

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

PANEL A

IN RE: MARK L. ROSS, Respondent
 Arkansas Bar ID#79249
 CPC Docket No. 2003-103

CONSENT FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee in three separate bank trust account overdraft notices on the IOLTA attorney trust account on Ross & Ross, P.A. which is the law firm and account of Mark L. Ross, an attorney practicing primarily in Little Rock, Arkansas. The information related to overdrafts which occurred in Mr. Ross' account on October 25, 2002, January 8, 2003, and July 17, 2003.

During August 2003, Respondent was served with a formal complaint, supported by the collections of documents regarding the three separate bank trust account overdrafts. A response was filed. The Respondent and the Executive Director negotiated a discipline by consent proposal, which was submitted to this Panel.

The information before the Panel revealed that on October 25, 2002, Mr. Ross had an IOLTA trust account check in the amount of \$1,350 presented against a balance of \$-5.65. Mr. Ross explained that the overdraft was the result of a possible duplicate payment in a collection matter he was handling. He was unable to say for certain but believed that was the error. Mr. Ross borrowed the funds from his mother, soon after notification of the overdraft, in order to cover the \$1350 check. Thereafter, in January 2003, Mr. Ross had another overdraft situation with his IOLTA trust account. A check payable to "The Jeweler's Board of Trade" in the amount of \$3,059.65 against a balance of \$2,784.88. Mr. Ross was unable to provide a specific response as to how the overdraft occurred. He explained in correspondence to the Executive Director that his computer software was not working properly and that he had been unable to run a daily report of receipts and disbursement of client funds. On July 13, 2003, an IOLTA trust account check in the amount of \$2,075.20, was returned by Mr. Ross' bank because the available balance at the time of presentment was \$575.34. Mr. Ross

advised that he did not have a satisfactory explanation as to why there was an overdraft. He advised that he was out of town the week that the check was presented at the bank. However, he again stated to the Executive Director that he did not have an excuse for the problem.

The information before the Committee confirmed that the overdrafts which were the subject of the formal disciplinary complaint were promptly rectified and that there have been no additional overdrafts. At no time were there any complaints from Mr. Ross' clients about these matters.

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

1. That Mr. Ross' conduct violated Model Rule 1.15(a)(1) when on three separate occasions, October 25, 2002, January 8, 2003, and July 17, 2003, his Arkansas IOLTA attorney trust account had checks presented against the trust account which had insufficient funds at the time to pay the items, demonstrating a failure to properly supervise and maintain his attorney trust account; and, when on or about October 28, 2002, he deposited \$1,500 in personal funds into his attorney trust account to cover the check for \$1,350.00 presented October 25, 2002, against insufficient funds, a prohibited deposit, inasmuch as no personal funds of a lawyer or law firm are to be deposited in any account designated as the trust account, other than the amount necessary to cover bank charges or to comply with the minimum balance required for waiver of bank charges. Model Rule 1.15(a)(1) requires that an attorney, in furtherance of his or her fiduciary obligation with regard to funds held for others, shall properly maintain and supervise the maintenance of any trust account established by the attorney or the law firm in which the attorney practices. It further requires that a lawyer or law firm not deposit in any account designated as the trust account, other than the amount necessary to cover bank charges or to comply with the minimum balance required for waiver of bank charges.

2. That Mr. Ross' conduct violated Model Rule 1.15(d)(1) when on October 25, 2002, Metropolitan National Bank of Little Rock reported that his IOLTA trust account had a negative balance as a result of an overdraft created by the presentation of check number 13153 for \$1,350, which was paid by the bank, resulting in the deposit of funds other than client funds in the trust account; when on January 8, 2003, Metropolitan National Bank of Little Rock reported that his IOLTA trust account had a negative balance as a result of an overdraft created by the presentation of his check number 12693 for \$3,059.65, which was paid by the bank, resulting in a deposit of funds other than client funds in the trust account; and when on July 17, 2003, Metropolitan National Bank of Little Rock reported that his IOLTA trust account had a negative balance as a result of an overdraft created by the presentation of his check number 13315 for \$2,057.20, which was returned and refused by the bank. Model Rule 1.15(d)(1) provides that each IOLTA trust account shall be an interest-bearing trust account in a bank, savings bank, trust company, savings and loan association, savings association, credit union, or federally regulated investment company, and the institution shall be insured by an agency of the federal government. Each such account shall provide overdraft notification to the Executive Director of the Office of Professional Conduct for the purpose of reporting whenever any properly payable instrument is presented against a lawyer trust account containing insufficient funds, irrespective of whether or not the instrument is honored.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel A, that MARK L. ROSS, Arkansas Bar ID# 79249, be, and hereby is, CAUTIONED for his conduct in this matter. Pursuant to Section 18.A. of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law (2002), Mr. Ross is ordered to pay the costs in this matter in the amount of \$50. The 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 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 A

By: _____

Gwendolyn D. Hodge, Chair, Panel A

Date: _____

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