

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

PANEL B

IN RE: ZIMMERY CRUTCHER, Respondent
 Arkansas Bar ID#74029
 CPC Docket No. 2005-096

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Thermon Lee Beard in an Affidavit dated July 25, 2005 . The information related to the representation of Mr. Beard by Respondent beginning in November 2004.

On or about August 3, 2005, Respondent was served with a formal complaint, supported by affidavits from Thermon Lee Beard, Beau Pederson, Investigator, Office of Professional Conduct, and Leslie W. Steen, Clerk of the Arkansas Supreme Court. Respondent filed a timely response to the formal disciplinary complaint. Thereafter, the matter proceeded to ballot vote pursuant to the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law (Procedures).

The information provided to the Committee reflected that during November 2004, Mr. Beard contacted Zimmery Crutcher, an attorney practicing primarily in Little Rock, Pulaski County, Arkansas. Mr. Beard contacted Mr. Crutcher about a matter involving Mr. Beard's brother and certain real estate that they owned together. Mr. Beard requested that Mr. Crutcher represent him in attempting to set aside a deed which Mr. Beard's brother had convinced him to sign in 2003 before Mr. Beard's brother remarried and moved his wife into the home that Mr. Beard shared with his brother. Mr. Crutcher advised Mr. Beard that he would need a payment of \$750 before he could begin paperwork on Mr. Beard's behalf. Mr. Beard began making payments in November 2004 and completed the payments on February 3, 2005.

At that time, Mr. Crutcher provided Mr. Beard with a copy of a Complaint he had prepared. Mr. Crutcher led Mr. Beard to believe that he was filing the Complaint as soon as he received the final payment. Mr. Crutcher did not do so. Following the final payment, Mr. Crutcher advised Mr. Beard that it might require

more money but he never advised how much nor explained why it would be more than he initially quoted. At the time of the signing of the Affidavit, Mr. Crutcher had not filed the matter on Mr. Beard's behalf nor had he returned any of the advanced payment of costs and fees to Mr. Beard.

The information from Leslie W. Steen reflected that as of July 28, 2005, Mr. Crutcher had not paid his license fee for 2005. As such, Mr. Crutcher's license to practice law in Arkansas had been suspended since March 1, 2005.

Mr. Crutcher denied that he violated Model Rule 1.3 because he did file a Complaint on Mr. Beard's behalf. The documentation attached to the response filed by Mr. Crutcher demonstrates that he filed the Complaint on Mr. Beard's behalf on August 11, 2005, which was a week after he was served with the formal disciplinary complaint herein. Mr. Crutcher also denied that he violated Model Rule 1.4(a) because he had no address or telephone number for Mr. Beard. Mr. Crutcher acknowledged that he had not paid his license fee until August 10, 2005. Mr. Crutcher said that Mr. Beard never approved the Complaint which was provided to him. Mr. Beard denied this fact and stated that he approved it on February 3, 2005, the day that he made the last payment to Mr. Crutcher and was led to believe the Complaint would be filed at that time.

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 B of the Arkansas Supreme Court Committee on Professional Conduct finds:

1. That Mr. Crutcher's conduct violated Model Rule 1.3 when he failed to take diligent and prompt action after being hired by Mr. Beard and paid the full amount of the fee he quoted to begin representation in the matter involving Mr. Beard's brother and the deed which Mr. Beard sought to have set aside. Model Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.
2. That Mr. Crutcher's conduct violated Model Rule 1.4(a) when he failed to keep Mr. Beard aware of the efforts, if any, he was undertaking on his behalf after Mr. Crutcher was hired and paid in full to assist Mr. Beard with his legal matter involving his brother and the real property

which they had purchased together several years previous and when he failed to respond to Mr. Beard's requests for information related to his legal matter following receipt of the final 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. Crutcher's conduct violated Model Rule 1.16(d) because after his license to practice law was suspended on March 2, 2005, for failure to pay his license fee, Mr. Crutcher failed to make Mr. Beard aware of this fact so that he could make a decision on whether to hire other counsel to represent him in the matter and because he did not promptly return to Mr. Beard the advance fee paid to him after Mr. Crutcher's license to practice law was suspended thereby preventing Mr. Crutcher from representing Mr. Beard from March 2, 2005, through the date the formal disciplinary Complaint was mailed for service to Mr. Crutcher. Model Rule 1.16(d) requires, in pertinent part, 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.
4. That Mr. Crutcher's conduct violated Model Rule 3.4(c) because he failed to comply with Rule VII.A., Arkansas Supreme Court Rules Governing Admission to the Bar, which requires all Arkansas licensed attorneys to pay an annual license fee as set by the Court not later than March 1 of each year. Instead, he failed to pay his annual license fee through at least June 29, 2005. Model Rule 3.4(c) requires that a lawyer not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists.
5. That Mr. Crutcher's conduct violated Model Rule 8.4(c) because he falsely advised Mr. Beard that he would be filing an action for Mr. Beard in Pulaski County Circuit Court as soon as he received the final installment of the quoted fee of \$750. In fact, no action was filed by Mr.

Crutcher between February 3, 2005, the date he received the final installment and June 20, 2005.

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 ZIMMERY CRUTCHER, JR., Arkansas Bar ID# 74029, be, and hereby is, REPRIMANDED for his conduct in this matter. Pursuant to Section 18.A of the Procedures, Mr. Crutcher is assessed the costs herein in the amount of \$50. In accordance with Section 18.B of the Procedures, Mr. Crutcher is ordered to pay a fine in the amount of \$1,500. Mr. Crutcher is also ordered to make restitution to Mr. Beard in the amount of \$750, pursuant to Section 18.C of the Procedures. The costs assessed herein and fine and restitution ordered herein, totaling \$2300, 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: _____