

SUPREME COURT OF ARKANSAS

No. CV-11-1260

STARK LIGON, EXECUTIVE
DIRECTOR, ARKANSAS SUPREME
COURT COMMITTEE ON
PROFESSIONAL CONDUCT
PETITIONER

V.

NEWTON DONALD JENKINS, JR.,
ARKANSAS BAR NO. 94231
RESPONDENT

Opinion Delivered May 30, 2013

ORIGINAL MOTION AND SECOND
MOTION FOR SUMMARY
DISPOSITION, ENTRY OF ORDER
OF DISBARMENT, AND MONEY
JUDGMENT FOR COSTS AND
EXPENSES

MOTIONS GRANTED; DISBARMENT
ORDERED.

PER CURIAM

Petitioner, Stark Ligon, Executive Director of the Arkansas Supreme Court Committee on Professional Conduct (the “Committee”), petitions this court a second time with a motion for summary disposition, entry of order of disbarment of Respondent Newton Donald Jenkins, Jr., and money judgment for costs and expenses. We held in abeyance Petitioner’s first motion for summary disposition, entry of order of disbarment, and money judgment for costs and expenses, and requested briefing on the issues of the propriety of service on Respondent of the disbarment petition and of the costs and expenses. *Ligon v. Jenkins*, 2013 Ark. 42 (per curiam). Petitioner filed the requested brief. The time for Respondent to file his responsive brief has now expired, and he has not filed a brief. We now consider the merits of Petitioner’s motion for summary disposition, entry of order of disbarment, and money judgment for costs and expenses.

On December 15, 2011, Petitioner filed a petition for disbarment against Respondent pursuant to section 13 of the Procedures of the Arkansas Supreme Court Regulating the Professional Conduct of Attorneys at Law (the “Procedures”). We appointed the Honorable John Lineberger to preside over the disbarment proceedings as special judge. *Ligon v. Jenkins*, 2012 Ark. 78 (per curiam). On January 24, 2012, Respondent filed an answer, motion to dismiss, and motion to strike portions of the disbarment petition. Respondent moved to dismiss for improper service, stating only generally that he had not been served properly in accordance with the Arkansas Rules of Civil Procedure. According to the special judge, Respondent subsequently defaulted on the two amended petitions for disbarment and failed to appear at his disbarment trial.

Following the disbarment trial, the special judge filed his findings of fact and conclusions of law with this court on October 25, 2012. The special judge found that service of the disbarment petition was personally made on Respondent’s spouse at the marital residence and that Respondent had failed to further appear or correspond in his disbarment proceedings after filing his answer, motion to dismiss, and motion to strike. The special judge denied Respondent’s motion to dismiss for improper service, finding it to be without merit and not pursued by Respondent. We note that, in his brief to this court, Petitioner contends that service of the original disbarment petition on Respondent was proper pursuant to Rule 4(d)(1) of the Arkansas Rules of Civil Procedure. We note also that the address at which service was made on Respondent’s wife is the address Respondent has on file with the clerk

of this court; therefore, service was also made in accordance with section 9 of the Procedures. See *Jenkins v. Ligon*, 2010 Ark. 24.

The special judge found that, in the disbarment proceedings alone, Respondent had committed at least eight violations for conduct involving dishonesty, deceit, fraud, or misrepresentation, which is defined as serious misconduct by section 17(B)(3) of the Procedures. The special judge observed that Respondent had a prior disciplinary history of numerous other violations for serious conduct involving dishonesty, deceit, fraud, or misrepresentation. In recommending sanctions, the special judge considered the aggravating and mitigating factors set out in section 19 of the Procedures, and *Wilson v. Neal*, 341 Ark. 282, 16 S.W.3d 228 (2000). The special judge found that all but one of the eleven aggravating factors existed except the one referring to the use of controlled substances. The special judge also found that none of the thirteen mitigating factors was applicable. Accordingly, the special judge recommended a sanction of disbarment. Finally, the special judge found that Petitioner's motion for expenses and costs of \$2,683.81 incurred in this case was reasonable and should be reduced to judgment.

Petitioner contends that summary disposition and entry of order of disbarment is warranted in this case because Respondent has not filed a brief in accordance with section 13(D) of the Procedures and has therefore left the special judge's findings of multiple rule violations and recommended sanction of disbarment unopposed. Petitioner argues that summary disposition of disbarment is therefore appropriate and furthermore consistent with previous disbarment proceedings in this court, specifically *In re Brown*, 369 Ark. App'x 566,

252 S.W.3d 137 (2007) (per curiam), and *Givens v. Greene*, 2013 Ark. 2 (per curiam). In addition, Petitioner moves for a money judgment against Respondent for costs and expenses pursuant to section 18 of the Procedures, which authorizes a panel of the Committee to impose costs and expenses on an attorney who has been sanctioned.

We did not grant Petitioner's first motion for summary disposition of this disbarment matter because, although we had previously issued summary orders of disbarment when the respondent attorney did not file a brief in this court challenging the special judge's findings, conclusions, and recommended sanctions, we had not heretofore done so when the respondent attorney had challenged service of the original disbarment petition and failed to appear at the disbarment trial. See *Jenkins*, 2013 Ark. 42. We therefore requested briefing in this case. We have now reviewed the brief we requested of Petitioner in this case. We cannot, however, also review a brief from Respondent, as he has failed to avail himself of this last opportunity to appear in his disbarment proceedings or to file a brief.

To date, other than the answer, motion to dismiss, and motion to strike, which the special judge ruled was without merit and not pursued, Respondent has failed to file anything with this court concerning his disbarment proceedings. He is therefore in default under Rule 55 of the Arkansas Rules of Civil Procedure. See *Greene*, 2013 Ark. 2; see also *Ligon v. Revels*, 367 Ark. 186, 238 S.W.3d 609 (2006) (per curiam). The allegations of the petition for disbarment are deemed admitted, and we accept the findings and conclusions of the special judge as unchallenged and unopposed. See *In re Brown*, 369 Ark. App'x 566, 252 S.W.3d 137.

We agree with the special judge's determination that the appropriate sanction is disbarment, and we grant Petitioner's request for entry of a summary order of disbarment.

Turning now to Petitioner's motion for costs and expenses, we note that section 18 of the Procedures provides that the Committee may impose certain costs and expenses on a sanctioned attorney. As Petitioner points out in his brief, under section 13 of the Procedures, once the Committee votes to initiate disbarment proceedings, an original action is initiated in this court, and a special judge is appointed to preside over all further action in the disbarment proceedings. Thus, as most of the expenses incurred in disbarment proceedings occur after the appointment of a special judge, the Committee could not impose costs and expenses associated with disbarment. The special judge found the \$2,683.81 in costs and expenses that Petitioner requested to be reasonable and in accordance with section 18. Pursuant to our inherent authority and our authority to regulate the practice of law granted to this court in amendment 28 to the Arkansas Constitution, we accept the special judge's findings in this regard, and also grant the additional costs of \$446.54 for briefs filed in this court as requested in Petitioner's second motion for costs and expenses.

The name of Newton Donald Jenkins, Jr., shall be removed from the registry of attorneys licensed by the State of Arkansas, and he is hereby barred and enjoined from engaging in the practice of law in this state. Judgment is entered for Petitioner for recovery of costs and expenses in the amount of \$3,130.35, for which sum let execution issue.

It is so ordered.

Motions granted; disbarment ordered.

GOODSON, J., not participating.

Stark Ligon, Arkansas Supreme Court Office of Professional Conduct, for petitioner.

No response.