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BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL A

IN RE: **NEWTON DONALD JENKINS, JR.**
Arkansas Bar ID #94231
CPC Docket No. 2011-063

Received

AUG 17 2012

Arkansas Supreme Court
Committee on Professional Conduct

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based were developed from information provided to the Committee by Leslie A. Rose on June 17, 2011. The information related to the representation of Leslie A. Rose in 2008-2010 by Respondent Jenkins, an attorney practicing primarily in Van Buren, Crawford County, Arkansas, and his Jenkins Law Firm PLLC. On July 8, 2011, Respondent Jenkins was served with a formal complaint, supported by affidavits from Ms. Rose and R. Ray Fulmer, II.

Beginning in February 2004, Ms. Leslie A. Rose (Ms. Rose or Rose) was purchasing a thirty-five acre farm in far eastern Oklahoma on a contract of sale, seller-financed at \$500 per month, for six plus years. She married Joshua Greb (Greb). After fixing up the farm for occupancy, in mid-2007, they moved their legal residence to the farm and obtained Oklahoma driver's licenses in July 2007. Both worked in Arkansas. In August 2008, mounting bills for expenses plus medical bills from Ms. Rose's injury caused them to seek counseling from attorney Donald Jenkins at the Jenkins Law Firm, PLLC ("JLF") in Crawford County, Arkansas, related to a possible bankruptcy. Rose paid the JLF a total of \$1,500 in August 2008 for services for what was to be a Chapter 7 bankruptcy case.

After reviewing their financial information, Jenkins counseled that their tax returns for

several previous years needed to be amended, specifically to add into the income and expense mix a "horse farm operation" to meet the "means testing" eligibility for a Chapter 7 filing. In early 2009, the JLF prepared amended federal returns for Rose and Greb for the years 2006 and 2007. The JLF also prepared amended state returns for them for the years 2006 and 2007. The amended 2006 state return was for Arkansas where they lived the entire year, at Arkansas residence address of her parents. The amended 2007 state return was for Arkansas where they lived part of 2007, at Arkansas residence address of her parents, before relocating to their Oklahoma farm. Rose later learned no amended 2007 Oklahoma state return was filed. The original 2008 federal and Arkansas returns were prepared by JLF on April 29, 2009, and again both listed the Arkansas address, although Rose had notified the JLF by e-mails during April 28-May 4, 2009, that they definitely lived in Oklahoma.

On June 16, 2009, Jenkins filed their Chapter 7 as No. 09-bk-72969, using Rose's parents' Arkansas address for the debtors. Jenkins did not disclose in the bankruptcy filing that she was buying the 35 acre farm in Oklahoma or that either debtor had any interest in real property. Jenkins listed the \$500 monthly farm contract payment by Rose as being "rent or mortgage" payments but did not link it to any ownership interest.

On July 24, 2009, Greb and Rose appeared with Jenkins in Fort Smith before Chapter 7 Trustee Ray Fulmer for their "341(a)" examination. The partial transcript of that questioning shows them producing their 2007 Oklahoma driver's license and then Jenkins explaining that away by stating they really resided in Arkansas and that he had their tax returns to prove it. Greb and Rose basically followed Jenkins' lead with regard to information given to the trustee's questions. The trustee was misled as to their actual state of residence, on the issue of

ownership of any real property, and possibly on their ability to claim Arkansas state exemptions, if they were not Arkansas residents.

In preparing and supposedly filing their 2009 Oklahoma tax return in April 2010, Jenkins failed to have the return filed, causing Rose to later be assessed and have to pay penalty and interest. Rose had to go to another tax preparer in December 2010 to prepare and file an amended 2009 Oklahoma state return.

In preparing and filing their 2009 Arkansas tax return in April 2010, Jenkins failed to have the required 2009 US tax return filed with it, causing Rose to later be assessed and have to pay penalty and interest. Rose had to go to another tax preparer in January 2011 to prepare and file an amended 2009 Arkansas state return.

In preparing and filing their 2009 US tax return, Jenkins used the horse farm as a going business for purpose of deducting business expenses to lower their income to meet the Chapter 7 “means test.” In January 2011, Rose had to go to another tax preparer to prepare and file an amended 2009 US tax return to remove all farm expense and “losses” Jenkins had claimed for them, stating there “was no farm in 2009,” and to correct their address to Oklahoma.

Rose and Greb were divorced in March 2010. In May 2010, Rose paid off the balance of the farm purchase contract and received a deed to the thirty-five acre farm.

In his Response, Mr. Jenkins generally and specifically claimed that Ms. Rose and Mr. Greb failed to provide him material accurate information, including about her “buying” the Oklahoma farm, their correct address, and in which state they actually lived. He denied he gave the bankruptcy trustee inaccurate information on his clients, or that his law firm

improperly prepared tax returns or amended tax returns for Rose and Greb.

Upon consideration of the formal Complaint and attached exhibit materials, the Response to it, rebuttal submitted by Ms. Rose, 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 Newton Donald Jenkins, Jr. violated Rule 1.1 in that (1) by using an Arkansas residence address to file the Greb-Rose bankruptcy in June 2009, while knowing that they were residents of Oklahoma; (2) in April 2009, by incorrectly using an Arkansas residence address to file the Greb-Rose tax returns for the year 2008, while knowing that they were residents of Oklahoma; and (3) in April 2010, by failing to actually file the Greb-Rose federal and Oklahoma tax returns for 2009, after same were prepared by the Jenkins Law Firm and signed by the taxpayers, in all of which actions Jenkins failed to use the required legal knowledge, skill, thoroughness and preparation reasonably necessary for the tax return preparation representation. Arkansas Rule 1.1 requires that a lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

B. The conduct of Newton Donald Jenkins, Jr. violated Rule 1.2(a), in that in April 2010, by failing to actually file the Greb-Rose federal and Oklahoma tax returns for 2009, after same were prepared by the Jenkins Law Firm and signed by the taxpayers, Jenkins failed to abide by a client's decisions concerning the objectives of representation, that their tax returns actually be filed. 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.

C. The conduct of Newton Donald Jenkins, Jr. violated Rule 3.3(a), in that (1) in court on July 24, 2009, at the Greb-Rose "341(a)" bankruptcy hearing before Trustee Ray Fulmer, Jenkins knowingly gave false and misleading testimony as to the state of residence of his clients Greb and Rose, or allowed false and misleading information and inferences to be given to the trustee as to his clients' actual state of residency, and (2) in court on July 24, 2009, at the Greb-Rose "341(a)" bankruptcy hearing before Trustee Ray Fulmer, Jenkins failed to correct previous false statements of material fact on his client Greb and Rose's filed bankruptcy documents regarding no ownership by either of real property, statements that Jenkins knew to be false and misleading and which he failed to correct. Arkansas Rule 3.3(a) requires that a lawyer shall not knowingly: (1) make a false statement of fact or law to a tribunal; or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer; (2),...

D. The conduct of Newton Donald Jenkins, Jr. violated Rule 4.1(a), in that (1) on July 24, 2009, at the Greb-Rose "341(a)" bankruptcy hearing before Trustee Ray Fulmer, Jenkins gave false and misleading testimony as to the residence state of his clients Greb and Rose, or allowed false and misleading information and inferences to be given to the trustee as to his client's actual state of residency, and (2) on July 24, 2009, at the Greb-Rose "341(a)" bankruptcy hearing before Trustee Ray Fulmer, Jenkins failed to correct statements in his client Greb and Rose's filed bankruptcy documents regarding the ownership by either of real property that Jenkins knew to be false and misleading, conduct in both instances by Jenkins

involving dishonesty, fraud, deceit or misrepresentation. Arkansas Rule 4.1(a) requires that in the course of representing a client a lawyer shall not knowingly make a false statement of material fact or law to a third person.

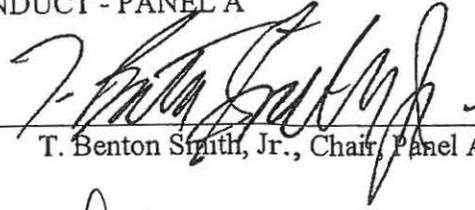
E. The conduct of Newton Donald Jenkins, Jr. violated Rule 8.4(c), in that (1) in June 2009, Mr. Jenkins knowingly filed the Greb-Rose bankruptcy case in the wrong state, Arkansas, knowing at the time the debtors were residents of Oklahoma, and had been for almost two years. He filed in Arkansas as a convenience to himself, so he would not have to travel several hours into the Oklahoma court site to service the Greb-Rose case at hearings there if he had filed in Oklahoma; (2) in the schedules filed for his Greb-Rose clients in their bankruptcy, and in filings thereafter for them, Jenkins knowingly failed to disclose that Rose was purchasing a 35 acre farm in Oklahoma on an installment sales contract financed by the seller, and that she therefore had an interest in real property, information provided to Jenkins by Rose before the bankruptcy petition was first filed; (3) on July 24, 2009, at the Greb-Rose "341(a)" bankruptcy hearing before Trustee Ray Fulmer, Jenkins gave false and misleading testimony as to the residence state of his clients Greb and Rose, or allowed false and misleading information and inferences to be given to the trustee as to his client's actual state of residency; (4) on July 24, 2009, at the Greb-Rose "341(a)" bankruptcy hearing before Trustee Ray Fulmer, Jenkins failed to correct statements in his client Greb and Rose's filed bankruptcy documents regarding the ownership by either of real property that Jenkins knew to be false and misleading; (5) in January 2009, Mr. Jenkins knowingly used, or permitted his law firm employees to use, incorrect Arkansas residence addresses for Greb-Rose on their amended 2007 tax returns, knowing Greb and Rose were Oklahoma residents in much of

2007; (6) in April 2009, Mr. Jenkins knowingly used, or permitted his law firm employees to use, incorrect Arkansas residence addresses for Greb-Rose on their 2008 tax returns, knowing Greb and Rose were Oklahoma residents in all of 2008; and (7) in April 2010, Mr. Jenkins knowingly used, or permitted his law firm employees to use, incorrect Arkansas residence addresses for Greb-Rose on their 2009 tax returns, knowing they were Oklahoma residents in all of 2009, in all instances conduct by Jenkins involving dishonesty, fraud, deceit or misrepresentation. 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 the Arkansas law license of **NEWTON DONALD JENKINS, JR.**, Arkansas Bar ID# 94231, be, and hereby is, **SUSPENDED FOR TWENTY-FOUR (24) MONTHS** for his conduct in this matter, and ordered to pay \$50.00 Committee costs. In assessing this sanction, Respondent's prior disciplinary history was a factor. The suspension shall become effective on the date this Findings and Order is filed of record with the Clerk of the Arkansas Supreme Court, and shall be concurrent from its effective date with any other suspension on Respondent now in effect. The \$50.00 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:



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

Date:

December 1, 2011