

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

IN RE: JEANETTE HEIMBAUGH, Respondent
Arkansas Bar ID#97040
CPC Docket No. 2006-009

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by John David Elliott in an Affidavit dated January 18, 2006. The information related to the representation of Mr. Elliott by Respondent beginning in August 2003.

On February 10, 2006, Respondent was served with a formal complaint, supported by affidavits from John David Elliott and Leslie W. Steen, Clerk of the Arkansas Supreme Court. Respondent filed a timely response to the disciplinary complaint. Thereafter the matter proceeded to ballot vote before Panel A of the Committee pursuant to the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law (2005).

The information before the Committee reflected that during August 2003, Mr. Elliott hired Jeanette Heimbaugh, an attorney practicing primarily in Conway, Arkansas, to represent him in a post-Decree matter. The matter involving Mr. Elliott's ex-wife and custody and visitation of his children went on for quite some time after Ms. Heimbaugh was hired. A hearing was conducted on July 1, 2004 before Honorable Charles E. Clawson, Jr. On page 122 of the transcript, Ms. Heimbaugh is asked by the presiding Judge to prepare the Order from the hearing. Since that time, Ms. Heimbaugh has not prepared or entered the Order the Court instructed her to prepare. As of the date of the filing of the formal disciplinary complaint, Ms. Heimbaugh remained Mr. Elliott's attorney of record but had failed to take any action on his behalf since July 1, 2004.

According to Mr. Elliott, he had been unable to speak with Ms. Heimbaugh since the hearing on July 1, 2004. He reported that he had called her office several times and left messages but she has failed to return the messages left for her. Mr. Elliott's ex-wife refused to let him visit with his daughter. Further, his ex-wife had failed to do any of the things the Judge ordered on July 1, 2004. Mr. Elliott was unable to obtain the assistance of law enforcement officials because he has had no Order to show them.

The day following the hearing Mr. Elliott faxed a copy of his tax return as was requested at the hearing. On July 7, 2004, he called Ms. Heimbaugh's office to see what the amount of child support was and where he was to pay the support. Ms. Heimbaugh did not return the call. During April 2005, nine (9) months after the hearing, he received a billing statement from Ms. Heimbaugh setting out that he owed her \$1500.50 in attorney's fees. The billing statement clearly demonstrated that Ms. Heimbaugh had taken no action on Mr. Elliott's behalf since the hearing on July 1, 2004. She simply did not prepare the Order as directed by the Court.

The information contained in Mr. Steen's affidavit reflected that despite her duty to pay her annual license fee no later than March 1 of any given year, Ms. Heimbaugh did not do so in 2005. Ms. Heimbaugh did not pay her license fee for 2005 until May 20, 2005. As such, she was suspended from the practice of law for the period of time from March 2, 2005, through May 20, 2005.

In responding to the formal disciplinary complaint, Ms. Heimbaugh denied that she had failed to return messages left by Mr. Elliott. According to Ms. Heimbaugh, Mr. Elliott was informed that he had to make an appointment to review the Order she was directed to prepare and to make payment arrangements on his bill. Mr. Elliott did not make an appointment. Ms. Heimbaugh admitted that she did not pay her license fee as required. Ms. Heimbaugh provided proof that after being served with the formal disciplinary complaint, she filed a Motion to Withdraw as Attorney of Record for Mr. Elliott. She did so without ever submitting the Order she was directed to prepare.

Upon consideration of the formal complaint and attached exhibit materials, the response to it, 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:

1. That Ms. Heimbaugh's conduct violated Model Rule 1.2(a) because Mr. Elliott hired her to represent him in a post-Decree matter involving his ex-wife and his children. An objective of the representation was for Ms. Heimbaugh to complete the matter and prepare the Order setting out his rights and duties as directed by the Court at the conclusion of the hearing on July 1, 2004. Ms. Heimbaugh failed to complete the process by failing to prepare and present the Order to the Court for signature. Model Rule 1.2(a) requires that a lawyer abide by a client's decisions concerning the objectives of representation, subject to paragraphs (c), (d) and (e), and consult with the client as to the means by which they are to be pursued.
2. That Ms. Heimbaugh's conduct violated Model Rule 1.3, when she did not act with diligence in her representation of Mr. Elliott following the hearing on July 1, 2004, in that she failed to prepare the Order as directed by the Court at the conclusion of the hearing. Model Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.
3. That Ms. Heimbaugh's conduct violated Model Rule 1.4(a) because she did not keep Mr. Elliott informed of the status of her actions, if any, which were being undertaken with regard to the Order she was directed to prepare at the conclusion of the hearing conducted July 1, 2004; and because although Mr. Elliott attempted to contact her on various occasions to request information about the Order she was to prepare following the hearing on July 1, 2004, she failed to comply with his requests for information. 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.
4. That Ms. Heimbaugh's conduct violated Model Rule 3.4(c) because Rule VII.A, Arkansas Supreme Court Rules Governing Admission to the Bar, requires all Arkansas licensed attorneys to pay an annual license fee as set by the Court not later than March 1 of each year. She did not obey this obligation of the Court. Instead, she failed to pay your annual license fee until May 20, 2005. Model Rule 3.4(c) requires that a lawyer not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists.
5. That Ms. Heimbaugh's conduct violated Model Rule 8.4(d), because her failure to prepare and present the Order as directed by the Court on July 1, 2004, caused Mr. Elliott to not have his legal matter completed and also caused him to not have an Order to be able to enforce his visitation rights with his children. 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 A, that JEANETTE HEIMBAUGH, Arkansas Bar ID# 97040, be, and hereby is, CAUTIONED for her conduct in this matter. Further, pursuant to Section 18.A. of the Procedures, Ms. Heimbaugh is assessed the cost of this proceeding in the amount of \$50. The 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 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: _____
Phillip D. Hout, Chair, Panel A

Date: _____