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SUPREME COURT OF ARKANSAS

No. CV-09-710

NEWTON DONALD JENKINS, JR.,
ARKANSAS BAR ID #94231

APPELLANT

V.

STARK LIGON, EXECUTIVE
DIRECTOR OF THE ARKANSAS
COMMITTEE ON PROFESSIONAL
CONDUCT

APPELLEE

Opinion Delivered January 21, 2010

AN ORIGINAL ACTION FROM FOR
THE COMMITTEE ON
PROFESSIONAL CONDUCT,
[NO. CPC 08-49]

AFFIRMED;
MOTION TO STRIKE, GRANTED.

JIM HANNAH, Chief Justice

Newton Donald Jenkins, Jr., appeals a decision of Panel A of the Arkansas Supreme Court Committee on Professional Conduct, arguing that defective service requires that this case be reversed and remanded. We disagree and affirm.¹

Chief Judge Jimm Larry Hendren of the United States District Court for the Western District of Arkansas referred Jenkins to the Committee regarding Jenkins's conduct in a matter pending before Judge Hendren's court. The Committee prepared a complaint and served it by certified mail, restricted delivery, return receipt mail, addressed to the post office box Jenkins had listed as his address with the office of the Clerk of the Arkansas Supreme Court. A return receipt received by the Committee shows that the complaint was signed for by Brad Oglevie,

¹The Committee found that Jenkins had violated the Arkansas Rules of Professional Conduct. He was suspended from the practice of law for a period of three months, fined fifty dollars in costs relating to the proceeding before the Committee, and fined five hundred dollars for failure to timely respond to the disciplinary complaint. Our jurisdiction is pursuant to Arkansas Supreme Court Rule 1-2(a)(5).

an employee of Jenkins's law office. The receipt provides two boxes, and the person accepting the mail may indicate that he or she is the addressee or a person authorized by the addressee to accept the mail by checking one of the boxes. Oglevie did not mark either box.

The Committee argues that it complied with the service requirements because the complaint was sent by certified mail, restricted delivery, return receipt mail, as required by section 9 of the Arkansas Supreme Court Procedures Regulating Professional Conduct (the Procedures); because the Committee need not produce a receipt signed by Jenkins or someone authorized to sign on his behalf; and because there is a rebuttable presumption that the person who signs a receipt is authorized to do so. The Committee further argues that the real issue is whether the Committee was clearly erroneous in denying the motion for reconsideration based on the lack of service. The Committee argues that whether service was effected was an issue of fact turning on Jenkins's credibility, and that the Panel did not believe Jenkins's testimony that he never received the complaint and did not know he had to respond.

At the outset, we consider Jenkins's motion to strike pages one through fifty-six of the Committee's supplemental addendum as irrelevant and prejudicial. These pages contain the complaint and various documents regarding the facts alleged to show that Jenkins violated the Arkansas Rules of Professional Conduct. As Jenkins argues, what is at issue on this appeal is whether the Committee's service of its complaint was effective. As such, the documents relating to the underlying action are not relevant. The motion is granted.

This court reviews appeals from the Committee de novo. *Donovan v. Supreme Court Comm. on Prof'l Conduct*, 375 Ark. 350, 354, 290 S.W.3d 599, 602 (2009). We determine whether the factual findings were clearly erroneous or whether the result reached was arbitrary

or groundless. *Id.*, 290 S.W.3d at 602. We give due deference to the Committee’s determination of credibility of witnesses, and its findings of fact will not be reversed unless they are clearly erroneous. *Id.*, 290 S.W.3d at 602.

Section 9(A)(2)(a), (b) (2009) of the Procedures provides that service of the complaint “may be effected” by one of two methods, either by “certified, restricted delivery, return receipt mail,” or by personal service. Section 9, as part of the Procedures, is a rule of this court. *See, e.g., Stanley v. Ligon*, 374 Ark. 6, 9, 285 S.W.3d 649, 653 (2008). The Procedures are construed using the same canons of construction used in interpreting statutes. *Id.*, 285 S.W.3d at 9–10. The first rule is to give the words their ordinary and accepted meaning in common language. *Id.*, 285 S.W.3d at 10.

At issue is what is required by the term “restricted delivery, return receipt mail,” contained in section 9(A)(2)(a). In *Donovan*, this court concluded that while production of a completed return receipt is required before a default may be entered in civil proceedings controlled by Arkansas Rule of Civil Procedure 4(d)(8)(A)(i), section 9(A)(2)(a) of the Procedures does not require the Committee to provide a completed return receipt. *Donovan*, 375 Ark. at 356, 290 S.W.3d at 603. In *Donovan*, this court held that “[u]nlike Rule 4 of the ACRP, section 9 of the Procedures does not require that the Committee produce a signed copy of the return receipt in order for it to act if the respondent attorney fails to respond within twenty days.” *Id.*, 290 S.W.3d at 603.

As the Committee argues, once the complaint is mailed by certified mail, restricted delivery, return receipt mail, to the address provided by the attorney to the Arkansas Supreme Court Clerk’s office, it has complied with Rule 9. The attorney then can file a petition for

reconsideration, pursuant to section 9(C)(4)(a), “stating, on oath, compelling and cogent evidence of unavoidable circumstances sufficient to excuse or justify the failure to respond.”

Our discussion in *Donovan* is instructive:

As *Donovan* acknowledges, this court has consistently held that the practice of law is a privilege and not a right. As such, courts cannot summarily restrict a lawyer’s ability to exercise the privilege. Nevertheless, it is well settled that any protections to a law license are only subject to the very lowest review under the Due Process and Equal Protection Clauses of the Constitution.

Donovan, 375 Ark. at 355, 290 S.W.3d at 603 (citations omitted). As part of the privilege of practicing law, an attorney bears the responsibility of keeping the clerk’s office informed of his or her current address. When the complaint is sent by certified mail, restricted delivery, return receipt mail, to the address that an attorney has provided to the clerk of this court, the Committee has complied with Rule 9.

In the present case, the record shows that the Committee complied with the rule. It was left to Jenkins to state, on oath, “compelling and cogent evidence of unavoidable circumstances sufficient to excuse or justify [his] failure to respond.” As the Committee notes, Jenkins argued in his petition for reconsideration that he did not receive the complaint. The Committee denied his petition, and we cannot say that finding was clearly erroneous based on the record before us.

SHEFFIELD, J., not participating.

Gordon, Caruth, & Virden, P.L.C., by: *Bart F. Virden*, for appellant.

Stark Ligon, Office of Professional Conduct, for appellee.