

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT  
PANEL A

IN RE: **JAMES M. DENDY**  
Arkansas Bar ID #81045  
CPC Docket No. 2012-033

**FILED**

SEP 21 2012

**BALLOT VOTE FINDINGS AND ORDER**

**LESLIE W. STEEN  
CLERK**

The formal charges of misconduct upon which this Findings and Order is based were developed from information provided to the Committee by United States District Judge Susan Webber Wright in February 2012 and by attorney John W. Hall, Jr. in April 2012. The information related to the criminal case representation of Mark Quattlebaum in federal court in 2010-2012 by Respondent Dendy, an attorney practicing primarily in Conway, Faulkner County, Arkansas. On June 1, 2012, Respondent was personally served with a formal Complaint. Respondent Dendy failed to file a response to the Complaint, which failure to timely respond, pursuant to Section 9.C(4) of the Procedures (2011), constitutes an admission of the factual allegations of the formal complaint and extinguishes Respondent's right to a public hearing.

1. This matter was first brought to the Office of Professional Conduct (OPC) on February 16, 2012, by a complaint in letter form from United States District Judge Susan Webber Wright, who stated that Mr. Dendy had apparently abandoned his federal criminal defendant client, Mark Quattlebaum, in mid-case, after a guilty plea but before sentencing. After a hearing on February 3, 2012, Judge Wright relieved Mr. Dendy and appointed Little Rock attorney John Wesley Hall, Jr. to represent Mr. Quattlebaum.

2. Mr. Hall then filed a grievance with OPC on April 18, 2012, stating that his investigation revealed that Mr. Dendy had been assisted in the Quattlebaum case by a “former attorney” (license surrendered in 2003) Kenneth G. Fuchs, that Quattlebaum had generally met with both Dendy and Fuchs on his case, and had actually made all of his cash fee payments for Dendy to Fuchs.

3. In 2010-11, James Dendy was practicing law from an address in Mayflower, Arkansas, and became the retained attorney of record for Mark Quattlebaum of Conway by October 14, 2010, in USDC Case No. 10-CR-188. A billing statement from Dendy to Quattlebaum dated November 1, 2011, shows a \$7,500 fee was charged to Quattlebaum by Dendy on August 2, 2010, and three cash payments on Quattlebaum’s account, totaling \$6,600, were credited between August 7, 2010 - January 27, 2011.

4. The evidence shows Mr. Dendy came in contact with former Arkansas-licensed attorney, Kenneth G. Fuchs in 2010 through Mark Quattlebaum. While in jail custody pursuant to a contempt order of the Supreme Court of Arkansas in June 2003, Mr. Fuchs surrendered his Arkansas law license in June 2003 rather than face disciplinary proceedings alleging serious misconduct. The Per Curiam Order entered June 12, 2003, in Supreme Court Case No. 03-633, accepting his petition to surrender, also barred and enjoined Mr. Fuchs from engaging in the practice of law in this state.

5. Section 22, “Restrictions on Former Lawyers,” of the Supreme Court’s Procedures Regulating Professional Conduct of Attorneys at Law (“Procedures”), defines a “former attorney” as one who has surrendered his law license, applicable to Mr. Fuchs. Section 22.G provides a former attorney shall have no contact with clients of any attorney by any means.

Section 22.H provides a former attorney shall have no contact with client funds or property.

Section 22.L provides that no attorney shall aid a former attorney in the unauthorized practice of law or in violation of the restrictions in Section 22. Section 22.L also provides that an attorney shall have an obligation, as under Arkansas Rule 8.3, to report any violation of Section 22 by a former attorney. Section 22.N provides that the maximum punishment for violation of Section 22 by an attorney may be disbarment. A former attorney who violates Section 22 may be deemed to be in contempt of the Supreme Court and may be punished accordingly.

6. Mr. Quattlebaum's Affidavit dated May 2, 2012, clearly sets out the involvement of Fuchs in Dendy's representation of Quattlebaum in the federal case. Quattlebaum was informed by them or led to understand that Dendy and Fuchs would be jointly representing Quattlebaum. Quattlebaum actually made his three cash fee payments to Fuchs. When Quattlebaum had difficulty contacting Dendy, he would go through Fuchs to find Dendy. He stated Fuchs actually was in court with Dendy in October 2010 when Quattlebaum entered a not guilty plea.

7. Problems with mail service between the clerk's office and Dendy had arisen by December 2011. Dendy failed to appear at a hearing on February 3, 2012, and Judge Wright had to appoint Quattlebaum a new attorney to finish his case.

Upon consideration of the formal Complaint and attached exhibit materials, and other matters before it, and the Arkansas Rules of Professional Conduct (2005), Panel A of the Arkansas Supreme Court Committee on Professional Conduct finds:

A. The conduct of James M. Dendy violated Rule 1.1 in that after his client's guilty

plea on September 21, 2011, Mr. Dendy failed to review the government's pre-sentence report (PSR) on his client, an essential activity for a criminal defense attorney in a federal case to ensure that the PSR is accurate and in his client's best interest, and to be able to file any rebuttal needed for the client. 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 James M. Dendy violated Rule 1.4(a)(3) in that after their court appearance on September 21, 2011, in his federal criminal case, at which a guilty plea was entered, client Mark Quattlebaum was thereafter unable to contact his retained attorney, James Dendy, to confer about the case and Quattlebaum's upcoming sentencing hearing and procedure. Arkansas Rule 1.4(a)(4) requires that a lawyer shall promptly comply with reasonable requests for information.

C. The conduct of James M. Dendy violated Rule 1.5(a) in that after being paid \$6,600 of a quoted \$7,500 fee well before September 2011, Mr. Dendy abandoned his client Mark Quattlebaum in mid-case in federal court after September 2011, without refund of any unearned fee. The fee Mr. Dendy was paid became unreasonable because Dendy failed to deliver a substantial part of the legal service contemplated by the fee, services related to the conclusion of the matter via sentencing after a plea of guilty was entered in September 2011. Arkansas Rule 1.5(a) requires that a lawyer's fee shall be reasonable. A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following: (1) the time and labor required, the novelty and difficulty of the questions involved,

and the skill requisite to perform the legal service properly; (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or by the circumstances; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and (8) whether the fee is fixed or contingent.

D. The conduct of James M. Dendy violated Rule 1.16(d) in that after being paid \$6,725 of a quoted \$7,500 fee, Mr. Dendy abandoned his client Mark Quattlebaum in mid-case in federal court, without refund of any unearned fee. Arkansas Rule 1.16(d) requires that, upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

E. The conduct of James M. Dendy violated Rule 8.3(a) in that in 2010-2011, having knowledge that Kenneth G. Fuchs was a former attorney, as defined in Section 22 of the Procedures, in violation of Section 22 of the Procedures, Mr. Dendy allowed Mr. Fuchs to have direct contact with Dendy's client Mark Quattlebaum regarding Quattlebaum's federal criminal case, allowed Fuchs to receive cash payments of fees totaling \$6,600 from Quattlebaum for Dendy, all in violation of Section 22 of the Procedures, and Dendy did not report Fuchs to the lawyer disciplinary authority for such conduct. Arkansas Rule 8.3(a) provides that a lawyer

having knowledge that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.

F. The conduct of James M. Dendy violated Rule 8.4(c) in that after being paid \$6,725 of a quoted \$7,500 fee, and after Mr. Quattlebaum entered a guilty plea in September 2011 with Mr. Dendy's assistance and approval, Dendy abandoned his client Mark Quattlebaum in mid-case in federal court, without notice or refund of any unearned fee, conduct by Dendy involving dishonesty, fraud, deceit or misrepresentation. Arkansas Rule 8.4(c) provides that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

G. The conduct of James M. Dendy violated Rule 8.4(d) in that (1) Mr. Dendy abandoned his client Mark Quattlebaum in USDC No. 10-CR-188 without notice to his client of the court, requiring the court to appoint and pay new counsel for Mr. Quattlebaum so he could complete his sentencing and case, conduct by Mr. Dendy requiring the court to expend time and resources that otherwise would not have been necessary if Dendy have fulfilled his obligation to his client and the court; (2) Mr. Dendy engaged in conduct prejudicial to the administration of justice, and in violation of Section 22.G of the Supreme Court's Procedures Regulating Professional Conduct of Attorneys at Law ("Procedures") when Dendy permitted former attorney Kenneth G. Fuchs, disbarred and enjoined by the Supreme Court in June 2003 from practicing law in Arkansas, to have direct contact with Dendy's client Mark Quattlebaum, after the attorney-client relationship was established between Dendy and Quattlebaum by August 2010; (3) Mr. Dendy engaged in conduct prejudicial to the administration of justice,

and in violation of Section 22.H of the Supreme Court's Procedures Regulating Professional Conduct of Attorneys at Law ("Procedures") when Dendy permitted former attorney Kenneth G. Fuchs, disbarred and enjoined by the Supreme Court in June 2003 from practicing law in Arkansas, to have contact with and receive client funds, being \$6,600 paid during August 2010-January 2011 by Dendy's client Mark Quattlebaum, for legal fees owed to Dendy; and (4) Mr. Dendy engaged in conduct prejudicial to the administration of justice, and in violation of Section 22.L of the Supreme Court's Procedures Regulating Professional Conduct of Attorneys at Law ("Procedures") when Dendy permitted former attorney Kenneth G. Fuchs, disbarred and enjoined by the Supreme Court in June 2003 from practicing law in Arkansas, to engage in the unauthorized practice of law when Dendy allowed Fuchs to be involved in Dendy's representation of Mark Quattlebaum in United States District Court in 2010-2011. 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 the Arkansas law license of **JAMES M. DENDY**, Arkansas Bar ID# 81045, be, and hereby is, **SUSPENDED FOR TWENTY-FOUR (24) MONTHS** for his conduct in this matter, and he is assessed standard minimum case costs of \$50.00. In assessing this sanction, the Respondent's lack of a prior disciplinary record was a factor. For his failure to file any response to the Complaint, he is additionally sanctioned with a **REPRIMAND**.

The suspension shall become effective on the date this Findings and Order is filed of record with the Clerk of the Arkansas Supreme Court. The \$50.00 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: Steven Shults  
Steven Shults, Chair, Panel A

Date: July 30, 2012