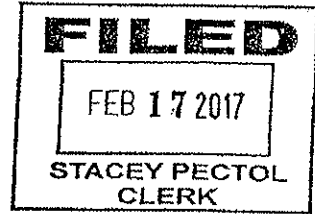


BEFORE THE ARKANSAS SUPREME COURT
COMMITTEE ON PROFESSIONAL CONDUCT
PANEL B



IN RE: MICHAEL J. KING, Respondent
Arkansas Bar ID # 88124
CPC Docket No. 2016-128

CONSENT FINDINGS & ORDER

The formal charges of misconduct upon which this Consent Order is premised, involving respondent attorney Michael J. King of Hot Springs, Arkansas, arose from information brought to the attention of the Committee on Professional Conduct by Albert Mack, III. Following Respondent Attorney's receipt of the formal complaint, the attorney entered into discussion with the Executive Director which has resulted in an agreement to discipline by consent pursuant to Section 20.B of the Arkansas Supreme Court Procedures Regulating Professional Conduct of Attorneys at Law (2011).

1. Hot Springs attorney Michael J. King ("King") represented Albert J. Mack, III ("Mack") and his wife Cynthia ("Mrs. Mack") in a guardianship proceeding in Hot Spring County, Arkansas, from November 2012 through April 5, 2013, as they sought guardianship of their minor cousin A. P. An Order of Guardianship was filed April 5, 2013. During this time frame the family lived in Hot Springs.

2. By early April 2013, Mack had come under suspicion for some alleged sexual misconduct with L. M., the minor (age four) female child of the Macks. Foreseeing the need for legal counsel in the matter, on or about April 10, 2013, Mack paid \$1,500 to King as a retainer. Mack is not aware of any written fee or employment agreement with King for legal services in the rape / DHS matters. After his arrest on the charge, Mack paid King \$7,500 on

April 12, 2013, as an additional payment on a quoted fee of \$14,000 for King's representation of Mack in the criminal matter and related DHS matters.

3. On May 9, 2013, in Hot Spring County Circuit Court, the State filed a Class Y felony Rape charge against Mack, an offense punishable by 10-40 years or life in prison. On May 14, 2013, Mack borrowed \$5,000 from his mother and paid King the final balance of the \$14,000 legal fee. Around May 21, 2013, the Arkansas State Police provided incident reports on the L.M. matter to the Macks. The full docket for the Mack criminal case shows the only entry that appears attributable to King's participation in the case is a Motion for Discovery to the State he filed on June 11, 2013.

4. By letter of June 20, 2013, King notified OAH (DHS) that he represented Mack and a hearing was requested. This is apparently the only document generated by King to DHS or OAH regarding Mack's matter at DHS that is contained in the files of either the Office of Professional Conduct (OPC) or attorney Bob Sanders.

5. Due to lack of contact and communication with King in June, Mack began to become anxious about his legal counsel and fate. Mack was directed by a friend to Dr. William Viser in Arkadelphia, a counselor with experience in such matters. After visiting with Dr. Viser, Mack was referred to Arkadelphia attorney Bob Sanders. Mack then employed Sanders and paid his \$15,000 legal fee with funds borrowed from his mother, Ms. Balentine. Dr. Viser worked with Mack and Sanders from late June 2013 through March 2014. Dr. Viser never had any contact with King about Mack.

6. King had effectively abandoned his client Mack by June 26, 2013. By letter of June 26, 2013, Mack attempted to terminate the legal services of King and asked for an accounting

of the \$14,000 paid and a refund of unbilled/unearned fees. Mack received no response from King and no refund.

7. By late June 2012 through July 15, 2012, Sanders had extensive written communications with the Hot Springs County Prosecutor on the criminal charge, and with DHS on the Mack matter there. Most of these communications were also copied to King.

8. After a hearing in the criminal case on July 15, 2013, at which King and the Mack family did appear, Sanders wrote King that day and asked about his future role representing Mack. King did not respond. King completely abandoned his client Albert Mack after July 15, 2013.

9. After the July 15 hearing, Sanders again communicated extensively with the prosecutor, the court, Mack, and DHS on behalf of Mack. Most of these communications were also copied to King. Sanders filed a motion for supervised visitation for Mack and the motion was set for hearing on September 11, 2013. King was notified of the hearing but did not appear. After the hearing, on September 24, 2013, Sanders wrote King about the status of Mack's matters. King did not respond.

10. On October 3, 2013, Mack's rape case was set for a two day jury trial on January 30-31, 2014. On January 10, 2014, Mrs. Mack signed an affidavit of non-prosecution for their daughter L.M., and the State nolle prossed the rape charge against Mack. In February 2014, the DHS case against Mack was closed.

11. Mack filed his grievance against King with OPC on June 3, 2014. OPC notified King of the grievance on June 24, 2014, (Ex. 36) and requested his informal version of the matter. After several contacts, King replied by letter dated August 27, 2014, claiming, among

other things, that King knew from previously representing the Macks in an “adoption” that Alfred Mack was a “high maintenance” client. King provided no documentation of his activity in representing Mack. The only fee amount King mentioned was a \$7,500 retainer on the rape charge.

12. King and wife filed a Chapter 13 bankruptcy action on May 16, 2012. Case records show that after several payment plans being offered and tried, the case was dismissed on July 15, 2013, for non-payment of the plan amounts.

13. On July 25, 2013, a bank filed a foreclosure case against King and wife over debts from notes going back to 2008 secured by their residence and three vehicles. A Decree was entered December 2, 2013, which recited the three vehicles had all been repossessed and liquidated and granted judgment against the Kings for about \$262,840 plus attorney’s fees.

14. Albert Mack has received no accounting of the \$14,000 fee or any fee refund from King.

Upon consideration of the formal complaint and attached exhibits, admissions made by the respondent attorney, the terms of the written consent, the approval of Panel B of the Committee on Professional Conduct, and the Arkansas Rules of Professional Conduct, the Committee on Professional Conduct finds:

D. The conduct of Michael J. King violated Rule 1.5(a) in that by mid-May 2013, King was paid in full the \$14,000 fee he quoted to represent Albert Mack on rape and DHS child abuse charges. The fee paid to King became unreasonable and excessive when King failed to perform work for Mack on the matters after June 2013, as measured against the effort of Mack’s new counsel Sanders, who picked up both matters in their early stages and

essentially finished them within six-eight months with excellent results for the client. Arkansas Rule 1.5(a) requires that a lawyer's fee shall be reasonable. A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following: (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or by the circumstances; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and (8) whether the fee is fixed or contingent.

E. The conduct of Michael J. King violated Rule 1.16(d) in that upon clearly abandoning his client Albert Mack by late June 2013, after having been paid in full his quoted \$14,000 fee, and taking no action for Mack thereafter, King failed to earn his full fee. King then failed to render any accounting for the \$14,000 to his client when demanded to do so by letter of June 26, 2013, and King failed to make any refund of unearned fee thereafter to his client. Arkansas 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, in accordance with the consent to discipline presented by Mr. King and the Executive Director, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct that Respondent **MICHAEL J. KING**, Arkansas Bar No. 88124, be, and hereby is, **REPRIMANDED** for his conduct in this matter, and **ORDERED TO PAY \$8,000.00 RESTITUTION** for the benefit of Albert J. Mack, III. The restitution, or "good faith" payments on it, assessed herein shall be payable by cashier's check or money order payable to the "Clerk, Arkansas Supreme Court" delivered to the Office of Professional Conduct commencing 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



Michael Mullally, Chairperson, Panel B

Date

2/17/17