

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

IN RE:           ANN C. DONOVAN, Respondent  
                  Arkansas Bar ID#78043  
                  CPC Docket No. 2005-020

**FINDINGS AND ORDER**

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Honorable Mark Lindsay in a Judicial Referral received November 22, 2004.

The information related to the representation of Ernestine Schones by Respondent in 2004.

On February 17, 2005, Respondent was served with a formal complaint, supported by the information from Judge Lindsay.

The information before the Committee demonstrated that on November 2, 2004, a hearing was held before Judge Lindsay in the matter of *Ernestine Schones v. Barbara Graham and David Graham*, CV-2003-2055. The hearing began with discussion about the Motion to Withdraw which Ms. Donovan, an attorney practicing primarily in Fayetteville, Arkansas, had filed the previous afternoon. Ms. Donovan advised the Court that she would withdraw her Motion if the opposing counsel was satisfied with the discovery responses she had filed on behalf of her client, Ms. Schones.

Mr. Prettyman, opposing counsel, explained that the responses to discovery had been ordered to be completed and provided to him no later than Friday, October 29, 2004. He also explained that he did not begin to receive any responses until Monday, November 1, 2004. Because of the late nature of the responses, Mr. Prettyman requested that no expert be allowed to testify on behalf of Ms. Donovan's client. Ms. Donovan offered that there was a mis-communication between she and her client which led to the lateness of the responses. Prior to ruling on the Motion for Sanctions with regard to the discovery, Judge Lindsay took testimony.

Judge Lindsay inquired of Ms. Donovan why she had not complied with his Order regarding answers to the discovery requests of the opposing counsel. According to Ms. Donovan's testimony, she called her client

immediately following the hearing the previous Thursday and left messages for her about the time for responding. Ms. Donovan testified to Judge Lindsay that when Ms. Schones picked up the rough draft of the responses, she spoke with office personnel who Ms. Donovan identified as Tom Donovan. Tom Donovan is a former attorney in the State of Arkansas. It was Tom Donovan who advised Ms. Schones that the responses did not have to be back in the office until the following Monday morning. It was Ms. Donovan's testimony that Tom Donovan was in her office working on a brief. There was other testimony related to problems that arose with her communication with her client, Ms. Schones.

Following that testimony, Judge Lindsay addressed Ms. Donovan's failure to have the record from District Court in the case file in Circuit Court. Ms. Donovan acknowledged this failure and also acknowledged that the record from District Court was not with the Circuit Court the morning of November 2, 2004. Ms. Donovan offered that she had requested it be placed in the file and brought to Judge Lindsay's court.

Next, testimony was taken concerning Ms. Donovan's Motion to Withdraw. According to Ms. Donovan, she filed the Motion because if the Court granted sanctions there would be conflict between her client and her. Ms. Donovan expressed her wish that the Court grant the Motion to Withdraw so that Ms. Schones could obtain other counsel.

Ms. Schones, the client of Ms. Donovan, offered testimony following Ms. Donovan's testimony. Ms. Schones confirmed that it was Tom Donovan who told her when to have the responses to the discovery requests back to Ms. Donovan. She also testified that if testimony was excluded she would be dissatisfied with Ms. Donovan's services.

Judge Lindsay granted Ms. Donovan's Motion to Withdraw on more than one basis. According to Judge Lindsay, he questioned Ms. Donovan's competency to represent Ms. Schones prior to the hearing on the Motion to Compel. He again pointed out that Ms. Donovan did not file the record from the District Court in the Circuit Court action, even after being reminded to do so. Judge Lindsay also found that Ms. Donovan did not convey the importance of complying with the Court's Order with regard to the discovery responses to her client. The Responses which Ms. Donovan did file did not comply with the Rules of Civil Procedure. Judge

Lindsay was upset with Ms. Donovan for failing to accept responsibility in the matters before him. Ms.

Donovan was given that opportunity but instead placed the blame on her client and her brother, Tom Donovan.

Judge Lindsay granted a continuance in the matter because he did not believe Ms. Schones had received competent representation by Ms. Donovan in the matter. He expressed his opinion that Ms. Schones had not received adequate legal services from Ms. Donovan.

Upon consideration of the formal complaint and attached exhibit materials, the response, and the Arkansas Model Rules of Professional Conduct, Panel A of the Arkansas Supreme Court Committee on Professional Conduct finds:

1. That Ms. Donovan's conduct violated Model Rule 1.1 when she failed to be competent and did not provide competent representation throughout the time she represented Ms. Schones in her civil litigation in Washington County Circuit Court; when she was not thorough enough in her representation of Ms. Schones to be certain that Ms. Schones understood she had to comply with the discovery requests made by the opposing counsel in a timely fashion; when she was not thorough enough in her representation of Ms. Schones to be certain that she explained to her the consequences of failing to timely and properly respond to the discovery requests made by the opposing counsel; when she was not thorough enough in her representation of Ms. Schones to be certain that the record from the District Court proceeding was filed in the Circuit Court action as required; and, when she was not thorough enough in her representation of Ms. Schones to be certain that the responses to the discovery complied with the Arkansas Rules of Civil Procedure. Model Rule 1.1 requires that a lawyer provide 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 1.3 when she did not diligently represent Ms. Schones in her civil litigation in Washington County Circuit Court. Model Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

3. That Ms. Donovan's conduct violated Model Rule 1.4(b) because she did not adequately explain to Ms. Schones the need to timely comply with the discovery requests of the opposing counsel in her civil litigation. Model Rule 1.4(b) requires that a lawyer explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.
4. That Ms. Donovan's conduct violated Model Rule 3.4(c) because she failed to comply with the Arkansas Rules of Civil Procedure when she submitted responses to the discovery propounded by opposing counsel which were not in the proper and required format; because 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, thereby creating the need for additional proceedings before the Court; because she allowed Tom Donovan, a former attorney, to provide legal services in her office in violation of Section 22 of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law which prohibits any former attorney who is providing services to an attorney from using office space in any location or building where the practice of law is conducted; and because she allowed Tom Donovan, a former attorney, to be in contact with Ernestine Schones, Ms. Donovan's client, about her discovery matters and the order requiring compliance with the discovery requests in violation of Section 22 of the Procedures which prohibits any former attorney from having any contact with clients of any attorney in person, by telephone, in writing, e-mail or by any form of communication. 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.
5. That Ms. Donovan's conduct violated Model Rule 8.4(d) because her failure to timely comply with the discovery requests made upon her on her client's behalf and her failure to explain to her client the responsibilities for doing so created the need for further action in the proceeding pending before Judge Lindsay

and caused delay in pursuing the matter before the Court. 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, acting through its authorized Panel A, that ANN C. DONOVAN, Arkansas Bar ID #78043, be, and hereby is, SUSPENDED FOR A PERIOD OF THREE (3) MONTHS for her conduct in this matter. The suspension in this matter shall become effectively immediately upon the filing of this Findings and Order with the Clerk of the Arkansas Supreme Court. Ms. Donovan shall also pay costs in the amount of \$50 in accordance with Section 18.A. of the Procedures. The costs assessed 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 with 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: \_\_\_\_\_  
Bart F. Virden, Chair, Panel A

Date: \_\_\_\_\_