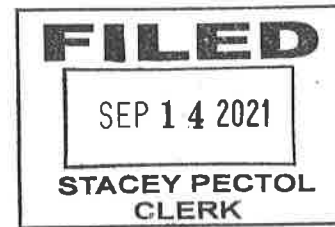


**BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL B**

IN RE: **KEVIN L. KELLEY**, Respondent
 ABN: 2010089
 Docket No. CPC-2020-014



FINDINGS AND ORDER

These Findings and resulting Order arise from information provided to the Committee by Jasmine Janell Davis on September 20, 2018. The information related to the representation of Ms. Davis by Respondent from 2011-2017. Mr. Kelley’s primary practice is in Dallas, Texas, but he is licensed in both Texas and Arkansas. The misconduct found in this matter occurred in relation to an Arkansas case.

On October 14, 2020, Respondent was served with a formal complaint, supported by affidavits from Lakeshia Chandler, Jasmine Davis, Vandell Bland, Sr., Britt C. Johnson, and Steve Quattlebaum. Respondent filed a response to the formal complaint on November 20, 2020.

1. Lakesia Chandler, mother of (at the time) minor child Jasmine Davis, hired Kevin Kelley in October 2010 to represent her daughter in a personal injury matter against Wal-Mart and L’Oréal for burns sustained using L’Oréal hair serum with a heated comb. Jasmine Davis had funds in a guardianship account, which were obtained as a result of a previous settled personal injury motor vehicle accident case in 2005.

2. Kelley “advanced” non-client funds to Chandler in the amount of \$1,000.00 per month beginning in November 2010 through May 2017 totaling \$78,000.00 in expectation of successful litigation against Wal-Mart and/or L’Oréal. Kelley advised Chandler that the case was worth in excess of \$47,000,000.00. Kelley improperly used his own trust account to make payments to Chandler.

3. On December 9, 2014, Defendants Wal-Mart and L'Oréal filed motions in limine and for summary judgment, challenging the sufficiency of the evidence and opinions offered by the Plaintiffs' primary expert witness on causation, Dr. Zeliger.

4. On January 22, 2015, Judge Proctor granted summary judgment to both Wal-Mart and L'Oréal. His Order filed February 3, 2015, dismissed the claims against both Defendants with prejudice. The Court opinion cites the deficiencies in Dr. Zeliger's deposition testimony, concerning flammability and combustibility, and that his opinions were not supported by actual testing.

5. On February 2, 2015, Kelley advised his clients that their case was dismissed with prejudice. Kelley informed his clients that they had the right to appeal, but that he did not do appeals, his representation was concluded, and his clients could handle their own appeal or seek appellate counsel. Kelley offered the names of Deborah Riordan and Brian Brooks as possible appellate counsel.

6. Plaintiffs appealed, with Riordan and Kelley as counsel, in Case No. CV-15-445. On August 31, 2016, the Court of Appeals issued its opinion affirming the trial court's dismissal of the lawsuit. The opinion describes in detail the testing, or lack thereof, of the serum by Plaintiffs' expert and the countering testimony offered by Defendants' experts. Rehearing was denied. The Supreme Court denied review on March 16, 2017, and issued a Mandate, which ended the case for the Plaintiffs.

7. Ms. Chandler believed that Mr. Kelley engaged and paid Ms. Riordan for her work on the appeal, because neither Chandler nor Davis did.

8. In January 2017, Mr. Kelley explained to Ms. Chandler that there were problems with the lawsuit, and it was too late for Chandler and Davis to do anything about it, including

consulting with other counsel. Kelley continued \$1,000.00 monthly payments to Chandler for an additional four (4) months.

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

1. Arkansas Rule 1.4(a)(3) requires that a lawyer shall keep the client reasonably informed about the status of the matter.

The conduct of Kevin L. Kelley violated Rule 1.4(a)(3) when Kelley failed to timely inform his clients, Chandler and Davis, of the August 2016 Court of Appeals affirmance of the summary judgment in their state case by the trial court.

2. Arkansas Rule 1.8(e) requires that a lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that: (1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and (2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

The conduct of Kevin L. Kelley violated Rule 1.8(e) when Kelley, his law firm, or both provided \$1,000 monthly payments to Lakesia Chandler as financial assistance to a litigation client prohibited by Rule 1.8(e), from November 2010 through May 2017, for at least seventy-eight (78) months during that period, or a total of \$78,000, as admitted by Kelley. Ms. Chandler rejected any claim that she and her daughter Davis were indigent during the period of Kelley's representation. Ms. Chandler characterized the \$1,000 payments as a no-questions-asked allowance from Kelley.

3. Arkansas Rule 1.15(a)(1) requires that a lawyer shall hold property of clients or third persons, including prospective clients, that is in a lawyer's possession in connection with a

representation separate from the lawyer's own property. The conduct of Kevin L. Kelley violated Rule 1.15(a)(1) in that Kelley never recovered any funds for Ms. Chandler and Ms. Davis, yet he made the first of the \$1,000 monthly payments to Chandler with check #5371 dated November 8, 2010, using a K&W IOLTA check, an improper use by Kelley of funds belonging to another client or person or entity, more than the maximum of \$500.00 attorney monies permitted to be maintained in a client trust account at any one time.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel B, that **KEVIN L. KELLEY**, Arkansas Bar Number 2010089, be, and hereby is, **CAUTIONED** for his conduct in this matter.

Mr. Kelley shall pay a fine in the amount of one thousand five hundred dollars and no cents (\$1,500.00) and shall also pay costs in the amount of fifty dollars and no cents (\$50.00).

The fine 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 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 B.



David P. Glover, Chair, Panel B



Date