

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

PANEL A

IN RE: Stephanie L. Mays, Respondent
Arkansas Bar ID#97055
CPC Docket No. 2004-049

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Shirley Chandler in an Affidavit dated March 19, 2004. The information related to the representation of John Michael Chandler by Respondent in 2003.

On April 1, 2004, Respondent was served with a formal complaint, supported by affidavits from Shirley Chandler, Janie M. Evins and Linda L. Dyer. Respondent filed a timely response. Following receipt of the response and rebuttal, the matter proceeded to ballot vote pursuant to the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law (2002).

The information before the Committee reflected that on May 28, 2003, Mrs. Chandler hired Stephanie L. Mays, an attorney practicing in Hot Springs, Arkansas. Mrs. Chandler hired Ms. Mays to appeal her son's conviction from Saline County Circuit Court. Mrs. Chandler and her husband elected to hire Ms. Mays after she explained to them that she had previously worked for the appellate courts and that she knew what the Court was looking for and she would be able to present a good appeal for their son, John Michael Chandler. Ms. Mays thereafter met with John Michael Chandler at the Saline County jail. He liked Ms. Mays so the decision was made to hire her to pursue the appeal.

Ms. Mays quoted Mrs. Chandler a fee of \$3500 plus \$500 for the cost of the transcript. Mrs. Chandler signed the fee agreement. On the day she signed the fee agreement, Mrs. Chandler paid Ms. Mays \$1500. After receipt of those funds, Ms. Mays filed a Notice of Appeal for Mr. Chandler. Following the filing of the Notice of Appeal, Linda Dyer, Certified Court Reporter for Judge Grisham Phillips, contacted Ms. Mays and advised her that she would need a deposit in the amount of \$500 to begin the preparation of the trial transcript. Ms.

Mays contacted Mrs. Chandler with this information. Mrs. Chandler traveled to Ms. Mays' office and delivered the \$500 to send to Ms. Dyer. The \$500 was provided on June 18, 2003. Mrs. Chandler was assured by Ms. Mays that the funds would be delivered to Ms. Dyer immediately.

On August 12, 2003, Mrs. Chandler paid Ms. Mays the remaining \$2000 balance on the fee for preparing and handling the appeal. During the meeting that took place at that time, Ms. Mays led Mrs. Chandler to believe that she had paid the \$500 deposit and that they were waiting only on the Court Reporter to provide the transcript. After Mrs. Chandler paid the additional funds to Ms. Mays, she was unable to get in touch with her for weeks. Finally, Mrs. Chandler spoke with Ms. Mays on September 16, 2003. Ms. Mays advised Mrs. Chandler that she expected to have the transcript by the end of the week. Mrs. Chandler was unable to reach Ms. Mays for the remaining part of September. When she finally reached Ms. Mays during the first of October, Ms. Mays advised that she had broken her foot but that everything was under control. This was when contact between Mrs. Chandler and Ms. Mays became very minimal. Ms. Mays quit returning calls and Mrs. Chandler did not know where to locate Ms. Mays.

Janie M. Evins worked in the same building as Ms. Mays and rented an office to Ms. Mays. When Mrs. Chandler contacted Ms. Evins, she learned that Ms. Evins was looking for Ms. Mays also. In an attempt to assist Mrs. Chandler and her son, Ms. Evins contacted Linda Dyer during October 2003. Ms. Dyer informed Ms. Evins that the deposit had never been received from Ms. Mays and that the deadline for lodging the record was November 7, 2003. Ms. Dyer also informed Ms. Evins that she, too, had been attempting to contact Ms. Mays also.

Mrs. Chandler also went to Ms. Evins' office during mid or late October 2003. While Mrs. Chandler was in Ms. Evins' office, Ms. Evins contacted Ms. Mays for her. Ms. Mays advised Ms. Evins that the deposit had been paid despite the fact that Ms. Dyer had not received it. Ms. Mays also advised Ms. Evins that Mrs. Chandler had only paid \$2000. Since she had the receipts demonstrating payment of \$4000, Ms. Evins was able to confront Ms. Mays with this fact as well.

Despite being advised that a Motion to Extend the Time to Lodge the Record on Appeal was necessary, Ms. Mays never took any action in that regard. Ms. Evins prepared a Motion to Extend the Time to File the Record on Appeal for Mr. Chandler. When the transcript was completed, Ms. Dyer informed Ms. Evins. She also informed Ms. Evins that Ms. Mays had sent \$350 to pay on the transcript not the \$500 that Mrs. Chandler had delivered to her. The check Ms. Mays sent to Ms. Dyer was sent by someone with the same last name as Ms. Mays from some type of legal service in Little Rock. Ms. Dyer cashed the check only to have it returned to her insufficient. On December 4, 2003, Ms. Mays was advised that Mrs. Chandler had received the transcript after paying the cost of the same and that she needed to refund the funds Mrs. Chandler had paid her. Ms. Mays agreed to do so the next day but she has not done so to date.

Mrs. Chandler was referred to Darrel Blount, another attorney in Hot Springs. Mr. Blount has been paid a retainer and is pursuing the appeal for John Michael Chandler.

Ms. Mays denied violating any of the Model Rules of Professional Conduct as set forth in the formal disciplinary complaint. She advised that she suffered a severe fracture of her right foot which caused her to be temporarily disabled for a period of four (4) months. She was injured by a person with whom she had a personal relationship. Because of the injury, she asserted that she was forced to close her office in Hot Springs and remove herself to a safe location. Ms. Mays explained that any delays were the result of the injury she sustained. Mrs. Chandler pointed out in her rebuttal that Ms. Mays was paid the \$500 for the deposit in June of 2003 and she was not injured until September 2003. Ms. Mays asserted that any misrepresentations to Mrs. Chandler about the deposit or the transcript were unintentional.

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

1. That Ms. Mays' conduct violated Model Rule 1.1 when she was not thorough enough in her representation of John Michael Chandler to be certain that she tendered the deposit necessary for the Court Reporter Linda Dyer to begin preparation of the record for appeal. Model 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. Mays' conduct violated Model Rule 1.3 when she failed to tender the deposit for the preparation of the transcript to Linda Dyer as Ms. Dyer requested so that she could begin to prepare the transcript for appeal, until after the full deposit had been paid by someone other than Ms. Mays and when she failed to take action to be certain that the transcript in John Michael Chandler's appeal matter would be prepared in a timely manner. Model Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.
3. That Ms. Mays' conduct violated Model Rule 1.4(a) because at no time did she advise Mr. Chandler or his mother, who had her son's permission to discuss his appeal with Ms. Mays, that she had not paid the deposit to the Court Reporter so that she would begin preparation of the transcript and because she failed to truthfully respond to the various requests for information about Mr. Chandler's appeal which were made by his agent, his mother. 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.
4. That Ms. Mays' conduct violated Model Rule 1.4(b) because at no time after she accepted fees and costs from Mrs. Chandler, on her son's behalf, did she explain to her or him that she was suffering from personal issues which might prevent her from adequately and diligently representing Mr. Chandler on appeal. Model Rule 1.4(b) requires that a lawyer explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.
5. That Ms. Mays' conduct violated Model Rule 1.15(b) because after receiving the \$500 from Mrs. Chandler to pay the deposit on the transcript, she failed to deliver those funds to Ms. Dyer, the third person to whom the funds were owed and when she failed to safeguard the funds given to her to pay the deposit on the transcript as evidenced by the fact that the check provided to Ms.

Dyer was returned for insufficient funds. Model Rule 1.15(b) requires, in pertinent part, that upon receiving funds in which a third person has an interest, a lawyer shall promptly notify the third person and except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the third person any funds that the third person is entitled to receive.

6. That Ms. Mays' conduct violated Model Rule 1.16(d) because since her representation of John Michael Chandler has been terminated, she has failed to return the unused portion of the advanced payment of fee made to her by his mother, Shirley Chandler, and because although her representation of John Michael Chandler has been terminated, she has not surrendered the funds which were given to her for costs associated with the appeal to Mrs. Chandler, who remitted the funds to her for that specific purpose. Model Rule 1.16(d) requires that upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned.
7. That Ms. Mays' conduct violated Model Rule 8.4(c) when she was not honest with Mrs. Chandler with regard to her son's appeal when she advised Mrs. Chandler that everything was moving along smoothly when the truth was that she had not contacted the Court Reporter to take care of the deposit required for the preparation and when she falsely advised Mrs. Chandler that she had paid the \$500 deposit to the Court Reporter, Linda Dyer. Model Rule 8.4(c) requires that a lawyer not 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 A, that STEPHANIE L. MAYS, Arkansas Bar ID# 97055, be, and hereby is, REPRIMANDED for her conduct in this matter. Ms. Mays is also assessed the cost of this proceeding in the amount of \$50 pursuant to Section 18.A. of Procedures. Ms. Mays is ordered to pay a fine in

the amount of \$500 pursuant to Section 18.B. of the Procedures. The Committee also orders Ms. Mays to pay restitution to Mrs. Chandler, the complainant herein, in the amount of \$4000. The restitution ordered by the Committee is pursuant to Section 18.C. of the Procedures. The cost, fine, and restitution 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 A

By: _____

Gwendolyn D. Hodge, Chair, Panel A

Date: _____