

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

IN RE: TONA MARIA DEMERS

ARKANSAS BAR ID #91024

CPC Docket No. 2000-126

FINDINGS AND ORDER

The formal charges of misconduct upon which this Order is based arose out of information that came to the attention of the Committee from an opinion of the Arkansas Court of Appeals issued on September 6, 2000. The information pertained to the representation by Tona Maria Demers of John C. Getson in the Estate of Clara Inez Getson in the Probate Court of Greene County, Arkansas. Following the initial ballot vote in this matter, Ms. Demers requested a de novo hearing pursuant to the Procedures governing the Committee. At the hearing, Ms. Demers represented herself and the Office of Professional Conduct was represented by Lynn Williams, Staff Attorney.

The information contained in the formal disciplinary complaint and also produced at the hearing on this matter revealed that Clara Inez Getson died testate on February 24, 1998, leaving four adult children, one of whom was Ms. Demers's client, John Getson. On May 15, 1998, Mrs. Getson's Will was admitted to probate and a personal representative was appointed. Notice of the proceeding was sent to John Getson by certified mail and received by him on May 16, 1998. Notice was also published in the Paragould Daily Press on May 22, 1998, and May 29, 1998. On December 11, 1998, Ms. Demers and her client appeared in the Greene County Probate Court to attend a hearing on the Motion to Contest the Will of Clara Inez Getson. Additionally, there was to be a request to the Court to set aside its May 15, 1998 Order. At the hearing it was discovered that neither motion had ever been filed with the Greene County Probate Clerk. Immediately after the hearing, Ms. Demers filed the motion adding, in her handwriting, language to set aside of the Order under Arkansas Rules of Civil Procedure 60(c)(3) due to the "...misprisons [sic] of the Clerk." "Original motion was sent to Pochahontas unopened by Linda Heritage." Linda Heritage was the Greene County Probate Clerk. On December 17, 1998, the attorney for the estate filed a response stating that the December 11, 1998, motion was time barred. On February 23, 1999, a hearing was held in the Greene County Probate Court. The Court found that there were no grounds to set aside its Order under Rule 60, as there was no evidence of misconduct, neglect of duty or mistake by the clerk. Ms. Demers appealed that Order, which was affirmed by the Court of Appeals.

Upon consideration of the formal complaint, the response thereto, the testimony and evidence introduced at the hearing on this matter, and the Arkansas Model Rules of Professional Conduct, the Committee on Professional Conduct finds:

1. That Ms. Demers' conduct violated Model Rule 1.1, when she failed to timely file Mr. Getson's Motion to Contest the Will and Set Aside the Previous Orders of the Court with the proper clerk. Model Rule 1.1 requires that a lawyer provide competent representation to a client, including the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.
2. That Ms. Demers' conduct violated Model Rule 1.3, when she failed to timely file Mr. Getson's Motion to Contest the Will and Set Aside the Previous Orders of the Court with the Greene County Probate Clerk. Model Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.
3. That Ms. Demers's conduct violated 8.4(d), when she failed to timely file her client's Motion to Contest the Will and Set Aside the Previous Orders of the Court which prevented her client from having his issues heard. Additionally, Ms. Demers prepared a Rule 60 Motion to set aside the previous Orders of the Greene County Probate Court based upon an affidavit which was false. This action required the Greene County Probate Court to conduct an additional hearing on the Rule60 Motion. Model 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 that TONA MARIE DEMERS, Arkansas Bar ID #91024, be, and hereby is, REPRIMANDED, for her conduct in this matter.

ARKANSAS SUPREME COURT COMMITTEE ON
PROFESSIONAL CONDUCT

By:

Bart Virden

Chairman

Date: