



BEFORE THE ARKANSAS SUPREME COURT
COMMITTEE ON PROFESSIONAL CONDUCT
PANEL A

IN RE: **TODD A. VAN ES**, Respondent
Arkansas Bar No. 2008202
Docket No. CPC-2020-030

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Joshua Lambert on November 19, 2020. The information related to the representation of Lambert by Respondent Van Es in 2020.

On February 5, 2021, Respondent Van Es, of Centerton, Arkansas was served with the formal Complaint, supported by an affidavit from Lambert. 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. Joshua Lambert ("Lambert"), of Louisiana, needed an Arkansas attorney to help transfer to Lambert title to real property in Benton County, Arkansas that belonged to Lambert's late grandmother. Lambert found the name of Van Es, contacted him by telephone on October 1, 2020, and discussed Lambert's legal needs. Van Es recommended probate of the grandmother's estate, but using Lambert's mother, Darla Jenkins, a resident of Benton County, as the personal representative, instead of Lambert. Lambert agreed, employed Van Es, and paid him the quoted fee of \$930.00 that day by credit card.

2. By text messages and phone call attempts, Lambert thereafter attempted to contact Van Es and attempted to obtain information about any progress by Van Es in opening the probate

administration and moving forward. Van Es failed to respond to Lambert in any substantive manner.

3. On November 17, 2020, Lambert asked Van Es in a text if Lambert needed to get another lawyer for the legal matter. Van Es did not respond.

4. OPC received the Lambert grievance against Van Es on November 19, 2020. OPC contacted Van Es several times about the Lambert grievance, requesting an informal response from Van Es as part of the OPC initial investigation. OPC received no informal response from Van Es.

5. Lambert and OPC are not aware of any action taken by Van Es on behalf of Lambert in the probate matter. According to Lambert, Van Es has not refunded any unearned portion of the \$930.00 Lambert paid Van Es for the legal representation.

Upon consideration of the formal complaint and attached exhibit materials, the failure of Respondent to file a response 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 1.2(a) in that it was Lambert's decision, and reason for employing Van Es as his lawyer, that Van Es would prepare the necessary documents and file in Benton County, Arkansas, a probate proceeding on the estate of Lambert's late grandmother to facilitate the transfer of title to real property from the grandmother to Lambert, but Van Es failed to follow through on that client decision and objective of the legal representation. Arkansas Rule 1.2 (a) requires that a lawyer shall abide by a client's decisions concerning the objectives of representation, subject

to paragraphs (c) and (d), and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued....

- B. The conduct of Todd Van Es violated Rule 1.3 in that Van Es was employed and paid his full quoted fee of \$930.00 by Lambert on October 1, 2020, but as of the time of the filing of this Complaint has filed nothing in probate court or show any evidence of work product to Lambert. 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 in spite of repeated efforts by Lambert to obtain information for Van Es about the status of the probate legal matter, Van Es failed to respond to Lambert. 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 in spite of repeated efforts by Lambert to obtain information for Van Es about the status of the probate legal matter, Van Es has failed to comply with Lambert's reasonable requests to Van Es for information about the probate 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) after Lambert's email to Van Es of November 17, 2020, asking Van Es if Lambert needed to get another lawyer to do the work Van Es was employed and paid to do, a strong suggestion that Van Es should consider his services terminated, Van Es failed to do the legal work promised or return any unused portion of the legal fee paid him by Lambert. 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 8.1(b) in that Van Es repeatedly knowingly failed to respond to a lawful OPC demand for information about the Lambert matter and provide OPC with any information Van Es possessed. Arkansas Rule 8.1(a) provides that ..., or a lawyer ... or in connection with a disciplinary matter, shall not: (a) ...; or (b) ..., or knowingly fail to respond to a lawful demand for information from an ... or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel A, that Respondent **TODD A. VAN ES**, Arkansas Bar Number 2008202, be, and hereby is, **REPRIMANDED, FINED \$1,000.00, ORDERED to pay \$930.00 RESTITUTION** to Joshua Lambert, and pay **\$50.00 case costs** for his conduct in this matter. For failing to file a response to the Complaint, Van Es is further **FINED \$1,000.00**. In assessing sanctions here, Respondent's prior disciplinary record was a factor.

The fines, restitution, and costs assessed herein, totaling \$2,980.00, 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, Chair, Panel A

Date: 3.22.21

Prepared by Stark Ligon, ABN 77057