

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

PANEL A

IN RE: JOSHUA MCHUGHES, Respondent
Arkansas Bar ID#67040
CPC Docket No. 2004-057

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Smitty W. Aaron. The information related to the representation of Mr. Aaron by Respondent beginning August 2001.

On or about April 21, 2004, Respondent was served with a formal complaint, supported by affidavit from Mr. Aaron. Respondent filed a timely answer to the formal complaint. Thereafter, the matter proceeded to ballot vote pursuant to the process set out in the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law. (2002)

The factual information before the Committee revealed that Mr. Aaron hired Joshua E. McHughes, an attorney practicing primarily in Pulaski County, Arkansas, to represent him in collecting bad debts from the sale of various automobiles. Their oral agreement was that Mr. Aaron would pay the initial filing fees and then would be reimbursed after collection was had on the cases. The remaining fee agreement was that Mr. McHughes would receive 25% of the remaining amount recovered in the lawsuits. Mr. McHughes did not provide Mr. Aaron with a written fee agreement. The agreement was explained to Mr. Aaron by an individual, Sammy Sparks, who was referred to as Supervisor of Collections for Mr. McHughes' law firm. Mr. McHughes admitted that the agreement was not placed in written form. He offered to the Committee that the purpose of the Model Rule was to prevent disputes about the fee which did not occur in this particular matter.

During the first contact with Mr. McHughes' law firm, Mr. Aaron was directed to Mr. Sparks, who is not an attorney. Mr. Sparks was Mr. Aaron's contact from that point on with regard to Mr. Aaron's legal matters and the debts he wished to have collected. At the time of the first office consultation, it was Mr. Sparks

who reviewed the files and advised which ones he thought could be collected. Mr. Aaron was advised that he needed to pay the filing fees and costs up front. He wrote a \$2,380 check payable to Mr. McHughes to be placed in Mr. McHughes' trust account. Although, Mr. Aaron was to be reimbursed the advanced costs, he had only received reimbursement on one case by January 14, 2003. Mr. Aaron was also to receive 75% of all monies collected but felt that did not occur in all instances. Mr. McHughes denied that Mr. Aaron did not receive the funds to which he was entitled. Mr. McHughes explained that he never saw the \$2, 380 cost check because someone else handled the manner in which it was deposited.

At some point during the representation, Mr. Aaron became concerned with the way Mr. McHughes and his law office handled the money when they sued individuals for him. Mr. Sparks had advised Mr. Aaron that it cost \$35 to file a lawsuit and \$50 to serve the lawsuit. However, Mr. Aaron pointed out that Mr. McHughes was able to serve some defendants by certified mail which did not cost \$50. During 2002, Mr. McHughes began to invoice Mr. Aaron \$70 for serving the defendants, despite the fact that certain files contained receipts and affidavits demonstrating that Mr. McHughes had only spent \$7.15 for certified mail service. Mr. McHughes explained that Mr. Aaron was never dissatisfied until Mr. Sparks ceased to be employed by the McHughes Law Firm.

When Mr. Aaron chose to no longer use Mr. McHughes' services, he requested that his files be returned to him. Some of the files were missing and not accounted for by Mr. McHughes. During February 2003 when Mr. Aaron received certain files from Mr. McHughes, he learned for the first time that Mr. McHughes had dismissed some of the lawsuits. Mr. Aaron reported that he was never consulted about the disposition of any case. Mr. McHughes cited as the reason for requesting the dismissal that it was "at the request of the plaintiff", which was not true, according to Mr. Aaron.

There was some question within the McHughes' Law Firm whether Mr. Aaron had made the initial payment for costs in the collection matters. Mr. Aaron provided a copy of the front and back of the cancelled check to Mr. McHughes, but still heard nothing from him about the matter. Mr. McHughes stated that the matter is being handled and addressed in a pending lawsuit between he and Mr. Aaron in Wrightsville District

Court.

In his response to the formal disciplinary complaint, Mr. McHughes denied all Model Rules' violations alleged in the formal disciplinary complaint, except the violation dealing with the written fee agreement. Mr. McHughes explained the process in his office for collection accounts. He also explained that he never met with Mr. Aaron, that Mr. Sparks and other employees dealt with him. In his response, Mr. McHughes makes the allegation that a former employee of his prepared the Affidavit of Mr. Aaron. However, it was the staff of the Office of Professional Conduct who did so, based upon information provided by Mr. Aaron. Along with his response, Mr. McHughes' included affidavits from his wife, Becky A. McHughes, Cassandra Swift, an employee of Mr. McHughes, and Annette Richardson, another employee of the McHughes Law Firm.

Upon consideration of the formal complaint and attached exhibit materials, the response to it, 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. McHughes' conduct violated Model Rule 1.2(a) when he failed to consult with Mr. Aaron about any of the debt collection lawsuits he brought on Mr. Aaron's behalf and also failed to discuss with Mr. Aaron any of the dismissals he sought and obtained on lawsuits brought on Mr. Aaron's behalf to collect delinquent debts owed to Mr. Aaron. Model Rule 1.2(a) requires that a lawyer abide by a client's decisions concerning the objectives of representation, subject to paragraphs (c), (d), and (e), and consult with the client as to the means by which they are to be pursued.
2. That Mr. McHughes' conduct violated Model Rule 1.5(c) because he failed to place the fee agreement with Mr. Aaron in written form although the fee agreement was based on a contingency of the recovery received. Model Rule 1.5(c) requires, in pertinent part, that a contingent fee agreement be in writing and state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and

whether such expenses are to be deducted before or after the contingent fee is calculated.

3. That Mr. McHughes' conduct violated Model Rule 1.15(a) when he failed to deposit the check written to him for Mr. Aaron's filing fees and costs in a readily identifiable trust account, even though the funds were not his but were to be used for filing fees and until such filing occurred, the funds remained those of Mr. Aaron. Model Rule 1.15(a)(1) requires, in pertinent part, that all lawyers hold property of clients that is in a lawyer's possession in connection with a representation separate from the lawyer's own property and also requires that 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.
4. That Mr. McHughes' conduct violated Model Rule 1.15(a)(3) because his inability to locate the deposit of Mr. Aaron's check for filing fees and costs given to him during August 2001 demonstrated a failure on his part to maintain complete records of his trust account for a period of five (5) years following the termination of representation of Mr. Aaron. Model Rule 1.15(a)(3) requires that complete records of such account (IOLTA trust account) and other property shall be kept by the lawyer and shall be preserved for a period five (5) years after the termination of representation.
5. That Mr. McHughes' conduct violated Model Rule 5.5(b) because he allowed Sammy Sparks, an individual not licensed to practice law, to meet with Mr. Aaron and explain the litigation that would be pursued on his behalf and to explain a fee agreement to Mr. Aaron without Mr. McHughes' presence. Model Rule 5.5(b) requires that a lawyer not assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel A, that JOSHUA E. MCHUGHES, Arkansas Bar ID#67040, be, and hereby is, CAUTIONED for his conduct in this matter. Further, pursuant to Section 18.A. of the

Procedures, Mr. McHughes is assessed the costs of this proceeding 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: _____