

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

**PANEL B**

IN RE: **KENNARD K. HELTON**

Arkansas Bar ID #80058

CPC Docket No. 2005-150

**CONSENT FINDINGS & ORDER**

The formal charges of misconduct upon which this Consent Order is premised, involving respondent attorney Kennard K. Helton of Dardanelle, Yell County, Arkansas, arose from information brought to the attention of the Committee on Professional Conduct by attorney Keith Coker in September 2005, pursuant to his reporting obligation under Rule 8.3(a).

During her lifetime Mr. Helton represented and dealt with Marguerite Menhart both as a lawyer and in a private non-lawyer capacity as a friend. In 1999 she sold her house and entrusted Mr. Helton with the net proceeds of \$58,086.43. He prepared a Promissory Note, with date of September 27, 1999, by which Ms. Menhart loaned him \$60,086.43 at zero interest. In lieu of interest and payments of principal, he was to make her monthly payments of not less than \$1,100.00 to Wildwood Retirement Center for her monthly apartment rental there, such payments to cease upon her death or her involuntary removal from Wildwood. The Note provided that upon her death any balance due on the Note shall be forgiven. Other financial obligations by Mr. Helton to Ms. Menhart are set forth in the Note. Mr. Helton never placed any of her funds in a trust account or maintained them separate from his funds. He invested most of the proceeds of this loan to him in a bank certificate of deposit. Between January 2000 and September 2003, he paid her Wildwood bill, expending almost the full sum of the loan she made to him.

Ms. Menhart was widowed in 1992, was childless, and died September 8, 2003, at age eighty-eight (88). On September 11, 2003, Mr. Helton filed a Petition for Probate of Will and Appointment of Executor as P-2003-223 in Pope County Circuit Court. He listed personal property of \$2,000 as the only estate asset. The 1999 will nominated him as executor. The will was admitted to probate and he was issued letters testamentary as executor without bond on September 11, 2003.

On January 28, 2005, Virginia Wice, a niece and an heir and devisee of Ms. Menhart, filed a petition to freeze estate assets, alleging that there were undisclosed estate assets, and that Mr. Helton had not filed the required inventory and accounting in the estate. On May 12, 2005, he filed an Inventory and an Accounting. On May 18, 2005, an Agreed Order was filed by which he was removed as Executor, a successor executor was appointed, and Mr. Helton was directed to file a complete and full accounting by June 11, 2005, which accounting would cover the informal fiduciary relationship between Ms. Menhart and him regarding the sales proceeds from her home. He did not file such accounting until November 4, 2005.

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 (2002). 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 Model Rules of Professional Conduct, the Committee on Professional Conduct finds:

A. Mr. Helton's conduct violated Model Rule 1.8(a) in that he entered into a "loan" arrangement or other business transaction in September 1999 with his elderly client Marguerite Menhart, who was approximately age eighty-four (84) at the time, by which he borrowed

\$60,086.43, being substantially all her assets, at zero interest, in return for a promise by him basically to pay her monthly retirement apartment rent as it came due, with his obligation to repay to cease upon her death. The transaction and terms of this business transaction with his client, under all the circumstances, were not fair and reasonable to Ms. Menhart. If he had died prior to her death, under the terms of the Note he prepared for her, she would have lost any balance of the funds she loaned him and would have been without the means to continue to live at Wildflower, or elsewhere, as she desired, and would have likely become a ward of the state financially. If she had died early in this arrangement, he would have possibly received a financial windfall unrelated to the fair value of any services he could have provided to her by the time of her death. There is no indication Ms. Menhart was advised, or had the opportunity, to consult with independent counsel about the terms of this proposed transaction before it was finalized. Model Rule 1.8(a) provides that a lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client [except as permitted herein]. (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which can be understood by the client; (2) the client is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and (3) the client consents in writing thereto.

B. Mr. Helton's conduct violated Model Rule 1.15(a) in that if Ms. Menhart, his client, wished him to pay her future living expenses from her assets and funds, he was required to hold her property in trust, and in some form of escrow or trust account separate from his funds, which he failed to do. Model Rule 1.15(a) requires that a lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds of a client shall be deposited and maintained in one or more identifiable trust accounts in the state where the lawyer's office is situated, or elsewhere with the consent of the client

or third person. C. Mr. Helton's conduct violated Model Rule 3.4(c) in that by Court Order filed May 18, 2005, he was ordered to file by June 11, 2005, a complete and full accounting of the conditions and affairs of Ms. Menhart's estate for the time period while he was executor of the estate. He did not file such an accounting until November 4, 2005. Model Rule 3.4(c) requires that a lawyer shall not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists.

WHEREFORE, in accordance with the consent to discipline presented by Mr. Helton and the Executive Director, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct that Respondent **KENNARD K. HELTON**, Arkansas Bar No. 80058, be, and hereby is, **REPRIMANDED** for his conduct in this matter, fined \$200.00, and assessed Committee costs of \$50.00. 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 \_\_\_\_\_

Harry Truman Moore, Chairperson, Panel B

Date \_\_\_\_\_