

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

PANEL A

IN RE: MARCELIERS "MARK" HEWETT

Arkansas Bar ID # 87081

CPC Docket No. 2005-063

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by attorney Noel F. Bryant on March 12, 2005. The information related to the representation of Leo Inmon, guardian for Mia Inmon, a minor, by Respondent Marceliers "Mark" Hewett, an attorney practicing primarily in Little Rock, Pulaski County, Arkansas, in a guardianship proceeding in Jefferson County, Arkansas, Probate No. P-2000-235-1, in 2000-2001. On April 22, 2005, Respondent was served with a formal complaint, supported by affidavits from Noel F. Bryant and Mia Marie Inmon. Respondent filed a response to the complaint.

Mia Marie Inmon ("Mia"), (date of birth August 30, 1983) lost her mother, Vera Inmon, on May 13, 2000. Thereafter Mia lived with her father, Leo Inmon. Mia drew Social Security survivor monthly benefits of \$971.00 on her late mother. Mia was also the sole beneficiary on a \$70,000 MetLife life insurance policy on her late mother. Marceliers "Mark" Hewett ("Hewett") was employed by Leo Inmon to open a guardianship for Leo to be appointed guardian for Mia. An Amended Petition was filed January 10, 2001, when Mia was over seventeen (17) years old, asking that the \$70,000 MetLife policy proceeds be paid to the guardianship estate of Mia, that Leo Inmon be permitted to pay attorney's fees, costs, and purchase Mia an automobile not to exceed \$10,000, and that the balance of the "funds be placed in a trust account with Bank of America,... in Pine Bluff." An Order prepared by Mr. Hewett was approved by the Court and filed February 13, 2001, appointed Leo Inmon as Mia's guardian, without any mention of a bond on him, approved expenditure of "no more than \$11,000.00" for an automobile for Mia, plus tax and insurance on it. The balance of the METLIFE funds were

ordered “to be deposited in a trust account at a local bank.” Letters of guardianship for Leo Inmon, without requirement of any bond, were issued February 13, 2001.

Less than seven months later, when Mia turned eighteen on August 30, 2001, she requested that her father turn over to her the balance of the funds in her guardianship account. He refused and Mia hired Noel Bryant as her attorney to pursue relief. He filed a petition requesting an accounting by Leo as guardian, of all funds for Mia that came into his hands. Mark Hewett represented Leo Inmon in this proceeding. After Mia had to obtain an Order to Compel, on December 3, 2001, Leo Inmon, represented by Mark Hewett, finally filed his answers to discovery propounded to Leo by Mr. Bryant. Mr. Inmon’s responses reveal the following:

1. He was at all times relevant an unemployed disabled veteran with no income.
2. He owned a 1993 Ford van and a 1996 Ford Taurus auto.
3. He was married to Linda Inmon, as shown by his 1998 and 2000 tax returns.

4. That he apparently put the life insurance proceeds into a MetLife “Total Control Account” (hereafter the “TCA”), in his name as guardian for Mia, and not into a trust account in a local bank as court-ordered.

Mr. Hewett failed to initially insure that the \$70,000 in MetLife funds were placed in an account from which no withdrawals could be made without court approval, and he failed to follow up to insure that Leo Inmon actually deposited the MetLife funds in a trust account in a local bank as the Order Mr. Hewett obtained required. Mr. Hewett failed to comply with Ark. Code Anno. 28-65-215(e) which states a court may dispense with bond if such funds are deposited with an insured financial institution which executes an agreement that no withdrawals will be allowed without a court order. Leo Inmon was ordered to file such an accounting by January 24, 2001. Mr. Hewett continued to represent Mr. Inmon in this matter, in spite of his prior representation of Mia, through the guardianship. Hewett would very likely be a witness in proceedings on the accounting. By a petition filed February 4, 2001, Mr. Bryant, for Mia, sought the disqualification of Mr. Hewett from further participation in the case on the grounds of his conflict of interest prohibited by Arkansas Rule 1.7(a). Mr. Hewett filed a response resisting being disqualified as attorney for Leo Inmon in the matter, stating he needed to be able to defend Mr. Inmon’s accounting that had been ordered to be filed. On February

21, 2001, the Court entered its Order removing Leo Inmon as Mia's guardian, directing him and MetLife to turn over to Mia all MetLife funds held by them, and ordered Leo to prepare an accounting of the insurance proceeds and Social Security benefits which he received on behalf of Mia Inmon. Thereafter, Mr. Hewett withdrew from further representation of Leo Inmon. After Leo Inmon filed his accounting, the Court conducted a hearing in mid-2003, and entered its Judgment Order on October 15, 2003, finding that Leo Inmon misappropriated \$20,894.51 from the ward's funds held in a MetLife account, and that his actions constituted a breach of fiduciary duty as guardian of the estate. Leo Inmon eventually paid the judgment and a satisfaction of judgment was filed May 17, 2004.

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

A. Mr. Hewett's conduct violated Model Rule 1.1 in that he failed to protect the property of the ward Mia Inmon by providing that his Amended Petition for Appointment of Guardian and the Order he presented to and secured from the Court, and filed February 13, 2001, complied with the requirements of Ark. Code. Ann. § 28-65-215(e), if no bond was to be required of the guardian of the minor ward's estate. He failed to protect the property of the minor ward Mia Inmon by insuring that her guardian, Leo Inmon, complied with the court Order Hewett obtained that required the guardian to place the \$70,000 of MetLife funds belonging to the estate of Mia Inmon in a trust account at a local bank. Model Rule 1.1 requires that a lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

B. Hewett's conduct violated Model Rule 1.7(a) in that he represented and had obligations to both the ward, Mia Inmon, and the guardian, Leo Inmon. When Mia Inmon took legal action against Leo Inmon in September 2001 seeking an accounting of her estate funds, Hewett failed to withdraw from representing Leo Inmon against the interests of Mia Inmon when requested to do so by her attorney. By this action Hewett represented Leo Inmon against Mia Inmon, his former client, adversely in the same matter. Mia Inmon did not

consent to Hewett representing her father and former guardian in an adverse proceeding against her interest. Model Rule 1.7(a) provides that a lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless: (1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and (2) each client consents after consultation.

C. Hewett's conduct violated Model Rule 1.7(b) in that he represented, or continued to represent, Leo Inmon in an accounting action filed against Inmon by his former ward, and Hewett's former client, Mia Inmon, under circumstances and with the knowledge that Hewett's representation of Leo Inmon would be materially limited by Hewett's responsibility to his former minor client, or third person, Mia Inmon. Model Rule 1.7(b) provides that a lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless: (1) the lawyer reasonably believes the representation will not be adversely affected; and (2) the client consents after consultation.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel A, that Marceliers "Mark" Hewett, Arkansas Bar ID# 87081, be, and hereby is, reprimanded for his conduct in this matter, and ordered to pay Committee costs of \$50.00. 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: _____

Bart F. Virden, Chair, Panel A

Date: _____

