

**BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT**

**PANEL B**

**IN RE: RICHARD N. TURBEVILLE**

Arkansas Bar ID #83176

CPC Docket No. 2004-122

**CONSENT FINDINGS & ORDER**

The formal charges of misconduct upon which this Consent Order is premised, involving Respondent Attorney Richard N. Turbeville of Little Rock, Arkansas, arose from information brought to the attention of the Committee on Professional Conduct by bank trust account overdraft notices.

The factual basis for this formal complaint is that the initial bank overdraft situation on this same trust account in June 2003 was dealt with informally and he was requested to make descriptive notations on future trust account checks for the purpose of leaving a proper paper trail for audit purposes. The first "overdraft" incident was not charged, but was mentioned in the complaint only for illustration of the first contact the office of Professional Conduct had with him on a trust account "overdraft" situation, for his future reference and guidance. On or about May 28, 2003, he issued his Arvest IOLTA trust account check No. 2279 for \$5,000.00 payable to "Tiffany Sanders" for some purpose not shown on the check. The check was presented to his bank on June 2, 2003, at a time when the account balance was \$52.64, resulting in the trust account check being paid, and his trust account being charged an overdraft fee of \$15.93, creating an "overnight overdraft" situation and an account shortage of about \$4,950 until a client deposit of \$5,000.00 was made the next day. On March 29, 2004, he notified the Office of Professional Conduct by letter that he was closing this Arvest trust account and opening a new one at another bank. When the first of these 2004 overdraft notices to be charged here reached the Office of Professional Conduct, by letter of May 3, 2004, he was advised that it was not proper to write trust account checks for personal purposes, and that he needed to have this Arvest trust account closed and any personal funds or earned fee funds out of it promptly. He stated there were no clients funds left in the

account and that these checks were written against personal funds that remained in his trust account. He was advised this was improper trust account use and procedure, pursuant to the Arkansas Rules of Professional Conduct related to attorney trust accounts.. His trust account statement for the month of April 2004 demonstrates that he deposited a total of \$37,809.94 into the same Arvest trust account that month, even though he had advised this office on March 29, 2004, that he was closing the account and it held no client monies, only funds of his law firm.

Mr. Turbeville responded to the complaint that he had personal difficulties during this time period which caused him to close his office and personal checking accounts, and that he was unable to immediately open new accounts, and his IOLTA trust account was the only available account he had for all purposes, so he used it for both personal and client funds and disbursements. He denied there was any intent to defraud anyone, that no client or other person lost any funds entrusted to him, and that he has now straightened out his affairs.

Following Respondent Attorney's receipt of the formal complaint, the attorney entered into discussion with the Executive Director which has resulted in an agreement to discipline by consent pursuant to Section 20.B of the Arkansas Supreme Court Procedures Regulating Professional Conduct of Attorneys at Law (2002). Upon consideration of the formal complaint and attached exhibits, admissions made by the respondent attorney, the terms of the written consent, the approval of Panel B of the Committee on Professional Conduct, and the Arkansas Model Rules of Professional Conduct, the Committee on Professional Conduct finds:

A. That Mr. Turbeville's conduct violated Model Rule 1.15(a) in that he commingled personal funds in his trust account by leaving funds, in amounts substantially above any amount reasonably necessary to cover bank charges or comply with the minimum balance required for the waiver of bank charges, that were claimed to be solely his, from earned fees or otherwise, in his trust account and failed to promptly remove them when they became identified as funds to which he was entitled. He deposited or caused to be deposited into his trust account non-client funds as follows, at times when he had advised the Office of Professional Conduct that the account was inactive and being closed and at times when he was using funds remaining therein directly for personal purposes, he made a deposit of \$25,000 on April 21, 2004, funds from the settlement of a client.

He commingled client and personal funds in his attorney trust account in April 2004, when he deposited a total of \$37,809.94 into his trust account after advising the Office of Professional Conduct on March 29, 2004, that he was closing this trust account and that the only funds remaining in the account were his firm funds. He issued his Arvest IOLTA trust account checks as follows: (a) No. 2434 on or about April 23, 2004, for \$111.00 payable to "Extra Closet Self Storage" marked for "unit #I-7," a purpose not clearly related to a client matter; (b) No. 2441 on or about April 26, 2004, for \$583.30 payable to "Farm Bureau" for a purpose not clearly related to a client matter; (c) No. 2444 on or about April 26, 2004, for \$346.53 payable to "Pulaski County Tax Collector" for a purpose not clearly related to a client matter; and (d) No. 2446 on or about April 27, 2004, for \$80.00 payable to "A Test" for a purpose not clearly related to a client matter. These checks were presented to his bank on April 28, 2004, at a time when the account balance was \$32.08, resulting in the trust account checks being returned to the payees without being paid, and his trust account being charged overdraft fees of \$63.72. He was notified May 3, 2004, of these overdrafts by mailed and faxed letter from the Office of Professional Conduct and requested to provide a written explanation within ten days for these trust account overdrafts.

He issued his Arvest IOLTA trust account checks as follows: (a) No. 2444 on or about April 26, 2004, for \$346.53 payable to "Pulaski County Tax Collector" for a purpose not clearly related to a client matter; and (b) No. 2455 on or about May 2, 2004, for \$259.19 payable to "Wal-Mart No. 1105" for a purpose not clearly related to a client matter. These checks were presented to his bank on May 4, 2004, at a time when the account balance was \$51.89, resulting in the trust account checks being returned to the payees without being paid, and his trust account being charged overdraft fees of \$31.86.

On or about April 23, 2004, he issued his Arvest IOLTA trust account check No. 2432 for \$300.00 payable to "Debbie Cozzens" for "loan repay," a purpose not clearly related to a client matter. The check, along with his check No. 2457 for \$40.00, was presented to his bank on May 5, 2004, at a time when the account balance was apparently \$20.03, resulting in check No. 2457 being paid and check No. 2432 being returned to the payee without being paid, and his trust account being charged an overdraft fee of \$31.86. He

was notified on May 10 and May 12, 2004, of these overdrafts by mailed and faxed letter from the Office of Professional Conduct and requested to provide a written explanation within ten days for these trust account overdrafts.

On or about April 28, 2004, he issued his Arvest IOLTA trust account check No. 2450 for \$100.00 payable to "Leslie Steen, Clerk" for the appeal filing fee in *St. Vincent v. Corrington*. The check was presented to his bank on May 6, 2004, at a time when the account balance was -\$51.83, resulting in the trust account check being returned to the payee without being paid, and his trust account being charged an overdraft fee of \$15.93. He was notified May 12, 2004, of these overdrafts by faxed letter from the Office of Professional Conduct and requested to provide a written explanation within ten days for these trust account overdrafts.

He issued his Arvest IOLTA trust account checks as follows: (a) No. 2416 on or about April 20, 2004, for \$342.55 payable to "Office Depot" for a purpose not clearly related to a client matter; (b) No. 2451 on or about April 28, 2004, for \$16.00 payable to "EMSI" for a purpose not clearly related to a client matter; and (c) No. 2455 on or about May 2, 2004, for \$259.19 payable to "Wal Mart No. 1105" for a purpose not clearly related to a client matter, this check being apparently sent through for the second time and being "NSF." These checks were presented to his bank on May 7, 2004, at a time when the account balance was -\$67.76, resulting in the trust account checks being returned to the payees without being paid, and his trust account being charged overdraft fees of \$47.79.

On or about May 10, 2004, he issued his Arvest IOLTA trust account check No. 2460 for \$34.88 payable to "Lakewood Exxon" for goods or services not clearly related to a client matter. The check was presented to his bank on May 11, 2004, at a time when the account balance was -\$75.55, resulting in the trust account check being returned to the payee without being paid, and his trust account being charged an overdraft fee of \$15.93.

On or about May 17, 2004, he issued his Arvest IOLTA trust account check No. 2468 for \$1,450.00 payable to "W & D Properties" for his "May rent." The check was presented to his bank on May 19, 2004, at a time when the account balance was \$1,101.39, resulting in the trust account check being returned to the payee

without being paid, and his trust account being charged an overdraft fee of \$15.93.

On or about May 27, 2004, he issued his Arvest IOLTA trust account check No. 2476 for \$300.00 payable to "PSG" for an unidentified purpose. The check was presented to his bank on May 28, 2004, at a time when the account balance was \$281.25, resulting in the trust account check being returned to the payee without being paid, and his trust account being charged an overdraft fee of \$15.93.

On or about June 30, 2004, he issued his Arvest IOLTA trust account check No. 2500 for \$343.83 payable to "Entergy" for two account numbers. The check was presented to his bank on July 2, 2004, and paid, although the account balance at the time was only 234.93, resulting in his trust account being charged an overdraft fee of \$15.93. Model Rule 1.15(a) requires that a lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. 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 or third person. The lawyer or law firm may not deposit funds belonging to the lawyer or law firm in any account designated as the trust account, other than the amount necessary to cover bank charges, or comply with the minimum balance required for the waiver of bank charges.

B. That Mr. Turbeville's conduct violated Model Rule 8.4(c) in that after advising the Office of Professional Conduct on by letter of March 29, 2004, that he was closing his IOLTA attorney trust account at Arvest bank and opening a new one at another bank, and that his Arvest account held no clients funds, only funds that belonged to his law firm, during the month of April 2004, he deposited \$37,809.94 in funds into the Arvest trust account, including one deposit of \$25,000 on April 21, 2004, that was funds in which a client had an interest. This conduct is deceitful and misrepresented actions he stated he had taken with regard to closing this trust account.

After advising the Office of Professional Conduct on by letter of March 29, 2004, that he was closing his IOLTA attorney trust account at Arvest bank and opening a new one at another bank, and that his Arvest account held no clients funds, only funds that belonged to his law firm, during the month of April 2004, he

failed to promptly remove from this trust account all funds belonging to him or his law firm, as shown by a number of trust account checks he wrote in April, May and June 2004, for personal purposes, while depositing \$37,809.94 in funds into the Arvest trust account, including one deposit of \$25,000 on April 21, 2004, that was money in which a client had an interest. This conduct is deceitful and misrepresented actions he stated he had taken with regard to closing this trust account. Model Rule 8.4(c) requires that a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

WHEREFORE, in accordance with the consent to discipline presented by Mr. Turbeville and the Executive Director, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct that Respondent Richard N. Turbeville, Arkansas Bar No. 83176, be, and hereby is, reprimanded for his conduct in this matter, and ordered to pay \$50.00 costs. 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 with 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, Chairperson, Panel B

Date \_\_\_\_\_

