

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

PANEL A

IN RE: EUGENE BENJAMIN HALE, JR.

ARKANSAS BAR ID #63021

CPC DOCKET NO. 2002-065

FINDINGS AND ORDER

The formal charges of misconduct upon which this Order is premised arose from the Complaint of Mary L. Johnson. Eugene B. Hale, Jr., an attorney practicing primarily in Prescott, Arkansas, represented Ms. Johnson's ex-boyfriend, Billy Callahan, in the criminal proceeding wherein Mr. Callahan was charged with domestic battery in the second degree because of the assault on Ms. Johnson.

Mr. Callahan's first appearance in Court was filed with the Clerk on March 14, 2001. Mr. Hale was retained by Mr. Callahan to represent him on the charges. After Mr. Hale filed two Motions for Continuance on Mr. Callahan's behalf, the trial was scheduled for November 26, 2001. The month prior to the scheduled trial, Mr. Hale contacted Ms. Johnson and asked her to come to his office in Prescott regarding the criminal proceeding against Mr. Callahan. Ms. Johnson went to Mr. Hale's office at his request. Her now husband, Terry Green, also attended the meeting with her. When she arrived at the office, Mr. Hale inquired of Ms. Johnson what she would like to see happen to Mr. Callahan. Ms. Johnson explained to Mr. Hale that she would like for Mr. Callahan to be placed on probation, be responsible for her medical expenses incurred as a result of the injuries he inflicted and also pay her for her pain and suffering in the amount of \$5000. Mr. Hale advised Ms. Johnson that he would consult with his client and then contact her again. Mr. Hale admitted that he contacted Ms. Johnson and asked her if she wanted to come in and talk about Mr. Callahan. He asserted that he only did so after directly asking the prosecutor if he had any objection to Mr. Hale speaking with Ms. Johnson. Mr. Hale also admitted that after Ms. Johnson explained what she wanted to see happen to Mr. Callahan that he, Mr. Hale, advised he would speak to his client and let Ms. Johnson know his answer.

Approximately two weeks later, Mr. Hale contacted Ms. Johnson and again asked that she come to his office. During that meeting, Mr. Hale explained to Ms. Johnson and Mr. Green that his client had agreed to the requests and that he was sorry for what had occurred. Mr. Hale admitted that he spoke with Ms. Johnson again and let her know that his client, Mr. Callahan, was agreeable to paying her medical expenses of \$5,000 and would accept a probated sentence. According to Mr. Hale, he also advised Ms. Johnson that probation would have to be agreed upon by the prosecutor and the Court. Mr. Hale advised that he did not consider a written agreement setting these terms out because he assumed a probation/restitution order would take care of that.

Thereafter, the week of trial, Mr. Hale assured Ms. Johnson that settlement would be taken care of by his client, Mr. Callahan. However, as the date set for pre-trial arrived, the settlement terms had not been met. Specifically, no funds had been delivered to Ms. Johnson.

On the day of pre-trial, Mr. Hale approached Ms. Johnson and again advised that Mr. Callahan was sorry for what had occurred. Ms. Johnson explained to Mr. Hale that she wanted Mr. Callahan to be held accountable for his actions. Mr. Hale assured her that he would make certain that Mr. Callahan fulfilled the terms of the settlement agreement. Mr. Hale even advised Ms. Johnson that he would make sure the settlement terms were fulfilled, even if it meant he would not get his fee. Following the conversation with Mr. Hale and one with Mr. Callahan, Ms. Johnson was advised by Mr. Hale that when her name was called that day that she needed to advise the Court that she wished to dismiss the charges against Mr. Callahan. As a result of all of these conversations and Mr. Hale's assurances, Ms. Johnson appeared in Court and advised that she wished to drop the charges against Mr. Callahan. Thereafter, the Motion and Order for Nolle Prosequi were filed in the Circuit Court of Hempstead County. After the court proceeding, Mr. Hale thanked Ms. Johnson for dropping the charges and also advised Ms. Johnson that he would make sure Mr. Callahan stood up to his word and that he would prepare the paperwork and give Mr. Callahan thirty (30) days to begin paying pursuant to the settlement terms. Mr. Hale's recollection of events on the morning of pre-trial differ from Ms. Johnson's. According to Mr. Hale, he met with the prosecuting attorney that morning and asked about probation for his client, Mr. Callahan. The prosecutor advised Mr. Hale that he could not agree to a probated sentence since Mr. Callahan had a "prior charge". After being advised of this fact by the prosecutor, Mr. Hale spoke with Mr. Callahan and Ms. Johnson outside the courtroom. It was after he advised the two of them that the prosecutor would not agree to probation that Ms. Johnson advised that she was going to "drop the charges" because Mr. Callahan was going to pay her medical bills.

Ms. Johnson called Mr. Hale several times after the court proceeding to inquire about the paperwork. Each time that she was able to speak with Mr. Hale, he assured her it would be taken care of and then he became unavailable when Ms. Johnson called or went by his office. After the thirty (30) days had elapsed, Ms. Johnson wrote Mr. Hale about the matter but Mr. Hale did not respond. Ms. Johnson felt as if she were duped into agreeing to drop the charges against Mr. Callahan. Mr. Hale explained that he did believe that Mr. Callahan was going to commence paying Ms. Johnson's medical bills as soon as she showed him the bills. Mr. Hale explained that he did speak to Ms. Johnson after the court appearance wherein the charges were nolle prossed. According to Mr. Hale, during their conversation, Mr. Hale was advised by Ms. Johnson that her medical bills had been paid by social security or medicaid. Even so, Ms. Johnson wanted Mr. Callahan to pay her the \$5,000. There was never any agreement to do so according to Mr. Hale. Further, Mr. Hale advised that Ms. Johnson did sue Mr. Callahan and obtained a default judgment against him and is presently having his wages garnished.

A supporting affidavit was filed with the Complaint by Terry Green, Ms. Johnson's now husband. Mr. Green's recollection of the matters is much the same as Ms. Johnson's. He was present during the meetings in Mr. Hale's office and also was present during the conversation at the courthouse on the day of Mr. Callahan's pre-trial. Mr. Green confirmed the information provided by Ms. Johnson.

Mr. Hale provided a supporting affidavit from Billy Callahan with his response. Mr. Callahan confirmed much of what his attorney advised in the response to the formal disciplinary complaint. Mr. Callahan advised that Ms. Johnson first told him out of the presence of Mr. Hale she was going to drop the charges. In addition, Mr. Hale provided a letter from William Randal Wright, the Prosecuting Attorney, in the Eighth Judicial District North, who handled the case against Mr. Callahan, wherein Ms. Johnson was the victim. Mr. Wright set out his belief that Mr. Hale did nothing other than represent his client.

In rebuttal to Mr. Hale's response, Ms. Johnson denied much of the information presented by Mr. Hale. In addition, she provided an Affidavit from Lake Key, Jr., a bail bondsman with First Arkansas Bail Bonds, Hope, Arkansas. Mr. Key advised that he was present on November 5, 2001, when Mr. Hale approached Ms. Johnson and told her if she would drop the charges that he would make sure that she received her money even if he did not receive his fee from his client, Mr. Callahan. Mr. Hale responded to the Affidavit by Mr. Key by stating that he does recall seeing Mr. Key in Court on November 5, 2001, and that he may have been nearby during conversations Mr. Hale had with Ms. Johnson and Mr. Callahan. But he denied that he ever said that he would make sure Ms. Johnson received her money. Mr. Hale also advised that he previously represented Mr. Key and believed that Mr. Key was either a victim of suggestion by Ms. Johnson or was intentionally trying to create difficulty for Mr. Hale as a result of his dissatisfaction with Mr. Hale's previous representation of him.

Upon consideration of the formal complaint, the response herein, and the Arkansas Model Rules of Professional Conduct, the Committee on Professional Conduct, Panel A, finds:

1. That Mr. Hale's conduct violated Model Rule 4.1(b) when he failed to disclose to Ms. Johnson that without a written agreement she was without recourse against Mr. Callahan when he failed to pay her the funds offered for dismissing the felony charges against him. Model Rule 4.1(b) requires that in the course of representing a client a lawyer not knowingly fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

2. That Mr. Hale's conduct violated Model Rule 4.3 when he took advantage of Ms. Johnson's lack of understanding to induce her to dismiss the felony charges against his client, Billy Callahan, without fully explaining to her that he would not be compelling his client to honor his portion of the agreement to compensate Ms. Johnson for her injuries caused by Mr. Callahan. Model Rule 4.3 requires that in dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, through Panel A, that EUGENE BENJAMIN HALE, JR., Arkansas Bar ID #63021 be, and hereby is, CAUTIONED for his conduct in this matter.

ARKANSAS SUPREME COURT COMMITTEE

ON PROFESSIONAL CONDUCT

By:

Win Trafford, Chairman, Panel A

Date:
