

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

**IN RE: KENNETH ALAN HARPER
ARKANSAS BAR ID NO. 89022
CPC DOCKET NO. 2013-034**

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information filed by Christopher Thomas Agpaoa concerning a criminal case filed in Ashley County, Arkansas, and a potential civil matter arising out of the criminal arrest.

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. Christopher Thomas Agpaoa was a student at the University of Arkansas at Monticello and is a resident of Sunderland, Maryland.

In March, 2012, Mr. Agpaoa was at the home of LaFran Swan. When he left the home, Ms. Swan's son, Michael, ran after him and struck him causing him to fall to the ground and rendering him unconscious. When Mr. Agpaoa regained consciousness, the police officer handcuffed him and placed him in the police car. Mr. Agpaoa was taken to the Ashley County Jail where he was charged with Disorderly Conduct. Mr. Agpaoa suffered injuries which required medical treatment. Mr. Agpaoa went to the office of Kenneth Harper in July, 2012, to discuss representation. Mr. Harper agreed to represent Mr. Agpaoa and entered his appearance. The disorderly conduct charge was dismissed in August, 2012.

Mr. Agpaoa thereafter employed Mr. Harper to pursue a civil matter against either the person responsible for attacking him or the police agency who arrested him and battered him.

On October 2, 2012, Mr. Agpaoa's father, Delano, sent a check in the amount of Five Hundred Dollars (\$500.00), drawn on his bank account, to Mr. Harper for the representation.

After Mr. Harper was hired by the Agpaoas, Christopher Agpaoa attempted to contact Mr. Harper at telephone numbers provided to him by Mr. Harper. The numbers were either disconnected, no longer in service, or directed to voice mail where messages left were unreturned. Mr. Agpaoa had no further communication with Mr. Harper.

Mr. Harper admitted in his response that he agreed to represent Mr. Agpaoa in his legal matters. Mr. Harper stated that he took on Mr. Agpaoa'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 1.1 when he effectively abandoned his client, Christopher Agpaoa, when his office was closed and his telephone service was disconnected, leaving his client unable to receive competent representation for which Mr. Harper's services had been employed and paid. 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, Christopher Thomas Agpaoa, 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 1.16(d) when he effectively terminated the

representation of his client, Christopher Agpaoa, when his office was closed and his telephone services were disconnected, severing any forms of communication between Mr. Harper and his client, yet Mr. Harper had in his possession fees that had not been earned. Rule 1.16(d) requires 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 or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

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 FIVE HUNDRED DOLLARS (\$500.00) to Christopher Thomas Agpaoa or Delano Agpaoa; 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 FIVE HUNDRED FIFTY DOLLARS (\$550.00) 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.