

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

IN RE: BRUCE J. BENNETT, Respondent
Arkansas Bar ID#92140
CPC Docket No. 2009-058

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FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Derrol Dee Kirby, III, in an Affidavit dated April 29, 2009. The information related to the representation of Mr. Kirby by Respondent Bruce J. Bennett in 2008.

On May 14, 2009, Respondent was served with a formal complaint, supported by affidavit from Mr. Kirby. Respondent failed to file a response to the complaint, which failure to timely respond, pursuant to Section 9.C(4) of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law, constitutes an admission of the factual allegations of the formal complaint and extinguishes Respondent's right to a public hearing.

During April 2008, Mr. Kirby hired Bruce J. Bennett, an attorney practicing in Bentonville, Arkansas, to represent him in civil litigation, on a contingency basis. If he did not win the case, Mr. Kirby did not owe him any fee. There was no written fee agreement.

The lawsuit was actually filed in 2006 *pro se*. Mr. Kirby represented himself for around one year and six months before he hired Mr. Bennett. When he first went to Mr. Bennett's office, his girlfriend and stepfather also went. Mr. Bennett agreed to represent Mr. Kirby for one-third of any recovery. Mr. Kirby left all his documents pertaining to the legal matter with Mr. Bennett. On April 3, 2008, Mr. Bennett filed a Motion for Substitution of Counsel. On the

next day, an Order was filed concerning discovery and deadlines for filing the same since Mr. Kirby had been unable to comply with the requests before hiring Mr. Bennett. The Order was served on Mr. Bennett as Mr. Kirby's counsel, not on Mr. Kirby.

As explained by Mr. Kirby, in June 2008, Mr. Bennett requested on two separate occasions that Mr. Kirby come to his office to answer discovery. This was after Mr. Kirby had called Mr. Bennett's office approximately six to eight times during which time Mr. Bennett did not respond. Following the last meeting when Mr. Kirby signed the medical release form and discovery, Mr. Bennett advised he would be in contact and keep Mr. Kirby informed of everything. Mr. Bennett did not contact Mr. Kirby again.

The Clerk's docket shows that a Motion to Compel was filed by the Defendants on June 3, 2008. Mr. Kirby acknowledged that he had not answered the discovery requests but stated that was one of the reasons Mr. Bennett was hired, i.e., to assist with answering them properly. Responses had been signed in Mr. Bennett's office in April 2008, however, they were not thorough enough so further responses were necessary. Through information in the Motion, Mr. Kirby learned that Mr. Bennett was written in May 2008 about the discovery responses and the Medical Authorization form already signed. Mr. Bennett was also written on May 30, 2008 by opposing counsel. Mr. Bennett did not respond to that letter, which caused the Motion to Compel to be filed.

The Court records also show that on July 7, 2008, an Order was filed which provided that responses to discovery had to be provided to opposing counsel by August 1, 2008. Mr. Bennett did not keep Mr. Kirby informed of this matter.

On August 5, 2008, the Defendants filed a Motion to Dismiss. Mr. Bennett was sent the

Motion by opposing counsel, as evidenced by the Certificate of Service on the Motion, but he did not respond to the Motion to Dismiss and an Order was entered granting the Motion.

Since he was unable to obtain information from Mr. Bennett, Mr. Kirby finally contacted the Clerk's office. It was only then that he first learned his case had been dismissed months previously.

When Mr. Kirby finally spoke with Mr. Bennett, he was advised that Mr. Bennett did not know anything about a Motion to Dismiss. He also said that he did not know of an Order to Dismiss being entered. Mr. Bennett told Mr. Kirby that he would make some calls and take care of it. Mr. Kirby has had no further contact with Mr. Bennett since that conversation.

During the entire course of time Mr. Bennett was representing Mr. Kirby, he never sent any letters or copies of pleadings to Mr. Kirby. When there was any communication it was verbal and Mr. Kirby was always told that everything was fine and that he would be notified when something happened in the matter. This was not true.

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

1. Mr. Bennett's conduct violated Rule 1.1, when he was not thorough enough in his representation of Mr. Kirby to be certain that he responded to correspondence from opposing counsel; when he was not thorough enough in his representation of Mr. Kirby to be certain that he timely responded to discovery requests after Orders to Compel were entered; and when he was not thorough enough in his representation of Mr. Kirby to be certain that he responded to the Motion to Dismiss filed by opposing counsel. 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.

2. Mr. Bennett's conduct violated Rule 1.2(a) when he failed to follow the guidelines and time deadlines given to him by the United States District Court Judge in Mr. Kirby's legal matter and as a result thereof Mr. Kirby's claims that he wished for Mr. Bennett to pursue on his behalf were dismissed without notice to Mr. Kirby at the time of the dismissal. Rule 1.2(a) requires that, subject to paragraphs (c) and (d), a lawyer abide by a client's decisions concerning the objectives of representation, and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued.

3. Mr. Bennett's conduct violated Rule 1.3, when he failed to timely comply with the United States District Court's Order to Compel in Mr. Kirby's legal proceeding and when he failed to respond to the Motion to Dismiss filed by opposing counsel, thereby allowing Mr. Kirby's lawsuit to be dismissed. Rule 1.3 requires that a lawyer shall act with reasonable diligence and promptness in representing a client.

4. Mr. Bennett's conduct violated Rule 1.4(a)(1), when he failed to inform Mr. Kirby of the Motion to Dismiss filed by opposing counsel in his litigation which Mr. Bennett was entrusted to pursue on his behalf. Rule 1.4(a)(1) requires that a lawyer promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required.

5. Mr. Bennett's conduct violated Rule 1.4(a)(3), when he did not keep Mr. Kirby informed of the status of his legal matter. Mr. Kirby learned of the dismissal of his lawsuit by contacting the Clerk's office, not by receiving the information from Mr. Bennett. Rule 1.4(a)(3)

requires that a lawyer keep the client reasonably informed about the status of the matter.

6. Mr. Bennett's conduct violated Rule 1.4(a)(4), when he failed to respond to the requests for information which Mr. Kirby left for Mr. Bennett about his legal matter. Rule 1.4(a)(4) requires that a lawyer promptly comply with reasonable requests for information.

7. Mr. Bennett's conduct violated Rule 1.5(c) because although his fee agreement with Mr. Kirby was contingent on the outcome of the proceeding, Mr. Bennett failed to place the agreement in written form. Rule 1.5(c) requires, in pertinent part, that a contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal.

8. Mr. Bennett's conduct violated Rule 8.4(d) because his failure to timely act on Mr. Kirby's behalf resulted in Mr. Kirby's legal proceeding being dismissed by Order pursuant to the defendants' Motion to Dismiss and thereby deprived Mr. Kirby of the opportunity to have his claims heard in court. 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 the Arkansas law license of BRUCE J. BENNETT, Arkansas Bar ID #92140, be, and hereby is, SUSPENDED FOR A PERIOD OF SIX (6) MONTHS for his conduct in this matter. The suspension in this matter shall become effectively immediately upon the filing of this Findings and Order with the Clerk of the Arkansas Supreme Court. For failing to respond to the formal complaint, the Committee, pursuant to Section 9C(3) of the Procedures imposes a separate sanction of a REPRIMAND and

a fine in the amount of FIVE HUNDRED DOLLARS (\$500). Mr. Bennett shall also pay costs in the amount of \$50 in accordance with Section 18.A. of the Procedures. The fine and costs assessed herein, totaling \$550, 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: Steven Shults
Steven Shults, Chair, Panel A

Date: August 12, 2009