

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL A

IN RE: BENJAMIN D. HOOTEN
Arkansas Bar ID # 2001265
CPC Docket No. 2006-049

CONSENT FINDINGS & ORDER

The formal charges of misconduct upon which this Consent Order is premised, involving respondent attorney Benjamin D. Hooten of Hot Springs, Garland County, Arkansas, arose from information brought to the attention of the Committee on Professional Conduct by his self-report of January 11, 2006.

Mr. Hooten received an undivided interest (along with his brother) in real property from his mother in 1993. Mr. Hooten was the subject of a civil judgment for \$110,000 in favor of Phyllis Nash (now Dunning) in 1996. In 2001 he was licensed as an attorney. Before becoming an attorney he had worked in the real estate business. In 2003 he quit-claimed his interest in the realty to his brother and the deed was recorded June 2, 2003. Respondent Hooten prepared and executed a "disclaimer" of interest in the realty and recorded it February 18, 2004. He filed a bankruptcy petition on June 4, 2004. His bankruptcy case documents show he engaged in an effort to exempt an interest in the realty through his bankruptcy case. Ms. Dunning objected to his discharge of his large judgment debt to her. The court conducted a hearing and denied Hooten a discharge in bankruptcy on the basis of what the judge found to be false statements and false schedules he had filed. Judge Mixon orally informed the Office of Professional Conduct that he would not be making a "judicial referral" to the Committee on this matter, having taken what he thought was sufficient punitive action against Mr. Hooten by denying him a discharge in bankruptcy, which left intact a judgment that now may approach \$200,000, with ten years' interest included.

Mr. Hooten responded that he had not intentionally made false statements in bankruptcy pleadings or his testimony there. He claimed his execution of the disclaimer was based on his reading of case law. He stated he knew little about bankruptcy or real estate law, having only been licensed a short time when these events occurred, and he was the only victim of his conduct. Mr. Hooten has no prior disciplinary complaints or sanctions.

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, which included dropping several other lesser alleged Rules violations, the approval of Panel A of the Committee on Professional Conduct, and the Arkansas Model Rules of Professional Conduct, the Committee on Professional Conduct finds:

A. Mr. Hooten's conduct Model Rule 8.4(c) in that:

1. He made an incorrect or false statement in his debtor's schedules filed in his bankruptcy petition filed June 4, 2004, in No. 04-bk-73821, where he claimed an apparent fee simple interest valued at \$7,500 in real property at 1810 West Long 17th Street, North Little Rock that he did not own, but claimed as exempt. Absent truthful, correct, and complete answers from the debtor, a debtor's estate probably cannot be properly administered by the Trustee.
2. He made false statements or omissions at the § 341(a) meeting of creditors in his bankruptcy case No. 04-bk-73821, when, in response to questions from the Trustee, he failed to reveal the quitclaim deed he executed and recorded on June 2, 2003, in favor of his brother for the interest Respondent Hooten had at the time in real property at 1810 West Long 17th Street, North Little Rock. Absent truthful, correct, and complete answers from the debtor, a debtor's estate cannot be properly administered by the Trustee.
3. He made false statements or omissions at the § 341(a) meeting of creditors in his bankruptcy case No. 04-bk-73821, when, in response to questions from the Trustee, he failed to reveal the disclaimer instrument he executed and recorded on February 18, 2004, dealing with the interest he once had in real property at 1810 West Long 17th Street, North Little Rock. The disclaimer was apparently an attempt by him to have the undivided one-half interest in this property that had come to him by deed from his mother in 1993 to go to his children in 2004, and not to his brother, to whom he had given the earlier quitclaim deed in 2003. Absent truthful, correct, and complete answers from the debtor, a debtor's estate cannot be properly administered by the Trustee.

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. Hooten and the Executive Director, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct that Respondent BENJAMIN D. HOOTEN, Arkansas Bar No. 2001265, be, and hereby is, REPRIMANDED and assessed \$100.00 costs for his conduct in this matter. 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 A

By _____
Phillip D. Hout, Chairperson, Panel A

Date _____