

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

IN RE: **BOBBY K. KEETER**, Respondent
Arkansas Bar ID #77076
CPC Docket No. 2013-028

HEARING FINDINGS AND ORDER

The formal charges of misconduct upon which this Order is based arose out of information provided by Karen Sue Duke of El Dorado, AR, on February 7, 2013, related to the representation of Duke by Bobby K. Keeter in 2011-2012 in a probate proceeding for The Estate of James Edward Duke (Estate) in Polk County, Arkansas.

I. INTRODUCTION

1. On May 7, 2013, Respondent Keeter was served with a formal complaint, supported by the affidavit of Karen Duke and other documents. A timely response was filed and the matter proceeded to ballot vote before Panel A of the Committee on July 19, 2013.

2. After being informed of the action by Panel A, Keeter requested a public hearing, which was conducted December 13, 2013, before Panel B at Little Rock. The hearing panel consisted Panel B regular members Henry Hodges (hearing chair), Steve Crane, Niki Cung, Barry Deacon, James Dunham, Carolyn Morris, and Panel C member Mark Limbird, serving in place of regular Panel B member Sylvia Orton who was not available that date.

II. FACTUAL ALLEGATIONS IN COMPLAINT

The summarized facts as alleged in the Complaint, based on the affidavit of Duke and exhibits, were:

1. On October 11, 2011, Duke's father, James Duke, died testate. His Will named his

other daughter as executrix and she was appointed and served in that capacity.

2. On December 22, 2011, Duke retained Keeter to represent her in her father's estate because she believed that the listing of Estate assets was incomplete and inaccurate. Duke paid Keeter a \$500.00 retainer fee. Keeter filed an Entry of Appearance on behalf of Duke on December 27, 2011.

3. On April 16, 2012, Duke emailed Keeter expressing her frustration with the "stand-off" between the executrix and Duke. She requested that Keeter schedule "the earliest possible hearing date" in regards to the Estate. Between March 2012 and May 2012, Duke placed at least five phone calls to Keeter at his office. Only one of those phone calls was returned.

4. On May 16, 2012, Duke sent Keeter a certified letter notifying Keeter that, "if he wished to proceed as her council [sic], please schedule a court appearance within ten days. Otherwise send me an itemized statement of services rendered to date along with reimbursement of funds remaining from the amount I paid as a retainer so I will be at liberty to pursue other avenues."

5. On May 31, 2012, Keeter notified Duke that a hearing concerning the Estate had been scheduled for 1 pm on June 13, 2012, in Mena.

6. On June 12, 2012, while Duke and Heather Smith, Duke's domestic partner, were en route to the hearing, Duke and Keeter spoke. Keeter informed Duke that there was no need for her to attend the hearing scheduled for the next day. Duke responded that she was already en route to attend. Keeter then scheduled a meeting with Duke for 11 am on June 13, 2012, to discuss the case.

7. On June 13, 2012, in his office, Keeter advised Duke and Smith that John Maddox, a

Mena attorney, had been appointed Special Executor of the Estate.

8. In August 2012, Duke made several telephone attempts to obtain information from Keeter but got no information of substance. On one call, Keeter answered and told her he would “get an update from John.”

9. On August 28, 2012, Duke called John Maddox to discuss the Estate. Maddox denied being appointed Special Executor. By letter to OPC in March 2013, Maddox confirmed that he had never been appointed Special Executor of the Estate and was not familiar with the Duke estate.

10. On the same date, Duke called the Polk County Circuit Court, Probate Division. She was informed that there was no record of a hearing on June 13, 2012, and that no Special Executor had been appointed.

11. On August 29, 2012, Duke mailed a certified letter to Keeter formally terminating his representation. She requested a copy of her file, an itemized statement of services rendered to date, and an appropriate reimbursement of funds remaining from the \$500 retainer she paid. Duke did not receive any response from Keeter.

12. A copy of the Estate’s docket sheet shows that no hearing took place on June 13, 2012 and no Special Executor was ever appointed. There are no entries on the docket sheet between January 9, 2012, when the Will was filed, and November 1, 2012, when Duke’s newly retained counsel filed a Petition for Probate of Will and Appointment of Personal Representative.

III. KEETER RESPONSE

In his Response filed July 10, 2013, Keeter stated in summary:

1. He had informed Duke he was hoping to have the hearing scheduled on June 13, 2012.

2. He had informed Duke it was probably going to be necessary to have a Special Executor appointed and Keeter did contact John Maddox about such appointment but Maddox declined.

3. He did not tell Duke that the hearing was set for June 13 or that John Maddox had been appointed as Special Executor of the Duke Estate.

4. He sent Duke a letter in September 2012 enclosing a copy of his office file on the Duke Estate and informing her he had fully earned the \$500 retainer paid and there would be no refund.

IV. HEARING TESTIMONY

At the hearing evidence was admitted and testimony, here summarized, was received from witnesses Karen Duke, Heather Smith, and Bobby Keeter.

1. Duke testified that:

A. She has been a plant safety inspector for ten years, has lived for twelve years with her partner Heather Smith, and Smith is completely familiar with Duke's personal and financial matters;

B. In late December 2011, Duke and Smith traveled to Mena, which Duke described as a four hour drive one way. Duke employed Keeter and paid him a \$500 retainer to represent Duke in her father's probate estate in Polk County. Thereafter Duke received scanty information from Keeter, forcing her to direct him in May 2012 to seek a hearing or withdraw as her attorney;

C. On May 31, 2012, Keeter notified Duke there was hearing set on June 13, 2012, at 1:00 pm in Mena on her father's estate. On the basis of this information, Duke made a

motel reservation for June 12 and Duke and Smith drove to Mena to be present for the June 13 hearing.

D. At a meeting in his office on June 13, 2012, Keeter told Duke and Smith that (1) he had met earlier with the judge and the other attorney in the case, (2) John Maddox, a Mena attorney, had been appointed as Special Executor in the Duke Estate, and (3) Keeter would get Maddox a copy of the Duke estate case file when Maddox returned from vacation.

E. Getting no satisfactory status information from Keeter for two months, in late August 2012, Duke contacted Maddox, who informed her he knew nothing of the Duke Estate and had not been appointed Special Executor. The same day Duke called the probate clerk's office in Mena and was informed there was no record of a hearing set for June 13, 2012, in the Duke Estate and no appointment of any Special Executor.

F. Duke wrote Keeter terminating his services, demanding a copy of his file, an accounting of his efforts, and a refund of any unearned fee. Duke received no response from Keeter.

5. Smith testified consistently with Duke's testimony, and stated she was with Duke at each meeting with Keeter and also heard and had the same information as offered by Duke.

6. Keeter testified:

A. He had not been as diligent as he should have been in his activity in the Duke Estate;

B. He had informed Duke in May 2012 that he was trying to get a hearing set for June 13, 2012, not that there was a hearing definitely set that date;

C. He informed Duke and Smith at the meeting at his office on June 13 that he

would contact John Maddox about possibly being appointed as Special Executor of the Duke Estate when Maddox returned from vacation, not that Maddox had been appointed as Special Executor as Duke and Smith claimed Keeter had informed them;

D. By letter in September 2012, Keeter transmitted a copy of the his Duke Estate file to Duke in El Dorado, informed her he had earned the full \$500 retainer, would not be making any refund, and this letter was never returned to his office as undelivered.

V. PANEL ACTION

Upon consideration of the formal complaint, the response thereto, and other matters, and the Arkansas Rules of Professional Conduct, Panel B of the Committee on Professional Conduct finds:

1. By a 4-3 vote, Respondent's conduct was found not to have violated Arkansas Rule 1.3 (diligence). Voting in the majority were Crane, Cung, Dunham, and Morris. Voting in the minority were Deacon, Hodges and Limbird.

2. By a unanimous vote, Respondent's conduct was found to have violated Arkansas Rule 1.4(a)(3), when Keeter failed to keep Duke reasonably informed about the status of probate proceedings in that he failed to return her phone calls or emails requesting information regarding the Estate. Arkansas Rule 1.4(a)(3) requires that a lawyer keep the client reasonably informed about the status of the matter.

3. By a unanimous vote, Respondent's conduct was found not to have violated Arkansas Rule 1.16(d) (return to client of property and papers at termination of the attorney-client relationship).

4. By a unanimous vote, Respondent's conduct was found not to have violated either charge of Arkansas Rule 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

Respondent's prior disciplinary history of several prior public sanctions was a factor considered by the Committee in deciding the sanctions imposed here.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel B, that **BOBBY K. KEETER**, Arkansas Bar ID #77076, be **REPRIMANDED**, assessed a \$2,500.00 fine, and assessed costs totaling \$382.77. The fine and costs, totaling \$2,882.77, 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.

ON ARKANSAS SUPREME COURT COMMITTEE
PROFESSIONAL CONDUCT

By:/s/ Henry Hodges, Chair, Panel B

Date: January 3, 2014

Approved as to form:

Stark Ligon, for Petitioner

Bobby K. Keeter, Respondent

Original filed with the Arkansas Supreme Court on
January 3, 2014