

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

**IN RE: KENNETH ALAN HARPER
ARKANSAS BAR ID NO. 89022
CPC DOCKET NO. 2013-032**

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information filed by Jason Ward arising out of a domestic relations matter in Chicot County, Arkansas.

Kenneth Alan Harper of Monticello, Arkansas, is an attorney licensed in 1989 to practice law in the State of Arkansas and assigned Arkansas Bar Number 89022. Jason Ward is a resident of Monticello, Arkansas. Mr. Ward was a party in a divorce case, *Jamie Ward v. Jason Ward*, Chicot County Circuit Court Case No. DR2005-69. The Wards were divorced in 2005 and Ms. Ward received custody of the parties' minor child. In September, 2012, Mr. Ward contacted Mr. Harper concerning changes to the visitation schedule with his minor son.

Mr. Harper agreed to represent Mr. Ward in the matter and quoted him a fee of Seven Hundred Fifty Dollars (\$750.00). Mr. Ward was not able to pay the entire fee at the time but Mr. Harper agreed to Mr. Ward making payments toward the fee. Mr. Harper charged Mr. Ward with a consultation fee for the meeting. Mr. Ward paid the fee of Fifty Dollars (\$50.00) and received a receipt for the payment of Fifty Dollars (\$50.00).

Mr. Ward thereafter began making payments pursuant to the agreement. On September 7, 2012, Mr. Ward paid Mr. Harper Three Hundred Seventy-Five Dollars (\$375.00). Mr. Ward was provided with a receipt evidencing payment and a balance of Three Hundred Seventy-Five Dollars (\$375.00). On September 14, 2012, Mr. Ward paid Seventy-Five Dollars (\$75.00). Mr.

Harper's office provided Mr. Ward with a receipt which showed a balance of Three Hundred Dollars (\$300.00). On September 21, 2012, Mr. Ward paid Seventy-Five Dollars (\$75.00). The receipt provided by Mr. Harper's office showed a balance of Two Hundred Twenty-Five Dollars (\$225.00). On September 28, 2012, Mr. Ward paid Seventy-Five Dollars (\$75.00) and received a receipt which showed a balance of One Hundred Fifty Dollars (\$150.00). On October 19, 2012, Mr. Ward paid Fifty Dollars (\$50.00) and received a receipt which showed a balance of One Hundred Dollars (\$100.00).

After his last payment on October 19, 2012, Mr. Ward was unable to contact Mr. Harper as the telephone numbers to Mr. Harper's office were disconnected, the office was empty and emails were not responded to by Mr. Harper. Records from the Chicot County Circuit Clerk's office show that as of March 22, 2013, there had been no post-divorce activity initiated in Mr. Ward's legal matter by Mr. Harper.

Mr. Harper admitted in his response that he agreed to represent Mr. Ward in his legal matter. Mr. Harper stated that he took on Mr. Ward's case when he had the ability to timely handle the matter. Mr. Harper stated that in November 2012, he suffered a broken right hip which required surgery and post-hospital recovery which prevented him from practicing law. Mr. Harper stated that when he returned to his office, he discovered that his staff had left and his utilities had been cut off. Mr. Harper stated that he was out of his office for over one hundred days without any income and during that time his bookkeeper had overdrawn his business account. Mr. Harper asserted that this was not a matter of professional negligence but a case where his professional duties were disrupted by a major life-changing personal injury.

A subpoena duces tecum was served upon Mr. Harper directing him to provide to the

Office of Professional Conduct bank records for his personal, office, and trust accounts from January 2011 through October 2013. The records were to be organized and reconciled by a certified public accountant of his choice and paid at his expense. Mr. Harper was also directed to provide copies of his medical records from January 2012 through October 2013. All records were to be provided to the Office of Professional Conduct by close of business, October 1, 2013. Mr. Harper failed to provide the requested records to the Office of Professional Conduct by October 1. Mr. Harper appeared at an evidentiary hearing on October 18, 2013, and provided his IOLTA trust account records with copies of checks and deposit slips. Mr. Harper provided monthly bank statements for his office account without copies of checks and deposit slips. Mr. Harper did not provide any his personal checking account records. Mr. Harper did not provide any of his medical records but offered to provide a medical release for the Office of Professional Conduct to obtain the records.

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

1. Kenneth Alan Harper violated Rule 1.1 when he abandoned his client, Jason L. Ward, after agreeing to represent him in the case of *Ward v. Ward*, Chicot County Circuit Court Case No. DR2005-69. Rule 1.1 requires that a lawyer provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.
2. Kenneth Alan Harper violated Rule 1.4(a)(3) when he failed to respond to requests for information from his client, Jason L. Ward, about the status of his legal matter. Rule 1.4(a)(3)

requires that a lawyer keep the client reasonably informed about the status of the matter.

3. Kenneth Alan Harper violated Rule 8.4(c) when he collected fees for representation starting in September, 2012, but failed to take any action towards the representation of Jason L. Ward, his client. Rule 8.4(c) states 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 KENNETH ALAN HARPER, Arkansas Bar No. 89022, be, and hereby is, SUSPENDED FOR A PERIOD OF THIRTY-SIX MONTHS; directed to pay restitution in the amount of SIX HUNDRED FIFTY DOLLARS (\$650.00) to Jason Ward; and, assessed costs in the amount of FIFTY DOLLARS (\$50.00) for his conduct in this matter. In reaching its decision, the Panel found that two of the factors listed in Section 10 of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law, Mr. Harper's conduct during the course of the Committee action and his prior disciplinary history, to be aggravating factors used in determining the appropriate sanction. The restitution and costs totaling SEVEN HUNDRED DOLLARS (\$700.00) 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 B

By:/s/ Henry Hodges, Panel B

Original filed with the Arkansas Supreme Court on

November 26, 2013.