

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

PANEL B

IN RE: ZIMMERY CRUTCHER, Respondent
 Arkansas Bar ID#74029
 CPC Docket No. 2005-114

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Crystal Shelton in an Affidavit dated September 1, 2005 . The information related to Ms. Shelton hiring Zimmery Crutcher, Jr, an attorney practicing primarily in Pulaski County, Arkansas, to represent her in a divorce proceeding in April 2005.

On September 9, 2005, Respondent was served with a formal complaint, supported by affidavits from Crystal Yvonne Shelton 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 April 2005, Ms. Shelton contacted Mr. Crutcher about pursuing a divorce action on her behalf. Ms. Shelton met with Mr. Crutcher at his office on April 11, 2005. On that date, Ms. Shelton gave Mr. Crutcher a check for \$400. The check was for Mr. Crutcher's fees and costs for representing Ms. Shelton. The reverse side of the check demonstrates that Mr. Crutcher negotiated the check for cash on the same date that Ms. Shelton paid him.

Mr. Crutcher did not file a Complaint for Divorce on Ms. Shelton's behalf. After Ms. Shelton paid Mr. Crutcher, she did not hear from him again. She called his office many times and left messages, which went unanswered. Ms. Shelton even went to Mr. Crutcher's office personally but was unable to see him.

Ms. Shelton hired other counsel to represent her. She left a letter for Mr. Crutcher on June 27, 2005 explaining that she had left correspondence terminating his representation of her on May 25, 2005. She did not receive a response to either letter. Mr. Crutcher did not refund the advance payment of fee to her nor had he

communicated with her.

The information from Leslie W. Steen reflected that Mr. Crutcher did not pay his license fee for 2005 until August 10, 2005. As such, Mr. Crutcher's license to practice law in Arkansas was suspended from March 1, 2005, until August 10, 2005.

Mr. Crutcher denied that he violated Model Rule 1.2(a) because he asserted that he had spoken with Ms. Shelton by telephone, in person, and drafted documents and letters to her. Mr. Crutcher denied that Ms. Shelton ever sought information regarding her divorce proceeding. Mr. Crutcher advised that services were provided to Ms. Shelton and that the initial payment was not the total fee charged by Respondent. There was no proof that there was any other request for fees. Mr. Crutcher asserted that he earned all the fee paid to him. He admitted that he did not pay his annual fee until August 10, 2005, but stated that he previously mailed the fee to the Clerk before August 10, 2005. Mr. Crutcher admitted that he violated Model Rule 5.5(a).

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 1.2(a) because even though Ms. Shelton hired Mr. Crutcher to pursue a divorce action on her behalf, he took no action to do so prior to his representation being terminated. At the time of hire Mr. Crutcher was unable to abide by Ms. Shelton's objectives because his license to practice law was suspended. Model Rule 1.2(a) requires that a lawyer abide by a client's decisions concerning the objectives of representation, subject to paragraphs (c), (d) and (e), and consult with the client as to the means by which they are to be pursued.
2. That Mr. Crutcher's conduct violated Model Rule 1.3 when he did not advise Ms. Shelton in a prompt matter that he was not going to be able to assist her with pursuit of her divorce action and when he failed to file any pleadings on behalf of Ms. Shelton in pursuit of her divorce from Mr. Shelton. Model Rule 1.3 requires that a lawyer act with reasonable diligence and

promptness in representing a client.

3. That Mr. Crutcher's conduct violated Model Rule 1.4(a) because he failed to advise Ms. Shelton that he was not going to be able to assist her pursuing a divorce action since his license to practice law was suspended at the time he accepted the funds from her for such representation; when he failed to respond to Ms. Shelton's requests for information about her legal matter; and when he failed to keep Ms. Shelton informed of the status of the efforts, if any, he was pursuing on her behalf with regard to her divorce proceeding. 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 Mr. Crutcher's conduct violated Model Rule 1.15(a)(1) because he cashed the check paid to him for his fees and for the cost of filing the divorce action instead of depositing the same in an IOLTA trust account until earned, even though no services had been provided to Ms. Shelton. Model Rule 1.15(a)(1) requires that all lawyers hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property with funds of a client being deposited and maintained in one or more identifiable trust accounts in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person.

5. That Mr. Crutcher's conduct violated Model Rule 1.16(d) because since his representation of Ms. Shelton has been terminated, he has failed to refund to her any of the unearned advance payment of fee and costs. Model Rule 1.16(d) requires, in pertinent part, that upon termination of representation, a lawyer take steps to the extent reasonably practicable to protect a client's interests, such as refunding any advance payment of fee that has not been earned.

6. That Mr. Crutcher's conduct violated Model Rule 3.4(c) because he did not obey the obligation of the Court in Rule VII.A, Arkansas Supreme Court Rules Governing Admission to the Bar, requiring all Arkansas licensed attorneys to pay an annual license fee as set by the Court not later than March 1, 2005. Mr.

Crutcher did not pay his annual license fee until August 10, 2005. Model Rule 3.4(c) requires that a lawyer not knowingly disobey an obligation under the rules of tribunal except for an open refusal based on an assertion that no valid obligation exists.

7. That Mr. Crutcher's conduct violated Model Rule 5.5(a) because he met with and provided advise to Crystal Shelton about a divorce proceeding at a time when his license to practice law was suspended for failure to pay his annual license fee and because he accepted fees for legal services, which had not yet been performed, at a time when his license to practice law was suspended. Model Rule 5.5(a) requires that a lawyer not practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction.

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, SUSPENDED THREE (3) MONTHS for his conduct in this matter. The suspension in this matter shall become effectively immediately upon the filing of this Findings and Order with the Clerk of the Arkansas Supreme Court. 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 \$500. Mr. Crutcher is also ordered to make restitution for Ms. Shelton in the amount of \$400, pursuant to Section 18.C of the Procedures. The costs assessed herein and fine and restitution ordered herein, totaling \$950, 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: _____

