

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

PANEL A

IN RE: N. DONALD JENKINS, JR., Respondent

Arkansas Bar ID#94231

CPC Docket No. 2002-183

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Dierk Van Keppel on September 30, 2002. The information related to the representation of Mr. Van Keppel by Respondent, N. Donald Jenkins, Jr., an attorney practicing primarily in Alma, during 2001 and 2002.

On January 8, 2003, Respondent was served with a formal complaint, supported by affidavit from Dierk Van Keppel. Respondent failed to file a timely 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.

The facts presented by Mr. Van Keppel reveal that on March 9, 2001, he hired Mr. Jenkins to represent him in a debt matter. Mr. Jenkins confirmed that he would represent Mr. Van Keppel when he was initially contacted by another attorney on Mr. Van Keppel's behalf. Initially, Mr. Van Keppel wrote a demand letter to Karl Platt on Mr. Van Keppel's behalf. Mr. Jenkins was paid \$175 to do so. Mr. Platt did not honor the demand so Mr. Jenkins filed a lawsuit on Mr. Van Keppel's behalf in the Circuit Court of Crawford County, Arkansas. After Mr. Platt was served, his counsel filed an Answer and Motion for Dismissal. In the Motion for Dismissal, it was alleged that the lawsuit had been brought in the wrong venue and was not in the county where Mr. Platt resided or was summoned. Mr. Jenkins did file a Response to the Motion. Mr. Van Keppel received a copy of the Response on October 29, 2001.

During December 2001, Mr. Jenkins provided Mr. Van Keppel a copy of Interrogatories he said he was serving on the defendant, Mr. Platt. For several weeks thereafter, Mr. Van Keppel did not hear anything from Mr. Jenkins. On March 13, 2002, Mr. Van Keppel wrote Mr. Jenkins and requested an update on the responses if any had been received to the Interrogatories. Two (2) weeks later, Mr. Van Keppel still had not heard anything from Mr. Jenkins so he wrote him again. That same day, Mr. Jenkins responded to Mr. Van Keppel. According to Mr. Jenkins, he had written Mr. Platt's counsel and had heard nothing. Mr. Jenkins also assured Mr. Van Keppel that as soon as anything developed in the legal proceeding, he would advise Mr. Van Keppel. On May 10, 2002, Mr. Van Keppel again wrote Mr. Jenkins and demanded that Mr. Jenkins seek an Order compelling responses to the discovery. Mr. Jenkins did not respond to the letter.

Based upon Mr. Jenkins' non-communication with Mr. Van Keppel, Mr. Van Keppel contacted Mark Ford to assist him in the matter. Mr. Ford was contacted on June 24, 2002, and that same day, Mr. Van Keppel wrote Mr. Jenkins and terminated his services. In response to the termination, Mr. Jenkins sent Mr. Van Keppel a statement requesting additional legal fees, in addition to the \$250 Mr. Van Keppel had already paid him for the lawsuit.

On July 8, 2002, Mr. Ford sent an Entry of Appearance to be filed. When the opposing counsel received a copy of the Entry of Appearance, he sent a letter to Mr. Ford explaining that the lawsuit had been dismissed on October 26, 2001. In addition, Mr. Ryan, the opposing counsel, also sent a copy of the Response to the Interrogatories wherein he had pointed out that the lawsuit had been dismissed. Mr. Ryan had sent a copy of the Response to Mr. Jenkins on December 12, 2001. Mr. Jenkins never made Mr. Van Keppel aware of this pleading or of the dismissal of the lawsuit.

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

That Mr. Jenkins' conduct violated Model Rule 1.1 because he failed to be thorough enough in his representation of Mr. Van Keppel to be certain that he filed the lawsuit on his client's behalf in the appropriate county. 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.

That Mr. Jenkins' conduct violated Model Rule 1.2(a) when he did not abide by his client's decision with regard to a potential settlement as he did not discuss the settlement proposal with Mr. Van Keppel in order to learn what his decision was. Model Rule 1.2(a) requires, in pertinent part, that a lawyer shall abide by a client's decision whether to accept an offer of settlement of a matter.

That Mr. Jenkins' conduct violated Model Rule 1.3 when he failed to promptly notify his client when his lawsuit was dismissed and when he failed to keep up with his client's lawsuit in such a manner as to be able to know the status of the same following the dismissal of the lawsuit by the presiding judge. Model Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

That Mr. Jenkins' conduct violated Model Rule 1.4(a) when he failed to respond to Mr. Van Keppel's requests for information about the lawsuit he filed on Mr. Van Keppel's behalf; when he did not keep Mr. Van Keppel informed of what efforts, if any, he was undertaking on his behalf with regard to the lawsuit filed against Mr. Platt; when he did not advise, during the course of his representation of Mr. Van Keppel, that his lawsuit had been dismissed during October 2001; and, when he did not discuss with Mr. Van Keppel the settlement offer made by opposing counsel with regard to the lawsuit. 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.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel A, that N. DONALD JENKINS, JR., Arkansas Bar ID# 94231, be, and hereby is, CAUTIONED for his 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), Mr. Jenkins is ordered to pay costs in the amount of \$50. Based upon his failure to timely respond, Mr. Jenkins is hereby fined in the amount of \$500 pursuant to Section 18.B. of the Procedures. Mr. Jenkins is also ordered to pay restitution to Mr. Van Keppel in the amount of \$250 pursuant to Section 18.C. of the Procedures. The fine, restitution, and 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.

By: _____

Gwendolyn D. Hodge, Chair, Panel A

Date: _____