

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

**IN RE: KENNETH ALAN HARPER
ARKANSAS BAR ID NO. 89022
CPC DOCKET NO. 2013-036**

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information filed by Patrick Lee Miller arising out of a contract with Jacquelyn Bray.

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. Patrick Lee Miller is a resident of Fountain Hill, Arkansas. In 2011, Patrick Lee Miller entered into a written contract with Jacquelyne Bray concerning a Dodge Charger and a Chevrolet Tahoe. In 2012, Ms. Bray informed Mr. Miller that she would not meet her obligations under the contract. Mr. Miller then turned to Mr. Harper for legal assistance in April, 2012.

Mr. Miller met Mr. Harper at his office in Monticello. Mr. Harper quoted Mr. Miller a fee of One Thousand Five Hundred Dollars (\$1,500.00). On July 2, 2012, Mr. Miller paid the Fifteen Hundred Dollars and received a receipt from Mr. Harper. Mr. Harper then stated that Mr. Miller would need to pay a filing fee of One Hundred Fifteen Dollars (\$115.00). On July 6, 2012, Mr. Miller paid the One Hundred Fifteen Dollar filing fee.

On July 18, 2012, Mr. Harper filed suit on behalf of Mr. Miller in Drew County Circuit Court. The case was styled as *Patrick Miller v. Jacqueline Bray*, Drew County Circuit Court Case No. CV-2012-0106-3. Mr. Miller stated that he didn't have much contact with Mr. Harper but he did receive notice that a court date had been set for December 10, 2012, in his lawsuit.

Mr. Miller appeared in Drew County Circuit Court on December 10 pursuant to the

notice he received. Mr. Harper was not there. Unbeknownst to Mr. Miller, Mr. Harper had filed a Motion for Continuance on December 6, 2012. The court granted the motion and the matter was not rescheduled for a date certain but to be reset at the request of the parties.

After court, Mr. Miller called Mr. Harper's office telephone number but the telephone service had been disconnected. Mr. Miller called Mr. Harper's personal cell phone number and left a message. Mr. Miller never heard anything from Mr. Harper. As of the date of the filing of this formal complaint, Mr. Miller's legal matter remains open with the Drew County Circuit Court.

Mr. Harper admitted in his response that he agreed to represent Mr. Miller in his legal matter. Mr. Harper stated that he took on Mr. Miller'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 effectively abandoned his client, Patrick Lee Miller, after agreeing to represent him in the case of *Miller v. Bray*, Drew County Circuit Court Case No. CV-2012-106-3, 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 1.4(a)(3) when he failed to respond to requests for information from his client, Patrick Lee Miller, 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, Patrick Lee Miller, 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. Rules 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 ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500.00) to Patrick Lee Miller; 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 FIVE HUNDRED FIFTY DOLLARS (\$1,550.00) 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.