

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

IN RE: **BENJAMIN ADAM KENT**, Respondent  
Arkansas Bar ID # 2006273  
CPC Docket No. 2013-066

**CONSENT FINDINGS & ORDER**

The formal charges of misconduct upon which this Consent Order is premised, involving respondent attorney Benjamin A. Kent of Little Rock, Arkansas, arose from information brought to the attention of the Committee on Professional Conduct by the proceedings August 14, 2012, in Supreme Court Case No. 12-592, where the Motion for Rule on the Clerk filed for May Construction Company was denied.

Following Kent's receipt of the formal complaint, he entered into discussion with the Executive Director which has resulted in an agreement to discipline by consent pursuant to Section 20.B of the Arkansas Supreme Court Procedures Regulating Professional Conduct of Attorneys at Law (2011). Upon consideration of the formal complaint and attached exhibits, admissions made by the respondent attorney, the terms of the written consent, the approval of Panel A of the Committee on Professional Conduct, and the Arkansas Rules of Professional Conduct, the Committee on Professional Conduct finds:

1. Prior history of the civil case involving May Construction Company ("May") and Town Creek Construction & Development, LLC ("Town Creek"), and other parties involving Aspen Ridge, a residential development in Washington County, Arkansas, is provided in the October 27, 2010, opinion of the Arkansas Court of Appeals, 2010 Ark. App. 711 (remanded), and the June 23, 2011, opinion of the Supreme Court of Arkansas, 2011 Ark. 281 (reversed and

remanded on direct appeal; affirmed on cross-appeal). The June 2011 decision sent the issue of commencement date of construction activity back to the trial court for factual findings.

2. The Davidson Law Firm of Little Rock (“DLF”), through Charles “Skip” Davidson (“Davidson”), Kent, and at least one other attorney earlier, represented May in a dispute and litigation with Town Creek, and other parties involving the Aspen Ridge development.

3. Chambers Bank claimed a first priority lien position by reason of its mortgage recorded on July 20, 2005.

4. In August 2006, Town Creek terminated its contract with May.

5. In September 2006, May filed a mechanic’s and materialmen’s lien against Town Creek and the Aspen Ridge property.

6. Town Creek defaulted in its loan with Chambers Bank and the bank filed to foreclose. Town Creek later gave Chambers Bank a deed to the Aspen property in lieu of foreclosure.

7. On August 1, 2007, Ohio Casualty Insurance Company (“Ohio Casualty”) posted an \$800,000 “lien bond” for the Aspen Ridge project, to cover Town Creek’s desire to secure release of the 2006 May lien on Aspen Ridge.

8. May’s contract claim against Town Creek went to arbitration, where an award for May of \$393,995.56 plus attorney’s fees against Town Creek was made in September 2007.

9. May sought to enforce the arbitration award in circuit court, for a declaration that the May lien was superior to the Chambers bank lien, and to enforce the May lien against the Ohio Casualty bond. May lost on both issues and appealed.

10. In October 27, 2010, the Court of Appeals found there was no appealable order, 2010 Ark. App. 711, and remanded the case to circuit court to settle the “finality” issue.

11. Further proceedings on remand before the trial court resulted in the Order filed August 11, 2011, where the circuit court again found in favor of Chambers Bank and against May on the priority of liens issue.

12. On August 25, 2011, May, through Kent, filed its Motion for New Trial and Motion for Reconsideration from the order of August 11, 2011.

13. On September 9, 2011, the Order denying the May motions was filed. There is no evidence available that the trial court or the clerk's office in Washington County sent a copy of the Order to any counsel in the case, and at least not to the Davidson law firm.

14. On October 28, 2011, Kent filed May's Motion to Request an Extension of Time to File Notice of Appeal, and Kent's affidavit in support, stating that a DLF employee, Ms. Wall, had made certain contacts with the trial judge's chambers to obtain information about the status of the post-trial motion and to set a hearing on the motion. In his response, Kent offered that he reasonably relied upon information given to him at the time by Wall about her claimed actions in contacting the trial court about the pending motion.

15. On November 22, 2011, the circuit court entered its Order Denying Motion and Order to Appear and Show cause on December 1, 2011, directed to Kent and Wall.

16. The transcript of the December 1, 2011, hearing contains the testimony of Wall, Kent, and Davidson.

17. On April 10, 2012, at the conclusion of a hearing, the trial court issued a letter of that date to the circuit clerk, directing the clerk to release and return the original bond to Ohio Casualty. The court also stated at the hearing that at the December 2011 hearing there was a discussion of what the court termed was "[F]rankly, unethical and improper conduct" in behalf

of counsel for May, with a DLF employee lying to the trial court and submitting fraudulent documents to the court. The court stated its view that these actions by DLF were an attempt to get around the fact that DLF missed an appeal deadline. The court also stated it should have turned [Kent] over to the Ethics Committee.

18. On July 19, 2012, May, by DLF, tendered the record on appeal in May v. Town Creek et al, to the Supreme Court Clerk, as Case No. 12-592. The clerk declined to file the record and DLF was directed to file a motion for rule on the clerk. On July 20, 2012, May, by Kent and Davidson, filed its Motion for Rule on the Clerk.

19. On August 14, 2012, the Supreme Court denied the motion for rule on the clerk and appellant May's effort at a legal remedy was concluded.

From the information contained in the Complaint and the consent offer from Mr. Kent, the following violations of the Arkansas Rules of Professional Conduct (Rules) (2005) are proven:

A. The conduct of Benjamin A. Kent violated AR Rule 1.1, in that Kent failed to provide competent representation to firm client May Construction when he failed to adequately monitor this pending motion for new trial and motion for reconsideration filed August 25, 2011, and missed the notice of appeal filing deadline after the trial court entered its order on September 9, 2011, denying the motions. Arkansas Rule 1.1 requires that a lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

B. The conduct of Benjamin A. Kent violated Rule 1.3 in that Kent failed to act with reasonable diligence and promptness in representing a firm client May Construction by failing to

timely file a notice of appeal from the adverse trial court order entered August 11, 2011, against May Construction, thereby costing client May Construction its right to an appeal. Arkansas Rule 1.3 requires that a lawyer shall act with reasonable diligence and promptness in representing a client.

C. The conduct of Benjamin A. Kent violated Rule 8.4(d) in that the conduct of Kent in missing the notice of appeal deadline for his client May Construction in 2011 on the August 11, 2011, trial court order, resulted in his client losing its right to pursue an appeal on its claim for a lien in the amount of about \$353,904 against certain real property, conduct prejudicial to the administration of justice. Arkansas Rule 8.4(d) provides that it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

WHEREFORE, in accordance with the consent to discipline presented by Mr. Kent and the Executive Director, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct that Respondent **BENJAMIN A. KENT**, Arkansas Bar No. 2006273, be, and hereby is, **CAUTIONED and Fined \$500.00** for his conduct in this matter. The \$500.00 fine 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:/s/ Danyelle J. Walker, Chairperson, Panel A

Date March 21, 2014

Original filed with the Arkansas Supreme Court  
Clerk on March 21, 2014.