

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

IN RE: CARL W. HOPKINS, Respondent
Arkansas Bar ID#94215
CPC Docket No. 2010-075

FILED

DEC 14 2010

**LESLIE W. STEEN
CLERK**

CONSENT FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Lera Shelby in an Affidavit dated August 11, 2010. The information related to Ms. Shelby having hired Carl W. Hopkins, an attorney practicing in Van Buren, Arkansas, to pursue a bankruptcy proceeding for her during March 2008.

On or around September 16, 2010, Respondent was served with a formal complaint, supported by affidavit from Lera Shelby. A response was filed. The Respondent, through counsel, and the Executive Director negotiated a discipline by consent proposal, which was submitted to this Panel.

The information before the Panel reflected that during March 2008, Mrs. Shelby contacted Carl Hopkins to assist her with filing a bankruptcy proceeding. During her initial conversation with Mr. Hopkins, Mrs. Shelby was informed that once Mr. Hopkins was paid in full, he would start the process of filing the bankruptcy pleadings.

On April 11, 2008, Mrs. Shelby delivered to Mr. Hopkins a check in the amount of \$1,250 which was the amount he requested for payment of fees and filing costs. It appears from the check that it was cashed the same day. It was certainly not placed in Mr. Hopkins' trust account as evidenced by the trust account records. There was no written fee agreement nor any

letter explaining the basis of the fee given to Mrs. Shelby, although Mr. Hopkins had never previously represented her.

On the same date, Mrs. Shelby also delivered the credit report which had been requested. She did explain to the secretary who took the credit report from her that certain parts of it were not legible. She was assured that it was okay, that the office had a list of most of the creditors from previous information, and that if a better copy was needed, Mr. Hopkins would let her know.

On April 28, 2008, Mr. Hopkins' secretary called and advised Mrs. Shelby to take her first bankruptcy class which she did. A few weeks later, Mrs. Shelby was advised to come to the office because the Petition was ready to be signed. Mrs. Shelby was told where to sign, she did so, and thought the Petition would be filed. In fact, she understood that it would be filed the following Friday.

After the Petition was signed, Mrs. Shelby made several attempts to contact Mr. Hopkins. She wanted a copy of the Petition she signed and also wanted to know the status of the bankruptcy proceeding. She did not receive replies to her messages.

Finally, on July 22, 2008, Mrs. Shelby received an e-mail from Mr. Hopkins to which she immediately responded. She was very upset and began to make attempts to have her payment refunded to her because Mr. Hopkins had not taken action as he said he would. At one point, Mr. Hopkins advised Mrs. Shelby that he would have his assistant send the refund to her, but he never did. Mr. Hopkins never filed any bankruptcy case for Mrs. Shelby.

On October 28, 2008, Mrs. Shelby went to Mr. Hopkins' office to obtain her file. She was given the initial paperwork she first provided but no Petition. After attempts by another

lawyer were unsuccessful in obtaining a refund for Mrs. Shelby, Paul Efurd filed a lawsuit for Mrs. Shelby. The matter was settled for \$500 to avoid additional court costs.

Upon consideration of the formal complaint and attached exhibit materials, the response, the consent proposal, other matters before it, and the Arkansas Rules of Professional Conduct, Panel B of the Arkansas Supreme Court Committee on Professional Conduct finds:

1. That Mr. Hopkins' conduct violated Rule 1.3, when he did not take action with regard to the bankruptcy filing for Mrs. Shelby for an extended period of time after being hired in April 2008 to pursue such a filing. Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

2. That Mr. Hopkins' conduct violated Rule 1.5(b), when he failed to place the fee arrangement with Mrs. Shelby in written form in spite of not having ever previously represented her and when he failed to explain the rate or basis of his fee to her. Rule 1.5(b) requires that the scope of representation and the basis or rate of the fee and expenses for which the client will be responsible be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate.

3. That Mr. Hopkins' conduct violated Rule 1.15(a)(1) because upon receipt of the \$1,250 retainer from Mrs. Shelby, which was for services to be rendered in the future and also any costs and expenses associated with the representation, Mr. Hopkins failed to place the funds in his IOLTA trust account. Mrs. Shelby's funds were not kept separate in a trust account. Rule 1.15(a)(1) requires that a lawyer hold property of clients or third persons, including prospective clients, that is in a lawyer's possession in connection with a representation separate from the

lawyer's own property.

4. That Mr. Hopkins' conduct violated Rule 1.15(b)(2) when he failed to deposit the \$1,250 advanced payment of fee and costs made to him by Mrs. Shelby in April 2008, in his IOLTA trust account. Rule 1.15(b)(2) requires that a lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel B, that CARL W. HOPKINS, Arkansas Bar ID# 94215, be, and hereby is, CAUTIONED for his conduct in this matter. In addition, pursuant to Section 18.A of the Procedures, Mr. Hopkins is assessed the cost of this proceeding in the amount of \$50. 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 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: Steve Crane, Chair, Panel B *Vice Chair*

Date: 12/10/10

(13.M, Rev.1-1-02)