

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL B

IN RE: Charlotte B. Murphy, Respondent
Arkansas Bar ID # 90115
CPC Docket No. 2003-151

CONSENT FINDINGS AND ORDER

The formal charges of misconduct upon which this Consent Order is premised arose from information provided to the Committee by William T. Hancock on March 11, 2002. The information related to the representation of Mr. Hancock by Respondent, Charlotte B. Murphy, beginning in 1999.

On November 14, 2003, Respondent was served with a formal complaint, supported by an affidavit from Mr. Hancock. Respondent filed a timely response on January 12, 2004.

The facts giving rise to the formal complaint are that Mr. Hancock's wife, Mrs. Carolyn Sue Hancock, was killed in an automobile accident on January 11, 1999, and the other driver was liable. On January 15, 1999, State Farm Insurance sent Mr. Hancock a letter directing him to complete a one-page "Proof of Death for Claim Form" in order to receive the proceeds from his wife's life insurance policy.

On January 18, 1999, Mr. Hancock hired Respondent to handle a wrongful death action due to the accident. The wrongful death action was to be filed against the driver and his employer. Mr. Hancock said it was his understanding that Respondent was to receive 25% of any settlement prior to litigation in the wrongful death action and that it was contingent on her winning the wrongful death action and was to be taken from any money that was recovered from the people responsible for his wife's death. The contract also provided that Respondent was to receive 40% of any recovery after a suit was initiated. Mr. Hancock said he further understood that if Respondent did not win the case, she would not receive her fee. Respondent was to advance the costs of the action. Mr. Hancock took the life insurance claim forms to Respondent for her to assist him with those as well.

On February 1, 1999, State Farm paid the life insurance proceeds but they sent the proceeds to Respondent at her request. They sent three transmittal letters along with three separate checks for \$10,000 each, and the letters stated that they were being sent to Respondent per her request. The checks were also made payable to Respondent per her request. Mr. Hancock said he never authorized Respondent to have her name placed on the checks. He said Respondent did assist him in filling out the claim forms for the life insurance policy but she was not supposed to receive part of the proceeds. On Friday, February 5, 1999, Mr. Hancock and his family went to Respondent's office and they were presented with the three checks from State Farm and were asked to endorse them. After they endorsed them, Respondent's office took the checks back from them. The checks were deposited into Respondent's Trust Account and \$7,500 of that amount was transferred out of the trust account and was deposited into Respondent's personal "cost" account. Mr. Hancock said at the time he endorsed these checks he did not fully understand what was going on. Later on, after talking to his family, he said he began to question why he was not given the life insurance proceeds and why Respondent had kept the checks.

Mr. Hancock's son, Robert, called Respondent's paralegal and asked why they had not received any of the money and her response was that the money was going to be placed in trust. Mr. Hancock said he thought that meant they were going to create trust accounts for his sons, which he did not want to happen at that time. Mr. Hancock's son inquired further and was told that it was going into Respondent's trust account to cover the costs of the wrongful death case. Mr. Hancock said that still did not seem right to him, so he called Naomi Johnson with State Farm and she told him that 100% of that money should have come to him as the beneficiary on the life insurance contract. She suggested that the checks could be stopped but indicated that before doing that she would call Respondent's office. Shortly thereafter, Mr. Hancock received a call from Respondent's office asking him to come in and discuss the matter with Respondent.

When Mr. Hancock went to Respondent's office, he asked her why her name was on the checks and why she should be entitled to keep such a large percentage of this money since there had been no legal action involved in getting the proceeds. He said Respondent attempted to claim it was all a big mistake. Eventually,

Respondent told Mr. Hancock that if he was unhappy about this that she would not take the money and that it was all a big misunderstanding. At that time, she cut him a check for the life insurance proceeds, less about \$600 which Mr. Hancock authorized her to send to pay off the balance on his wife's car. As Mr. Hancock was leaving, Respondent told me that if there was a problem recovering other life insurance proceeds from J.C. Penny's life insurance contract, that she would still be entitled to 25% of that amount.

Mr. Hancock said it appeared to him that Respondent just took what she thought she could and then waited for him to complain before correcting the situation. He said he could not imagine someone taking \$7,500 from a person for helping fill out a one-page form.

Mr. Hancock said he realized Respondent tried to deceive him and take money from him that she was not entitled to. When she did this, he said he lost confidence in her and felt that he could no longer trust her to represent his family's interest in the wrongful death action. Mr. Hancock fired Respondent and hired another lawyer soon thereafter. After he fired her, Respondent sent Mr. Hancock a letter on February 26, 1999, stating that he only owed her for the time spent on the case and not a percentage of what his new lawyer recovered. Then on March 19, 1999, Respondent sent him another letter stating that she had decided to enforce a formal lien for the full fee of 25%.

Mr. Hancock's new attorney filed an action for wrongful death in Pulaski County Circuit Court. On December 31, 2001, Respondent filed a motion to intervene in the action and asked for 40% since a lawsuit was initiated. She also filed a Complaint in Intervention. An order was entered on April 12, 2002, granting the Motion to Intervene. A hearing was held on May 9, 2003, and resulted in an Order being entered on May 20, 2003. Respondent testified that she did not contact State Farm and direct them to place her name on the checks. She further testified that she was in contact with State Farm daily. The Circuit Court found that Respondent had discussed with members of her office whether she could collect a fee on the life insurance proceeds and that an attorney in her office advised her she could only charge the fee if certain factors were present, none of which were. The Court found that Respondent directed her paralegal to contact State Farm and instruct them to put Respondent's name on the checks. The Court further found that Mr. Hancock had just cause to terminate

the attorney-client relationship with Respondent.

Respondent filed a response denying all allegations and said Mr. Hancock had articulated different versions of why he fired her, what he knew, when he learned it and what he thought she was going to do with the money. Respondent stated in her affidavit that by the time Mr. Hancock called her office regarding the \$7,500 she had kept from the proceeds, she had already decided she was going to give him the whole \$30,000. She further stated that the reason she filed the attorney's lien and intervened in the wrongful death action was because she had initially advised Mr. Hancock's new attorney that she expected *quantum meruit* payment for her work and when there was no response to her request, she filed the lien to preserve her claim.

The matter proceeded to ballot vote pursuant to the Arkansas Supreme Court Procedures Regulating Professional Conduct of Attorneys at Law. Respondent was advised of the ballot vote decision and thereafter requested a public *de novo* hearing. Prior to the scheduled *de novo* hearing, the Respondent and the Executive Director negotiated a discipline by consent proposal, which was submitted to this Panel. Upon consideration of the formal complaint and attached exhibits, admissions made by the respondent attorney, the terms of the written consent, and the Arkansas Model Rules of Professional Conduct, the Committee on Professional Conduct finds:

1. That Ms. Murphy's conduct violated Model Rule 1.2(a) when, she took \$7,500 from life insurance proceeds without informing her client and outside of the agreement she had with her client. Model Rule 1.2(a) requires that a lawyer abide by a client's decisions concerning the objectives of representation.
2. That Ms. Murphy's conduct violated Model Rule 1.4(b) when, she took \$7,500 from the life insurance proceeds without informing her client. Model Rule 1.4(b) provides that a lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.
3. That Ms. Murphy's conduct violated Model Rule 8.4(a) when, without informing her client, she took \$7,500 from the life insurance proceeds. Model Rule 8.4(a) requires that a lawyer not

violate or attempt to violate the rules of professional conduct, knowingly assist or induce another to do so, or do so through the acts of another.

4. That Ms. Murphy's conduct violated Model Rule 8.4(d) when she took from life insurance proceeds \$7,500 to which she was not entitled, thereby causing her client to fire her and hire new counsel to complete his case, and when she filed a motion and complaint in intervention claiming entitlement to 40% of the proceeds. 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, acting through its authorized Panel B, that Charlotte B. Murphy, Arkansas Bar ID # 90115, be, and hereby is, REPRIMANDED and fined \$250 for her conduct in this matter. Ms. Murphy is ordered to pay costs in the amount of \$50. The costs and fine assessed herein shall be paid in the form of a money order or cashiers check made payable to the "Clerk, Arkansas Supreme Court" and 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 B

By: _____

J. MICHAEL COGBILL, Chair, Panel B

Date: _____