

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

**IN RE: KENNETH ALAN HARPER  
ARKANSAS BAR ID NO. 89022  
CPC DOCKET NO. 2013-035**

**FINDINGS AND ORDER**

The formal charges of misconduct upon which this Findings and Order is based arose from information filed by Cody Daniel arising out of a dispute concerning real and personal property.

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. Cody Daniel (“Cody” hereafter) is a resident of Hampton, Arkansas, and was a defendant in a lawsuit filed in Bradley County Circuit Court by his father, Richard. The case was styled as *Richard Daniel v. Cody Daniel*, Bradley County Circuit Court Case No. CV-2012-074-3. Cody was served with a copy of the lawsuit on August 28, 2012, and went to the law office of Kenneth Alan Harper on August 30, 2012.

Mr. Harper agreed to represent Cody for the sum of Seven Hundred Fifty Dollars (\$750.00). Cody paid the Seven Hundred Fifty Dollar fee and received a receipt from Mr. Harper. During the meeting, Mr. Harper requested certain documents from Cody concerning property at issue in the lawsuit, specifically receipts for repairs on the pickup truck that Cody had paid. Cody provided the documents to Mr. Harper. On September 20, 2012, Mr. Harper filed an answer to the lawsuit with the Bradley County Circuit Clerk but did not provide a copy to Cody.

Cody attempted to contact Mr. Harper at his office concerning the status of his legal matter. At some point, the telephone service to Mr. Harper’s law office was disconnected. Cody

wrote Mr. Harper and informed him that it had become difficult or impossible for him to discuss his legal matter. Cody informed Mr. Harper that he did not want Mr. Harper to represent him any further in the legal matter, requested that Mr. Harper refund him the sum of Six Hundred Fifty Dollars, and return all documents that Mr. Harper had been provided. Cody had not received anything from Mr. Harper since he sent his November 5, 2012, letter.

Mr. Harper admitted in his response that he agreed to represent Cody in his legal matter. Mr. Harper stated that he took on Cody'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, Cody Daniel, after agreeing to represent him in a pending matter, *Daniel v. Daniel*, Bradley County Circuit Court Case No. CV-2012-074-3, leaving him without competent representation. 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 1.3 when he failed to respond to the November 5, 2012, letter from his client, Cody Daniel. Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

3. Kenneth Alan Harper violated Rule 1.4(a)(3) when he failed to provide his client, Cody Daniel, with a copy of the answer to complaint filed on his behalf and when he failed to respond to requests for information from his client, Cody Daniel, 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.

4. Kenneth Alan Harper violated Rule 1.16(d) when he failed to respond to the November 5, 2012, letter of termination of representation from his client, Cody Daniel; failed to provide his former client, Cody Daniel, with a return of unearned fees following receipt of a letter dated November 5, 2012, notifying him that his representation had been terminated; and, failed to provide his former client, Cody Daniel, with papers or property provided to him by Mr. Daniel during the period of representation. 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 interest, 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 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 SEVEN HUNDRED FIFTY DOLLARS (\$750.00) to Cody Daniel; 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 EIGHT HUNDRED DOLLARS (\$800.00) 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.