

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

IN RE: BOBBY K. KEETER, Respondent
Arkansas Bar ID#77076
CPC Docket No. 2011-057

FILED

NOV 14 2011

**LESLIE W. STEEN
CLERK**

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Randy Rainwater in an Affidavit dated June 15, 2011. The information related to the representation of Martha Chase by Respondent Keeter in 2010. Mr. Rainwater represents Henry Chase III in matters involving Martha Chase.

On June 20, 2011, Respondent was served with a formal complaint, supported by affidavit from Mr. Rainwater and various other court records, Supreme Court Rules and Opinions. Respondent Keeter filed a timely response. Following the receipt of rebuttal from Mr. Rainwater, the matter proceeded to ballot vote before Panel A of the Committee.

The information before the Panel reflected that that Randy Rainwater represents Henry Chase, III, in a divorce case in Scott County Circuit Court with case number DR2008-112 and also in a matter involving an Order of Protection (case number DR2009-137). Bobby Kenneth Keeter represented the opposing party, Martha Chase, until a substitution of counsel Order was entered on April 26, 2011. The cases were ongoing for a long period of time. The divorce proceeding continues with various matters although a Decree of Divorce was finally entered on May 12, 2011.

During the week of November 1, 2010, Mr. Rainwater inquired of Mr. Keeter whether they could settle the remaining issues in the divorce case (DR2008-112). It was during this

inquiry that Mr. Keeter mentioned that there was hearing set the following week on the Order of Protection case (DR2009-137) because his client wanted the Order extended. Mr. Keeter first advised that the hearing was set for the following Monday but then said he was not certain and that it might be set for the following Thursday. Mr. Keeter also advised Mr. Rainwater that he would let Mr. Rainwater know for certain, but Mr. Keeter never did so. This was the first notice of any kind that Mr. Rainwater had of Mr. Keeter having scheduled a hearing in the Order of Protection matter. Mr. Rainwater's client also had no notice of the hearing setting nor the Petition requesting that the previous Order be extended. Mr. Chase was not served with a Petition, Order or Notice of a hearing for extending the Order of Protection previously entered.

Mr. Rainwater contacted the Judge's case coordinator to see what was set in the matter. She advised Mr. Rainwater that the hearing was set for the following Monday. Mr. Rainwater reported that he then called the Circuit Clerk's office to get a copy of the documents with regard to the request to extend the Order of Protection. The deputy clerk with whom Mr. Rainwater spoke only had the Order of Protection case on her docket sheet. The hearing had been set in the Protection matter (DR2009-137) not the divorce proceeding. (DR2008-112)

In following up on the matter, Mr. Rainwater called the Clerk's office again. He inquired if anything had been filed by Mr. Keeter in the divorce case (DR2008-112). At that time, Mr. Rainwater discovered that Mr. Keeter had a subpoena issued in the divorce case for Mr. Chase's bank records at Union Bank of Mena for a hearing in the divorce case. The subpoena had been issued on November 2, 1010. It was subject to the requirements of Rule 45 of the Rules of Civil Procedure which were amended effective July 1, 2010, requiring three (3) days notice before service of subpoena requesting documents and appearance at a hearing. However, there was no

scheduled hearing in the divorce proceeding, even though the subpoena clearly set out that a hearing was scheduled in that matter. The subpoena was issued for the same date and time as the Order of Protection hearing. There were no financial issues to be resolved in the Order of Protection matter so the subpoena simply could not have been issued for that hearing.

Mr. Rainwater contacted the Sheriff's office and learned that the subpoena had already been served to the Bank. When Mr. Rainwater contacted Union Bank, he learned that Mr. Keeter's office had already obtained the records by personally picking them up from the bank. There was no intent to have the documents presented at hearing scheduled for November 8, 2010, as the subpoenaed documents had already been personally obtained on or before November 5, 2010, when Mr. Rainwater learned of the subpoena through means other than Mr. Keeter.

According to Mr. Keeter, he contacted Judge McCormick's chambers after having been notified by his client of the hearing in the Order of Protection matter and requested a hearing in the divorce matter as well. He further asserts that he called Mr. Rainwater and advised him of this fact. Mr. Keeter goes on to state that when he issued the subpoena for the hearing he believed was set in the divorce matter, he faxed a copy to Mr. Rainwater.

Mr. Rainwater explained that Mr. Keeter never mentioned any subpoena to him and did not fax him a copy of the subpoenas. Further, Mr. Rainwater offered that the divorce proceedings were not on the docket or addressed until Mr. Keeter requested the court address certain issues.

As counsel for Mr. Chase, Mr. Rainwater was given no notice that the subpoena was issued nor was he allowed any opportunity to object. There was no permission from Mr. Chase or Mr. Rainwater for the Bank to release the records as they did.

Instead of going through proper discovery methods, Mr. Keeter used a “stealth” subpoena which is not permitted under Rule 45 of the Rules of Civil Procedure. “Stealth” subpoenas are improper and notice is necessary for any subpoena.

Mr. Keeter never had Mr. Rainwater’s client served with any notice of the hearing or any other documents. Mr. Rainwater and Mr. Chase did appear and Mr. Keeter represented his client at the hearing, although it was initially a pro se petition. The divorce case was still not on the docket for a hearing although Mr. Keeter obtained the financial records by falsely setting out in the subpoena that a hearing was set in the divorce case. Although it appears from the Docket Sheet that there were issues present with regard to Mr. Chase complying with all discovery requests, Mr. Keeter had avenues available to him pursuant to Arkansas Rules in which to obtain the records he sought without the necessity of not following the requirements of the Rules adopted by the Arkansas Supreme Court or being dishonest and deceitful himself in obtaining the documents.

The Arkansas Supreme Court has set out in two separate disciplinary matters that an attorney is expected to know the law. In this matter, Mr. Keeter was expected to know the protections the Court placed in Rule 45 to allow the person whose documents have been subpoenaed the opportunity to object before service of the subpoena and certainly before compliance with the subpoena. Mr. Keeter failed to comply with the requirements of Rule 45 and did so in a dishonest method by asserting a hearing in a matter where no hearing was scheduled.

Upon consideration of the formal complaint and attached exhibit materials, the 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:

1. That Mr. Keeter's conduct violated Rule 3.4(c) because he failed to provide notice to Mr. Chase that a Petition for extending an Order of Protection had been filed in DR2009-137; he failed to provide notice that a subpoena duces tecum had been issued for Mr. Chase's bank records as required by Rule 45 of the Rules of Civil Procedure; he failed to serve Mr. Chase's counsel with notice of the subpoena three (3) days before service as required by Rule 45 of the Rules of Civil Procedure since no hearing was scheduled in the matter in which the subpoena was issued; and he failed to serve Mr. Chase's counsel with the subpoena in accordance with Rule 5(b) of the Rules of Civil Procedure as required by Rule 45 of the Rules of Civil Procedure. 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.

2. That Mr. Keeter's conduct violated Rule 4.1 because in the subpoena issued at the request of Mr. Keeter to the Union Bank of Mena, Mr. Keeter falsely set out that a hearing was set in the divorce proceeding of Henry and Martha Chase. There was no hearing set in that matter and no appearance required at such a hearing by an official of the Bank with the documents subpoenaed by Mr. Keeter. Rule 4.1(a) requires that in the course of represent a client, a lawyer shall not knowingly make a false statement of material fact or law to a third person.

3. That Mr. Keeter's conduct violated Rule 4.4 because Mr. Keeter, while representing Martha Chase, had a subpoena issued in a case where no hearing was set and failed to comply with the law in Arkansas which establishes the manner in which notice of subpoenas are to be given. He obtained documentation and information from Henry Chase's bank account

in violations of the law in Arkansas which sets out the specific method for the use of subpoenas for production of documents, which Rules were put in place for the protection of those whose records are being subpoenaed. Rule 4.4 requires, in pertinent part, that in representing a client, a lawyer not use methods of obtaining evidence that violate the legal rights of such a person.

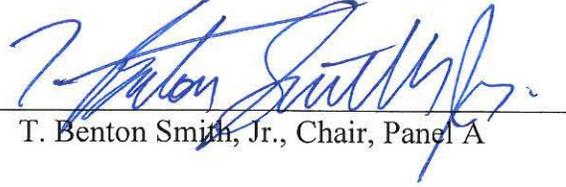
4. That Mr. Keeter's conduct violated Rule 8.4(c) because Mr. Keeter falsely set out in a subpoena issued to obtain documents from Mr. Chase's personal and business bank accounts that a hearing was scheduled in DR2008-112 when no such hearing was scheduled; Mr. Keeter falsely set out in a subpoena issued to obtain documents from Mr. Chase's personal and business bank accounts that the documents were to be presented at a hearing scheduled for November 8, 2010, but he had the documents obtained personally by November 5, 2010; Mr. Keeter by an act of omission deceitfully hid from Mr. Rainwater that a subpoena had been issued for Mr. Chase's personal and business bank account records, in that no notice was given to Mr. Rainwater, as counsel for Mr. Chase, prior to service and compliance with the subpoena; and, in a conversation with Mr. Rainwater during the week of November 1, 2010, Mr. Keeter advised that he would inform Mr. Rainwater of the date of the hearing he scheduled in the Order of Protection matter in Scott County, but he did not do so. Rule 8.4(c) requires that a lawyer not 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 BOBBY K. KEETER, Arkansas Bar ID# 77076, be, and hereby is, REPRIMANDED for his conduct in this matter. Mr. Keeter is assessed the costs of this proceeding in the amount of FIFTY DOLLARS (\$50), pursuant to Section 18.A. of the Procedures. Mr. Keeter is also directed to pay a fine in the

amount of ONE THOUSAND DOLLARS (\$1,000) pursuant to Section 18.B of the Procedures. The fine and costs assessed herein, totaling ONE THOUSAND FIFTY DOLLARS (\$1,050) 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: _____



T. Benton Smith, Jr., Chair, Panel A

Date: _____

September 23, 2011