

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

**IN RE: DONALD W. COLSON
ARKANSAS BAR ID No. 2005166
CPC Docket No. 2013-008**

FINDINGS AND ORDER

Donald W. Colson is an attorney licensed to practice law in 2005 in the State of Arkansas and was assigned Arkansas Bar Number 2005166. Mr. Colson was employed by Brenda Carol Reed to represent her in a bankruptcy matter.

In February 2012, Ms. Reed met with Mr. Colson about a possible bankruptcy matter. Mr. Colson agreed to represent Ms. Reed and, while there was no written fee agreement, informed Ms. Reed that he would accept \$1,000 as payment for his fees, which included a \$306 Chapter 7 Bankruptcy filing fee. Ms. Reed completed the pre-bankruptcy credit counseling program and provided Mr. Colson with the information for him to complete the bankruptcy petition. On July 11, 2012, Mr. Colson filed the Chapter 7 Bankruptcy Petition on Ms. Reed's behalf. Ms. Reed's bankruptcy case was assigned case number 4:12-bk-14018.

In August 2012, Ms. Reed received a notice from the Bankruptcy Court Clerk, stating that a Motion to Extend Time to Pay Filing Fee had been granted. Ms. Reed did not understand why she received the notice because Mr. Colson had been paid for the filing fee in February. Ms. Reed emailed Mr. Colson and asked about the Motion to Extend Time to Pay Filing Fee. Mr. Colson responded to the email by stating that "[i]t just gives more time to pay." Ms. Reed replied by stating that she had already paid the fee. Mr. Colson responded to Ms. Reed by stating that "[he] usually wait[ed] til after the meeting and pay at that time."

On September 10, 2012, Ms. Reed's bankruptcy case was dismissed for failure to pay the

bankruptcy filing fee. As soon as Ms. Reed received the notice, she attempted to contact Mr. Colson but he did not respond to messages left by Ms. Reed. Ms. Reed also sent emails to Mr. Colson but Mr. Colson did not respond to the emails either.

On October 1, 2012, Ms. Reed sent a letter to Judge Audrey Evans and explained to her what had happened concerning her bankruptcy case. Ms. Reed's letter was treated as a Motion to Reopen Chapter 7 case and Set Aside Dismissal. On November 15, 2012, a hearing was held before Judge Evans. Ms. Reed appeared at the hearing but Mr. Colson did not. Judge Evans reopened the bankruptcy proceeding and waived the payment of the filing fee.

On November 15, 2012, a letter dated November 12, 2012, and written by Mr. Colson was filed in Ms. Reed's bankruptcy case. In the letter, Mr. Colson stated that he had been suspended from the practice of law for a period of three (3) years. Mr. Colson's law license was suspended effective September 5, 2012, and this was the first notice Ms. Reed had received concerning Mr. Colson's suspension from the practice of law.

A Formal Complaint was prepared by the Office of Professional Conduct. Pursuant to §9.A(2)(a) of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law ("Procedures"), a copy of the Formal Complaint was sent to Mr. Colson at his address of record with the Arkansas Supreme Court Clerk by certified, restricted delivery, return receipt mail. On March 11, 2013, Mr. Colson signed a receipt for the Formal Complaint. Pursuant to §9.B(1) of the Procedures, Mr. Colson had thirty days from March 11, 2013, to file a response to the Formal Complaint. Mr. Colson's response was due to be filed on or before April 12, 2013. No response was filed. Pursuant to §9.C(4) of the Procedures, failure to respond to a formal complaint shall constitute an admission of the factual allegations of the complaint and

shall extinguish a respondent's right to a public hearing.

Upon consideration of the Formal Complaint and attached exhibits, the failure to respond and the resulting deemed admission of the factual allegations, and the Arkansas Rules of Professional Conduct, the Committee on Professional Conduct finds:

1. Donald W. Colson violated Rule 1.3 when he failed to file Ms. Reed's bankruptcy petition for a period of four (4) months after Ms. Reed had completed the necessary credit counseling and had paid Mr. Colson to file the petition on her behalf, and, when Mr. Colson failed to pay to the Bankruptcy Court Ms. Reed's filing fee after receiving the funds from Ms. Reed at the time of hire and well before he filed the bankruptcy proceeding. Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

2. Donald W. Colson violated Rule 1.4(a)(4) when he failed to comply with requests for information left for him by Ms. Reed after she learned of the dismissal of her bankruptcy proceeding based on the failure to pay the filing fee, which Ms. Reed had months earlier delivered to Mr. Colson when she paid his fee for representation in the bankruptcy matter. Rule 1.4(a)(4) requires that a lawyer promptly comply with reasonable requests for information.

3. Donald W. Colson violated Rule 1.16(d) when, after his license to practice law in Arkansas was suspended, he failed to give Ms. Reed notice in a timely manner of the suspension of his license to practice law, and when he failed to return the filing fee to Ms. Reed or deliver it to the Bankruptcy Clerk. Rule 1.16(d) requires that upon termination of representation, a lawyer take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client and refunding any advance payment of fee or expense that has not been earned or incurred.

4. Donald W. Colson violated Rule 8.4(c) when he accepted \$1000 from Ms. Reed, a portion of which was to be paid to the bankruptcy Clerk for the filing fee in Ms. Reed's bankruptcy proceeding. Instead of paying the filing fee, which had been delivered to him by his client, Mr. Colson filed a request to pay the filing fee in installments which was dishonest as his client had already delivered the filing fee to him. Rule 8.4(c) requires that a lawyer not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

5. Donald W. Colson violated Rule 8.4(d) when he failed to pay to the Bankruptcy Court Ms. Reed's filing fee though she had delivered those funds to him and the failure to pay the filing fee resulted in the dismissal of Ms. Reed's bankruptcy action. 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 licenses of DONALD W. COLSON, Arkansas Bar No. 2005166, be, and hereby is, SUSPENDED for a period of forty-eight (48) months, directed to pay restitution in the amount of ONE THOUSAND DOLLARS (\$1,000.00), and assessed costs in the amount of FIFTY DOLLARS (\$50.00). The sanction imposed in this matter was enhanced based upon Mr. Colson's prior disciplinary history, as permitted by §19.A(12). In addition, DONALD W. COLSON, Arkansas Bar No. 2005166, is, pursuant to §9.C(1) and (3), REPRIMANDED for his failure to provide a written response to the Formal Complaint and is ordered to pay a fine in the amount of ONE THOUSAND DOLLARS (\$1,000.00). All fines 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, 2100 Riverfront Drive, Little Rock, Arkansas 72202, 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: /s/Danyelle J. Walker, Chair, Panel A

Date: June 6, 2013

Original filed with the Arkansas Supreme Court on
July 9, 2013.