BEFORE THE ARKANSAS SUPREME COURT
COMMITTEE ON PROFESSIONAL CONDUCT
PANEL B

IN RE: **LISA DIANE DAVIS**, Respondent
Arkansas Bar ID #2001-072
CPC Docket No. 2013-024

BALLOT VOTE FINDINGS & ORDER

The formal charges of misconduct upon which this Findings and Order is based were developed from information provided to the Committee by Linda Franks and her daughter Deloris Franks Cornett in April 2013. The information related to the representation of Linda Franks in 2011-2012 by Respondent Lisa Diane Davis, an attorney practicing primarily in Piggott, Clay County, Arkansas. On May 7, 2013, Respondent Davis was personally served by a deputy sheriff with the formal Complaint, supported by an affidavit from Ms. Cornett. Respondent Davis failed to file a response to the Complaint, 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. This file was considered and voted upon at the Panel B meeting on June 21, 2013.

In factual summary:

1. Linda Franks, who lives near Piggott in Clay County, Arkansas, is the mother of Deloris Franks Cornett, who lives about ten miles away in Missouri. Linda's husband, Billy Franks, died several years ago.

2. Linda Franks has had a major stroke, is elderly, and subject to anxiety attacks. She has difficulty speaking clearly. As a result of her limitations, her daughter Deloris has her power of attorney and makes many of her major life decisions for her.

3. Linda Franks and Nancy Hornsby are sisters and live on adjoining properties. They have become estranged in the last several years, resulting in litigation in September 2011, where Hornsby sued Franks.

4. In October 2005, Billy and Linda Franks, needing funds, borrowed $13,500 from Daniel Wallace, a close friend of Hornsby. No promissory note evidencing any such loan from Wallace to the Franks has been produced. Daniel Wallace wrote about that transaction, stating that as of November 6, 2007, the Franks had only been able to pay $900.00 on the loan balance.

5. In February 2006, Billy and Linda Franks bought 2.50 acres in Clay County from Charles and Christina Smith. At the same time Daniel Wallace and Nancy Hornsby, who were not married, bought 5.00 acres nearby from the same Smiths.

6. Billy and Linda Franks had two lots in Parma, Missouri, that contained a rental property. When the Franks were unable to repay Wallace on his loan, they let Hornsby have the rental income. To finally settle the debt, the Franks signed the Parma lots over to Wallace and Hornsby by deed on May 25, 2006. There was an error in the description and a Correction Warranty Deed was executed on November 20, 2006, to Wallace and Hornsby. It is the understanding of Franks and Cornett that the two lots in Parma, Missouri, were transferred to Wallace and Hornsby as partial payment and credit on the 2005 loan balance the Franks owed to Wallace.

7. On September 16, 2011, with Wallace now deceased, Hornsby filed suit against Linda Franks, now a widow, in Clay County Circuit Case No. CV-2011-65, seeking a temporary and permanent injunction due to alleged issues involving access and trespass on

their Clay County properties. A Mutual Restraining Order was issued September 26, 2011. By letter dated October 7, 2011, David Copelin, attorney for Hornsby, mailed Franks copies of the documents listed.

8. On September 16, 2011, as Clay Circuit No. CV2011-66, Copelin filed a second suit for Hornsby against Franks, this time for judgment on the alleged $6,669.16 unpaid balance of the loan made by Wallace to the Franks on October 19, 2005.

9. There is no copy of any Note or evidence of such a loan with the Complaint in CV-2011-66, or any indication as to how Hornsby came to own a loan made by the then-deceased Daniel Wallace.

10. Franks was served by certified mail, which she signed for on October 14, 2011. She promptly contacted Cornett about the lawsuit.

11. On October 17, 2011, Cornett went alone to see Piggott, Arkansas, attorney Lisa D. Davis about the lawsuit against her mother, Franks. Cornett employed Davis to represent and defend her mother in the "loan" lawsuit and paid Davis $575.00 that day on her fee. Cornett returned on November 2, 2011, and paid Davis the $1,000.00 balance of the fee.

12. At the November 2, 2011, visit with Davis, Cornett took Franks, who showed Davis her proof of payment of the balance owed on the loan, through the transfer of the two lots in Parma, Missouri in 2006. Franks also explained that the loan was from and with Hornsby's now-deceased boyfriend, Wallace, and not with Hornsby.

13. Davis told Cornett and Franks that a problem for Hornsby would be proving she now owned the Franks debt to Wallace, as there was no indication of any probate of Wallace's estate or other means of legal transfer that would have resulted in Hornsby legally

owning the alleged debt upon which she had sued Franks. Davis told the women that defending against the Hornsby loan suit would be no problem, given Franks' proof.

14. Cornett and Franks left Davis understanding she would take care of Franks in the loan lawsuit. They did not hear from Davis until September 2012.

15. Davis never filed any Answer or other pleading for Franks, letting her go into default. On January 26, 2012, Copelin and Hornsby appeared. Franks and Cornett did not appear, having no notice from Davis of any hearing. Without their knowledge, judgment for $6,669.16, plus costs and attorney's fees, was awarded against Franks by a Default Judgment entered March 8, 2012.

16. A letter from Davis dated April 10, 2012, to Franks arrived shortly thereafter, informing Franks that Davis's law license had been suspended for three months on March 22, 2012.

17. Cornett and Franks checked at the courthouse in Piggott about the lawsuit against Franks, and found the Default Judgment filed on March 8, 2012. They also found a copy of an April 11, 2012, letter from Davis to Copelin informing him of her license suspension.

18. Cornett and Franks tried to contact Davis thereafter, without success. Her office was closed.

19. By letter dated September 12, 2012, Davis contacted Franks and informed her that Davis was back in her office. The letter also asked Franks to contact Davis "so we can discuss how to proceed," as if Davis had no idea that the Default Judgment had been filed abut two weeks before Davis's license suspension started.

Upon consideration of the formal Complaint and attached exhibit materials, the lack of

any response thereto, and other matters before it, and the Arkansas Rules of Professional Conduct, Panel B of the Arkansas Supreme Court Committee on Professional Conduct finds:

A. The conduct of Lisa Diane Davis violated Rule 1.1 in that:

1. Davis failed to file any Answer or other responsive pleading for her client Linda Franks in Clay County Circuit CV-2011-66, resulting in a default judgment for $6,669 plus attorney's fees of $831 being entered against her client.

2. In her letter dated September 12, 2012, Davis informed Franks that Davis's law license was now reinstated and that Franks should come see Davis so they could discuss how to proceed on the Hornsby lawsuit against Franks, for which Davis had been employed and paid her full fee in November 2011, and in which Hornsby had already obtained a default judgment against Franks in March 2012, a fact Davis either did not know or failed to disclose to Franks, conduct by Davis indicating a lack of 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 Lisa Diane Davis violated Rule 1.3 in that after being timely employed and fully paid on November 2, 2011, by Deloris Cornett for Linda Franks, Davis failed to file any Answer or other responsive pleading for her client Linda Franks in Clay County Circuit CV-2011-66, resulting in a default judgment for $6,669 plus attorney's fees of $831 being entered against her client. Arkansas Rule 1.3 requires that a lawyer shall act with reasonable diligence and promptness in representing a client.

C. The conduct of Lisa Diane Davis violated Rule 1.4(b) in that if Davis had advised Franks and Cornett at the time they employed Davis that circumstances and situations not involving Franks and Cornett might cause Davis to fail to file any answer for Franks leaving Franks in default, Franks and Cornett would have had an opportunity to consider employing other counsel to represent Franks in the lawsuit and possibly receive the relief sought. 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 Lisa Diane Davis violated Rule 1.16(d) in that Davis received a total of $1,575.00 in fees by November 2, 2011, to represent and defend Linda Franks in the Hornsby lawsuit, failed to provide any legal services, failed to file an Answer, allowed a default judgment for approximately $7,500 to be entered in March 2012 against Franks, and has failed to refund the unearned portion of the fee she received to represent Franks. 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 Lisa Diane Davis violated Rule 8.4(c) in that :

1. By November 2, 2011, Davis had accepted $1,575.00 in fees to represent and defend Linda Franks in the Hornsby lawsuit against Franks. Then Davis provided no legal services to Franks, allowed Franks to have a default judgment for approximately $7,500

entered against her and become a lien on Franks' home place, and has made no refund of fees paid thereafter, conduct by Davis involving dishonesty, fraud, deceit or misrepresentation; and

2. In her letter dated September 12, 2012, Davis informed Franks that Davis's law license was now reinstated and that Franks should come see Davis so they could discuss how to proceed on Hornsby lawsuit against Franks, for which Davis had been employed and paid her full fee in November 2011, and in which Hornsby had already obtained a default judgment against Franks in March 2012, a fact Davis either did not know or failed to disclose to Franks, conduct by Davis 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.

F. The conduct of Lisa Diane Davis violated Rule 8.4(d) in that Davis effectively abandoned her client Linda Franks after November 2, 2011, and failed to file any Answer or other responsive pleading to protect Franks from being in default to the Hornsby lawsuit or to inform Franks that Davis would not being filing an Answer or other responsive pleading to protect Franks, conduct by Davis 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 B, that **DISBARMENT PROCEEDINGS** shall be initiated against the Arkansas law license of **LISA DIANE DAVIS**, Arkansas Bar ID# 2001072, for her "serious" conduct in this matter.

In assessing this sanction, Respondent's prior disciplinary record was a factor, as well as her failure to file any response. Since Davis is currently the Respondent in a pending disbarment proceeding, Case No. D-13-428, initiated by this Committee, the charges contained herein shall be added to that proceeding by amended petition for disbarment. Davis is also currently under an **ORDER OF INTERIM SUSPENSION** in No. D-13-428.

ARKANSAS SUPREME COURT
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CONDUCT - PANEL B

By: /s/ Henry Hodges, Chair, Panel B

Date: June 27, 2013

Original filed with the Arkansas Supreme Court
November 21, 2013.