

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

IN RE: DAVIS HENRY LOFTIN, Respondent

Arkansas Bar ID#79196

CPC Docket No. 2003-034

CONSENT FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Georgia Danielle Holmes on August 16, 2001. The information related to the representation of Ms. Holmes by Respondent beginning in September 2000.

On April 29, 2003, Respondent was served with a formal complaint, supported by affidavit(s) from Ms. Holmes. A response was filed. The Respondent and the Executive Director negotiated a discipline by consent proposal, which was submitted to this Panel.

The information provided to the Committee demonstrated that Ms. Holmes hired Davis Henry Loftin, an attorney practicing primarily in West Memphis, Arkansas, to represent her in a bankruptcy proceeding. Ms. Holmes hired Mr. Loftin during September 2000. Ms. Holmes initially paid Mr. Loftin the amount of \$250 and the remaining balance was to be paid out of the bankruptcy plan.

Mr. Loftin filed the bankruptcy petition for Ms. Holmes on September 25, 2000. Initially, Ms. Holmes was ordered to pay \$900 per month to the trustee but since the insurance had lapsed on her automobile, the Order was modified. Ms. Holmes lost her job subsequent to the filing of the bankruptcy proceeding, because of this fact, she missed the bankruptcy payments from December 2000 until approximately April 2001. Ms. Holmes appeared before Judge Mixon during April 2001. Judge Mixon granted Ms. Holmes a stay on all of her assets with the condition that she not miss any payments for the next six (6) months. Ms. Holmes was also ordered to maintain insurance on her car. If she did not do so, she would be in default of the Judge's Order. At some point after the Order was entered by Judge Mixon, Mr. Loftin was sent correspondence requesting that proof be provided demonstrating that Ms. Holmes maintained insurance on her automobile. Ms. Holmes personally delivered the proof of insurance to Mr. Loftin's office. Mr. Loftin failed to provide the proof of insurance. Mr. Loftin's failure resulted in a Motion being filed seeking to have the automobile surrendered to the lien holder. The Motion was filed after Mr. Loftin failed to meet the deadline of June 11, 2001, at 5:00 p.m. for proof of valid insurance. The Petition was granted on July 5, 2001. Ms. Holmes had no knowledge that there was a problem until she received a letter on July 19, 2001, advising her that her automobile insurance was being cancelled. After receiving the letter, Ms. Holmes contacted Mr. Loftin and he advised her that he would look into it for her. When Ms. Holmes awoke on Monday, July 23, 2001, her automobile was missing. Ms. Holmes had no idea what had occurred. One of her neighbors advised her that a wrecker had been by and taken her car. Ms. Holmes immediately called Mr. Loftin and explained everything to him. When Ms. Holmes was able to see him the next day, Mr. Loftin advised her that these things take time but that he was working on recovering her car for her. The next day when Ms. Holmes returned again to Mr. Loftin's office, she obtained her file and learned that the reason for the repossession was because of Mr. Loftin's failure to comply with the Court Order regarding proof of insurance.

On July 27, 2001, when Ms. Holmes called Mr. Loftin, she asked him to rent her an automobile because she was the sole provider for her household and it was imperative that she be able to get to and from work. Mr. Loftin advised that he would pick her up from work and obtain a car for her. Mr. Loftin did rent an automobile for Ms. Holmes on August 1, 2001. Five (5) days later they appeared in Court before Judge Mixon. During the hearing, Judge Mixon ordered that the car be returned to me because the repossession was due to Mr. Loftin's negligence. Judge Mixon provided Mr. Loftin the choice of correcting the problem he created or having the Judge write a letter about Mr. Loftin's professional conduct. Mr. Loftin admitted that it was his fault that matters were not attended to in regard to Ms. Holmes' automobile and insurance coverage. At the conclusion of the hearing, Mr. Loftin was instructed by the Court to prepare the Order granting the Motion to Vacate. He did not do so in a timely fashion. The Order was finally entered on December 12, 2001. Pursuant to the Order, Mr. Loftin was to pay \$315 for the repossession costs and \$500 in attorney's fees.

Upon consideration of the formal complaint and attached exhibit materials, the response, the consent proposal, and other matters before it, and the Arkansas Model Rules of Professional Conduct, Panel B of the Arkansas Supreme Court Committee on Professional Conduct finds:

That Mr. Loftin's conduct violated Model Rule 1.1 because he was not thorough enough in his representation of Ms. Holmes to make certain that he provided the proof of insurance to the lien holder on her car as ordered by the Bankruptcy Court thereby causing her car to be repossessed and additional hearings to be necessary before the Bankruptcy Court. Model Rule 1.1 requires that a lawyer provide competent representation to a client, including the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

That Mr. Loftin's conduct violated Model Rule 1.3 when he failed to timely proof of insurance to the lien holder of Ms. Holmes' car which resulted in her automobile being repossessed and an additional hearing being necessary in her bankruptcy matter and when he failed to respond to the Motion for Relief from Stay filed by Transouth with regard to Ms. Holmes' automobile in her bankruptcy proceeding. Model Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

That Mr. Loftin's conduct violated Model Rule 1.8(e) when he provided financial assistance to Ms. Holmes in that he rented an automobile for her, while she was in bankruptcy, after her automobile was repossessed due to his negligence in failing to provide proof of insurance as required by the Bankruptcy Court and also in failing to respond to the Motion for Relief from Stay. Model Rule 1.8(e) requires that a lawyer not provide financial assistance to a client in connection with pending or contemplated litigation, except that: (1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and (2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

That Mr. Loftin's conduct violated Model Rule 8.4(d) because his failure to promptly and efficiently represent Ms. Holmes' interests in her bankruptcy proceeding created the necessity for more proceedings before the Bankruptcy Court than would have been necessary otherwise. Model Rule 8.4(d) requires that a lawyer not engage in conduct that is prejudicial to the administration of justice.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel B, that DAVIS HENRY LOFTIN, Arkansas Bar ID# 79196, be, and hereby is, REPRIMANDED for his conduct in this matter.

In addition, Mr. Loftin is assessed costs in the amount of \$50 pursuant to Section 18.A. of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law. Mr. Loftin is also fined in the amount of \$700 pursuant to Section 18.B. of the Procedures. The fine and costs 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 B

By: _____

John Rush, Chair, Panel B

Date: _____

(13.M, Rev.1-1-02)