

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

PANEL B

IN RE: ANN CECILLIA DONOVAN

ARKANSAS BAR ID #78043

CPC DOCKET NO. 2003-173

FINDINGS AND CONSENT ORDER

The formal charges of misconduct upon which this Order is premised arose from the Complaint of Beverly Larry. Ann C. Donovan, an attorney practicing in Fayetteville, Washington County, Arkansas, was hired during March 2002, to represent Beverly Larry with regard to a paternity matter she wished to pursue.

On or about December 3, 2003, Respondent was served with a formal complaint, supported by affidavit from Ms. Larry. A response was filed. The matter proceeded to ballot vote pursuant to the Arkansas Supreme Court Procedures Regulating Professional Conduct of Attorneys at Law. Respondent was advised of the ballot vote decision and thereafter requested a public *de novo* hearing. Prior to the scheduled *de novo* hearing, the Respondent and the Executive Director negotiated a discipline by consent proposal, which was submitted to this Panel.

The information before the Committee reflected that Ms. Larry had given birth to a daughter on October 30, 2001. When the biological father doubted his paternity, Ms. Larry contacted the Office of Child Support Enforcement in Fayetteville. Because the staff at the OCSE advised Ms. Larry that it would take at least one year before the matter could be resolved, she began to look for a private attorney to assist her. Ms. Larry was honest with all attorneys with whom she met about the situation with the father. When Ms. Larry met with Ms. Donovan, Ms. Donovan did not hesitate. She advised Ms. Larry that she could help her. According to Ms. Donovan, she would be able to locate the biological father with the information which Ms. Larry provided to her. Because of Ms. Larry's situation with a newborn, Ms. Donovan agreed to lower her fee for this type of matter to \$350 plus \$130 for costs.

Ms. Larry paid Ms. Donovan the \$130 costs on the day she hired Ms. Donovan. The remaining fee was paid on April 4, 2002. The \$130 costs check was cashed by Ms. Donovan the day after receipt despite the fact that the check was specifically for costs. The costs were not placed in any trust account. Ms. Donovan advised that the \$130 was not for costs but rather was a partial payment of a flat non-refundable fee. After she received the fee, Ms. Donovan assured Ms. Larry that she would get started right away. Ms. Larry requested that Ms. Donovan contact her right away when the father was served so that Ms. Larry would be prepared for any action he might take.

Two weeks elapsed without any contact from Ms. Donovan. Ms. Larry called and left messages two or three times. No messages were returned. Because Ms. Donovan did not return the messages, Ms. Larry went to her office. Ms. Donovan told Ms. Larry and her sister that the person who assists her with her files went to the apartment complex to serve the biological father with the papers but was advised that he did not live there. Ms. Larry learned sometime later that no such action had ever been filed on her behalf.

Ms. Larry became very upset because she had made Ms. Donovan aware of the fact that she wanted this matter handled as quickly as possible. She was tired of getting the run around from Ms. Donovan. On May 17, 2002, Ms. Larry advised Ms. Donovan that she no longer needed her services. Ms. Larry explained that she no longer wanted Ms. Donovan's services because of the weeks that had elapsed with no progress and the inability to contact Ms. Donovan about the legal matters. Ms. Donovan requested that Ms. Larry allow her to continue the representation but Ms. Larry told her that she merely wanted her daughter's photos returned to her and that she wanted a refund for services not rendered. Ms. Donovan advised Ms. Larry that she did not have any money and would have to finish working that week in order to pay Ms. Larry some of her money the following Friday. Ms. Donovan did provide Ms. Larry with the photos of her daughter but did not allow Ms. Larry to look at whatever file she may have had.

On June 5, 2002, Ms. Larry contacted Ozark Legal Clinic and explained what happened with Ms. Donovan. She was advised that she could file a complaint in small claims court to collect her advanced fee payment, could write the Arkansas Supreme Court Committee on Professional Conduct on Professional

Conduct to report Ms. Donovan's conduct and could file a paternity case using the services of the OCSE. Ms. Larry did file suit against Ms. Donovan in Fayetteville District Court on February 27, 2003. Trial was set for June 12, 2003. On June 11, 2003, Ernie Witt filed an Answer on behalf of Ms. Donovan. The matter was then transferred to District Court. The trial in District Court was held August 25, 2003. Ms. Donovan nor her counsel appeared. Judge Rudy Moore, Jr. granted Judgment in favor of Ms. Larry. Shortly thereafter a Motion to Set Aside Judgment was filed based upon Ms. Donovan's bankruptcy filing. Ms. Larry was ultimately provided the refund of her advance fees and cost payment in December 2003, after Ms. Donovan sought approval from the bankruptcy court to return the unearned fees.

Other information contained in the complaint concerned the fact that Ms. Donovan did not pay her attorney license fee for 2002 until March 20, 2002. As such, she was suspended from the practice of law from March 2, 2002, until March 20, 2002, pursuant to Arkansas Supreme Court Rule. Despite the suspension, her office was open and she was meeting with clients, including Beverly Larry, the complainant herein.

Upon consideration of the formal complaint and attached exhibit materials, the response, the consent proposal, other matters before it, and the Arkansas Model Rules of Professional Conduct, Panel B of the Arkansas Supreme Court Committee on Professional Conduct finds:

1. That Ms. Donovan's conduct violated Model Rule 1.15(a)(1) when she accepted funds from Ms. Larry, a part of which was for a filing fee for a paternity action she was to file on Ms. Larry's behalf. Ms. Donovan did not deposit or safeguard any of the funds in her client trust account, but rather negotiated the check shortly after receiving the same. Model Rule 1.15(a)(1) requires that all lawyers hold property of clients that is in a lawyer's possession in connection with a representation separate from the lawyer's own property with funds of a client being deposited and maintained in one or more identifiable trust accounts in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person.

2. That Ms. Donovan's conduct violated Model Rule 1.16(d) because when Ms. Larry terminated her representation of her, Ms. Donovan failed to provide Ms. Larry with the documentation, if any, in the file on her legal matter which would have demonstrated any actions taken on Ms. Larry's behalf; when she failed

to return any portion of the advanced fee to Ms. Larry; and, when she failed to return the advance payment of the filing fee to Ms. Larry, despite the fact that those sums should have been safeguarded and belonged solely to Ms. Larry since Ms. Donovan never filed an action on Ms. Larry's behalf. Model Rule 1.16(d) requires that upon termination of representation, a lawyer 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 that has not been earned.

3. That Ms. Donovan's conduct violated Model Rule 5.5(a) because when she met with Ms. Larry and discussed her legal matter, including providing legal advice with regard to the actions to be taken and her rights, as well as accepting a legal fee from her on March 4, 2002, a time when her license to practice law in the State of Arkansas was suspended for failure to pay her license fee to the Clerk of the Arkansas Supreme Court. 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.

4. That Ms. Donovan's conduct violated Model Rule 8.4(d) because her failure to take action on Ms. Larry's behalf led to an unnecessary delay in the paternity proceeding she wished to pursue and because her failure to return to Ms. Larry the funds which were due to her based on Ms. Donovan's inaction on Ms. Larry's behalf and the fact that she did not file a lawsuit on Ms. Larry's behalf created the need for Ms. Larry to file an action against Ms. Donovan in the court system of Washington County. 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, acting through its authorized Panel B, that ANN C. DONOVAN, Arkansas Bar ID #78043 be, and hereby is, REPRIMANDED for her conduct in this matter. Further, pursuant to Section 18.A of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law (2002), Ms. Donovan is ordered to pay costs in the amount of \$50. Ms. Donovan is also ordered to pay a fine in the amount of \$1000, pursuant to Section 18.B. of the Procedures. The costs assessed herein and the fine imposed shall be paid in the

form of a money order or cashier's check made payable to the Office of Professional Conduct and delivered to the Office of Professional Conduct within thirty (30) days of the filing of this Findings and Order with the Clerk of the Arkansas Supreme Court. The fine imposed herein shall be paid in \$100 monthly payments until paid in full. Ms. Donovan is also placed on probation for a period SIX (6) MONTHS. The probationary period shall begin to run at the time the Findings and Consent Order of Discipline are filed with the Clerk of the Arkansas Supreme Court. A separate probation agreement shall be executed by Ms. Donovan and maintained in the confidential files of the Office of Professional Conduct. Ms. Donovan is also ordered to continue her participation in the ARLAP program and to provide quarterly reports of such compliance to the Office of Professional Conduct.

ARKANSAS SUPREME COURT COMMITTEE
ON PROFESSIONAL CONDUCT - PANEL B

By:

J. Michael Cogbill, Chair, Panel B

Date:
