

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

IN RE: TERRY F. WYNNE, Respondent
Arkansas Bar ID#77148
CPC Docket No. 2012-050

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Terry Wynne, an attorney practicing law in Pine Bluff, Arkansas, in a self-report, February 27, 2012 and a Rule 8.3(a) reporting letter of Carey E. Young, dated February 24, 2012, as well as additional information obtained during the investigation of the matter. The information related to Mr. Wynne's conduct while associated with the Bridges, Young, Matthews & Drake Law Firm in Pine Bluff, Arkansas.

On August 15, 2012, Respondent was served with a formal complaint. Respondent filed a timely response to the formal complaint. Rebuttal was submitted by a member of the Bridges, Young, Matthews & Drake Law Firm but not the firm.

The information before the Panel reflected that :

1. In 1977, Respondent Terry F. Wynne was licensed to practice law in Arkansas, and at some point thereafter, until February 21, 2012, Mr. Wynne was a member of the law firm of Bridges, Young, Matthews & Drake in Pine Bluff, Arkansas.

2. During the summer of 2011, an individual, P.H., whose business had formerly been represented by the law firm, contacted Ted Drake, of the firm, and explained that his son, W.H., was getting a divorce.

3. Mr. Drake recommended that Mr. Wynne represent W.H. in the divorce proceedings.

4. On or about July 1, 2011, W.H. gave a retainer check to Mr. Wynne in the amount of \$2,500. Mr. Wynne did not deliver the check to the firm for deposit in the firm IOLTA account.

5. In August 2011, P.H. contacted Mr. Drake again and advised that another attorney had been retained to represent W.H. in the divorce proceeding. On August 23, 2011, P.H. and W.H. met with Mr. Drake to obtain information about their business for responding to discovery in the divorce matter. During that meeting, P.H. mentioned that a retainer had been given to Mr. Wynne and that when Mr. Wynne was notified that another attorney had been hired, Mr. Wynne advised that he would refund part of the retainer but no refund had been received.

6. Following the meeting with P.H. and W.H., Mr. Drake checked the firm records and discovered no record of a retainer being deposited into the firm's IOLTA account or any other account at the firm. When asked about the retainer check, Mr. Wynne advised he would look into it. At a later date, Mr. Drake again asked Mr. Wynne about the retainer, Mr. Wynne asserted that W.H. still had the retainer check and that Mr. Wynne would give W.H. a bill for the amount due to the firm. On September 27, 2011, a billing statement was issued to W.H. for \$475 which was paid. It is the information and belief of the members of the firm that also on that date, the retainer was refunded to W.H. by Mr. Wynne.

7. Mr. Drake inquired of P.H. and W.H. what exactly had happened. It was reported to Mr. Drake that Mr. Wynne said that Mr. Wynne's wife had cashed or deposited the check. Mr. Wynne's wife died on August 6, 2011.

8. Based upon the information received from P.H., Mr. Drake asked for a copy of the negotiated retainer check. The copy of the check was received on February 13, 2012, and showed that it was payable to Terry Wynne and appeared to have been endorsed by Terry

Wynne. 9. Three (3) days later, Mr. Drake, Joe Strode and Jim Moser, all with the Bridges Law Firm, met with Mr. Wynne to ask him about the negotiated retainer check. At the meeting, Mr. Wynne admitted that he deposited the check into his personal banking account and offered “The check speaks for itself. I did it - I needed the money.” Mr. Wynne was given a list of all files he had opened at the firm since January 1, 2011, and asked if he had done the same thing with regard to any of them. Mr. Wynne denied doing so but when asked again, Mr. Wynne stated that he did not think so but that he would have to look into it.

10. Also on February 16, 2012, L.D. appeared at the firm’s Hot Springs office and stated that she was there to sign some documents for her divorce that Terry Wynne was preparing for her to be signed and filed. L.D. also explained to Tanya Spavins that she (L.D.) had paid Mr. Wynne \$500 for the legal assistance. No records were found to demonstrate that the \$500 was deposited into the firm’s IOLTA account or any other account of the firm. The firm later learned that the total paid to Mr. Wynne was \$320. On February 27, 2012, Mr. Wynne delivered to the firm a check from Jeremy Duncan made payable to Mr. Wynne in the amount of \$248, together with cash in the amount of \$72.

11. On Monday, February 20, 2012, Mr. Drake arrived at the Bridges Law Firm and found three (3) pre-bills regarding files which were to be handled by Terry Wynne. The pre-bill is a preliminary draft of an invoice or billing statement which hasn’t yet been brought to a final bill or mailed to a client. The pre-bills noted on each that credits were given to the clients, presumably for retainers paid by the clients directly to Mr. Wynne who did not turn the retainers over to the firm.

12. Mr. Drake also received a voice mail from Mr. Wynne on that date at 6:48 a.m. Mr.

Wynne's message was: "Ted, this is Terry. It's Monday morning. I am going to be out today. We had my granddaughter's baptism yesterday and all the family is getting together in Little Rock for a while then so I won't be in today but I put three other pre-bills on your chair of ones that I remember that I took money put in my or cashed the checks actually I think. I have asked Kandi to pull additional ones. I don't think there are any others but I have asked her to pull billing history on a couple I just don't have any memory about. I'll update that information as soon as I get it from her. I apologize again. I will live with the firm's decision. I would like to stay with the firm and continue working but I'll leave that in y'all's hands. I can probably be reached by telephone if need, if need me. I will be in the office tomorrow then I will be out the rest of the week and that's all I know to tell you at this point and I apologize again. Thank you." Kandi Lehr is the firm's billing clerk.

13. Also on February 20, 2012, Kristy Lowery, the law firm administrator, found a check in the sum of \$5,500 payable to the Bridges Law Firm from Terry Wynne. There was a post-it note on the check stating "Kristy - Put this in trust under TW - Personal # please. Thanks Terry."

14. In the self-report made on February 27, 2012, Mr. Wynne admitted that he did not account to the firm for funds received in the amount of \$5,500. He also admitted that when inquiry was made of him with regard to another \$2,500 retainer paid directly to him, he denied that he had received it.

15. Following the initial report to the Office of Professional Conduct, the Bridges Law Firm continued with their investigation into the financial records of the firm with regard to files being handled by Mr. Wynne which were opened in 2008 and subsequent.

16. On March 12, 2012, Mr. Wynne delivered a hand-written note to Cary Young explaining that he had reviewed all of his files and that there were five (5) other additional client checks cashed by him and not deposited into the firm IOLTA account or otherwise delivered to the law firm. The total of the five (5) checks is \$2,750. As of July 30, 2012, the firm has not received any payment from Mr. Wynne for any of those five payments.

17. Further investigation into firm records reflected that there were twelve (12) other firm clients who made retainer payments to Terry Wynne that were not deposited into the firm IOLTA account or otherwise delivered to the law firm. The total of those retainer payments is \$16,850. It was later learned that one of those clients paid \$3,000 not the \$4,000 initially believed, making the total of those payments \$15,850. In addition, there were un-reimbursed advances in those specific files totaling \$1,394.85.

18. Finally, the firm was able to identify additional client files in which Terry Wynne worked and authorized advances without statements being issued. The advances totaled \$4,797.14.

19. After the initial report of client funds which Mr. Wynne failed to deliver for deposit into the firm's IOLTA account, the firm sent out billings which resulted in information related to four (4) other clients whose payments were not delivered to the firm. Those payments totaled \$5,500. Of that amount, Mr. Wynne refunded \$400 to one of the clients, leaving a balance of \$5,100 not returned to clients or the firm.

20. A total of approximately \$29,520 has been identified as being paid to Terry Wynne by firm clients, with only \$5,820 having been repaid to the firm by Terry Wynne.

21. Mr. Wynne's practice is now located at the Win Trafford Law Firm, 709 West 6th

Avenue, Pine Bluff, Arkansas 71601, with phone number 870-534-3743.

22. Certain clients of the firm elected to go with Mr. Wynne when his association with the Bridges, Young, Matthews and Drake Law Firm was terminated. The Office sent letters to clients asking whether the client wished to retain our firm or go with Mr. Wynne. Those files of persons who wished to be represented by Mr. Wynne were picked up or delivered to Mr. Wynne.

23. In responding to the formal disciplinary complaint, Mr. Wynne admitted that the allegations in paragraphs numbered 1 through 16 were essentially correct. Mr. Wynne was not sure that the amount of \$29,520 was correct. Mr. Wynne admitted that he violated Rule 8.4(c).

24. Mr. Wynne explained that the reason for his misconduct was that he developed a gambling problem and needed the money. He presented to the Committee a statement from the leader of the Gamblers' Anonymous meetings he attends to demonstrate his attendance since February 2012.

25. Mr. Wynne explained that his emotional state was affected by the terminal illness and death of his wife in 2011. He offered in mitigation that he had no prior disciplinary record, did not believe any client was harmed and that when confronted he admitted the misconduct and self-reported. Mr. Wynne also offered in his sworn response that he was willing to pay restitution to the firm.

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

1. That the conduct of Terry Wynne violated Rule 8.4(c), to wit:

1. On or about firm client, W.H., delivered to Terry Wynne, a check in the

amount of \$2,500 intended to be used as a retainer for firm representation in divorce proceedings and instead of delivering the check or funds to the law firm, Mr. Wynne converted the funds to his personal use by having it payable to Terry Wynne and depositing it into his personal banking account. He did not deliver the funds to the law firm until the law firm and the client had discovered the conversion and determined the funds had not been paid to the law firm and credited to the client's account there.

2. During early 2012, Mr. Wynne received \$320 from firm client, L.D., for legal assistance in her divorce proceeding. Instead of delivering the funds to the law firm, Wynne converted the funds to his personal use. He did not deliver the funds to the law firm until the law firm discovered the conversion and determined the funds had not been paid to the law firm and credited to the client's account there.

3. Mr. Wynne, by his own admission, received a retainer of \$2,500 from firm client, M.H., which he did not deliver for deposit into the firm's IOLTA trust account and did not account to the firm for the funds received.

4. By his own admission, Mr. Wynne received a retainer of \$1,500 from firm client, M.B., which he did not deliver for deposit into the firm's IOLTA trust account and did not account to the firm for the funds received.

5. By his own admission, Mr. Wynne received a retainer of \$1,500 from firm client, A.H., which he did not deliver for deposit into the firm's IOLTA trust account and did not account to the firm for the funds received.

6. When confronted with information about the retainer payment made by firm client, W.H., Mr. Wynne denied he had received it. Mr. Wynne had personally taken those funds

and was aware of having done the same.

7. By his own admission, Mr. Wynne received five (5) other checks from firm clients, totaling \$2,750, which were cashed by him and not deposited into the firm IOLTA account or otherwise delivered to the law firm.

8. The law firm has determined through further investigation that there were twelve (12) other firm clients who made retainer payments to Mr. Wynne that were not deposited into the firm IOLTA account or otherwise delivered to the firm by Mr. Wynne. The total of those retainer payments was at least \$20,950, which Mr. Wynne, without permission or authority took as his own separate property, conduct involving dishonesty, fraud, deceit or misrepresentation by Mr. Wynne.

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 TERRY F. WYNNE, Arkansas Bar ID# 77148, be, and hereby is, SUSPENDED FOR A PERIOD OF ONE YEAR for his conduct in this matter. The Committee specifically considered that Mr. Wynne had no prior public disciplinary history when determining the appropriate sanction to be imposed in this matter. The suspension shall become effective on the date this Findings and Order is filed of record with the Clerk of the Arkansas Supreme Court. In addition, Mr. Wynne is assessed the costs of this proceeding in the amount of \$50. The costs 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 B

By: /s/ Barry Deacon, Chair, Panel B

Date: December 21, 2012

Original filed with the Arkansas Supreme Court
on July 1, 2013.

(11.A, Rev 5-26-11)