2000.

Mr. Miller allowed approximately one month to elapse before he called Mr. Carlyle to check on the status of any efforts on his behalf. Mr. Miller was not allowed to speak with Mr. Carlyle but did speak with his secretary, Ronda. Ronda advised Mr. Miller that there was a scheduled court date of March 21, 2001, but that it had to be canceled because of Mr. Carlyle's scheduled back surgery. On May 11, 2001, Mr. Miller personally went to Mr. Carlyle's office. Mr. Carlyle would not visit with Mr. Miller when he arrived at the office but advised Mr. Miller that he would do so at 3:00 p.m. Mr. Miller left the office and returned at 2:30. When he returned, Mr. Miller was informed by Ronda that Mr. Carlyle had left the office and would not be returning that day. In addition, Ronda advised Mr. Miller that Mr. Carlyle had no intention of seeing him or anyone else.

It was on this date in Mr. Carlyle's office that Mr. Miller learned that there never had been a court date set on his behalf because a lawsuit had not even been filed. When Mr. Miller inquired of Ronda why she had lied to him. She responded that Mr. Carlyle told her to do so. Mr. Miller returned home and called District Judge Winningham. After Mr. Miller explained the situation to Judge Winningham, he was informed that he could file a small claims action against Mr. Carlyle. Mr. Miller did so on May 14, 2001. The first court date was canceled based on a request by Mr. Carlyle. Mr. Miller requested another date and was granted one.

On July 20, 2001, when Mr. Miller arrived at the courthouse, Mr. Carlyle met him outside and offered to pay Mr. Miller \$650 plus \$50 for court and service costs if Mr. Miller would drop the claim against him. Mr. Carlyle advised Mr. Miller that he would pay him on July 24, 2001. Mr. Miller refused to leave the courtroom although Mr. Carlyle asked him to do so on more than one occasion. When the case was called, Mr. Carlyle advised the Judge that an arrangement had been reached and that the matter had been settled. Mr. Miller then went to Mr. Carlyle's office on July 24, 2001, to pick up the money. No one was at the office when Mr. Miller and his wife arrived. There was a note attached to the door with a statement to Mr. Miller advising that the check had been mailed that morning.

Mr. Miller left Mr. Carlyle's office and went to the municipal building and showed the note to the City Clerk. Then he called Judge Winningham. Judge Winningham suggested that Mr. Miller wait until Wednesday July 26 to see if he received the check. No check was received. When Mr. Miller called to advise Judge Winningham of this fact, the Judge advised Mr. Miller that Mr. Carlyle was to be in court the following morning and for Mr. Miller to come to court and they would all three meet in his chambers before Court began. Mr. Carlyle did not appear for Court the following day.

When Mr. Carlyle did not appear for a subsequent setting in the civil matter that Mr. Miller brought against him, Mr. Miller received a Judgment against Mr. Carlyle in the amount of \$650. Mr. Carlyle took no steps to satisfy the Judgment in a prompt fashion. Mr. Miller even obtained a Writ of Execution. As of the date Mr. Miller executed his Affidavit to the Committee, Mr. Carlyle had not satisfied the Judgment. The Affidavit was executed on November 1, 2001. Mr. Carlyle did finally satisfy the Judgment after being served with the formal disciplinary complaint in this matter. In responding to the formal disciplinary complaint, Mr. Carlyle admitted that the affidavit of Mr. Miller was basically correct. He advised that he has been in a state of depression because of a separation between he and his wife. According to Mr. Carlyle during the last two years, he has lost his life savings, his home and his law office building. But that he has now rented an office space and is attempting to rebuild his practice. As mitigation, Mr. Carlyle offered that Mr. Miller was refunded all his money plus the court costs.

Upon consideration of the formal complaint, the response herein, and the Arkansas Model Rules of Professional Conduct, the Committee on Professional Conduct finds:

1. That Mr. Carlyle's conduct violated Model Rule 1.2(a) since he failed to sue Mr. Miller's neighbors after receiving the required fee to do so. Model Rule 1.2(a) requires, in pertinent part, that a lawyer abide by a client's decisions concerning the objectives of representation.
2. That Mr. Carlyle's conduct violated Model Rule 1.3 when he failed to file a lawsuit on behalf of Mr. Miller against his neighbors. Model Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.
 - That Mr. Carlyle's conduct violated Model Rule 1.4(a) when he failed to advise Mr.

Miller that the actual status of his legal matter was that he had not filed a complaint on Mr. Miller's behalf. 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.

- That Mr. Carlyle's conduct violated Model Rule 8.4(c) when he caused his secretary

to falsely inform Mr. Miller that he had a scheduled court date even though an action had never even been filed on Mr. Miller's behalf; when he caused his secretary to falsely advise Mr. Miller that he had mailed a check to Mr. Miller on July 24, 2001; and, when his statement to the Judge that an arrangement had been made whereby he would return Mr. Miller his funds on July 24, 2001, provided to be false. Model Rule 8.4(c) requires that a lawyer not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

- That Mr. Carlyle's conduct violated Model Rule 8.4(d) when he continued to fail to

satisfy the valid judgment that Mr. Miller held against him until the formal disciplinary complaint in this matter was served upon him. Model Rule 8.4(d) requires that 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, through Panel A, that GERALD W. CARLYLE, Arkansas Bar ID #72019 be, and hereby is, REPRIMANDED for his conduct in this matter.

ARKANSAS SUPREME COURT COMMITTEE

ON PROFESSIONAL CONDUCT

By:

Win Trafford, Chairman, Panel A

Date:
