

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

IN RE: RICKEY H. HICKS, Respondent
Arkansas Bar ID#89235
CPC Docket No. 2010-079

FILED

JAN 11 2011

**LESLIE W. STEEN
CLERK**

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Dondie Ray Franklin in an Affidavit dated September 14, 2010. The information related to the representation of Mr. Franklin by Respondent beginning in 2008.

On September 21, 2010, Respondent was served with a formal complaint, supported by affidavit from Mr. Franklin. Respondent filed a timely Response and the matter proceeded to ballot vote before Panel B of the Committee on Professional Conduct pursuant to the Arkansas Supreme Court Procedures Regulating Professional Conduct of Attorneys at Law.

The information before the Committee reflected that during July 2008, Mr. Franklin, along with three other individuals, hired Rickey Hicks, an attorney practicing primarily in Little Rock, Arkansas, to represent him in a legal proceeding which had been filed by another attorney before that attorney took the Circuit Court bench. The civil litigation was pending in federal court when Mr. Hicks was hired. Mr. Franklin paid Mr. Hicks a total of \$2500. The \$2500 was not placed in a trust account at any time after receipt. Mr. Hicks offered that he had already begun work on the case when Mr. Franklin delivered the fee to him and therefore there was no deposit to be made into the trust account. Mr. Hicks considered it payment for the time and expenses he had already undertaken in the matter.

Mr. Hicks opined to Mr. Franklin early on in the representation that Mr. Franklin had an “excellent case” and a good chance of coming out victorious. In responding to the formal disciplinary case, Mr. Hicks asserted that he never told Mr. Franklin that he had an excellent case. Mr. Hicks went on to explain that no civil rights case is an excellent case.

After the initial communication, Mr. Hicks was not in contact with Mr. Franklin often in the period of his representation of Mr. Franklin. Mr. Franklin received only two letters during the time Mr. Hicks represented him.

During March 2009, Mr. Franklin’s deposition was taken by the opposing counsel. At the conclusion of the deposition, Mr. Hicks advised Mr. Franklin that everything was going well. The following month, Mr. Franklin called Mr. Hicks and asked him about the lawsuit. It was during that conversation that Mr. Hicks informed Mr. Franklin that the lawsuit of one of his former co-workers had been dismissed. Mr. Hicks then explained that Mr. Franklin’s lawsuit was still pending. According to Mr. Hicks, he advised Mr. Franklin that the dismissal of the co-worker’s case amounted to a dismissal of Mr. Franklin’s as well, because a Summary Judgment Motion was pending on the same issues in Mr. Franklin’s case.

For several weeks, Mr. Franklin heard nothing from Mr. Hicks. He called various times for Mr. Hicks but Mr. Franklin did not receive return calls. Because Mr. Franklin was aware that one of his former co-workers had not been told her lawsuit was dismissed, he called the Court Clerk himself. It was then that he learned that his lawsuit had been dismissed by Order entered on June 8, 2009. Mr. Hicks had not provided Mr. Franklin with a copy of the Order nor had he advised Mr. Franklin that the lawsuit had been dismissed. When Mr. Franklin called Mr. Hicks, instead of explaining the matter to him, Mr. Hicks terminated the telephone call by hanging up

on Mr. Franklin.

Mr. Hicks advised that he informed Mr. Franklin of the dismissal when Mr. Franklin called his office. He stated that he was sure he and Mr. Franklin talked and that at no time did Mr. Franklin ever express any desire to appeal. Mr. Hicks also stated that he never hung up on Mr. Franklin or any other client.

Mr. Franklin was denied any opportunity to appeal the Order of the Court granting the Defendants' Motion for Summary Judgment. He was not aware of the Order within the time for filing such an appeal because Mr. Hicks had not advised him of the same nor sent him a copy of the Order.

Upon consideration of the formal complaint and attached exhibit materials, the response to it, 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. Hicks' conduct violated Rule 1.3, because Mr. Hicks did not timely advise Mr. Franklin that his legal matter had been dismissed, nor explain the time deadlines for an appeal in such a manner as to allow him the opportunity to seek other counsel or file a Notice of Appeal pro se to preserve the opportunity for appeal. Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

2. That Mr. Hicks' conduct violated Rule 1.4(a)(3), because during the period of his representation of Mr. Franklin, Mr. Hicks did not communicate with Mr. Franklin in such a manner as keep him reasonable informed about the status of the matter. Rule 1.4(a)(3) requires that a lawyer keep the client reasonably informed about the status of the matter.

3. That Mr. Hicks' conduct violated Rule 1.4(a)(4), because when Mr. Franklin left

messages for Mr. Hicks seeking information about his legal matter, Mr. Hicks failed to respond to them. Rule 1.4(a)(4) requires that a lawyer promptly comply with reasonable requests for information.

4. That Mr. Hicks' conduct violated Rule 1.15(b)(1), because upon receipt of the initial payment of \$2,000 from Mr. Franklin when first hired, funds that were Mr. Franklin's until earned by Mr. Hicks, Mr. Hicks did not place those in an IOLTA trust account. Rule 1.15(b)(1) requires that funds of a client be deposited and maintained in one or more separate, clearly identifiable trust accounts in the state where the lawyer's office is situated, or elsewhere with the consent of the client.

5. That Mr. Hicks' conduct violated Rule 1.15(b)(2), because Mr. Hicks failed to deposit the \$2,000 advanced payment of fee made to him by Mr. Franklin in July 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 RICKEY H. HICKS, Arkansas Bar ID# 89235, be, and hereby is, REPRIMANDED for his conduct in this matter. Pursuant to Section 18.A. of the Procedures, Mr. Hicks is assessed the costs of this proceeding in the amount of \$50. Further, Mr. Hicks is ordered to pay a fine in the amount of \$2,500 pursuant to Section 18.B. of the Procedures. The sanction imposed in this matter was enhanced based upon Mr. Hicks' prior disciplinary history. The fine and costs assessed herein, totaling \$2,550, 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
Steve Crane, Chair, Panel B

Date: 12-15-10