

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL A

IN RE: ANN C. DONOVAN
 ARKANSAS BAR ID #78043
 CPC Docket No. 2003-055

FINDINGS AND ORDER

The formal charges of misconduct upon which this Order is premised arose from information coming to the attention of the Committee, by way of a Judicial Referral made by Honorable Mark Lindsay, Circuit Judge for Washington County. The information related to the conduct of Ann C. Donovan in her representation of Bob Bruckner in the case of Springdale School District No. 50 of Washington County, Arkansas Parson Hills Elementary School Parent Teacher Association, Westwood Elementary School Parent Teacher Association; and Kari Kinne and Julia Henera, as representatives of Westwood Elementary School Parent Teacher Association vs. Bob Bruckner. Ms. Donovan is an attorney primarily practicing law in Fayetteville, Washington County.

The information provided demonstrated that on August 20, 2002, a hearing on various pending Motions was conducted before the Honorable Mark Lindsay, Circuit Judge. The hearing began with Ms. Donovan arguing the Motion to Dismiss that she had filed on behalf of her client, Mr. Bruckner. The Motion was based upon the premise that the complaint or amended complaint failed to set out what authority the school district had to file a lawsuit and/or enter into contracts. Ms. Donovan also argued that punitive damages were not available as had been prayed for against her client. At the conclusion of Ms. Donovan's argument, Judge Lindsay stated that he understood her argument to be that there was a lack of authority to enter into the contracts upon which the lawsuits had been based. Before moving on to opposing counsel, Judge Lindsay inquired of Ms. Donovan who she was suing in her counterclaim filed on behalf of Mr. Bruckner. After he inquired a second time, Ms. Donovan replied "the school district".

In addressing the Court, the opposing counsel explained that he had pending a Motion to Compel Discovery. According to opposing counsel, he had sent Ms. Donovan Interrogatories and Requests for Production on or about March 20, 2002. The Amended Complaint was sent to Ms. Donovan on March 29 and filed of record with the Washington County Circuit Clerk on April 1, 2002. After receiving no response from Ms. Donovan, opposing counsel sent correspondence, dated May 24, 2002. Ms. Donovan did not respond so a Motion to Compel was filed on June 10, 2002. In addition to that Motion, a Motion for Default was filed because Ms. Donovan had not responded to the Amended Complaint. Ms. Donovan did not tender the discovery responses until the day before the hearing on the Motion to Compel. This was true with regard to the Answer to the Amended Complaint as well. Opposing counsel also pointed out to Judge Lindsay that he had never received Ms. Donovan's Motion for Extension to Time to Respond or the Order which was granted and provided Ms. Donovan an additional ten (10) days.

Ms. Donovan was provided an opportunity to respond to the statements and argument of opposing counsel. Ms. Donovan stated that an Answer had been prepared in April 2002 but had not been mailed by a staff member in her office. Ms. Donovan had no answer for why it was not mailed. According to Ms. Donovan, she moved her office during the time frame involved and also offered that her dad was hospitalized around the same time and died on May 31, 2002. She denied receiving the correspondence from opposing counsel. Ms. Donovan stated that she would have looked into the matter if opposing counsel had just called her.

At the conclusion of the arguments and statement by counsel, Judge Lindsay made his ruling on the various Motions. Ms. Donovan's Motion to Dismiss was denied. The counterclaim filed by Ms. Donovan was dismissed because she failed to comply with Rule 10(d) of the Arkansas Rules of Civil Procedure, but she was given ten (10) days to comply with the requirements of that Rule. Ms. Donovan did file the Amended Counterclaim on September 3, 2002. Ms. Donovan was ordered to pay \$350 in attorney's fees to opposing counsel because it was necessary for him to seek court intervention before Ms. Donovan supplied responses to the discovery. The Motion for Default Judgment was denied because Ms. Donovan had filed an earlier Answer to the original Complaint.

In her response to the formal disciplinary complaint, Ms. Donovan denied that she had pursued conflicting legal theories. She pointed out that Arkansas law has a compulsory counterclaim requirement and she was following that requirement when she filed the counterclaim. Further, Ms. Donovan advised that she would have presented more specific facts had she not been told by opposing counsel the evening before the proceeding that he did not intend on proceeding with the Motion to Compel. Ms. Donovan provided the Committee Panel with more information about being with her dad in the last months of his life. She also addressed the issue of moving her office space. Ms. Donovan also explained that she believes that Rule 37, Arkansas Rules of Civil Procedure does require the other attorney to call before filing a Motion to Compel because the language of the Rule sets out: “The motion shall include a statement that the movant has in good faith conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the information or material without court action.” As part of her affidavit of response, Ms. Donovan also advised that she believed she had been treated differently by Judge Lindsay since he became aware that she was representing a client against Corliss Williamson, whose autographed picture Judge Lindsay has in his office.

Upon consideration of the formal complaint, the response thereto, and the Arkansas Model Rules of Professional Conduct, the Committee on Professional Conduct finds:

1. That Ms. Donovan’s conduct violated Model Rule 1.1 when she was not thorough enough in her representation of Mr. Bruckner to be certain (i) that her arguments and pleadings filed on his behalf did not contain conflicting premises of the law, (ii) that her Counterclaim complied with all the requirements of the Arkansas Rules of Civil Procedure, (iii) that the responses to the discovery were timely served on opposing counsel, and, (iv) that she filed a timely Answer to the Amended Complaint. Model Rule 1.1 requires that a lawyer provided competent representation to a client, including the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

2. That Ms. Donovan’s conduct violated Model Rule 3.4(c) when she failed to comply with Arkansas Rule of Civil Procedure 10(d) when she filed her Counterclaim on behalf of Mr. Bruckner, her client and when

she failed to timely serve responses to the discovery requests of opposing counsel despite the requirements of the Arkansas Rules of Civil Procedure and the Court's Order extending her time to do so. Model Rule 3.4(c) requires that a lawyer 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.

3. That Ms. Donovan's conduct violated Model Rule 8.4(d), to wit: (i) Her failure to comply with the discovery requests made upon her on her client's behalf created the need for further action in the proceeding pending before Judge Lindsay and caused delay in pursuing the matter before the Court and (ii) Her failure to comply with the time requirements for serving responses to the discovery requests of the plaintiff resulted in the Judge holding her responsible for paying attorney's fees to the opposing counsel. Model Rule 8.4 (d) requires that a lawyer not engage in conduct that is prejudicial to the administration of justice.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct that ANN C. DONOVAN, Arkansas Bar ID #78043, be, and hereby is, CAUTIONED for her conduct in this matter. Further, pursuant to Section 18.A of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law, Ms. Donovan is ordered to pay costs in the amount of \$50. Said costs shall be due and payable within thirty (30) days of the date of filing this Findings and Order with the Clerk of the Arkansas Supreme Court. The costs shall be delivered to the Office of Professional Conduct by way of a money order or cashier's check made payable to "Clerk, Arkansas Supreme Court."

ARKANSAS SUPREME COURT COMMITTEE
ON PROFESSIONAL CONDUCT

By:

Gwendolyn D. Hodge, Chair, Panel A

Date: