

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

IN RE: **JIMMY DON OVERTON**, Respondent (a/k/a **J. Don Overton**)
Arkansas Bar ID # 2007029
CPC Docket No. 2014-011

CONSENT FINDINGS & ORDER

The formal charges of misconduct upon which this Consent Order is based, involving respondent attorney Jimmy Don Overton of Little Rock, Arkansas, arose from information brought to the attention of the Committee on Professional Conduct by Dr. Hussain Al-Rizzo of Little Rock. Following Respondent Attorney's receipt of the formal Complaint, the Respondent and his counsel 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. Respondent Overton graduated from the UALR Bowen School of Law in 2006, and was licensed in Arkansas on April 9, 2007. Overton holds himself out in public as knowledgeable and experienced in real estate law and construction litigation.

2. In June 2008, Dr. Hussain Al-Rizzo, a professor in the College of Engineering and Information Technology at the University of Arkansas at Little Rock, contracted with Todd Coney of Little Rock for the construction of a home in the Chenal Valley area of West Little

Rock for a cost of about \$320,000. Al-Rizzo took possession of the new house on or about February 6, 2009.

3. The party with whom Dr. Al-Rizzo contracted was a Todd Coney, who may have been doing business as either or both of DRC Custom Homes (DRCCH) or Todd Coney Custom Homes (TCCH), or possibly as DRC Construction Company (DRCCC). DRCCC is believed to have held residential builder license No. 0183410210 from the Arkansas Contractors License Board at the times material to this matter. It is believed none of Todd Coney, DRCCH, or TCCH held valid Arkansas residential contractor license during April 1 - August 20, 2008, at the time of the Al-Rizzo contract and much of the work.

4. Problems between Coney and Al-Rizzo arose, and in August 2009 Coney sued Al-Rizzo in Pulaski County District Court - Small Claims Division for \$5,000 allegedly unpaid by Al-Rizzo on the construction contract. Al-Rizzo employed Overton and his Overton law firm on September 10, 2009, for representation on a one-third of any recovery contingency fee arrangement.

5. Overton filed a counterclaim for \$119,620 against Coney for alleged construction defects and damages, and on October 15, 2009, the case was transferred to Pulaski Circuit Court as No. CV-09-6868. Overton filed two amended Complaints, alleging breach of contract, breach of express warranty, breach of implied warranties, negligence, and fraud, and asked for a jury trial. Coney answered generally denying the Complaints and alleging set-offs.

6. In March 2010, Coney sent Interrogatories and Request for Production to Overton. After several attempts to get responses, a motion to compel was filed. An Order to Compel Discovery was entered July 16, 2010. There is no documentation available that shows

Overton ever served responses on Coney's counsel.

7. On June 10, 2010, Coney's counsel filed and served Plaintiff's First Requests for Admissions on Overton and no responses were filed. On July 22, 2010, Coney filed a Motion and Brief to Deem Admitted Requests for Admissions. Overton filed no response. Al-Rizzo did not know of the existence of the First Requests for Admissions directed to him. On August 24, 2010, the court entered an Order deeming the requests for admission as admitted.

8. On September 14, 2010, Coney filed a motion for summary judgment, based on the deemed admitted requests for admissions. Overton filed no response. Al-Rizzo did not know of the existence of the motion for summary judgment. By Order filed October 12, 2010, summary judgment was granted to Coney and the case was dismissed with prejudice. Al-Rizzo did not know of this order, was not informed of it by Overton, and only learned of it from another person at a later date.

9. By email on December 19, 2010, Overton discharged Al-Rizzo as his client, but did not inform Al-Rizzo of the true status of his case and claim - that it had been dismissed with prejudice by summary judgment on October 12, 2010, if Overton was aware of that action at the time he discharged Al-Rizzo.

10. On January 27, 2011, Overton filed his motion to withdraw as Al-Rizzo's attorney in CV-09-6868. No order granting withdrawal has been entered because the case file was closed on October 12, 2010.

11. On June 6, 2013, for Al-Rizzo, Little Rock attorney Tim Steadman wrote Overton, putting him on notice of Al-Rizzo's claims for legal malpractice in the Coney case, and asking that Overton's malpractice insurer be notified. By email on June 10, 2013, Overton

informed Steadman that Overton had no insurance coverage or carrier at the time, offered his version of events, and stated Al-Rizzo still had more than a year to refile against Coney with any additional claims not previously made.

12. On July 12, 2013, Al-Rizzo filed a pro se lawsuit against Overton and his law firm for legal malpractice and on other grounds and seeking money damages.

13. Due to the adverse outcome of his litigation with Coney, Al-Rizzo had to pay Coney \$1,000.00 to settle Coney's claims against Al-Rizzo.

By consent, it is found by Panel A that the following Rules violations occurred.

A. The conduct of J. Don Overton violated Rule 1.3 in that (1) Overton failed to file any responses to the Coney Requests for Admissions filed June 10, 2010, thereby exposing Al-Rizzo to having the requests deemed admitted against Al-Rizzo and being used as the basis for summary judgment for Coney and against Al-Rizzo; (2) Overton failed to file any response to the Coney Motion to Deem Requests Admitted filed July 22, 2010, and served by mail on Overton by Coney's counsel, thereby exposing Al-Rizzo to having the requests deemed admitted against Al-Rizzo and being used as the basis for summary judgment for Coney and against Al-Rizzo; and (3) Overton failed to file any response to the Coney Motion for Summary Judgment filed with the court clerk on or about September 9, 2010, and served by Coney's counsel by mail on Overton at the same time, thereby exposing Al-Rizzo to having summary judgment entered for Coney and against Al-Rizzo. Arkansas Rule 1.3 requires that a lawyer shall act with reasonable diligence and promptness in representing a client.

B. The conduct of J. Don Overton violated Rule 1.4(a)(3) in that (1) Overton failed to

keep his client Al-Rizzo reasonably informed by failing to inform Al-Rizzo that the Coney Requests for Admissions filed June 10, 2010, had been served upon Overton and required a response from Al-Rizzo; (2) Overton failed to keep his client Al-Rizzo reasonably informed by failing to inform Al-Rizzo that the Coney Motion to Deem Requests Admitted filed July 22, 2010, had been served upon Overton and required a response from Al-Rizzo; and (3) Overton failed to keep his client Al-Rizzo reasonably informed by failing to inform Al-Rizzo that the Coney Motion for Summary Judgment filed with the court clerk on or about September 9, 2010, and served by Coney's counsel by mail on Overton at the same time, had been served upon Overton and required a response from Al-Rizzo. Arkansas Rule 1.4(a)(3) requires that a lawyer shall keep the client reasonably informed about the status of the matter.

C. The conduct of J. Don Overton violated Rule 1.4(a)(4) in that Overton failed to promptly comply with Al-Rizzo's requests for information about Al-Rizzo's case. Arkansas Rule 1.4(a)(4) requires that a lawyer shall promptly comply with reasonable requests for information.

WHEREFORE, in accordance with the consent to discipline presented by Mr. Overton and the Executive Director, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct that Respondent JIMMY DON OVERTON, Arkansas Bar No. 2007-029, be, and hereby is, **CAUTIONED** for his conduct in this matter and assessed \$100.00 costs. The 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 A

By: /s/ Danyelle J. Walker, Chairperson, Panel A

Date: September 19, 2014

Original filed with the Arkansas Supreme Court Clerk
on September 19, 2014.