

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

**IN RE: Davis Henry Loftin  
ARKANSAS BAR ID No. 79196  
CPC Docket No. 2013-005**

**CONSENT FINDINGS AND ORDER**

Davis Henry Loftin is attorney licensed to practice law in the State of Arkansas in 1979 and assigned Arkansas Bar Number 79196. Mr. Loftin was employed to represent Jonathan and Sarah Demuth in a bankruptcy proceeding in United States Bankruptcy Court for the Eastern District of Arkansas.

During March 2008, Jonathan and Sarah Demuth hired Davis Henry Loftin to represent them in a Chapter 13 bankruptcy proceeding. Mr. Loftin filed the bankruptcy petition on March 28, 2008. On July 16, 2012, Mr. Loftin filed a Notice of Change of Address for the debtors, Jonathan and Sarah Demuth. On August 28, 2012, Mr. Loftin filed a Modified Plan and Amended Schedules for his clients, the Demuths. On September 10, 2012, the Trustee filed an Objection to Confirmation of Modified Plan. A hearing was scheduled to take place on October 2, 2012, with regard to the Objection to the Modification of the Plan. The hearing did not take place because an agreement was reached by which Mr. Loftin was to file a modification within twenty-one (21) days. The Order reflecting this duty of Mr. Loftin was filed on October 2, 2012.

As soon as Mr. Demuth received notice of the Order allowing Mr. Loftin twenty-one (21) days, he began to try to reach Mr. Loftin. Mr. Demuth was not able to speak with Mr. Loftin but did speak with Ashley, Mr. Loftin's assistant. Ashley had no specific answer to Mr. Demuth's concerns but explained to Mr. Demuth that she would relay the message to Mr. Loftin and have him return the call. Mr. Loftin did not do so. A few days later, Mr. Demuth called the

Loftin Law Office again and again spoke with Ashley, not Mr. Loftin. Ashley explained to Mr. Demuth that all was fine and that Mr. Loftin had discussed the matter with the Trustee and the problem had been addressed. Each time Mr. Demuth spoke with Ashley, he asked to be allowed to speak with Mr. Loftin, but there was always an excuse for why Mr. Loftin was unavailable. Promises to have Mr. Loftin return the calls went unfulfilled. During the conversations, Ashley also assured Mr. Demuth that Mr. Loftin would file the proper modification pleadings within the time allowed to do so.

Mr. Loftin did not file a Modification on behalf of his clients, the Demuths, within the time allowed. As a result, the Trustee filed a Motion to Dismiss on October 26, 2012. A hearing was scheduled for December 6, 2012, with regard to the Motion to Dismiss. When Mr. Demuth received notice of the hearing and Motion to Dismiss, he contacted Mr. Loftin's office and terminated Mr. Loftin's representation in the bankruptcy matter. Mr. and Mrs. Demuth then employed new counsel to ensure that their interests were adequately and professionally protected.

On November 6, 2012, Mr. Loftin finally filed a Chapter 13 Modified Plan, at the same time that he filed a Motion to Withdraw. Mr. Loftin failed to submit a proposed Order on his Motion to Withdraw. On the same date, an Order was entered withdrawing the Trustee's Motion to Dismiss. On November 8, 2012, the Demuths' new counsel, Bart Ziegenhorn, filed his Notice of Appearance in the bankruptcy proceeding. Mr. Ziegenhorn filed a Response to Mr. Loftin's Motion to Withdraw in an effort to be certain the presiding bankruptcy judge was aware of the full circumstances surrounding Mr. Loftin moving to withdraw, i.e., that Mr. Loftin had been terminated prior to filing the Modification. On November 28, 2012, an Order was entered

confirming the Modified Plan. On December 14, 2012, a second Order was entered directing Mr. Loftin to submit an Order on his Motion to Withdraw. As of December 20, 2012, Mr. Loftin had not done so.

Mr. Loftin's failure to respond to requests for information from his client and lack of diligence on their behalf made it necessary for them to hire new counsel and pay additional fees in order to have their interests protected and not be faced with more issues in the bankruptcy proceeding.

Following service of the formal complaint, Mr. Loftin entered into discussion with the Executive Director which resulted in an agreement to discipline by consent pursuant to Section 20.B of the Arkansas Supreme Court Procedures Regulating Professional Conduct of Attorneys at Law (2012). Mr. Loftin conditionally admitted to violating Rules 1.1, 1.3, 4(a)(4), and 8.4(d) and the proposed sanction of a reprimand, fines in the amount of \$1000.00, costs, and restitution in the amount of \$300.00. Upon consideration of the formal complaint and attached exhibits, admissions made by the respondent attorney, the terms of the written consent to discipline proposal, the approval of Panel B of the Committee on Professional Conduct, and the Arkansas Rules of Professional Conduct, the Committee on Professional Conduct finds:

1. Davis Henry Loftin's conduct violated Rule 1.1 when he failed to file a Modification of Plan within the twenty-one (21) days required by the October 2, 2012 Order. Mr. Loftin's failure to do so caused the Trustee to file a Motion to Dismiss, caused the court to set a hearing, and created the need for the Demuths to hire new counsel. 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. Davis Henry Loftin's conduct violated Rule 1.3 when he failed to act in a timely and diligent manner with regard to filing the Modification of Plan within twenty-one (21) days of the October 2, 2012 Order. Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

3. Davis Henry Loftin's conduct violated Rule 1.4(a)(4) when he failed to comply with reasonable requests for information left for him by Mr. Demuth when Mr. Demuth contacted him concerning: (1) the situation with the Trustee's Objection to the Modified Plan and (2) the Order allowing Mr. Loftin twenty-one (21) days to file a compliant plan. Rule 1.4(a)(4) requires that a lawyer promptly comply with reasonable requests for information.

4. Davis Henry Loftin's conduct violated Rule 8.4(d) when he failed to take timely action on behalf of the Demuths and caused additional pleadings to be filed by the Trustee, including a Motion to Dismiss, and created the need for the Demuths to hire new counsel and pay additional attorney fees in the amount of \$300.00 in order to be certain that any issues with regard to their bankruptcy proceeding would be addressed in a timely and professional manner. Rule 8.4(d) requires that a lawyer not engage in conduct that is prejudicial to the administration of justice.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel B, that DAVIS HENRY LOFTIN, Arkansas Bar No. 79196, be, and hereby is, REPRIMANDED, assessed a fine in the amount of ONE THOUSAND DOLLARS (\$1000.00), costs of FIFTY DOLLARS (\$50.00), and is ordered to pay restitution in the amount of THREE HUNDRED DOLLARS (\$300.00) for his conduct in this matter. The fines, costs, and restitution assessed herein, totaling ONE THOUSAND THREE HUNDRED FIFTY DOLLARS (\$1350.00), 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: /s/Henry Hodges, Chair, Panel B

Date: June 21, 2013

Original filed with the Arkansas Supreme Court on  
June 21, 2013