

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

PANEL A

IN RE: MICHAEL W. HAWKINS

ARKANSAS BAR ID #87077

CPC DOCKET NO. 2003-071

FINDINGS AND ORDER

The formal charges of misconduct upon which this Order is premised arose from the Complaint of William Cobb. Michael W. Hawkins, an attorney practicing in Fayetteville, Washington County, Arkansas, was hired during November 1999, to represent Mr. Cobb in a divorce proceeding that had been filed by Kimberly Nivens Cobb. Mr. Hawkins quoted a fee of \$500 to represent Mr. Cobb in the matter. Mr. Cobb agreed and paid the amount to Mr. Hawkins. Although Mr. Hawkins had never previously represented Mr. Cobb, the fee agreement was not reduced to written form. Mr. Hawkins filed an Answer for Mr. Cobb shortly after being hired. A final hearing was conducted. On March 29, 2000, the Court entered an Order granting the divorce. In the Decree, the Court set out that he was retaining jurisdiction over the issues concerning the home, including damages allegedly committed upon the property, marital debt and division of property. The Court ordered that the attorneys for each party prepare a Memorandum Brief regarding these issues. The Brief was to be filed within thirty (30) days from the date of the entry of the Decree. Mr. Hawkins' signature appears on the Decree and he was present at the hearing where Judge Kimbrough ordered the Memorandum Briefs be prepared and filed. Mr. Hawkins had until April 28, 2000, to file the brief as ordered by the Court. He did not do so. Mr. Hawkins admitted that he did not file the post trial brief (despite being ordered to do so by the trial judge) because he deemed in his opinion that a Post Trial Brief would be unnecessary and redundant. Opposing counsel did file her brief on that date. None of the information contained in opposing counsel's brief was countered because Mr. Hawkins did not comply with the Court's Order to file a Post Trial Brief. An Amendment to the Decree was filed on December 15, 2000. Mr. Cobb was not aware of the filing because Mr. Hawkins never provided him a copy. Mr. Hawkins denied that he failed to provide Mr. Cobb with a copy of the

Amendment to Decree. He asserted that he did so with a transmittal letter dated December 18, 2000. Following the hearing in the divorce matter, Mr. Hawkins never returned calls that Mr. Cobb made to him. He never responded to Mr. Cobb's messages concerning whether the Judge had made a decision with regard to the post trial briefs. In addressing his failure to communicate with Mr. Cobb after the final hearing in the matter, Mr. Hawkins appears to place the blame on Mr. Cobb by stating that Mr. Cobb never communicated with him after the hearing date. According to Mr. Hawkins, Mr. Cobb only contacted him after being served with contempt papers. Mr. Hawkins also stated that he did not feel it necessary to contact Mr. Cobb about his decision to not file a Post-Trial Brief because of his opinion that a Post-Trial Brief was unnecessary and redundant.

Based upon Mr. Hawkins' failure to inform Mr. Cobb of the Amendment to Decree, Mr. Cobb did not comply with the provisions set out therein. On March 13, 2002, opposing counsel filed a Petition for Contempt against Mr. Cobb. Prior to filing the Petition for Contempt, opposing counsel advised Mr. Hawkins that she would file a Petition if Mr. Cobb did not comply with the terms of the Amendment to Decree. Mr. Hawkins did not forward this information to Mr. Cobb. According to Mr. Hawkins, he had no duty to do so because he had already terminated their relationship. After being served with the Petition for Contempt, Mr. Cobb hired separate counsel to assist him in the matter after receiving the Petition. An Answer to the Petition was filed on Mr. Cobb's behalf on April 18, 2002. Before an Order was entered with regard to the Petition for Contempt, opposing counsel filed a Writ of Garnishment as a result of the Judgment received pursuant to the Amendment to Decree. Mr. Cobb was not held in contempt but was ordered to pay attorney's fees to opposing counsel.

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

1. That Mr. Hawkins' conduct violated Model Rule 1.1 when he failed to be thorough enough in his representation of Mr. Cobb to file the Post-Trial Memorandum Brief as ordered by the Court in the Decree of Divorce and when he failed to ensure that Mr. Cobb was aware of the entry of the Amendment to Decree and had been provided a copy of the same after he was sent a copy by the presiding Judge. Model Rule 1.1 requires that a lawyer provide competent representation to a client, including the legal knowledge, skill,

thoroughness and preparation reasonably necessary for the representation.

2. That Mr. Hawkins' conduct violated Model Rule 1.3 when he failed to file a Post-Trial Memorandum Brief within thirty (30) days following entry of the Decree of Divorce despite being ordered to do so by the Court on behalf of his client and when he did not ensure that Mr. Cobb had a copy of the Amendment to Decree after he received the same. Model Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

3. That Mr. Hawkins' conduct violated Model Rule 1.4(a) when he failed to communicate with Mr. Cobb following entry of the Decree of Divorce, despite the fact he had a continuing obligation to Mr. Cobb based upon the Order of the Court which mandated that he file a Post-Trial Memorandum Brief on Mr. Cobb's behalf addressing certain property issues; when he failed to keep Mr. Cobb informed of the status of the matters relating to the Amendment to Decree and the Post-Trial Memorandum Briefs; when he failed to provide Mr. Cobb with a copy of the Amendment to Decree; when he failed to advise Mr. Cobb of opposing counsel's impending Petition for Contempt based on his failure to comply with the Amendment to Decree; and when he failed to respond to Mr. Cobb's telephone messages and requests for information related to the matters in his divorce proceeding. Model Rule 1.4(a) requires that a lawyer keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

4. That Mr. Hawkins' conduct violated Model Rule 1.4(b) when he failed to advise Mr. Cobb that he needed to seek other counsel because Mr. Hawkins was not going to file the Post-Trial Memorandum Brief as ordered by the Court in the Decree of Divorce and when he did not explain to Mr. Cobb that an Amendment to Decree had been entered in the divorce proceeding thereby depriving him of the opportunity to seek other counsel to determine if he had grounds to appeal entry of the same. Model Rule 1.4(b) requires that a lawyer explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

5. That Mr. Hawkins' conduct violated Model Rule 3.4(c) when he failed to file a Post-

Trial Memorandum Brief on behalf of Mr. Cobb despite being ordered to do so by the Court in the divorce proceeding. Model Rule 3.4(c) requires that a lawyer 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.

6. That Mr. Hawkins' conduct violated Model Rule 8.4(d) because his failure to submit a Post-Trial Memorandum Brief denied Mr. Cobb the opportunity to have his points argued before the Court with regard to the property and issues related thereto; because his failure to advise Mr. Cobb when the Amendment to Decree was entered deprived him of the opportunity to seek reconsideration or appeal the decision of the Court; and, because his failure to advise Mr. Cobb of the requirements that the Amendment to Decree placed on him caused him to be the subject of a contempt proceeding and created the need for him to hire additional counsel. Model Rule 8.4(d) requires that a lawyer not engage in conduct that is prejudicial to the administration of justice.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct that MICHAEL W. HAWKINS, Arkansas Bar ID #87077 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 (2002), Mr. Hawkins is ordered to pay costs in the amount of \$50. The Committee also imposes a fine in the amount of \$250, pursuant to Section 18.B of the Procedures, as a result of Mr. Hawkins' conduct herein. The costs and fine assessed herein shall be paid in the form of a money order or cashier's check made payable to the Office of Professional Conduct and delivered to the Office of Professional Conduct within thirty (30) days of the filing of this Findings and Order with the Clerk of the Arkansas Supreme Court.

ARKANSAS SUPREME COURT COMMITTEE
ON PROFESSIONAL CONDUCT

By:

Gwendolyn D. Hodge, Chair, Panel A

Date:
