BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL A

FILED
JUL 20 2010
LESLIE W. STEEN
CLERK

IN RE: **JIMMY RAY BAXTER**
ARKANSAS BAR ID #78012
CPC Docket No. 2009-143

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 Ms. Flora White in an Affidavit dated December 21, 2009. The information is related to the representation of Ms. Flora White by Jimmy Ray Baxter in 2005.

On January 21, 2010, Respondent was served with a formal complaint, supported by an affidavit from Ms. Flora White. A response was filed. The Respondent and the Executive Director negotiated a discipline by consent proposal, which was submitted to this Panel.

The information before the Panel reflected that Ms. White was being sued in Saline County Circuit Court No. CV2005-539, by family members over a dispute regarding the probate of her deceased father's will. The Complaint against her was filed on April 18, 2005. Ms. White hired Jimmy Ray Baxter to represent her in the matter and paid him an initial $3,000.00 on April 22, 2005. Ms. White went on to pay Mr. Baxter an additional $3,000.00, for a total fee of $6,000.00. There was no written contract between Ms White and Mr. Baxter.

To assist Mr. Baxter with her defense, Ms. White gave Mr. Baxter the originals of several documents, including her deceased father's Will , the probate documents, the documents related to the sale of the deceased father's home, bank financial records, and a signed agreement between Ms. White and her other siblings for change of deed to some lake front property. Mr. Baxter advised Ms. White that these documents would be supplied to a handwriting expert to verify the deceased father's signature. Ms. White paid Mr. Baxter $450.00 to cover the cost of

the handwriting expert's service. A handwriting expert was never used in the matter.

Mr. Baxter filed a Motion to Dismiss the matter on April 29, 2005, for improper venue. After a hearing, the Court denied the Motion and entered an Order on June 3, 2005. Mr. Baxter and opposing counsel then suggested that the parties try mediation to resolve the matter. No mediation ever took place. Opposing counsel contacted both the Judge's case coordinator and Mr. Baxter regarding difficulty he was having with getting with Mr. Baxter to set an agreed upon date for the mediation to take place. After a few years, a final hearing was set in the matter for February 23, 2009. Mr. Baxter did notify Ms. White of the scheduled hearing by letter. However, Mr. Baxter failed to appear at that hearing. The Judge gave Ms. White thirty (30) days to work out the problems she was having with Mr. Baxter, or otherwise hire new counsel.

Mr. Baxter stated that on the date of the scheduled hearing he was hospitalized and therefore could not attend the hearing. Mr. Baxter failed to notify Ms. White or the Court of his hospitalization. Ms. White appeared at the hearing as advised by Mr. Baxter in his letter, and she, as well as the Court, were completely unaware of the reason why he did not appear. Mr. Baxter stated that in May 2008, he moved out of his downtown office and began practicing out of his home on Alcoa Road. He failed to notify Ms. White that he was closing his downtown office and moving it to his home.

On February 24, 2009, the day after the scheduled hearing, Ms. White sent Mr. Baxter a letter terminating his representation of her and requesting return of her file. Getting no response from Mr. Baxter to her letter, Ms. White attempted to contact Mr. Baxter by telephone with no response. On April 28, 2009, Ms. White sent Mr. Baxter a certified letter again requesting return of her entire file and all documents she provided him and return of fees paid to him. Mr. Baxter forwarded her file to her new attorney, however, none of the documentation she provided to Mr. Baxter was included in the file. Mr. Baxter acknowledges that Ms. White entrusted documents to

him, but that they were at some time extracted from his file. He speculates that a former employee of his misplaced them, or that the documents were lost in the move from the downtown office to his home. Mr. Baxter was responsible for the safe keeping of the documents given to him by Ms. White and has failed to return documents to Ms. White.

Mr. Baxter was notified of this Complaint in August 2009. On January 25, 2010, Mr. Baxter presented a cashier's check #028038 drawn on Homebank of Arkansas in the amount of $6,450.00, made payable to Flora White to the Office of Professional Conduct as reimbursement of fees paid to Mr. Baxter by Ms. White. On January 26, 2010, cashier's check #028038 was mailed to Ms. White by certified restricted delivery mail, and the green card was signed by Ms. White, showing receipt of the cashier's check, on January 28, 2010.

Upon consideration of the formal complaint and attached exhibit materials, the response, the consent proposal, 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:

1. That Jimmy Ray Baxter's conduct violated Rule 1.3 when (1) he failed to make diligent effort to set the matter for mediation as agreed upon by him and opposing counsel causing a delay in the possible resolution of the matter from June 2005 to December 2008, and (2) he failed to notify his client and the Court of his hospitalization in February 2009, causing his client and the opposing parties to appear at court for hearing, knowing he would not be present to participate. Arkansas Rule 1.3 requires that a lawyer shall act with reasonable diligence and promptness in representing a client.

2. That Jimmy Ray Baxter's conduct violated Rule 1.4(a)(3) when (1) he failed to keep Ms. White advised of the status of this matter, despite her attempting to contact him several times by telephone, and (2) he failed to notify Ms. White of what effect his illness and subsequent hospitalization would have on his representation of her, which did not allow Ms.

White the opportunity to consider obtaining new representation in the matter sooner. Arkansas Rule 1.4(a)(3) requires that a lawyer shall keep the client reasonably informed about the status of the matter.

3. That Jimmy Ray Baxter's conduct violated Rule 1.15(a)(2) when he failed to safeguard the original documents, including a Will and a family agreement related to ownership of real property, given to him by Ms. White for use in the matter. According to Mr. Baxter, he received the documents and they were either misplaced by a former employee of his, or the documents were lost in the move from the downtown office to his home. Arkansas Rule 1.15(a)(2) requires that property, other than funds of clients or third persons, shall be identified as such and appropriately safeguarded.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel A, that Jimmy Ray Baxter, Arkansas Bar ID# 78012, be and hereby is, **REPRIMANDED** for his conduct in this matter. Pursuant to Section 18.A of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law (2002), Mr. Baxter is assessed the costs of this proceeding in the amount of **FIFTY DOLLARS ($50.00)**. The cost 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 A

By: T. Benton Smith, Jr.
T. Benton Smith, Jr., Chair, Panel A

Date: July 20, 2010