

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

PANEL A

IN RE: RICK C. SHUMAKER, Respondent
Arkansas Bar ID#82211
CPC Docket No. 2005-012

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 Phillip Brown in an Affidavit dated January 21, 2005. The information related to the representation of Mr. Brown by Respondent in March 2004.

On February 1, 2005, Respondent was served with a formal complaint, supported by affidavits from Phillip Brown and Leslie W. Steen, Clerk of the Arkansas Supreme Court. A response was filed. The Respondent and the Executive Director negotiated a discipline by consent proposal, which was submitted to this Panel.

The information before the Panel reflected that on March 2, 2004, Mr. Brown hired Rick Shumaker, an attorney practicing in Texarkana, to assist him in attempting to stop the sale of marital property and to also assist him in seeking to sell personal property of his ex-wife. The fee agreement was for Mr. Brown to pay Mr. Shumaker \$750 for the representation. Mr. Brown paid \$500 to Mr. Shumaker on March 2, 2004 and \$250 on March 9, 2004. None of the funds were deposited into Mr. Shumaker's IOLTA trust account until costs were paid or the fees were earned. The checks were cashed upon receipt.

The records of the Arkansas Supreme Court Clerk reflect that Mr. Shumaker had not paid his annual license fee for 2004 through January 25, 2005. As such, Mr. Shumaker was administratively suspended for his failure to do so from March 1, 2004, through the time he did pay his fee and the penalty for the late payment. At the time, Mr. Brown paid Mr. Shumaker for his representation, Mr. Shumaker was suspended from the practice of law and therefore not in good standing to represent Mr. Brown in any legal matters.

Mr. Brown's specific purpose for hiring Mr. Shumaker was to stop the sale of the marital property. Time was of the essence and Mr. Brown explained that to Mr. Shumaker when he presented him with the paperwork demonstrating when the sale was to take place. According to Mr. Brown, Mr. Shumaker did not contact him after the payment of the fees was made.

On the Friday before the scheduled sale of the marital property, Mr. Brown contacted Mr. Shumaker. He understood from Mr. Shumaker that the necessary papers were ready to be filed and that Mr. Shumaker would be filing them for him. Immediately prior to the scheduled sale, Mr. Brown contacted Mr. Shumaker and learned from him that there was nothing Mr. Shumaker could do to help him with this matter.

Mr. Brown asserted that had he been advised that there was nothing Mr. Shumaker could do to help him, he would have tried to make financial arrangements to buy the home at the sale. Mr. Brown was deprived of the opportunity to do so and was deprived of the opportunity to seek advice from other counsel.

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

1. That Mr. Shumaker's conduct violated Model Rule 1.3 when he did not advise Mr. Brown in a prompt manner that he was not going to be able to assist him with an attempt to stop the sale of his home and when he failed to file any pleadings on behalf of Mr. Brown with regard to the legal matter Mr. Brown hired him to pursue. Model Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.
2. That Mr. Shumaker's conduct violated Model Rule 1.15(a)(1) because although no services had been provided to Mr. Brown, he cashed the checks paid to him for fees instead of depositing the same in an IOLTA trust account until earned. Model Rule 1.15(a)(1) requires that all lawyers 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 with funds of a client being 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.

3. That Mr. Shumaker's conduct violated Model Rule 5.5(a) when he met with and provided legal advice to Phillip Brown at a time when his license to practice law was suspended for failure to pay his annual license fee and when he accepted fees for legal services, which had not yet been performed, at a time when his license to practice law was suspended. Model Rule 5.5(a) requires that a lawyer not practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel A, that RICK C. SHUMAKER, Arkansas Bar ID# 82211, be, and hereby is, REPRIMANDED for his conduct in this matter. Further, pursuant to Section 18.A. of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law (2002), Mr. Shumaker is assessed the costs of this proceeding in the amount of \$100. In addition, pursuant to Section 18.C. of the Procedures, Mr. Shumaker is ordered to the pay restitution to Mr. Brown in the amount of \$750. The costs and restitution 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 A

By: _____

Bart F. Virden, Chair, Panel A

Date: _____

