

**BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL B**

IN RE: **LISA DIANE DAVIS**
Arkansas Bar ID # 2001072
CPC Docket No. 2011-078

FILED

MAR 22 2012

**LESLIE W. STEEN
CLERK**

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based were developed from information provided to the Committee by Gary T. Dalton in June 2010. The information related to the representation of Mr. Dalton in 2008-2011 by Respondent Lisa Diane Davis, an attorney practicing primarily in Piggott, Clay County, Arkansas. In October 2011, Respondent Davis was served with a formal complaint, supported by affidavits from Gary Dalton, Clay County Circuit Clerk Janet L. Kilbreath, King Benson, H. T. Moore, and Floyd Pederson, Jr. The case proceeded to ballot vote before Panel B on February 17, 2012.

In 2003, Gary Dalton (of near Memphis, Tennessee) and his brother B.W. Dalton (of Georgia) acquired a farm in Clay County, Arkansas, of about 117 acres as tenants in common, each owning an undivided one-half interest. Problems arose between the brothers over the lease of the farm, no tenant was secured to farm the land after 2005, and the farm produced no income thereafter. On August 19, 2008, Gary Dalton employed Piggott attorney Lisa D. Davis to file suit for the partition of the farm, and paid her what he understood from her to be a flat fee of \$3,500 for her services plus another \$150.00 for costs of the suit. Dalton never signed any employment agreement of fee agreement and has never seen anything in writing from Davis informing her fee would exceed \$3,500.00, until he unexpectedly received a Statement from Davis around June 1, 2011, for an additional \$8, 793.75 for her services. From

November 2008 through May 2010, Davis or her staff informed Dalton, or led him to understand, that Davis had filed suit for him in November 2008, they were awaiting a court date, and then that they were awaiting a mediation date for the case. Dalton was not provided with a copy of any suit Davis had allegedly filed for him.

Gary Dalton filed his grievance at the Office of Professional Conduct (OPC) on June 4, 2010. On June 13, 2010, Stark Ligon of OPC contacted Ms. Davis by e-mail, notified her the filing of the Dalton grievance, and asked Davis to contact him. In subsequent e-mails through July 31, 2010, Ligon asked Davis for a copy of the suit she had filed for Dalton. On August 2, 2010, Davis faxed Ligon copies of a Petition for Partition, file stamped August 21, 2008, at 4:13 p.m., as Case No. CV-2008-23 in Clay County Circuit Court, styled "Gary and Helene Dalton v. B. W. Dalton," along with a copy of a purported Answer for B. W. Dalton file stamped September 4, 2010, and showing on its face that the Answer was filed by Paragould attorney King Benson.

On August 14, 2010, Ligon requested the OPC Investigator to obtain directly from the Clay County Circuit Clerk the docket sheet, Complaint, and Answer in No. CV-2008-23, or find out if the case did not exist there. On August 18, 2010, the Investigator obtained from the Court Clerk copies for the docket sheet, Complaint, and Answer for her No. CV-2008-23, showing the actual case filed was styled "Eugene and Terry Slaten v. Mark and Leana Mann," and file stamped April 21, 2008, at 11:31 a.m., being filed approximately four months before Gary Dalton employed Lisa Davis. The Slatens were represented by Lisa Davis. King Benson represented the Manns.

The Clerk also provided OPC with a copy of the docket sheet, Petition for Partition,

and Answer filed in No. CV-2010-48, file stamped July 29, 2010, at 2:21 p.m., in the new partition action styled "Gary & Helene Dalton v. B. W. Dalton," which appears to be the same pleading, except for the case number, as that submitted by Ms. Davis to OPC as allegedly being filed in August 2008 as No. CV-2008-23. In No. CV-2010-48, the Answer for B. W. Dalton was filed by Piggott attorney David Copelin on August 13, 2010. Ligon e-mailed Ms. Davis on August 14, 2010, and she replied on August 17, 2010, stating, "My client decided to non suit the stagnant case, as I was unable to get it transferred. We then refiled, with me paying the costs...." In fact, the "stagnant case," presumably her "Dalton v. Dalton" No. CV-2008-23, was never filed as the Dalton partition case, but was an unrelated case Davis filed, which she passed off on her client Gary Dalton and then on OPC as having been filed, which was a false statement to Dalton and then to OPC.

On August 14, 2010, Ligon contacted King Benson about the "2008 Dalton" case, and sent him copies of the pleadings provided to OPC by Davis. Benson denied ever having a client named B. W. Dalton or ever having filed the alleged Answer for him in the purported "Dalton v. Dalton" No. CV-2008-23.

Ligon explained the situation to Gary Dalton, who then made a decision to continue with Davis as his attorney, having paid her the full fee, in hopes she would get the farm dispute with his brother settled in an early mediation, sale of the farm, or court resolution. Then OPC could do what it determined needed to be done with Davis. By November 30, 2010, a deal by which brother B. W. Dalton would purchase Gary Dalton's interest in the farm had fallen through. Thereafter Davis pursued a setting for the court-ordered mediation of the dispute. The mediation was conducted by June 1, 2011, and was not successful. On June 6,

2011, Davis sent Gary Dalton a Statement for an additional \$8,793.75, supposedly for 70.25 hours of time, at \$175.00 per hour, reduced by his initial \$3,500 payment. Dalton questioned the additional billing, asked for an itemization, and has not paid any of it. Dalton continued to push Davis to get his lawsuit a prompt court date.

By mid-July 2011, Dalton had received, through Davis, an offer from an area buyer for his interest in the farm. Becoming increasingly concerned about Davis and her fee issues, Dalton sought the services of another area attorney. On or about July 12, 2011, Gary Dalton employed H. T. Moore, a Paragould attorney, to replace Lisa Davis and represent Dalton in the partition case. On or about July 22, 2011, Gary Dalton terminated the services of Lisa Davis. Moore took over, arranged for a partition of the farm by exchange of deeds between the Dalton brothers, got the sale of Gary Dalton's now separate land closed on September 8, 2011, and dismissed the Dalton v. Dalton partition suit, No. CV-2010-48. Gary Dalton paid Moore a \$2,500 flat fee for his services to wrap up the matter without having to go to court.

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

A. The conduct of Lisa D. Davis violated Rule 1.2(a) in that it was the decision of her new client Gary Dalton in August 2008, when he employed and paid attorney Lisa Davis, that she would promptly file the necessary suit for partition and work toward a speedy resolution of his dispute with his brother about their farm, rather than delay almost two full years in filing his suit, yet Davis did not actually file such a suit until July 29, 2010, and then apparently only after she had been contacted by the Office of Professional Conduct about Gary

Dalton's new grievance filed against her in the matter. Arkansas Rule 1.2 (a) requires that a lawyer shall abide by a client's decisions concerning the objectives of representation, subject to paragraphs (c) and (d), and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued.

B. The conduct of Lisa D. Davis violated Rule 1.3 in that Lisa Davis was employed and paid in full on August 19, 2008, by Gary Dalton to file a partition lawsuit for him on the Dalton farm, yet she did not file such a suit until July 29, 2010, a two year wait without any justification, conduct by Davis showing her lack of reasonable diligence and promptness in representing her client Gary Dalton. Arkansas Rule 1.3 requires that a lawyer shall act with reasonable diligence and promptness in representing a client.

C. The conduct of Lisa D. Davis violated Rule 1.5(b) in that Lisa Davis had not previously represented Gary Dalton before he employed her on August 19, 2008, for the partition matter, and Davis failed to communicate to Dalton, in writing or orally, the true basis or rate of her fee for the representation, as shown by her additional unitemized billing of \$8,793.75 to Dalton in June 2011. Arkansas Rule 1.5(b) requires that the scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.

D. The conduct of Lisa D. Davis violated Rule 4.1 in that on August 2, 2010, Davis knowingly made a false statement of material fact to a third person, to the Office of

Professional Conduct (OPC), when she faxed to OPC copies of pleadings labeled Clay Circuit Court Case No. CV-2008-23, styled “Gary & Helene Dalton v. B. W. Dalton,” allegedly filed August 21, 2008, when Davis knew these documents falsely represented a case that she had not filed for Gary Dalton and which attorney King Benson had not answered for B. W. Dalton, as Davis had represented in her communication to OPC. Arkansas Rule 4.1(a) requires that in the course of representing a client a lawyer shall not knowingly make a false statement of material fact or law to a third person.

E. The conduct of Lisa D. Davis violated Rule 8.1(a) in that (1) in connection with a lawful demand for information to her from the Office of Professional Conduct (OPC) in connection with a disciplinary matter, on August 2, 2010, Davis knowingly made a false statement of material fact to the Office of Professional Conduct when she faxed to OPC copies of pleadings labeled Clay Circuit Court Case No. CV-2008-23, styled “Gary & Helene Dalton v. B. W. Dalton,” allegedly filed August 21, 2008, when Davis knew these documents falsely represented a case that she had not filed for Gary Dalton and which attorney King Benson had not answered for B. W. Dalton, as Davis represented in her communication to OPC, and (2) in connection with a lawful demand for information to her from the Office of Professional Conduct (OPC) in connection with a disciplinary matter, on June 17, 2010, Davis knowingly made a false statement of material fact to the Office of Professional Conduct in her e-mail to Stark Ligon when she described in detail her efforts “to get a court date for” the “case” she had then going for Gary Dalton, knowing at the time of this communication that Davis had not filed any such suit for Gary Dalton. Arkansas Rule 8.1(a) provides that ... , or a lawyer in connection with a ... or in connection with a disciplinary matter, shall not: (a)

knowingly make a false statement of material fact; or (b) ..., or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6.

F. The conduct of Lisa D. Davis violated Rule 8.4(c) in that (1) on August 2, 2010, Davis knowingly made a false statement of material fact to the Office of Professional Conduct (OPC) when she faxed to OPC copies of pleadings represented by her to be from Clay Circuit Case No. CV-2008-23, styled "Gary & Helene Dalton v. B. W. Dalton," allegedly filed August 21, 2008, when Davis knew these documents falsely represented a case that she had not filed for Gary Dalton and which attorney King Benson had not answered for B. W. Dalton, as Davis had represented in her communication to OPC; (2) on June 17, 2010, Davis knowingly made a false statement of material fact to the Office of Professional Conduct (OPC) in her e-mail to Stark Ligon when she described in detail her efforts "to get a court date for" the "case" she directly inferred she had going for Gary Dalton, knowing at the time of this communication that Davis had not filed any such suit for Gary Dalton; (3) on February 6, 2009, Davis made a false statement of material fact to her client Gary Dalton by e-mail when she informed him she had "requested a court date but have not yet received on[e] yet," clearly referring to a pending lawsuit, but she knew she had not filed any such suit for Dalton at that date; (4) on June 16, 2009, Davis made a false statement of material fact to her client Gary Dalton by e-mail when she informed him "So far the pretrial is set for November 10th,....," clearly referring to a pending lawsuit, but she knew she had not filed any such suit for Dalton at that date; (5) on September 30, 2009, Davis made a false statement of material fact to her client Gary Dalton by e-mail when she informed him "I have not received a definite date for

the pretrial yet. The possible dates are November 2, 6, and 16. The Judge we have drawn is now ordering some cases into mediation,” clearly referring to a pending lawsuit, but she knew she had not filed any such suit for Dalton at that date; and (6) on March 15, 2010, in response to her client Gary Dalton’s e-mail inquiry to her asking for the “status of the BW Dalton Partition lawsuit, ”Davis made a false statement of material fact to Gary Dalton by e-mail when she informed him “I am still waiting on a definite date for mediation,” clearly referring to a pending lawsuit, but she knew she had not filed any such suit for Dalton at that date, each instance being conduct by Davis involving dishonesty, fraud, deceit or misrepresentation.

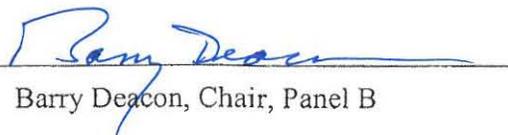
Arkansas Rule 8.4(c) provides that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel B, that the Arkansas law license of **LISA DIANE DAVIS**, Arkansas Bar ID# 2001072, be, and hereby is, **SUSPENDED for THREE (3) MONTHS**, for her conduct in this matter, and she is also fined \$2,500.00, ordered to pay \$3,500.00 restitution for the benefit of Gary T. Dalton, and ordered to pay \$50.00 case costs. In arriving at the sanction, the Panel considered Respondent’s lack of a prior disciplinary record as a factor.

The suspension shall become effective on the date this Findings and Order is filed of record with the Clerk of the Arkansas Supreme Court. The fine, restitution, and costs, totaling \$6,050.00, 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 with 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, Chair, Panel B

Date: Feb. 20, 2012

ARKANSAS SUPREME COURT
COMMITTEE ON PROFESSIONAL CONDUCT

NOTICE OF SUSPENSION OF ATTORNEY'S
PRIVILEGE TO PRACTICE LAW

IN RE: LISA DIANE DAVIS
 ARKANSAS BAR ID # 2001072
 CPC Docket No. 2011-078

Attorney Lisa Diane Davis, an attorney practicing law primarily in Piggott, Arkansas, has been suspended from the practice of law within the jurisdiction of this State.

The Committee on Professional Conduct suspended Arkansas Attorney Lisa Diane Davis' License for a period of three (3) months effective March 22, 2012.

Please be advised that a suspended attorney shall not be reinstated to the practice of law in this State until the Arkansas Supreme Court has received an affirmative vote by a majority of the Committee. If, and at such time as the Committee may reinstate the attorney, you will be provided notice of the reinstatement and the effective date thereof.

If you have any questions in this regard or you have information evincing the attorney's continued practice contrary to the status of his license, please contact this office.

3/22/2012

Date

Stark Ligon

Stark Ligon, Executive Director
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Received

MAR 22 2012

Arkansas Supreme Court
Committee on Professional Conduct