RECEIVED
SUPREME CT/CT OF APPEALS
CLERK'S OFFICE

2008 APR -7 A 9:20

LESLIE W. STEEN

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL A

In Re: **ANN C. DONOVAN**
Arkansas Bar ID # 78043
CPC Docket No. 2007-089

ORDER GRANTING MOTION FOR STAY PENDING APPEAL

1. A majority of Panel A has voted to grant Respondent's Motion for Stay Pending Appeal to the Arkansas Supreme Court.

2. Respondent's Petition for Reconsideration has been denied and the Findings and Order from the ballot vote which order suspended Respondent's Arkansas law license for twelve (12) months, shall be filed of record, but the suspension ordered therein is stayed and shall not be effective until further order of the Committee or the Arkansas Supreme Court

IT IS SO ORDERED on April 7, 2008.

Steven Shults

Steven Shults, Panel A Chair

FILED
APR 07 2008
LESLIE W. STEEN
CLERK

V

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL A

FILED
APR 07 2008
LESLIE W. STEEN
CLERK

IN RE: ANN C. DONOVAN, Respondent
Arkansas Bar ID#78043
CPC Docket No. 2007-089

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Honorable Richard Taylor in a Judicial Referral. The information related to the representation of William and Viola Parks by Respondent beginning in 2005.

On October 11, 2007, Respondent was served with a formal complaint, supported by the information from Judge Taylor. Respondent failed to file a timely response to the complaint, or to request an extension of time in which to respond in a timely fashion, which failure to timely respond, pursuant to Section 9.C(4) of the Procedures, constitutes an admission of the factual allegations of the formal complaint and extinguishes Respondent's right to a public hearing.

The information before the Committee demonstrated that a hearing was held on April 5, 2007, related to issues pending involving a Motion for Turnover of Property in the case of In Re: William and Viola Parks, Debtors, United States Bankruptcy Court, Western District of Arkansas, Fort Smith Division, Docket No. 2:05-BK-72859 (7). Josh Sanford, an attorney practicing primarily in Russellville, appeared with Mr. and Mrs. Parks. At the beginning of the hearing, Mr. Sanford informed the Court that Ann Donovan, an attorney practicing primarily in Fayetteville, had contacted him with regard to the Motion for Attorney's fees and that she wanted to know if they could work it out. According to Mr. Sanford, he had not heard anything further from her since that time. Someone on Ms. Donovan's behalf called Mr. Sanford, the day before the hearing but had not entered an appearance on her behalf.

Mr. Fulmer, the Trustee, explained to the Court that at the first meeting of creditors involving the Parks, when Ms. Donovan was their counsel of record, they were forthcoming that their petition and schedules were grossly inaccurate. The Trustee informed the Office of Professional Conduct that the tape of the 341(a) meeting no longer exists and there apparently is no transcript of the Parks' examination. According to the information provided by Mr. Fulmer to Judge Taylor, Ms. Donovan was asked to prepare a petition and schedules in line with the Parks' testimony at the first meeting and get it filed. Mr. Fulmer waited a year and Ms. Donovan filed nothing. He wrote and called Ms. Donovan asking for something to happen. He finally felt forced to file the Motion for Turnover because the Parks' homestead was not even listed in their original petition and schedules. After the Parks went to Mr. Sanford about the bankruptcy, he filed an Amended Petition and Schedules. Mr. Fulmer explained to the Court that he believed the Parks tried to do right but that their representation was weak and caused the problems.

After Judge Taylor considered the Motion for Turnover, he inquired of the Motion to Pay Attorney's Fees. The Court went on and heard the evidence on the Motion.

Mr. Sanford explained to Judge Taylor that Ms. Donovan initially filed a Chapter 13 for the Parks but once it became clear that they could not stay in a 13 proceeding, she converted it to a 7. There were significant problems with the petition and those problems were not corrected by Ms. Donovan during the pendency of her representation of the Parks. Ms. Donovan listed an asset for the Parks that they did not own and she failed to include their homestead. Ms. Donovan's conduct placed the Parks in a precarious position and left them open to the possibility of not being able to maintain their homestead. It was also explained to Judge Taylor that Mr. and Mrs. Parks incurred significant costs in hiring Mr. Sanford to fix what Ms. Donovan should have done correctly initially. Further, it was explained to the Court that Ms. Donovan did not keep the

Parks informed of what was going on in their bankruptcy proceeding.

Mr. Parks testified and explained that Ms. Donovan was hired to file a bankruptcy petition for he and his wife in 2005 and was paid $1100 for the representation. Mr. Parks offered that he and his wife completed paperwork for Ms. Donovan so that she could complete the petition to be filed for them. He stated that the information in the petition was not what had been given to Ms. Donovan and also advised that he did not sign the petition Ms. Donovan filed on their behalf. Mr. Parks testified before Judge Taylor that he asked Ms. Donovan about the listing for property in Paris, Arkansas, which he did not own and never had owned, and Ms. Donovan told him that it was okay and did not matter.

Mr. Parks was not certain all that went on at the first meeting of creditors because so much did go on that day. He did say that the Trustee asked questions and Ms. Donovan did not have a lot to say that day. According to Mr. Parks, every time he and / or his wife would ask Ms. Donovan something about the bankruptcy, she would advise them that she had taken care of it, or she would take care of it that afternoon or tomorrow. Mr. Parks explained that he and his wife tried to contact Ms. Donovan many times to find out what was going on but she would not return their telephone calls.

In addition to the $1100 paid to Ms. Donovan as a flat fee for the bankruptcy proceeding, Mr. Parks stated that he and his wife gave Ms. Donovan $300 to get her telephone service reinstated at her office. He also explained that he and his family helped Ms. Donovan move from one office to another, and then from the smaller office to her home. In addition, he explained that they spent all day cleaning Ms. Donovan's house. Mr. Parks said that he and his family did the work because Ms. Donovan was their bankruptcy attorney and because she professed to not have any money and they felt sorry for her.

With regard to their home, Mr. Parks testified that Ms. Donovan told them it did not matter how much equity that they had in the home because all of that was taken care of with the homestead exemption. He learned later that there was a cap on the exemption amount. Mr. Parks said that after he received notice to appear in court, March 1st, Ms. Donovan asked he and his wife to stop calling her. The testimony was also that Ms. Donovan did not ever send the Parks a copy of the Trustee's Motion for Turnover. Mr. Parks received the information from the Court, not from Ms. Donovan, his attorney. When Mr. Parks learned of the Motion and the need to appear in Court, he asked Ms. Donovan what it was about and she told him it was about the Geo Metro and the Dodge pickup but she never said anything about the house. Further, Ms. Donovan told him that she filed a Response to the Motion for Turnover but she did not do so. Mr. Parks learned that the Motion for Turnover involved his home after contacting Mr. Sanford for help.

In the initial Petition Ms. Donovan filed on behalf of Mr. and Mrs. Parks, she set out that Mrs. Parks had a $96,000 income. Mrs. Parks is on disability and suffers from Parkinson's disease. She does not have a $96,000 annual income. Mr. Parks is listed as "disabled / farmer". In the Schedule, Ms. Donovan stated that $96,000 was expected annually from a "worm operation" to begin in July or August 2005. In fact, the Parks' annual income was actually a total of $17,556 in disability benefits.

In response to questions asked by Judge Taylor, Mr. Parks explained that $900 of the $1100 was paid to Ms. Donovan prior to the bankruptcy filing and then the $200 was paid several weeks later.

Ray Fulmer, the Trustee, also testified before Judge Taylor. Mr. Fulmer agreed that there were significant problems with the Petition filed by Ms. Donovan on behalf of the Parks. Mr.

Fulmer asked Ms. Donovan to file amended schedules within thirty (30) days that matched the Parks' testimony. Mr. Fulmer explained that over a year and a half, he called and wrote Ms. Donovan three letters explaining that she needed to get this straightened out but she never contacted him in response until he filed the Motion for Turnover of assets.

Judge Taylor announced his decision following a recess that date. Judge Taylor granted the Motion for Attorney's Fees and awarded Mr. and Mrs. Parks $1,400, which represented the $1,100 paid to Ms. Donovan initially and the $300 given to her in order to have her telephone service reinstated. Judge Taylor canceled the contract between Ms. Donovan and the Parks and explained that no services were provided which were of benefit to the debtors. In addition, Judge Taylor ordered that a transcript of the hearing be made and then forwarded as a referral to the Supreme Court Committee on Professional Conduct.

The Order granting the Motion for Payment of Attorney's Fees was entered on April 6, 2007. The Order on the Motion for Turnover of Property was filed on April 11, 2007. Ms. Donovan took no action on the Order granting the Motion for Payment of Attorney's Fees until she learned, following the filing of the transcript, that Judge Taylor had made a referral to the Committee on Professional Conduct. On May 18, 2007, Ms. Donovan filed a Motion for Reconsideration and Stay. She offered that Eric Soller was to have asked for a continuance for her and that he did not do so. Ms. Donovan requested time to appear and be heard on the issues. Judge Barry set a hearing for June 14, 2007. A Response to Ms. Donovan's Motion for Reconsideration was filed on May 25, 2007. Ms. Donovan filed a Motion for Continuance of the June 14, 2007 hearing on the day before the scheduled hearing. Judge Barry continued the hearing until August 15, 2007.

At the hearing on August 15, 2007, an announcement was made that a settlement had

been reached between the parties. Based upon the agreement, the Motion for Reconsideration was granted. Ms. Donovan remained liable for the judgment resulting from the Court's Order on April 6, 2007, and the debtors were awarded an additional $750 for costs and attorneys fees. The Order specifically recites that Judge Barry is taking no action on the referral of Ms. Donovan to the Committee. Judgment was entered against Ms. Donovan on that date reflecting that she still owed the funds to the Parks.

On August 15, 2007, counsel for the Parks sent a letter to the Executive Director of the Office of Professional Conduct requesting that the matter be dropped. The complaint did not originate from the Parks but was rather a referral from Judge Taylor and therefore is not the Parks' complaint to "drop". Attached to the formal disciplinary complaint was a print out from Pacer Web Services demonstrating that Ms. Donovan has been Attorney of Record in 100 bankruptcy cases in the Western District of Arkansas since 1987. There were no listings for her in the Eastern District of Arkansas for bankruptcy cases.

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

1. That Ms. Donovan's conduct violated Rule 1.1, when she prepared Schedules for the Parks which were grossly inaccurate when Ms. Donovan filed them on their behalf; when she listed an asset for the Parks on their bankruptcy filings which they did not own and had never owned; when she failed to list the Parks' homestead on their bankruptcy proceeding; when she did not explain to the Parks that there was a "cap" on the exemption amount that they could claim on their homestead in a bankruptcy proceeding; and, when she was not thorough enough in her representation of Mr. and Mrs. Parks to be certain that she filed an Amended Petition and

Schedules to reflect the correct information in their bankruptcy filing for a year and a half following the meeting of creditors until the time that a Motion for Turnover had to be filed by Mr. Fulmer, the Trustee. Rule 1.1 requires that a lawyer provide competent representation to a client, including the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

2. That Ms. Donovan's conduct violated Rule 1.3, when she did not diligently represent Mr. and Mrs. Parks in their bankruptcy proceeding and when, after being advised that she had filed Schedules containing grossly inaccurate information, despite having been provided the correct information by her clients, she failed to file Amended Schedules. Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

3. That Ms. Donovan's conduct violated Rule 1.4(a)(3), when she did not keep Mr. and Mrs. Parks informed of the status of their bankruptcy proceeding. Ms. Donovan instead advised them that she was taking care of everything or that had everything had been taken care of, despite having the knowledge that she had not filed Amended Schedules reflecting accurate information or taken any other steps to fix the problems she created with the filing she initiated on their behalf without their signatures. Rule 1.4(a)(3) requires that a lawyer keep the client reasonably informed about the status of a matter.

4. That Ms. Donovan's conduct violated Rule 1.4(a)(4), when she failed to return telephone messages left for her by Mr. and Mrs. Parks for information about the status of their bankruptcy proceeding. Rule 1.4(a)(4) requires that a lawyer promptly comply with reasonable requests for information.

5. That Ms. Donovan's conduct violated Rule 3.3(a)(1), when, after including real property on the Parks' bankruptcy schedules which they did not own, she failed to correct that

false statement of material fact at any time during her representation of Mr. and Mrs. Parks and, when, after incorrectly and falsely setting out on the Parks' bankruptcy schedules that Mrs. Parks had expected income of $96,000 annually, she failed to correct that false statement of material fact made to the bankruptcy court at any time during her representation of Mr. and Mrs. Parks. Rule 3.3(a)(1) requires that a lawyer not knowingly fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.

6. That Ms. Donovan's conduct violated Rule 8.4(d) because her failure to timely file Amended Schedules in the Parks' bankruptcy or to address the problems she corrected with the faulty filing created the need for further action in the proceeding pending before Judge Taylor, caused delay in pursuing the matter before the Court, and created the need for Mr. and Mrs. Parks to hire other counsel. Rule 8.4(d) requires that a lawyer shall not engage in conduct that is prejudicial to the administration of justice.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel A, that the Arkansas law license of ANN C. DONOVAN, Arkansas Bar ID #78043, be, and hereby is, SUSPENDED FOR A PERIOD OF TWELVE (12) MONTHS for her conduct in this matter. The suspension in this matter shall become effectively immediately upon the filing of this Findings and Order with the Clerk of the Arkansas Supreme Court. In addition, Ms. Donovan is ordered to pay restitution to Mr. and Mrs. Parks in the amount of $1400.00, pursuant to Section 18.C. of the Procedures. For failing to respond to the formal complaint, the Committee, pursuant to Section 9C(3) imposes a separate sanction of a REPRIMAND. Ms. Donovan shall also pay costs in the amount of $50 in accordance with Section 18.A. of the Procedures. The restitution and costs assessed herein, totaling $1,450, 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: Jerry D. Pinson

Jerry D. Pinson, Chair, Panel A

Date: November 27, 2007