

**BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL C**

IN RE: Ann C. Donovan, Respondent

Arkansas Bar ID#78043

CPC Docket No. 2001-032

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 Jim Harrelston on January 29, 2001. The information related to the representation of Child Support Bureau of Texas and Gail Faber by Respondent in 2000.

In April 2001, Respondent was served with a formal complaint, supported by affidavits from Jim Harrelston and Leslie Steen, Clerk of the Arkansas Supreme Court. A response was filed. The Respondent, through counsel, and the Executive Director negotiated a discipline by consent proposal, which was submitted to this Panel.

The facts as set out in the formal complaint, response and the conditional admissions made by Respondent in the consent to discipline proposal reveal the information as set out below. Ann C. Donovan, an attorney practicing in Fayetteville, Washington County, Arkansas, was retained during January 2000, to represent a client of Child Support Bureau of Texas, LLC, (CSB), for the purpose of enforcing an out-of-state child support order. After being hired to pursue this matter, Ms. Donovan did not file any pleadings in an attempt to enforce the child support judgment for Ms. Faber until over three (3) months had elapsed after her engagement as attorney for Ms. Faber and the Child Support Bureau of Texas. At the conclusion of the legal matter involving Ms. Faber's child support, there was a dispute over the attorney's fees to be recovered and over whether there was a fee agreement entered between Ms. Donovan and Child Support Bureau of Texas, LLC. Judge Michael Mashburn, the Circuit Judge who ruled in the declaratory judgment action, ruled in favor of Ms. Donovan on that issue and determined that there was a contract entered into between the parties.

On June 6, 2000, an Order was entered in Washington County Chancery Court, requiring the non-custodial parent to pay Ms. Donovan \$2,466.91 in attorney's fees. This was the only amount she was to receive and it was to be received directly from the absent parent. Ms. Donovan did not send Mr. Harrelston or CSB a copy of the Order until September 2000. When the Order was received, it was learned that Ms. Donovan had prepared the Order in such a way as to have all child support payments sent directly to her despite the agreement that the payments were to be sent directly to CSB, who would then cause the appropriate amount to be sent to the custodial parent. Although Ms. Donovan received a \$4500 child support payment on behalf of Gail Faber, the client of CSB, on August 7, 2000, she did not forward it to CSB until September 12, 2000. The check written to CSB was not written on a trust account as required nor was it for the full amount. The funds were not deposited and transmitted by way of a trust account check as required by the Arkansas Model Rules of Professional Conduct. Ms. Donovan also retained 25% of the payment as an attorney's fee, even though a dispute had arisen over what amount each party should receive. CSB's lawyer contacted Ms. Donovan in an effort to recover the funds which Ms. Donovan had retained. Ms. Donovan did not reply to the attorney. Ms. Donovan failed to keep both Ms. Faber and CSB aware of all activities in the proceeding along with all efforts undertaken in order to recover the delinquent child support payments.

Mr. Harrelston, on behalf of CSB, attempted to have the Order modified so that the child support payments could be sent directly to CSB, but he was unsuccessful. Not until Ms. Donovan was served with the formal complaint did she seek judicial intervention concerning what to do with the child support payments which she had retained.

During the course of investigation of this matter, the staff of the Office of Professional Conduct learned that Ms. Donovan did not pay her annual license fee until May 2000. As such, she was practicing law without a license during much of the time she was representing Ms. Faber and CSB. Ms. Donovan filed pleadings and appeared in court while her license was suspended and she was therefore prohibited from such conduct. According to Ms. Donovan, she paid her dues as soon as she was notified that they were past due. It was Ms. Donovan's statement that it was merely an oversight because she did not recall receiving the first notice that her license fee was due.

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 C of the Arkansas Supreme Court Committee on Professional Conduct finds:

- That Ms. Donovan's conduct violated Model Rule 1.3 when she failed to file any

pleadings to enforce the child support judgment for Ms. Faber until over three (3) months had elapsed following the date of hire. Model Rule 1.3 requires that a lawyer shall act with reasonable diligence and promptness in representing a client.

2. That Ms. Donovan's conduct violated Model Rule 1.4(a) when she failed to keep her client informed of the status of the proceeding related to the child support order and when she failed to keep her client informed as to the receipt of child support payments through the registry of the Court. Model Rule 1.4(a) requires that a lawyer keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

3. That Ms. Donovan's conduct violated Model Rule 1.15(a)(1), since a portion of

the funds that were collected on behalf of Child Support Bureau of Texas, LLC, and Gail Faber, were sent to the Child Support Bureau of Texas, LLC, by way of a check written on an operating account, not an identifiable trust account, and since she failed to maintain the funds collected on behalf of Child Support Bureau of Texas, LLC, and Gail Faber in a readily available trust account. Model Rule 1.15(a)(1) requires, in pertinent part, that all lawyers hold property of clients or third

persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property, with funds of a client required to be deposited and maintained in one or more identifiable trust accounts in the state where the lawyer's office is situated.

- That Ms. Donovan's conduct violated Model Rule 1.15(b) when, upon receiving

the \$4,500 lump sum child support payment from the registry of the Court, she failed to promptly notify Child Support Bureau of Texas or Gail Faber, and failed to promptly deliver the funds to Child Support Bureau of Texas or Gail Faber. Model Rule 1.15(b) requires, in pertinent part, upon receiving funds in which a client or third person has an interest, that a lawyer promptly notify the client or third person and that a lawyer promptly deliver to the client or third person any funds or property that the client or third person is entitled to receive.

- That Ms. Donovan's conduct violated Model Rule 1.15(c) because, although a

dispute had arisen over funds in which she and Child Support Bureau of Texas, on behalf of Gail Faber, both claim an interest, she has failed to keep the funds separate from her own until such time as the dispute had been resolved. Model Rule 1.15(c) requires when, in the course of representation, a lawyer is in possession of property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved.

- That Ms. Donovan's conduct violated Model Rule 5.5(a) because at a time

when her Arkansas Law license was suspended for the failure to pay her annual 2000 license fee, she was filing pleadings and practicing law in the Chancery Court of Washington County, Arkansas. Model Rule 5.5(a) requires that a lawyer not practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel C, that ANN C. DONOVAN, Arkansas Bar ID# 78043, be, and hereby is, CAUTIONED for her conduct in this matter.

ARKANSAS SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT - PANEL C

By: _____

David Newbern, Chair, Panel C

Date: _____