

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

FILED

IN RE: MARK E. BARTON, Respondent
 Arkansas Bar ID#96248
 CPC Docket No. 2010-085

FEB 23 2011

**LESLIE W. STEIN
CLERK**

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Tim Wilson in an Affidavit dated September 24, 2010. The information related to the representation of Mr. Wilson by Respondent beginning in August 2009.

During October 2010, Respondent was served with a formal complaint, supported by affidavit from Tim Wilson. Respondent filed a timely response. Rebuttal was received from Mr. Wilson. Thereafter, the matter proceeded to ballot vote before Panel A of the Committee.

The information in Mr. Wilson's Affidavit and confirmed, in part, by the information provided by Mr. Barton demonstrates that Mark E. Barton, an attorney practicing primarily in El Dorado, Union County, Arkansas, was hired by Mr. Wilson to assist him in the probate of Mr. Wilson's mother's estate. Mr. Barton requested \$400 initially and was paid cash on the date of hire. The receipt given to Mr. Wilson clearly shows that \$250 of the \$400 was for any cost associated with the probate. In spite of this, those funds were not placed in an IOLTA trust account to be safeguarded until expended.

On October 1, 2009, Mr. Barton provided Mr. Wilson with a Petition for Appointment of Administrator to be signed and then filed. Mr. Barton did not file the Petition from October 1, 2009, until November 20, 2009. The other remaining heir of Mr. Wilson's mother was not

served with Summons until December 17, 2009. On December 14, 2009, Mr. Barton sent notice to Mr. Wilson that a hearing would be held in the probate proceeding on March 11, 2010.

Mr. Wilson received no additional information from Mr. Barton after the letter was sent until March 3, 2010. Mr. Barton knew for two months that the other heir had counsel and had filed a pleading in the estate proceeding but he failed to advise Mr. Wilson of this fact.

Mr. Wilson was prepared for a hearing to be held on March 11, 2010, but Mr. Barton called and advised him that the hearing had been canceled. Mr. Barton told Mr. Wilson that an agreement had been reached in the matter and that he would contact Mr. Wilson later. Mr. Barton asserts that Mr. Wilson was given an appointment by telephone. There is no follow up correspondence to confirm this fact. According to Mr. Barton, the appointment was to discuss an agreed order naming Mr. Barton as Administrator and the need for a bond. Mr. Barton stated to the Office of Professional Conduct that Mr. Wilson failed to attend the appointment and had not called or written to reschedule nor had he made any effort to request the file or refund. Mr. Wilson explained that he has left numerous messages which have not been returned. Mr. Wilson also offered that there is no secretary to speak with and no office telephone for Mr. Barton just a cell phone on which he has left messages. Mr. Barton provided a letter, dated April 21, 2010, from Brian Ratcliff, counsel for the other heir, seeking information about the Agreed Order. In spite of that letter, it appears Mr. Barton has taken no steps to communicate with his client in order to obtain the Agreed Order.

Mr. Wilson handled a matter with an insurance company with regard to a \$4,000 check from Guarantee Life. Mr. Barton offered no assistance with that issue. All Mr. Wilson was seeking was to obtain the belongings which he believed were rightfully his. Mr. Barton gave Mr.

Wilson hope that he could assist him with this endeavor but did not do so after counsel appeared for the other remaining heir.

In responding to the formal disciplinary complaint, Mr. Barton denied not being diligent in his representation of Mr. Wilson and explained that he was waiting for direction from his client after Mr. Wilson failed to appear for a scheduled appointment. Mr. Barton also denied failing to communicate with his client. Mr. Barton did admit that he failed to deposit the funds intended for costs into an IOLTA account until such funds were expended.

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

1. That Mr. Barton's conduct violated Rule 1.3, because Mr. Barton did not undertake diligent and prompt efforts on behalf of Mr. Wilson during his representation of Mr. Wilson. Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

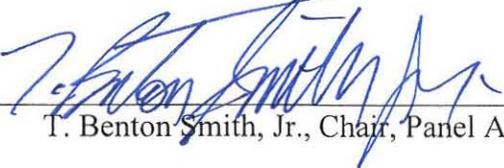
2. That Mr. Barton's conduct violated Rule 1.4(a)(3), when Mr. Barton failed to keep Mr. Wilson informed of the status of any actions he had taken or was taking on Mr. Wilson's behalf with regard to the probate of Mr. Wilson's mother's estate. Rule 1.4(a)(3) requires that a lawyer keep the client reasonably informed about the status of the matter.

3. That Mr. Barton's conduct violated Rule 1.4(a)(4), when Mr. Barton failed to comply with requests for information left for him by Mr. Wilson after notifying Mr. Wilson that a hearing in March 2010 had been canceled and an Agreed Order would be entered. Rule 1.4(a)(4) requires that a lawyer promptly comply with reasonable requests for information.

4. That Mr. Barton's conduct violated 1.15(b)(2), when Mr. Barton failed to deposit the \$250, specifically intended for court costs, paid to him by Mr. Wilson into an IOLTA trust account until such funds were expended. Rule 1.15(b)(2) requires that a lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel A, that MARK E. BARTON, Arkansas Bar ID# 96248, be, and hereby is, CAUTIONED for his conduct in this matter. Pursuant to Section 18.A. of the Procedures, Mr. Barton is assessed the costs of this proceeding in the amount of FIFTY DOLLARS (\$50). In addition, pursuant to Section 18.C of the Procedures, Mr. Barton is ordered to make restitution for the benefit of Mr. Wilson in the amount of FOUR HUNDRED DOLLARS (\$400). The restitution and costs assessed herein, totaling FOUR HUNDRED FIFTY DOLLARS (\$450), shall be payable by cashier's check or money order payable to the "Clerk, Arkansas Supreme Court" delivered to the Office of Professional Conduct within thirty (30) days of the date this Findings and Order is filed of record with the Clerk of the Arkansas Supreme Court.

ARKANSAS SUPREME COURT COMMITTEE
ON PROFESSIONAL CONDUCT - PANEL A

By: 
T. Benton Smith, Jr., Chair, Panel A

Date: January 26, 2011