

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

PANEL A

IN RE: WILLIAM RAY NICKLE

ARKANSAS BAR ID #86135

CPC DOCKET NO. 2002-109

**FINDINGS AND ORDER**

The formal charges of misconduct upon which this Order is premised arose from the Complaint of Brandon and Charlene Denise Harper. William Ray Nickle, an attorney practicing in Jonesboro, was hired to represent Denise before the Arkansas Board of Nursing and in a child support matter. Mr. Nickle quoted Mr. and Mrs. Harper a fee of \$1000 but made no other mention of fees or monies to be paid to him. Mr. Nickle was hired after Mrs. Harper did not attend a hearing on a matter which had been referred to the Arkansas Board of Nursing about alleged misconduct on her part. Mr. and Mrs. Nickle denied that they had ever received notice of the hearing. Since the Board of Nursing looked upon her absence in a very negative light, the decision was made to suspend her nursing license for two (2) years, impose a fine of \$1000 and require submission to random drug screens during the time of suspension. Mrs. Harper learned of the action after a class of nurses, from the vocational school where Mrs. Harper was teaching, went to the State Board to hear disciplinary cases and heard that hers was scheduled at the time. When Mrs. Harper learned of the action, she contacted the State Board and was advised that she would need to hire an attorney to possibly represent her in court on an appeal. The Harpers initially contacted Marvin Childers who referred Mrs. Harper to Mr. Nickle.

It was during their first consultation with Mr. Nickle that he quoted the Harpers the \$1000 fee. Since they were unable to pay the fee at one time, Mr. Nickle accepted it in two separate \$500 payments. Mr. Nickle admitted that he accepted the retainer in two separate payments but set out that the second payment was not made as the Harpers stated it would be but was made a few weeks later. At the same time, Mrs. Harper spoke with Mr. Nickle about a child support problem she was experiencing. Mr. Nickle agreed to handle this matter as well. Mr. Nickle denied that the Harpers spoke with him about the child support matter. He explained that the only matter discussed with him during the initial consultation was the Nursing Board matter. According to Mr. Nickle, the Harpers did not speak with him about the child support matter until March 2001. Mr. Nickle also recalled that at the time they spoke about the child support matter, he explained again to the Harpers that his fee would be \$100 per hour and that additional fees needed to be paid. Mr. Nickle stated that the Harpers promised that attorney's fees would be paid shortly.

All of the contact took place in the months of November 2000, December 2000 and January 2001. In November 2000, Mr. Nickle provided the Harpers with a copy of a letter that he sent the State Board of Nursing. In December 2000, Mr. Nickle sent information to the Harpers about the information he had in the file on the Arkansas State Board of Nursing matter. Then, in January 2001, Mr. Nickle provided the Harpers with a response that he had received from the Nursing Board. There was very little contact again from Mr. Nickle until November 2001, although Mr. Nickle did advise the Harpers in April 2001 that the State Board of Nursing had filed the record in the legal matter that he had filed on Mrs. Harper's behalf.

While these legal matters were being pursued, Mr. and Mrs. Harper decided to trade their van in for another vehicle. The Harpers decided to buy a vehicle from Blackwell Baldwin Ford in Jonesboro. On the day that they signed all the papers for purchase, a salesman advised them that it was necessary for them to carry "gap insurance". They were advised that it was state law. After the papers were signed, they contacted Mr. Nickle's office and spoke with Sharon Nickle because Mr. Nickle was unavailable. Sharon Nickle advised the Harpers that "gap insurance" was not required pursuant to state law. As a result of this information, the Harpers contacted the dealership and informed them that they were returning the vehicle. They elected not to do so when the owner offered to pay their sales tax on the vehicle, since they were required to pay for insurance which they were not required to carry.

No further thought was given to the matter until they received a packet in the mail the following week. The packet was certified mail from Mr. Nickle's office. The packet contained a letter advising that Mr. Nickle was withdrawing from the legal matters because attorney's fees had not been paid as agreed. In addition, Mr. Nickle set out that the Harpers had used his name without permission during their dealings with Blackwell Baldwin Ford. Mr. Nickle also stated in the letter that he had enclosed a Motion to Withdraw, but there was no such a Motion on either case enclosed. The Harpers did not understand how Mr. Nickle could assert that they had not paid as agreed. They had not heard anything from him in months and they had not received any documentation about any money owed. After receiving the packet from Mr. Nickle, the Harpers attempted to contact him but were unable to speak with him.

Mr. Nickle denied that he did not advise the Harpers that he was seeking additional legal fees on the legal matters for which he was representing Mrs. Harper. According to Mr. Nickle, he advised the Harpers on numerous occasions that he was seeking additional legal fees. Further, Mr. Nickle asserted that he did explain that the \$1000 was merely a retainer from which he would bill \$100 per hour. It was Mr. Nickle's recollection that he explained this to the Harpers at the first meeting and then on numerous occasions thereafter.

Upon consideration of the formal complaint, the response herein, and the Arkansas Model Rules of Professional Conduct, the Committee on Professional Conduct, Panel A, finds:

1. That Mr. Nickle's conduct violated Model Rule 1.4(b) when he failed to advise Mr. and Mrs. Harper that he was seeking additional legal fees in Mrs. Harper's legal matters and that if he did not receive them, he would use that basis in order to withdraw from representation thereby denying them the opportunity to pay the legal fees or determine early on that they needed to hire new counsel to represent Mrs. Harper. Model Rule 1.4(b) requires that a lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.
2. That Mr. Nickle's conduct violated Model Rule 1.5(b) when he did not explain the basis or rate of his fee to the Harpers in writing or otherwise, but merely requested a \$1000 retainer and told the Harpers nothing more, although he had not previously represented Mr. and/or Mrs. Harper. Model Rule 1.5(b) requires that when a lawyer has not regularly represented a client, the basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a

reasonable time after commencing the representation.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, through Panel A, that WILLIAM RAY NICKLE, Arkansas Bar ID #86135 be, and hereby is, REPRIMANDED for his conduct in this matter. In addition, pursuant to Section 18.A. of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law (2002), Mr. Nickle is ordered to pay costs of this proceeding in the amount of \$50. The costs shall be due and payable within thirty (30) days of the date this Order is filed with the Clerk of the Arkansas Supreme Court.

ARKANSAS SUPREME COURT COMMITTEE

ON PROFESSIONAL CONDUCT

By:

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Win Trafford, Chairman, Panel A

Date:

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