



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

IN RE: TODD VAN ES, Respondent
Arkansas Bar No. 2008202
Docket No. CPC-2020-023

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Mary Washburn on August 7, 2020. The information related to the representation of Ms. Washburn by Respondent Van Es in 2020.

On October 28, 2020, Respondent was served with a formal complaint, supported by the affidavit of Mary Washburn. Respondent 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 CLB non-compliance by an Order issued November 18, 2019, by the Supreme Court CLE Committee. Van Es was notified of the license suspension by letter dated December 6, 2019. Van Es has recently completed reinstatement requirements of his license and a stay of his suspension was granted October 21, 2020.

2. Mary Washburn (Washburn) employed Van Es on June 9, 2020, to deal with and if needed to probate the estate of her recently-deceased sister Anne Downing in Benton County, Arkansas. At no time did Van Es inform Washburn about the then-suspended status of his Arkansas law license.

3. On the same day Washburn paid Van Es a retainer of \$1,000 through her credit card. Washburn also provided the phone number of her brother-in-law, who is also an attorney, for Van Es to speak with. Van Es agreed to give Washburn's brother-in-law a call, but never did.

4. On June 11, 2020, Washburn reached out via email to Van Es with a list of questions and received no response.

5. On June 12, 2020, Washburn received a phone call from Van Es saying he would go to her sister's home on June 15, 2020, to make sure it was locked and get a locksmith to change the locks. It is unknown if Van Es did this as Washburn never heard back from him.

6. On June 29, Washburn sent an email to Van Es inquiring about the status of the matter and Van Es never responded.

7. On July 14, 2020, Washburn sent a Certified Mail with a request for a return receipt to Van Es, informing him that she will no longer be needing his services. In the mail, Washburn also requested a detailed accounting of any work done and a refund of her \$1,000 retainer fees.

8. On July 29, 2020, Washburn reached out to the Office of Professional Conduct (OPC) and was provided with a grievance form. On August 7, 2020, OPC received and filed Washburn's grievance against Van Es.

9. On August 28, 2020, via email, OPC informed Van Es of Washburn's grievance, which communication included her letter terminating Van Es' services as her attorney, and requested an informal response from Van Es by September 15, 2020.

10. At 10:51 am on August 28, 2020, an OPC email was sent to Van Es informing Van Es of his Arkansas law license suspension status.

11. At 3:28 pm on August 28, 2020, Stark Ligon of OPC sent an email to Van Es referencing the text message Ligon had received from Van Es and Ligon's response with a

suggestion to call Van Es the afternoon of the following Monday, August 31, 2020, to discuss the grievances made against Van Es and his continuing CLE license suspension from November 2019.

12. By email at 4:53 pm on August 28, 2020, Van Es agreed to Ligon's Monday, August 31, 2020 phone call appointment, stating that Van Es would be calling Ligon at 3 pm that day and promised to be prepared.

13. On August 29, 2020, Washburn informed OPC via email that the certified mail letter she sent to Van Es' Law Firm was returned to Washburn.

14. Via email on August 29, 2020, Ligon reached out to Van Es inquiring as to a suitable mailing address at which to reach Van Es.

15. On August 31, 2020, via email Van Es confirmed receipt of Washburn's grievance sent to him by Ligon.

16. Via email on October 7, 2020, Ligon again requested from Van Es an informal response to Washburn's grievance against Van Es and extended the deadline to October 15, 2020. Ligon also reminded Van Es of his continuing CLE suspension status.

17. Van Es provided no additional information or response to OPC on Washburn's grievance filed against him at OPC.

18. On October 28, 2020, Van Es executed an Affidavit of Service in this case and emailed OPC a copy. His thirty (30) days to thereafter file a Response to the Complaint started that day. He never filed a Response.

19. While Van Es' Arkansas law license remained CLE suspended, Van Es filed a pleading in Washington County Circuit Court Case No. 72cv-18-705 on August 24, 2020.

Upon consideration of the formal Complaint and attached exhibit materials, the failure of Mr. Van Es to respond to it, 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 1.4(a)(4) in that Van Es failed to promptly respond to Washburn's communications to Van Es seeking information about Washburn's sister's legal affairs or a probate matter. Arkansas Rule 1.4(a)(4) requires that a lawyer shall promptly comply with reasonable requests for information.
- B. The conduct of Todd Van Es violated Rule 1.16(d) in that after being informed by Ligon on August 28, 2020, that Washburn had terminated Van Es' legal services on handling Anne Browning's legal affairs or probating her estate, Van Es failed to provide Washburn a refund of the unearned portion of the \$1,000 retainer fee Washburn paid Van Es on the Browning 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.
- C. The conduct of Todd Van Es violated Rule 3.4(c), in that he was in disobedience of Arkansas Supreme Court Rule VII.C, Rules Governing Admission to the Bar, Van Es failed to complete his required hours for Continuing Legal Education (CLE) until October 2020, resulting in the continuing suspension of his Arkansas law license, from November 18, 2019 until October 21, 2020, when he obtained a stay of the suspension.

Arkansas Rule 3.4(c) requires that a lawyer shall not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists.

- D. The conduct of Todd Van Es violated Rule 5.5(a), in that in communicating with Washburn, accepting employment and a \$1,000 retainer from her on handling or probating her sister's estate on June 9, 2020, at a time when Van Es's Arkansas law license had then been suspended since November 2019, Van Es knowingly practiced law in Arkansas in violation of the regulation and rules 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.
- E. The conduct of Todd Van Es violated Rule 8.4(c) in that (1) on June 9, 2020, Van Es, 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 \$1,000 legal fee from Washburn, knowing Van Es could not perform legal services for Washburn without a law license that was in Active status at the time and failing to disclose this information to Ms. Washburn, and (2) in that Van Es accepted a legal fee of \$1,000 from Washburn on June 9, 2020 and thereafter failed to perform legal services for Washburn, or inform Washburn that he was unable to provide legal service due to his law license suspension, or refund Washburn'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 **TODD VAN ES**, Arkansas Bar Number 2008202, be, and he hereby is, **REPRIMANDED** for his conduct in this matter, **FINED \$1,000.00**, and **ORDERED to pay \$50.00 CASE COSTS**. For his failure to respond to the Complaint, he is separately **REPRIMANDED** and **FINED an additional \$1,000.00**. In assessing sanctions here, the Respondent's prior disciplinary history was a factor.

The fines and costs assessed and ordered 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: Mark L. Martin
Mark L. Martin, Panel A Chair SL

Date: 1-20-21