BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL A

FILED
SEP 15 2010
LESLIE W. STEEN
CLERK

IN RE: **NEWTON DONALD JENKINS, JR.**
Arkansas Bar ID # 94231
CPC Docket No. 2010-030

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based were developed from information obtained from United States Bankruptcy Court (Western District of Arkansas) case No. 08-bk-73231, In Re: Ronald Beliles, and United States District Court (Western District of Arkansas) case No. 09-cv-02115, In Re: Ronald Beliles. The information related to the representation of Ronald and Sandra Beliles in those cases by Respondent Newton Donald Jenkins, Jr., an attorney practicing primarily in Van Buren, Arkansas. In April 2010, Respondent was served with a formal complaint, to which he filed a Response. The matter was considered by Panel A at a ballot vote on July 16, 2010.

On August 15, 2008, Mr. Jenkins filed a Chapter 7 Bankruptcy Petition for debtors Ronald and Sandra Beliles of Chester, Arkansas, as No. 08-bk-73231 in the Western District of Arkansas. On September 5, 2008, the Trustee, Ray Fulmer, filed an objection to the extent of the statutory exemptions claimed by the Beliles in their Schedule C. On November 12, 2008, the Court sustained the objection and directed debtors to amend their claimed exemptions to comply with appropriate bankruptcy law. The next day, on November 13, 2008, an Order was generated and filed granting the Beliles their discharges under Chapter 7.

On April 20, 2009, the Trustee wrote Jenkins, as debtors' counsel, requesting that an amended exemption schedule be filed or he would have to move to set aside the discharge and to dismiss the case. Jenkins did not respond to the letter. On July 20, 2009, the Trustee filed a motion to set aside and deny the Beliles discharge. Mr. Jenkins filed a response on July 23, 2009, attaching a copy of an amended Schedule C as to the exemptions. On August 11, 2009, the Court heard the Trustee's Motion to Set Aside Discharge, Mr. Jenkins failed to appear and represent his clients, the motion was granted, and the discharge orders for the Beliles were set aside.

On August 12, 2009, the court entered its Order granting the Trustee's motion and setting aside the Beliles discharges. On August 21, 2009, the U. S. Trustee filed her Motion to Disgorge Attorney's Fees, seeking to have the court require Mr. Jenkins to refund to his clients all legal fees they had paid him in their bankruptcy case because they received inadequate representation and ultimately no benefit from Jenkins' representation. Mr. Jenkins filed a response to the motion to disgorge on August 31, 2009. This motion was stayed pending his appeal described below.

Also on August 31, 2009, Jenkins appealed to the United States District Court from the order setting aside the Beliles discharges, docketed as No. 09-cv-02115. On December 21, 2009, the District Court entered its Order finding that Jenkins filed his notice of appeal too late and dismissed the Beliles appeal.

On February 22, 2010, back in the bankruptcy court, the Beliles substituted a new attorney in their case, who promptly filed a Motion to Dismiss their case. The Motion was granted by Order issued March 18, 2010. On March 23, 2010, the U. S. Trustee obtained an

Order withdrawing its Motion to Disgorge Attorney's Fees, attaching proof from the Jenkins Law Firm, PLLC, that $1,000 has been paid to the Beliles as a full legal fee refund. As of April 21, 2010, the Beliles have not filed or refiled any bankruptcy case, and had no legal protection offered by a discharge of debts under a bankruptcy order. A PACER on-line search conducted on January 18, 2010, showed that as of that date, between1998 and 2010, Mr. Jenkins had filed 537 bankruptcy cases for clients in the Western District of Arkansas alone.

In his Response, Mr. Jenkins offered that the Beliles used the Arkansas exemptions as best they could, but had some junk cars he scheduled at $1,500, later valued at more than $500, that would not fit within these exemptions. He stated the debtors offered to surrender the asset to the trustee and thought the matter was resolved, based on their receiving discharges. He also stated he had never been denied a first continuance in a bankruptcy case, and that the denial here, when he had a prior and conflicting setting in another court, caused him to fail to appear in the Beliles case on August 11, 2009. He stated the Beliles were not prejudiced, and that they were completely reimbursed their attorney's fees by him, in compliance with the court order.

Upon consideration of the formal Complaint and attached exhibit materials, the Response to it, and other matters before it, and the Arkansas Rules of Professional Conduct, Panel A of the Arkansas Supreme Court Committee on Professional Conduct finds:

A. The conduct of N. Donald Jenkins, Jr. violated Rule 1.1, in that: (1) Jenkins, an experienced Arkansas bankruptcy lawyer, used the wrong scheme of statutory exemptions in the petition and schedule he filed for the Beliles, and (2) in appealing the decision on August 12, 2009, by the Bankruptcy Court to set aside his clients' discharges, Jenkins failed to timely

file the notice of appeal, resulting in the United States District Court dismissing his clients' appeal without a consideration on the merits, each act conduct demonstrating a lack of the required the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. Arkansas Rule 1.1 requires that a lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

B. The conduct of N. Donald Jenkins, Jr. violated Rule 1.3, in that: (1) From November 12, 2008, to July 23, 2009, Jenkins failed to file an amended Schedule C of exemptions for his clients, the Beliles, as ordered by the Court on November 12, 2008, and (2) in appealing the decision on August 12, 2009, by the Bankruptcy Court to set aside his clients' discharges, Jenkins failed to timely file the notice of appeal, resulting in the United States District Court dismissing his clients' appeal without a consideration on the merits, each a failure to act with reasonable diligence and promptness in representing a client. Arkansas Rule 1.3 requires that a lawyer shall act with reasonable diligence and promptness in representing a client.

C. The conduct of N. Donald Jenkins, Jr. violated Rule 1.4(b), in that if Jenkins had advised his Beliles clients before late 2008 that circumstances and situations not involving them might cause Jenkins to fail to timely file amended Schedule C statutory exemptions for them, causing them to lose their previously-ordered bankruptcy discharges, the clients would have had an opportunity to consider employing other counsel to represent the clients in protecting the discharges they had received. Arkansas Rule 1.4(b) requires that a lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed

decisions regarding the representation.

D. The conduct of N. Donald Jenkins, Jr. violated Rule 3.4(c), in that on November 12, 2008, the Bankruptcy Court ordered Jenkins to file amended Schedules for the Beliles with correct statutory exemptions. Jenkins knowingly failed to obey this direct order until July 23, 2009, by which time the Court determined it was too late and the discharges granted to his clients in November 2008, were set aside. Arkansas Rule 3.4(c) requires that a lawyer shall not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists.

E. The conduct of N. Donald Jenkins, Jr. violated Rule 8.4(d), in that: (1) Jenkins' failure to file a proper Arkansas statutory exemption schedule for his Beliles clients resulted in their previous discharges being set aside and the Bankruptcy Court having to reconsider the case and devote additional time to what would otherwise have been an unnecessary motion to set aside discharges and a motion to disgorge attorneys fees, and (2) Jenkins' failure to file a proper Arkansas statutory exemption schedule for his Beliles clients resulted in their previous discharges being set aside, his then appealing to the United States District Court, his failure to timely file the notice of appeal, and the appeal being dismissed on this jurisdictional procedural error, required the United States District Court to devote additional time to what would otherwise have been an unnecessary appeal if Jenkins had filed appropriate bankruptcy exemption schedules initially, each act conduct by Jenkins that is prejudicial to the administration of justice. Arkansas Rule 8.4(d) provides that it is professional misconduct for a lawyer to 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 **NEWTON DONALD JENKINS, JR.**, Arkansas Bar ID# 94231, be, and hereby is, **REPRIMANDED, FINED $1,000.00** for his conduct in this matter, and **ASSESSED $50.00 COSTS**. In arriving at these sanctions, the Panel considered Respondent's disciplinary record as a factor. The fine and costs, totaling $1,050.00, 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: T. Benton Smith, Jr.
T. Benton Smith, Jr., Chair, Panel A

Date: July 22, 2010