

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

**IN RE: KENNETH ALAN HARPER
ARKANSAS BAR ID NO. 89022
CPC DOCKET NO. 2013-033**

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information filed by Stephanie R. Jones involving a probate matter.

Kenneth Alan Harper is an attorney licensed in 1989 to practice law in the State of Arkansas and assigned Arkansas Bar Number 89022. Stephanie Jones is a resident of Gould, Arkansas. Ms. Jones is the mother of Arneisha Murray. On December 19, 2000, Cleveland Murray was found to be the father of Arneisha Murray. On November 26, 2011, Mr. Murray died.

On December 2, 2011, Ms. Jones went to the law office of Attorney Kenneth Harper for legal assistance as she was concerned about her daughter's future and wanted to protect her interests in any estate proceedings. Ms. Jones chose to consult with Mr. Harper as his brother, Attorney Victor Harper, had taken care of Mr. Murray's legal matters, including the determination that Mr. Murray was the father of Arneisha. Ms. Jones met with Kenneth Harper but he did not indicate what his fee would be. Mr. Harper charged Ms. Jones a consultation fee of Fifty Dollars (\$50.00). Ms. Jones later received a call from Mr. Harper who advised her that the fee would be One Thousand Five Hundred Dollars (\$1,500.00).

In January, 2012, Ms. Jones received a check in the amount of Ten Thousand Dollars (\$10,000.00) from State Mutual Insurance Company. Ms. Jones took the check to Mr. Harper

and signed it over to Mr. Harper. Mr. Harper wrote Ms. Jones a check in the amount of Eight Thousand Five Hundred Dollars (\$8,500) from his IOLTA trust account and kept the One Thousand Five Hundred Dollars (\$1,500.00) for fees.

From January 2012, until November 2012, Ms. Jones went to Mr. Harper's office on numerous occasions to get information about her matter. Ms. Jones stated that Mr. Harper would not tell her the truth about the status of Mr. Murray's estate. Ms. Jones stated that she went to the Lincoln County Circuit Clerk's office and inquired whether anything had been filed on her or her daughter's behalf by Mr. Harper in the estate case. Ms. Jones was advised that nothing had been filed.

In December, 2012, Ms. Jones got Mr. Harper to agree to refund the fees she had paid to him. According to Ms. Jones, Mr. Harper stated to her that he had been experiencing difficulties. Ms. Jones agreed to let Mr. Harper pay the amount he owed by the week or month but she wanted something in writing. On December 14, 2012, Mr. Harper wrote out a document entitled Statement of Debt. The Statement of Debt read as follows:

“Kenneth Harper and The Harper Law Office, PLCC, owe a refund to Stephanie Jones of \$1500.00. Due to a recent injury the undersigned was unable to assist Mrs. Jones. The undersigned will repay \$50 per week and will pay the remainder upon ability.

Dec 14, 2012

KAH /s/

Stephanie Jones /s/”

Ms. Jones stated that Mr. Harper did not pay any of the money he admitted owing her pursuant to the document he prepared.

On February 11, 2013, Ms. Jones filed suit against Mr. Harper in Star City District Court

against Mr. Harper. Exhibit 6. The case was styled as *Stephanie Jones v. Kenneth Harper*, Star City District Court Case No. MSC13-0009. Mr. Harper was served by process server on February 19, 2013. Mr. Harper failed to respond to the lawsuit. On April 8, 2013, the Star City District Court entered a default judgment against Mr. Harper in the amount of One Thousand Five Hundred Fifty Dollars (\$1,550.00) plus costs in the amount of One Hundred Thirty Dollars (\$130.00), for a total of One Thousand Six Hundred Eighty Dollars (\$1,680.00).

Mr. Harper admitted in his response that he agreed to represent Ms Jones in her legal matter. Mr. Harper stated that he took on Ms. Jones'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 1.3 when he failed to act in furtherance the interests of his clients, Stephanie Jones and Arneisha Murray, from January, 2012, until his representation was terminated in December, 2012. Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

2. Kenneth Alan Harper violated Rule 1.4(a)(3) when he failed to respond to requests for information on behalf of his client, Stephanie Jones, about the status of the legal matter for which he was employed. 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 1.15(a)(1) when he failed to hold property belonging to Stephanie R. Jones separate from his own funds. Rule 1.15(a)(1) requires that in safekeeping

property, a lawyer shall hold property of clients or third persons, including prospective clients, that is in a lawyer's possession in connection with a representation separate from the lawyer's own property.

4. Kenneth Alan Harper violated Rule 1.15(a)(5) when he deposited One Thousand Five Hundred Dollars (\$1,500) into his IOLTA trust on January 31, 2012, and failed to deliver to his client, Stephanie Jones, the One Thousand Five Hundred Dollars (\$1,500) when she requested it in December, 2012. Rule 1.15(a)(5) requires, in part, that a lawyer promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full written accounting regarding such property to the client or third persons.

5. Kenneth Alan Harper violated Rule 8.4(c) when he took One Thousand Five Hundred Dollars (\$1,500.00) from Stephanie Jones for which he was not entitled; when he converted for his personal use the One Thousand Five Hundred Dollars (\$1,500.00) he received from Stephanie Jones; and, when he agreed to repay Stephanie Jones the One Thousand Five Hundred Dollars (\$1,500.00) he received from her and thereafter failed to do so. 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 equal to the amount of the judgment in the Star City

District Court case in the amount of ONE THOUSAND SIX HUNDRED EIGHTY DOLLARS (\$1,680.00) to Stephanie Jones; 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 ONE THOUSAND SEVEN HUNDRED THIRTY DOLLARS (\$1,730.00) 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.