

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

PANEL A

IN RE: RICHARD H. YOUNG

Arkansas Bar ID # 94149

CPC Docket No. 2005-131

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Respondent's trust account bank in 2004 via "overdraft" notices. Respondent Richard H. Young is an attorney practicing primarily in Russellville, Pope, County, Arkansas. On October 19, 2005, Respondent was served with a formal complaint. A Response was timely filed.

Respondent is a sole practitioner. He entrusted the operation and maintenance of his attorney IOLTA trust account at Bank of the Ozarks to his spouse, a nonlawyer. During 2004 she made impermissible deposits of non-client funds into his attorney trust account. She, and he, also impermissibly wrote trust account checks directly payable for personal, not client, purposes. Trust account checks were made payable to "cash." Overdrafts on the trust account were reported by his bank to the Office of Professional Conduct (OPC) five times from August - November 2004. His trust account was reported as having a negative balance on August 18, 2004 (-\$1.54), October 8, 2004 (-\$28.54), and November 12, 2004 (-\$0.54). Mr. Young did not properly maintain his trust account by permitting it to go into negative balance on several occasions, by permitting checks to be written from it for personal expenditures, and by making "cash" withdrawals. His law office and practice were closed from March 30, 2004 to December 13, 2004, as a result of his suspension from practice during that time period by Committee orders in other cases not involving the conduct alleged here.

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. Young's conduct violated Model Rule 1.15(a) in that in 2004, he deposited or permitted to be deposited into his attorney trust account funds that were from personal sources, and not client funds, thus commingling personal funds in a trust account that is to only hold client funds.

On or about June 21, 2004, he wrote or permitted to be written trust account check #151 for \$200.00 to "Cash" for a personal, and not a client-related, purpose. On or about June 17, 2004, he wrote or permitted to be written trust account check #152 for \$400.00 to "Cash" for a personal, and not a client-related, purpose. On or about July 20, 2004, he wrote or permitted to be written trust account check #155 for \$18.00 to "Pizza Hut" for a personal, and not a client-related, purpose. On July 27, 2004, he wrote or permitted to be written trust account check #154 for \$65.18 to "Citicorp" for a personal, and not a client-related, purpose. On August 13, 2004, he wrote or permitted to be written trust account check #156 for \$190.19 to "Rose Drug" for a personal, and not a client-related, purpose. On September 17, 2004, he wrote or permitted to be written trust account check #157 for \$60.00 to "Skyline Medical Clinic" for a personal, and not a client-related, purpose. On or about October 8, 2004, he wrote or permitted to be written trust account check #158 for \$80.00 to "Cash" for a personal, and not a client-related, purpose. On or about October 14, 2004, he wrote or permitted to be written trust account check #161 for \$50.00 to "Cash" for a personal, and not a client-related, purpose. On or about October 16, 2004, he wrote or permitted to be written trust account check #159 for \$29.50 to "Pizza Hut" for a personal, and not a client-related, purpose. On or about October 25, 2004, he wrote or permitted to be written trust account check #160 for \$12.50 to "Newton's Pharmacy" for a personal, and not a client-related, purpose. On November 6, 2004, he wrote or permitted to be written trust account check #162 for \$27.00 to "Heart of the Ozarks" for a personal, and not a client-related, purpose. On November 6, 2004, he wrote or permitted to be written trust account check #163 for \$150.00 to "Brittney Holcomb" for a personal, and not a client-related, purpose.

He failed to properly maintain his trust account in that on July 27, 2004, he wrote or permitted to be written trust account check #154 for \$65.18 to "Citicorp." When this check was presented to his bank for payment on July 30, 2004, it was returned unpaid because the trust account balance was then not sufficient to pay the check in full. He failed to properly maintain his trust account in that on August 13, 2004, he wrote or

permitted to be written trust account check #156 for \$190.19 to "Rose Drug." When this check was presented to his bank for payment on August 17, 2004, it was returned unpaid because the trust account balance was then not sufficient to pay the check in full. He failed to properly maintain his trust account in that on September 17, 2004, he wrote or permitted to be written trust account check #157 for \$60.00 to "Skyline Medical Clinic." When this check was presented to his bank for payment on September 24, 2004, it was returned unpaid because the trust account balance was then not sufficient to pay the check in full. He failed to properly maintain his trust account in that on November 6, 2004, he wrote or permitted to be written trust account check #162 for \$27.00 to "Heart of the Ozarks." When this check was presented to his bank for payment on November 10, 2004, it was returned unpaid because the trust account balance was then not sufficient to pay the check in full. He failed to properly maintain his trust account in that on November 6, 2004, he wrote or permitted to be written trust account check #163 for \$150.00 to "Brittney Holcomb." When this check was presented to his bank for payment on November 9, 2004, it was returned unpaid because the trust account balance was then not sufficient to pay the check in full. Model Rule 1.15(a) requires, in pertinent part, that a lawyer shall 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. Funds of a client shall be 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. The lawyer or law firm may not deposit funds belonging to the lawyer or law firm in any account designated as the trust account, other than the amount necessary to cover bank charges, or comply with the minimum balance required for the waiver of bank charges.

B. Mr. Young's conduct violated Model Rule 5.3(b) in that he failed to reasonably supervise his spouse, a nonlawyer, in her operation and maintenance of his firm trust account and to ensure that her operation and maintenance of the trust account was compatible with his obligations for the trust account required by his professional obligations as a lawyer. Model Rule 5.3(b) requires that, with respect to a nonlawyer employed or retained by or associated with a lawyer: a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of

the lawyer.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel A, that **RICHARD H. YOUNG**, Arkansas Bar ID# 94149, be, and hereby is, **REPRIMANDED** for his conduct in this matter, fined \$500.00, and assessed Committee costs of \$50.00. In determining the sanction and fine imposed here, the Panel has considered Respondent's prior disciplinary record. The fine and 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: _____