

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

**PANEL A**

**IN RE: MICHAEL DENNIS BOOKER**

Arkansas Bar ID #89053

CPC Docket No. 2005-040

**FINDINGS AND ORDER**

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Linda S. Hayes of Little Rock on January 5, 2004. The information related to the representation of Ms. Hayes by Respondent Michael Dennis Booker, an attorney practicing primarily in Little Rock, Pulaski County, Arkansas, in 2002-2005.

On March 11, 2005, Respondent was served with a formal complaint, supported by an affidavit from Linda S. Hayes. Respondent filed a response to the complaint. After ballot vote by Panel B, Respondent requested a public hearing, which was conducted November 18, 2005, before Panel A. Stark Ligon represented the Office of Professional Conduct. Mr. Booker represented himself. Testimony was taken from Linda Hayes, Michael Booker and Keena Wamble, an attorney associated with Mr. Booker. No exhibits other than the pleadings and exhibits attached to them were offered at the hearing.

Mr. Booker was employed not later than early August 2002 by Linda Hayes to represent her in her claims arising from a motor vehicle collision on May 25, 2001, in Pulaski County, in which the vehicle she was operating was rear-ended by another vehicle on John Barrow Road. In August 2002 Booker was sent a copy of her file on the matter from her previous lawyers. Ms. Hayes had damage to her vehicle which it was estimated would cost about \$2,800 to repair. After a time she had difficulty obtaining information about her matter from Booker's office, in spite of her many attempts to do so. Finally, in January 2004, she filed a complaint with the Committee on Professional Conduct. The Office of Professional Conduct was in contact with Mr. Booker prior to November 15, 2004, by telephone inquiring about this matter. On November 15, 2004, Mr. Booker was

written about the matter. He was contacted several times by telephone and letters by the Office into mid-February 2005, about the Hayes matter. Mr. Booker made an appointment with Ms. Hayes and she came to his office on February 24, 2005, where she was presented a release in favor of Mr. Booker and Mr. Brown, the person involved in her May 25, 2001, incident, and Booker's office check for \$2,601.78, payable to her, as Booker's resolution or settlement in her situation. Since the statute of limitations, three years, had run on her claims on May 25, 2004, while Mr. Booker was entrusted with her matter, she reluctantly elected to accept these funds to resolve the matter.

Mr. Booker testified that his firm normally did not handle the property damage portion of the claims of his personal injury clients unless he specifically so stated on his fee agreement with the client. Ms. Wamble concurred in this general policy statement. No fee agreement on the Hayes matter was offered at the hearing. Mr. Booker testified he took no action for Ms. Hayes on the property damage claim to her vehicle.

Ms. Hayes testified that her medical bills from the 2001 collision were at least the \$1,601.78 Mr. Booker calculated plus additional charges for later steroid injections at \$450 per treatment she required for her back pain but which were not included in his total. Ms. Hayes testified that an estimate from Russell Chevrolet for repair of the damage to her vehicle was \$2,800 and that she had not had the vehicle repaired because she never received funds from any source for that expense.

Upon consideration of the formal complaint and attached exhibit materials, the response to it, and other matters before it, and the Arkansas Model Rules of Professional Conduct, Panel A of the Arkansas Supreme Court Committee on Professional Conduct, with Robert Trammell sitting in place of Phil Hout and Beverly Morrow sitting in place of Patricia Youngdahl:

A. Unanimously finds that Mr. Booker's conduct violated Model Rule 1.2(a) in that he failed to abide by the objective of his client Linda Hayes, to pursue to settlement or suit her claims arising from the May 25, 2001, motor vehicle collision in which she was involved, and in which she believed Clarence Brown to be at fault. Model Rule 1.2 (a) requires that a lawyer shall abide by a client's decisions concerning the objectives of representation, subject to paragraphs (c), (d) and (e), and shall consult with the client as to the means by which

they are to be pursued.

B. Unanimously finds that Mr. Booker's conduct violated Model Rule 1.3 in that he were employed by Ms. Hayes in July or August 2002, yet he failed, without explanation to his client, to take appropriate action before May 25, 2004, to either settle or file suit on her claims against Clarence Brown and his insurer. Model Rule 1.3 requires that a lawyer shall act with reasonable diligence and promptness in representing a client.

C. Unanimously finds that Mr. Booker's conduct violated Model Rule 1.4(a) in that he and his office failed to provide Linda Hayes with information about the status of her pending matter when she made requests for such information. Model Rule 1.4(a) requires that a lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

D. Unanimously finds that Mr. Booker's conduct violated Model Rule 1.4(b) in that if he had advised Linda Hayes before May 25, 2004, that circumstances and situations not involving her might cause Mr. Booker to fail to take timely and appropriate action on her claims against Clarence Brown which she entrusted to Booker, the client would have had an opportunity to consider employing other counsel to represent the client in the matter, and possibly receive the relief the client sought. Model Rule 1.4(b) requires that a lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

E. By a 4-3 vote, with Morrow, Trafford and Hodge dissenting, finds that Mr. Booker's conduct violated Model Rule 8.4(c) in that his "settlement" with Ms. Hayes on February 24, 2005, misrepresented to her the true situation in her claims against Clarence Brown, in that the funds for the \$2,601.78 did not come from any settlement or recovery Mr. Booker obtained against Brown or his insurer but came from other sources, and his "settlement" and the "release" he required of Ms. Hayes on February 24, 2005, were deceitful in that the release required her to waive any claims she has against Mr. Booker and his law firm, in addition to any claims she had against Clarence Brown, a move by Mr. Booker designed to protect himself from any claims Ms. Hayes might have against Booker for his negligence in handling her May 25, 2001, claims. Model Rule 8.4(c) requires that a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or

misrepresentation.

F. Unanimously finds that Mr. Booker's conduct violated Model Rule 8.4(d) in that his failure to take timely and appropriate action on her behalf prior to May 25, 2004, resulted in Ms. Hayes losing any right to pursue her claims against Clarence Brown in legal action. Model Rule 8.4(d) requires that a lawyer shall not engage in conduct that is prejudicial to the administration of justice.

WHEREFORE, it is the 5-2 majority sanction vote decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel A, with members Virden and Herr dissenting as to sanction, that MICHAEL DENNIS BOOKER, Arkansas Bar ID# 89053, be, and hereby is, REPRIMANDED for his conduct in this matter, assessed costs of \$125.00 (which includes the standard case cost of \$50.00 and the court reporter's appearance fee of \$75.00), and ordered to pay restitution for the benefit of Linda Hayes of \$4,000.00. The costs and restitution 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 with 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 A

By: \_\_\_\_\_

Bart F. Virden, Chair, Panel A

Date: \_\_\_\_\_