

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL B

IN RE: ZIMMERY CRUTCHER, JR., Respondent
 Arkansas Bar ID#74029
 CPC Docket No. 2004-058

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Alexander Grubbs in an Affidavit dated April 6, 2004. The information related to the requested representation of Mr. Grubbs by Respondent.

On April 16, 2004, Respondent was served with a formal complaint via certified, restricted delivery mailing, supported by the affidavit from Mr. Grubbs. Respondent failed to file a timely response to the complaint, which failure to timely respond, pursuant to Section 9.C(4) of the Procedures, constitutes an admission of the factual allegations of the formal complaint and extinguishes Respondent's right to a public hearing.

The information before the Committee demonstrated that on or about March 20, 2002, Mr. Grubbs hired Zimmery Crutcher, Jr., an attorney practicing primarily in Little Rock, to represent him in a transaction wherein some of his personal automobiles had been sold without his consent. Mr. Grubbs had previously met with Mr. Crutcher in his office in Little Rock during February 2002 to discuss the legal matter. Mr. Crutcher agreed to represent Mr. Grubbs for a fee of \$1500. Mr. Crutcher did not provide Mr. Grubbs with a written fee agreement even though he had never previously represented him previously.

Mr. Grubbs hired Mr. Crutcher after he had terminated the services of another attorney. After paying Mr. Crutcher \$1000 on March 20, 2002, Mr. Grubbs did not receive any additional contact from him. After approximately four (4) months had elapsed, Mr. Grubbs tried to get in touch with Mr. Crutcher so he could pay him the remaining \$500. Mr. Grubbs was unable to contact Mr. Crutcher. Mr. Crutcher failed to make any contact with Mr. Grubbs either.

At the request of Mr. Grubbs, the Office of the Executive Director contacted Mr. Crutcher to notify him of Mr. Grubbs' concerns. A few months later, Mr. Crutcher returned papers to Mr. Grubbs which Mr. Grubbs had provided him. There was no transmittal letter nor was there any refund of the \$1000 fee paid to Mr. Crutcher. Another letter was sent to Mr. Crutcher by the Executive Director concerning the failure to return the unearned portion of the advanced payment of fee to Mr. Grubbs. Mr. Crutcher did not respond to that correspondence.

Upon consideration of the formal complaint and attached exhibit materials, 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 prompt action after being hired by Mr. Grubbs to perform legal services for him with regard to the sale of three personal automobiles. 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 advise Mr. Grubbs of the efforts, if any, he was undertaking on Mr. Grubbs' behalf after he was hired to assist Mr. Grubbs with his legal matter; when he failed to respond to Mr. Grubbs' requests for information related to his legal matter following receipt of the partial fee payment from him; and, when he failed to advise Mr. Grubbs when he apparently decided not to assist him with his legal matter. 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 1.4(b) when at no time after he decided not to pursue legal services for Mr. Grubbs did he advise him of this fact, thereby depriving him of the opportunity to seek other counsel in a timely manner. 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.

4. That Mr. Crutcher's conduct violated Model Rule 1.5(b) when he did not explain the rate or basis of fee to Mr. Grubbs, nor did he place the fee agreement in written form, although he had never previously represented Mr. Grubbs on any matter. Model Rule 1.5(b) requires that when the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.

5. That Mr. Crutcher's conduct violated Model Rule 1.16(d) when, after deciding that he was not going to represent Mr. Grubbs, he took no steps to effect the termination of his representation of him to Mr. Grubbs's knowledge, such as making Mr. Grubbs aware of the decision; when he did not promptly return to Mr. Grubbs the papers and property entrusted to him when he was hired to represent Mr. Grubbs; and when at no time did he return the unused portion of the advanced payment of fee to Mr. Grubbs. 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.

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. Further, pursuant to Section 18.C. of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law (2002), Mr. Crutcher is ordered to make restitution to Mr. Grubbs in the amount of \$1000, the amount paid to Mr. Crutcher by Mr. Grubbs. Mr. Crutcher is also ordered to pay costs in the amount of \$50, pursuant to Section 18.A. of the Procedures. For his failure to respond, the Committee, pursuant to Section 9C.(3) of the Procedures, imposes the separate sanction of a REPRIMAND and a \$1000 fine pursuant to Section 18.B of the Procedures. The fine, restitution and costs assessed herein, totaling \$2050, 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: _____