

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

PANEL A

IN RE: RALPH A. DOWNS, III

ARKANSAS BAR ID #94023

CPC DOCKET NO. 2002-035

**FINDINGS AND ORDER**

The formal charges of misconduct upon which this Order is premised arose from the Complaint of Mathew W. Hemphill. Ralph Aaron Downs, III, an attorney practicing in Little Rock, Pulaski County, Arkansas, was retained on January 6, 2000, to represent Mr. Hemphill in a Motion for Change of Custody. Mr. Downs requested a \$500 retainer from Mr. Hemphill, which Mr. Hemphill mailed to Mr. Downs upon request. Mr. Downs never sent Mr. Hemphill any type of receipt. There was not a written fee agreement prepared nor was there any letter explaining the basis of the fee to Mr. Hemphill.

Mr. Hemphill's child is in California with him and was at the time Mr. Downs was hired to pursue the change of custody order. Mr. Downs was well aware of this fact and of the fact that time was of the essence and that Mr. Hemphill needed an Order so that he would not have to return the child to Arkansas.

After Mr. Hemphill retained Mr. Downs, but before Mr. Downs filed any Motion on his behalf, Mr. Hemphill received correspondence from his ex-wife's lawyer, Michael Knollmeyer. In the correspondence, Mr. Knollmeyer informed Mr. Hemphill that he was going to file a Motion for Contempt against Mr. Hemphill and also seek criminal charges for interference with custody. Immediately, Mr. Hemphill made Mr. Downs aware of this correspondence and the contents thereof. Mr. Downs did not file the Motion for Change of Custody until April 2000. Mr. Downs wrote Mr. Hemphill and advised him that he filed the Motion and an Entry of Appearance but he did not provide Mr. Hemphill with a copy of the Motion. Despite repeated requests to be provided a copy of the Motion, Mr. Downs never provided Mr. Hemphill with one. After filing the Motion, Mr. Downs never took any steps to have Mr. Hemphill's ex-wife served. According to Mr. Downs, he served the Motion for Change of Custody on Mr. Hemphill's ex-wife's attorney and then set the matter for hearing. There is nothing on the docket sheet for the case that reflects service was perfected or that a hearing was scheduled. Further, according to Mr. Downs, a settlement agreement was prepared and forwarded to Mr. Knollmeyer for review.

Shortly after the Motion was filed, Mr. Hemphill began to try to reach Mr. Downs with little or no success. Mr. Downs returned very few telephone calls. When he did, he offered Mr. Hemphill various excuses for his failure to return earlier calls or take further action on Mr. Hemphill's matter. From August 2000 through March 30, 2001, Mr. Downs did not return any of Mr. Hemphill's telephone calls. Mr. Downs admitted that after August 2000 communications broke down due to personal difficulties of Mr. Downs.

On March 30, 2001, Mr. Hemphill finally spoke with Mr. Downs. Mr. Hemphill had a local friend page Mr. Downs in order to obtain a response from Mr. Downs. At that time, Mr. Downs apologized to Mr. Hemphill and asked what he could do. Mr. Hemphill asked for the return of his file documents and a refund of the money paid. Mr. Downs advised that he would check and see how much of the retainer had been used and then would refund Mr. Hemphill the difference. He had not done so as of the time of the Affidavit. Further, Mr. Downs never returned the file to Mr. Hemphill. Mr. Downs explained that due to the unsatisfactory outcome of the matter, the papers and property belonging to Mr. Hemphill had been returned and that the unearned fee was also returned. Mr. Downs provided no proof of the return of the documents or the fee to the Committee with his response.

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. Downs' conduct violated Model Rule 1.2(a) when he failed to pursue Mr. Hemphill's Motion for Change of Custody and when he failed to pursue any efforts to cause service to be made on Mr. Hemphill's ex-wife after filing the Motion for Change of Custody. Model Rule 1.2(a) requires, in pertinent part, that a lawyer abide by a client's decisions concerning the objectives of representation, subject to paragraphs (c), (d), and (e), and shall consult with the client as to the means by which they are to be pursued.
2. That Mr. Downs' conduct violated Model Rule 1.3 when he did not pursue the Motion for Change of Custody after filing the same on April 3, 2000. Model Rule 1.3 requires that a lawyer shall act with reasonable diligence and promptness in representing a client.

- That Mr. Downs' conduct violated Model Rule 1.4(a) when during the course

representation of Mr. Hemphill, he failed to keep Mr. Hemphill adequately informed of the efforts, if any, he was undertaking on his behalf and when despite frequent telephone calls from Mr. Hemphill, he failed to respond to Mr. Hemphill's messages and requests for information. 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.

- That Mr. Downs' conduct violated Model Rule 1.5(b) since although he had not

regularly represented Mr. Hemphill, he failed to explain the basis or rate of fee to him, in writing, or otherwise. Model Rule 1.5(b) requires when a lawyer has not regularly represented the 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.

- That Mr. Downs' conduct violated Model Rule 1.16(d) because when his

representation of Mr. Hemphill was terminated, he did not return to him the papers and property to which he was entitled; he did not return the amount of the unearned portion of the retainer despite agreeing to do so; and, he did not take steps to be relieved in the post-decree matter involving Mr. Hemphill so that there is no attorney of record in the file thereby creating problems for Mr. Hemphill in obtaining the representation of another attorney. Model Rule 1.16(d) requires, in pertinent part, that upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as surrendering papers and property to which the client is entitled and 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, through Panel A, that RALPH AARON DOWNS, III, Arkansas Bar ID #94023 be, and hereby is, REPRIMANDED for his conduct in this matter. In addition, pursuant to Section 18.C. of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law, Mr. Downs is ordered to make restitution to Mr. Hemphill in the amount of \$500. Payment should be made to the Office of the Executive Director, in favor of Mr. Hemphill, within thirty (30) days of the date of the filing of this Findings and Order 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: