BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL B

FILED
MAR 19 2010
LESLIE W. STEEN
CLERK

IN RE: BRUCE J. BENNETT, Respondent
Arkansas Bar ID#92140
CPC Docket No. 2009-065

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 Dennis and Valory Vinciguerra in an Affidavit, dated June 2, 2009. The information related to the representation of the Vinciguerras by Respondent beginning in September 2007.

During June 2009, Respondent was served with a formal complaint, supported by affidavit from the Vinciguerras. A response was filed. The matter proceeded to ballot vote before Panel A of the Committee. After receiving notice of the decision of Panel A, Respondent requested a public hearing and then the Respondent and the Executive Director negotiated a discipline by consent proposal, which was submitted to this Panel and to the Arkansas Supreme Court pursuant to Section 18.E of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law.

The information before the Committee reflected that during September 2007, Dennis and Valory Vinciguerra hired Bruce J. Bennett, an attorney practicing in Bentonville, Arkansas, to represent them in civil litigation. Mr. Bennett had represented the Vinciguerras in previous years in other civil matters. Although not completely satisfied with the outcome of those previous matters, the Vinciguerras did feel that Mr. Bennett had properly conducted himself in those matters.

A Complaint was filed on September 7, 2007, by Delta Trust and Bank in its capacity as

Trustee of the Susan Greene Trust, etc. against the Vinciguerras, LaDonna Bornhoft, Deep Stream, LLC and J&J Dollar, LLC. Ray Bornhoft had already been sued on this matter. The Vinciguerras were served with the Complaint on September 13, 2007. On that same date, they spoke with Mr. Bennett and asked him to represent them and their company in the matter. Mr. Bennett agreed to do so. One week later the Vinciguerras met with Mr. Bennett and discussed responses to the allegations in the Complaint. A Motion to Dismiss was also discussed because there was no connection between the Vinciguerras and the remaining two defendants, and also because their relationship with Bornhoft, the owner of J&J Dollar, LLC had been severed almost a year prior to the incident that caused the lawsuit. Mr. Bennett assured the Vinciguerras that he would take care of those things but first wanted to file the answers to the complaint. Mr. Bennett never filed a Motion to Dismiss.

Mr. Bennett and the Vinciguerras also discussed filing a claim on the Vinciguerras' behalf against Mr. Bornhoft or Mrs. Bornhoft. Mr. Bennett also spoke with the Vinciguerras' counsel in Missouri about doing so. Although he was to file such an action, as of the date of the filing of the formal disciplinary complaint he had never done so. Mr. Bennett denied that he was hired to pursue any claims against Ray Bornhoft. He also asserted that he advised the Vinciguerras that this was not something he had ever done and that there were other firms that specialized in that type of litigation.

Mr. Bennett did not file Answers to the Complaint against the Vinciguerras until October 8, 2007. This was past the time allowed by law to file the Answer. There was no apparent reason for him not to have timely filed the Answer because he had all the information prior to the deadline. Mr. Bennett admitted that the response was filed late, but asserted it was because Mr.

Vinciguerra was late in getting the complaint to him.

On October 22, 2007, a Motion to Strike Answer and For Default Judgment was filed by the Plaintiffs' counsel. The Vinciguerras did not know this filing had occurred because communication with Mr. Bennett had completely broken down. The Vinciguerras went to the courthouse to review the file and learned of the Motion. During the entire period of time, Mr. Bennett continued to advise the Vinciguerras that he was working on getting them excluded from the lawsuit.

At a later date, the Vinciguerras learned that in December 2007, there was a hearing notice issued for January 10, 2008. The hearing was to address the Motion to Strike and For Default Judgment. The Vinciguerras had no knowledge of this hearing. The Motion was denied with an Order filed January 14, 2008. The Vinciguerras do not know what excuse Mr. Bennett provided to the Judge in this matter because they were not notified of the hearing and therefore were not present.

On February 25, 2008, Plaintiff filed a Motion for Partial Summary Judgment. Judge Finch granted the Motion just two days after it was filed. It appears that Mr. Bennett was mailed a copy the day after the Motion was granted, giving the Vinciguerras no opportunity to file a response. Nothing was done by Mr. Bennett to have the motion dismissed or the order set aside. It was not until the Vinciguerras received notices of garnishments sent to all banks in Northwest Arkansas that they were aware of the summary judgment against them.

When the Vinciguerras contacted Mr. Bennett about the judgment of $617,529.05 against them, he had no answers for what had occurred. Mr. Bennett continued to assert that he was working on getting the Vinciguerras dismissed from the lawsuit. On March 4, 2008, an

Amended Order Granting Partial Summary Judgment was filed.

A Show Cause hearing was set for July 10, 2008. When the Vinciguerras contacted Mr. Bennett, he said he did not know what it was about nor the reason for the hearing. At the hearing, which the Vinciguerras learned of through opposing counsel, they learned that the reason for the hearing was because no Affidavit of Financial Means had been filed on their behalf. Mr. Bennett had the Affidavit in his possession since April 10, 2008.

While reviewing Court files the Vinciguerras learned that there was a July 18, 2008, e-mail from Plaintiffs' attorney, Jessica Middleton, to Mr. Bennett concerning the documents she was requested from them and the Order to Show Cause. Mr. Bennett responded with "looks good to me." The document was never given to the Vinciguerras so they were unable to provide the requested documents.

On August 15, 2008, a Writ of Execution was issued. Mr. Bennett did nothing to assist the Vinciguerras with this matter or to attempt to stop or "put off" the writ.

On August 25, 2008, a Motion for Contempt was filed. When the Vinciguerras learned of the hearing on the Motion, they called Mr. Bennett to ask why and again he said he did not know. Mr. Bennett was mailed a copy of the contempt motion on August 22, 2008, stating the reason for the filing. At the hearing, the Vinciguerras learned it was because they did not respond to the order to produce documents to the plaintiffs' counsel. They were never informed of the Order although Mr. Bennett had a copy of it. Mr. Bennett never provided his clients, the Vinciguerras, with a copy or advised them of the need to produce certain documents. Mr. Bennett knew that Plaintiffs' counsel was requesting the Vinciguerras be jailed for the contempt but he still never did anything to protect them or their interests. Judge Finch denied the Motion.

On September 24, 2008, the Writ of Execution was carried out by the Sheriff's office. Everything in the Vinciguerras' home was taken, except clothes, mattresses and linens. They called Mr. Bennett but he told them that there was nothing he could do – he was on his way to court.

A month after their assets were seized, Mr. Bennett finally filed a Motion For the Return of Property. The Motion was related to property that others had liens on and the Vinciguerras did not own outright. Even though the Vinciguerras requested he attempt to try to get them dismissed from the lawsuit over a year previously, he still did not do so. Four (4) days after Mr. Bennett filed the Motion for Return of Property, the Vinciguerras were notified that their assets would be sold at auction on November 20, 2008.

On November 7, 2008, a Motion for Disbursement was filed. A copy was sent to Mr. Bennett but again the Vinciguerras were not notified. During this period of time, the Vinciguerras asked Mr. Bennett why they had not had a response to the Motion to Return Property. He said he would check and let them know. The Vinciguerras did not find out the Motion was denied until they went to the courthouse and went through the court documents.

An Order denying the Motion to Return Property was signed by Judge Finch on November 6, 2008. It was not filed until November 19, 2008, the day before the auction. Six days before the auction was to be held, Mr. Bennett finally filed a Motion to Set Aside Judgment. Judge Finch denied that Motion on November 19, 2008. His reason for the denial was that the Motion failed to state grounds for such a late request. Mr. Bennett was clearly not protecting his clients' interests. According to Mr. Bennett, the Motion to Set Aside was filed "as soon as discovered by parties and counsel."

After all of this occurred, the Vinciguerras met with an attorney practicing in Fort Smith. They wanted to know what options might be available to them. By the time they met with different counsel, there was nothing that could be done, but to report Mr. Bennett for failing to file answers in a timely manner, failing to appeal rulings in a timely fashion, failing to notify them of pleadings, Orders and requirements from those, and failing to file cross-claims. Legally, the other counsel's only suggestion was that they seek advice from a bankruptcy attorney.

During the course of Mr. Bennett's representation of the Vinciguerras, he did not send them letters to advise of the status of the civil litigation. He did e-mail periodically. The Vinciguerras provided most of those e-mails. They did not have access to any others because when their property was seized, their computer was taken.

Mr. Bennett explained that during the time things were occurring with the Vinciguerras, he was going through a horrible divorce, which may have had something to do with timeliness issues. He also described the Vinciguerras as high-maintenance clients with a low-maintenance budget.

Upon consideration of the formal complaint and attached exhibit materials, the response, the consent proposal, and 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. Bennett's conduct violated Rule 1.3, when he failed to file a timely Answer to the lawsuit filed against his clients the Vinciguerras; when he failed to timely file any pleading seeking to have the Judgment against the Vinciguerras set aside; when he failed to file a Motion to Dismiss on behalf of the Vinciguerras; because his representation of the Vinciguerras, after they hired him in September 2007, to defend them in the Delta Trust lawsuit, was neither

diligent nor prompt; and because he did not file the Motion To Return Seized Property in a timely fashion. Rule 1.3 requires a lawyer act with reasonable diligence and promptness in representing a client.

2. That Mr. Bennett's conduct violated Rule 1.4(a)(1), when he failed to inform the Vinciguerras of the Motion to Strike Answer and For Default filed by opposing counsel in the litigation which he was entrusted to defend on their behalf; when he failed to inform the Vinciguerras of the hearing on the Motion to Strike Answer which was conducted on January 10, 2008; when he failed to inform the Vinciguerras of the Motion for Partial Summary Judgment filed by opposing counsel in the litigation in which he was to be defending their interests; when he failed to inform the Vinciguerras of the Motion to Show Cause filed after the Judgment was entered against them; when he failed to inform the Vinciguerras of the Order entered with regard to the Motion to Show Cause; when he failed to inform the Vinciguerras of the time restrictions placed on them to provide certain information to opposing counsel pursuant to Judge Finch's Order on the Motion to Show Cause; when he failed to inform the Vinciguerras of the Motion for Contempt filed against them and the request that body attachment issue; and when he failed to inform the Vinciguerras that the Motion to Return Property had been denied. Rule 1.4(a)(1) requires that a lawyer promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required.

3. That Mr. Bennett's conduct violated Rule 1.4(a)(3), because he did not keep the Vinciguerras informed of the status of the lawsuit filed against them. They learned of many of the pleadings by contacting the Clerk's office and not through information Mr. Bennett provided to them. Rule 1.4(a)(3) requires that a lawyer keep the client reasonably informed about the

status of the matter.

4. That Mr. Bennett's conduct violated Rule 8.4(d), because his failure to timely act on the Vinciguerra's behalf resulted in them not being able to pursue a Motion to Dismiss them from the lawsuit prior to Judgment being entered against them and because his failure to promptly and diligently represent the Vinciguerras caused them to not be able to present their defenses in Court. Rule 8.4(d) requires that a lawyer 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 B with approval of the Arkansas Supreme Court, that the law license of BRUCE J. BENNETT, Arkansas Bar ID#92140, be, and hereby is, SUSPENDED FOR A PERIOD OF NINE (9) MONTHS for his conduct in this matter. The suspension shall become effective on the date this Findings and Order is filed of record with the Clerk of the Arkansas Supreme Court. Mr. Bennett is ordered to pay the costs of this proceeding, pursuant to Section 18.A. of the Procedures, in the amount of $100. 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 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 R Crane
Steve R. Crane, Chair, Panel B

Date: 3-16-10