



BEFORE THE ARKANSAS SUPREME COURT
COMMITTEE ON PROFESSIONAL CONDUCT
PANEL A

IN RE: **TODD VAN ES**, Respondent
Arkansas Bar No. 2008202
Docket No. CPC 2020-019

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Mark McCutcheon on July 2, 2020. The information related to the representation of McCutcheon by Respondent Van Es in 2020.

On August 31, 2020, Respondent was served with a formal Complaint, supported by affidavits from McCutcheon and Nancie Givens, Director of the Court's Office of Professional Programs. Respondent Van Es failed to file a response to the Complaint, which failure to timely respond, pursuant to Section 9.C(4) of the Procedures, constitutes an admission of the factual allegations of the formal complaint and extinguishes Respondent's right to a public hearing.

1. The Arkansas law license of Todd Van Es (Van Es) was suspended for CLE non-compliance by an Order issued November 18, 2019, by the Supreme Court CLE Committee. Van Es was notified of the license suspension by CLE office letter dated December 6, 2019. Van Es remained in suspension status at the time the Complaint was filed.

2. Mark McCutcheon (McCutcheon) employed Van Es in April 2020, to file and obtain an uncontested divorce for McCutcheon in Benton County, Arkansas. At no time did Van Es inform McCutcheon that Van Es's law license was in suspended status. McCutcheon informed Van Es that he needed the divorce done quickly so McCutcheon could close on a refinancing of the home and get his wife name's removed from the debt on the home.

3. McCutcheon paid Van Es the full quoted fee of \$950 in two payments by May 6, 2020. Thereafter, McCutcheon was unable to contact Van Es to find out about the status of the divorce case Van Es had promised to promptly file and had informed McCutcheon that his divorce would be final in just over thirty days thereafter. Not hearing from Van Es, McCutcheon checked at the courthouse and was informed Van Es had failed to file any divorce case for McCutcheon.

4. McCutcheon was forced to hire new counsel, Jordan Snoderly (Snoderly), and paid him a \$1,000 fee to file the divorce case. The Complaint for Divorce was filed by Snoderly on June 26, 2020.

5. On July 2, 2020, the Office of Professional Conduct (OPC) received and filed McCutcheon's grievance against Van Es.

6. By email on July 8, 2020, OPC informed Van Es of McCutcheon's grievance and requested an informal response from Van Es by August 1, 2020. The email address used by OPC, todd@vaneslawfirm.com, is the address Van Es has on file with the Supreme Court Clerk, and also the email address used by Van Es on a client's federal case PACER filing on April 2, 2020.

7. By email on July 7, 2020, Snoderly informed Van Es that Snoderly was now representing McCutcheon in the divorce matter. On July 14, 2020, Snoderly wrote to Van Es at his physical office address and requested a refund of McCutcheon's unearned fee and a copy of the client file. The letter was returned to Snoderly as "undeliverable," and remained on July 31, 2020 to a post office box address for Van Es.

8. By email on July 18, 2020, OPC followed up with Van Es and requested he confirm receipt of the original OPC email of July 8 about the McCutcheon grievance.

9. On July 29, 2020, Ms. McCutcheon filed her Waiver and Entry of Appearance in the divorce case. As of July 30, 2020, McCutcheon had not received anything from Van Es - a fee refund or file copy. On July 31, 2020, OPC again emailed Van Es asking about McCutcheon's fee refund and file. As of August 2, 2020, Snoderly had received no fee refund nor file for McCutcheon from Van Es. Van Es has not responded to any contacts from OPC or provided any information requested from him by OPC.

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

- A. The conduct of Todd Van Es violated Rule 1.1, in that Van Es failed to provide competent legal representation to McCutcheon in April-June 2020, because Van Es failed to keep his Arkansas law license in active status at that time, and therefore could not provide McCutcheon legal services, such as filing a divorce case. 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 Todd Van Es violated Rule 1.3, in that after being employed in mid-April and paid in full by early May 2020, Van Es failed to promptly file his client's complaint for divorce, when the client had informed Van Es that time was of the essence on getting the divorce finalized. Arkansas Rule 1.3 requires that a lawyer shall act with reasonable diligence and promptness in representing a client.
- C. The conduct of Todd Van Es violated Rule 1.4(a)(3), in that after being employed and paid his full fee, Van Es failed to keep his client McCutcheon reasonably informed

about the status of his matter, including that Van Es had not filed the divorce complaint well into June 2020. Arkansas Rule 1.4(a)(3) requires that a lawyer shall keep the client reasonably informed about the status of the matter.

- D. The conduct of Todd Van Es violated Rule 1.4(a)(4), in that Van Es failed to promptly comply with McCutcheon's communications to Van Es seeking information about McCutcheon's divorce matter. Arkansas Rule 1.4(a)(4) requires that a lawyer shall promptly comply with reasonable requests for information.
- E. The conduct of Todd Van Es violated Rule 1.16(d), in that after being informed by McCutcheon's new lawyer in early July 2020, that Van Es was no longer representing McCutcheon in the divorce matter, Van Es failed to provide McCutcheon a refund of the unearned portion of the \$950 fee McCutcheon paid Van Es on the McCutcheon divorce matter. Arkansas Rule 1.16(d) requires that, upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.
- F. The conduct of Todd Van Es violated Rule 1.19(a), in that after being informed in early July 2020 that he was no longer representing McCutcheon on the divorce matter, Van Es failed to provide his former client a copy of the Van Es office file on the client's divorce matter. Arkansas Rule 1.19(a) provides the "client file," as defined in this Rule, shall be provided to the client or former client or the authorized representative of either

upon written request in any form by the client, former client, or authorized representative to the lawyer, and the lawyer failed to provide the original or a copy of the client file in a reasonable time or under other circumstances, terms, and conditions that violate Rule 1.19.

- G. The conduct of Todd Van Es violated Rule 5.5(a), in that in meeting with McCutcheon in mid-April 2020 and accepting employment and a fee from him on a new divorce case, at a time when Van Es's Arkansas law license had been suspended since November 2019, Van Es knowingly practiced law in Arkansas in violation of the regulation of the legal profession in Arkansas. Arkansas Rule 5.5(a) provides that a lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.
- H. The conduct of Todd Van Es violated Rule 8.1(a), in that on several occasions from and after July 8, 2020, Van Es failed to respond to legitimate requests for information from OPC about the McCutcheon divorce matter, sent by OPC to Van Es using his email address on record with the Supreme Court Clerk. Arkansas Rule 8.1(a) provides that ... a lawyer ... in connection with a disciplinary matter, shall not: (a) ...; or (b) ..., or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6.
- I. The conduct of Todd Van Es violated Rule 8.4(c), in that in mid-April 2020, Van Es, (1) knowing his Arkansas law license was suspended at the time and that he was prohibited from practicing law at the time, accepted new employment and a legal fee from McCutcheon, knowing Van Es could not perform legal services for McCutcheon

without a law license that was in active status at the time; and (2) Van Es accepted a legal fee of \$950 from McCutcheon in April-May 2020 and thereafter failed to perform legal services for McCutcheon, or inform McCutcheon that he was unable to provide legal services, or refund McCutcheon's fee. Arkansas Rule 8.4(c) provides that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

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 license of **TODD VAN ES**, Arkansas Bar Number 2008202, be, and hereby is, **SUSPENDED for TWELVE (12) MONTHS** for his conduct in this matter, and he is **FINED \$500.00**, ordered to pay **RESTITUTION** of \$950.00 for the benefit of Mark McCutcheon, and pay costs of \$50.00. The suspension shall become effective on the date this Findings and Order is filed of record with the Clerk of the Arkansas Supreme Court.

For his separate failure to file a Response to the Complaint, Respondent Van Es is separately reprimanded and fined \$1,000.00. In assessing the sanctions in this case, Respondent's prior disciplinary record was a factor.

The fines, restitution, and costs assessed herein, totaling \$2,500.00, shall be paid 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: Mark L. Martin
Mark L. Martin, Vice-Chair, Panel A

Date: 11.24.20

Order prepared by: Stark Ligon, OPC Director, ABN 75077