

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL A

FILED

JAN 26 2011

**LESLIE W. STEEN
CLERK**

IN RE: JOHN C. ALDWORTH, Respondent
Arkansas Bar ID#82001
CPC Docket No. 2010-109

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 David Connolly in an Affidavit dated November 29, 2010. The information related to conduct subsequent to the representation of Mr. Connolly by Respondent in 2009.

During December 2010, Respondent was served with a formal complaint, supported by affidavit from Mr. Connolly. A response was filed. The Respondent and the Executive Director negotiated a discipline by consent proposal, which was submitted to this Panel.

David Connolly hired John Aldworth, an attorney practicing primarily in Clinton, Arkansas, in September 2009 to pursue a divorce action on his behalf. Mr. Connolly's wife was attempting to leave the State with their minor children and Mr. Connolly wanted to take action to attempt to stop that move. Mr. Connolly paid Mr. Aldworth a total of \$5200 which was to be billed against at \$150 per hour. The final payment of \$2500 was made on Friday, October 2, 2009.

Mr. Connolly's wife requested a reconciliation the following day. On the Monday or Tuesday that followed, Mr. Connolly called Mr. Aldworth and advised him that he wished to have the divorce proceeding dismissed. Mr. Connolly requested return of the last payment of \$2500 and then when the matter was dismissed for a refund of any other unused funds to be sent

to him. The Order of Dismissal was not filed until November 30, 2009.

Over the month of October and November, Mr. Connolly went to Mr. Aldworth on numerous occasions inquiring about the refund. On or around December 21, 2009, Mr. Aldworth sent Mr. Connolly a letter and a check for \$500. The letter said the payment was the first installment until the full amount was paid. Mr. Connolly did not cash the check until February 4, 2010.

By the end of January, 2010, Mr. Connolly had heard nothing else from Mr. Aldworth so he went to his office to see him. According to Mr. Connolly, during this meeting, Mr. Aldworth informed Mr. Connolly that he had a problem with billing Mr. Connolly because they had not kept up with all the hours. Mr. Aldworth then shocked Mr. Connolly by advising him that he was going to treat the \$5200 paid as a flat fee. No discussion had ever been had about that type of arrangement.

From the time of their meeting in January until Mr. Connolly filed his grievance on April 9, 2010, Mr. Connolly received no letters, phone calls nor checks from Mr. Aldworth. Mr. Connolly hired counsel to assist him in seeking return of the unused portion of the fee and had to pay \$300 for that representation.

After the initial review of Mr. Connolly's grievance, Mr. Aldworth was contacted pursuant to Rule 8.1(b) of the Arkansas Rules of Professional Conduct and requested to provide additional information about the matter. The records provided by Mr. Aldworth demonstrate clearly that there are no deposits into Mr. Aldworth's IOLTA trust account of any of the payments made by Mr. Connolly. Not all of the payments were earned prior to receipt. Specifically, there are no deposits of payments made by Mr. Connolly on September 2, 2009,

September 4, 2009, September 25, 2009, October 2, 2009 nor October 10, 2009. As such, none of the funds that were Mr. Connolly's until earned by Mr. Aldworth were properly safeguarded and kept separate in an IOLTA trust account.

Given that the advanced payment of fees was not placed in the trust account until earned, the funds belonging to Mr. Connolly were never properly safeguarded by Mr. Aldworth following receipt. Funds advanced by a client, which Mr. Connolly was, regardless of whether they are for costs to be incurred, legal services to be provided, or future disbursements to third parties, must go into the attorney's trust account. Funds are to be withdrawn when earned and when costs are expended.

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

1. That Mr. Aldworth's conduct violated Rule 1.15(a)(1), because upon receipt of the \$500 retainer from Mr. Connolly on September 2, 2009, part of which was for services to be rendered in the future and also filing fee costs associated with the representation, Mr. Aldworth failed to place the funds in his IOLTA trust account; upon receipt of the \$500 payment from Mr. Connolly on September 4, 2009, part of which was for services to be rendered in the future, Mr. Aldworth failed to place the funds in his IOLTA trust account; upon receipt of the \$2500 payment from Mr. Connolly on October 2, 2009, part of which was for services to be rendered in the future, Mr. Aldworth failed to place the funds in his IOLTA trust account; and, upon receipt of the \$1000 payment from Mr. Connolly on October 10, 2009, all of which was for services to be rendered in the future, Mr. Aldworth failed to place the funds in his IOLTA trust account.

None of Mr. Connolly's funds were properly safeguarded. Rule 1.15(a)(1) requires that a lawyer hold property of clients or third persons, including prospective clients, that is in a lawyer's possession in connection with a representation separate from the lawyer's own property.

2. That Mr. Aldworth's conduct violated Rule 1.15(b)(2), because Mr. Aldworth failed to deposit the \$500 advanced payment of fee and costs made to him by Mr. Connolly on September 2, 2009, in his IOLTA trust account; failed to deposit the \$500 advanced payment of fee made to him by Mr. Connolly on September 4, 2009, in his IOLTA trust account; failed to deposit the \$2,500 advanced payment of fee made to him by Mr. Connolly on October 2, 2009, in his IOLTA trust account; and failed to deposit the \$1,000 advanced payment of fee made to him by Mr. Connolly on October 10, 2009, in his IOLTA trust account. Rule 1.15(b)(2) requires that a lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

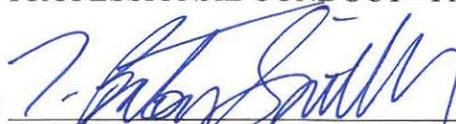
3. That Mr. Aldworth's conduct violated Rule 1.16(d) because after the representation was ended, Mr. Aldworth did not take steps to protect Mr. Connolly's interests in that he failed to refund the advance payment of fee at the time of the end of representation. Mr. Aldworth paid Mr. Connolly in installments and it took him five (5) months to return funds that were Mr. Connolly's not his. Rule 1.16(d) requires that upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as refunding any advance payment of fee that has not been earned.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel A, that JOHN C. ALDWORTH, Arkansas Bar ID# 82001, be, and hereby is, CAUTIONED for his conduct in this matter.

Further, pursuant to Section 18.A of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law, Mr. Aldworth is assessed the costs of this proceeding in the amount of \$50. Mr. Aldworth is also ordered to pay restitution for the benefit of Mr. Connolly in the amount of \$300 pursuant to Section 18.B of the Procedures. Finally, Mr. Aldworth is assessed a fine in the amount of \$250 pursuant to Section 18.C of the Procedures. The fine, restitution, and costs assessed herein, totaling \$600, 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: _____



T. Benton Smith, Chair, Panel A

Date: _____

January 26, 2011

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