BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL B

FILED
FEB 27 2008
LESLIE W. STEEN
CLERK

IN RE: RONALD CAREY NICHOLS
ARKANSAS BAR ID NO. 90009
CPC DOCKET NO. 2007-121

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by referral from the Arkansas Supreme Court. The information related to the representation of Anthony Randle by Ronald Carey Nichols, Attorney at Law, Carlisle, Arkansas.

Ronald Carey Nichols represented Anthony K. Randle in a criminal case in Pulaski County Circuit Court, Case No. CR 2006-2589, in which Mr. Randle was charged with capital murder. On January 23, 2007, Mr. Randle was found guilty of capital murder and sentenced to life without parole. A timely Notice of Appeal was filed on February 16, 2007. Mr. Nichols then timely lodged the record of the lower court proceedings on May 14, 2007. The Arkansas Supreme Court Clerk then issued a scheduling order directing Mr. Nichols to file a brief on behalf of his client, Anthony K. Randle pursuant to Rule 4-3(a) of the Rules of the Arkansas Supreme Court. Rule 4-3(a) requires that in criminal cases in which the State is the appellee and in which the appellant is not indigent, the appellant shall have 40 days from the date the transcript is lodged to file the required number of briefs with the Clerk. A brief was, therefore, due to be filed on or before June 23, 2007.

On May 17, 2007, Mr. Nichols filed a Motion to Be Relieved. In his motion, Mr. Nichols stated that his client did not pay the agreed fee for representation in the matter. On June 7, 2007, the Arkansas Supreme Court issued a letter order denying the Motion To Be Relieved as counsel for Mr.

Randle.

On June 20, 2007, Mr. Nichols filed a second Motion to Be Relieved. Also on June 20, 2007, Mr. Nichols filed a Motion for Extension of Time to File Appeal Brief. The Motion for Extension of Time was granted allowing Mr. Nichols until July 9, 2007, to file the brief on his client's behalf.

On June 29, 2007, Mr. Nichols filed a second Motion to Extend Time to File Brief. The Arkansas Supreme Court granted the motion and extended the time for filing a brief on Mr. Randle's behalf to August 8, 2007. The letter notice issued by the Court stated that the extension was a final one.

No brief was filed on or before August 8, 2007, by Mr. Nichols on Mr. Randle's behalf. Mr. Nichols filed a Motion to File a Belated Appeal on August 16, 2007 and the State of Arkansas filed a Motion to Dismiss on August 29, 2007. The Arkansas Supreme Court issued a letter order dated September 6, 2007, denying Mr. Nichol's second Motion to Be Relieved, declared Mr. Randle indigent, and appointed Mr. Nichols to represent Mr. Randle on appeal.

On September 13, 2007, the Arkansas Supreme Court granted Mr. Nichols' Motion to File Belated Appeal. In its *Per Curiam* Order, the Court directed Mr. Nichols to file a brief on behalf of Mr. Randle on or before September 28, 2007. The Court then referred the matter to the Office of Professional Conduct. On September 27, 2007, Mr. Nichols filed a brief on behalf of his client.

On November 1, 2007, Ronald Carey Nichols was served with a formal compliant along with a copy of all exhibits. Mr. Nichols failed to file a response to the complaint, which failure to timely respond, pursuant to Section 9.C(4) of the Procedures, constitutes an admission of the factual allegations of the formal complaint and extinguishes his right to a public hearing.

Upon consideration of the formal complaint and attached exhibit materials, the failure to respond to the formal complaint, and other matters before it, and the Arkansas Model Rules of Professional Conduct, Panel B of the Arkansas Supreme Court Committee on Professional Conduct finds:

1. Ronald Carey Nichols' conduct violated Rule 1.3 when he failed to file a timely appeal brief on behalf of his client, Anthony K. Randle, following the entry of the Judgment and Commitment Order and the filing of a notice of appeal in the case of Anthony K. Randle, Arkansas Supreme Court Case No. CR-2007-490. Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

2. Ronald Carey Nichols' conduct violated Rule 3.4(c) when he failed to comply with Rule 16 of the Arkansas Rules of Appellate Procedure--Criminal, which requires that trial counsel, whether retained or court-appointed, continue to represent a convicted defendant throughout any appeal to the Arkansas Supreme Court or Arkansas Court of Appeals, unless permitted by the trial court or the appellate court to withdraw in the interest of justice or for other sufficient cause, when he failed to file an appeal brief on behalf of his client, Anthony K. Randle; and, when he failed to comply with Rule 4-3(a) of the Rules of the Supreme Court when he failed to file a brief on behalf of his client, Anthony K. Randle, within 40 days from the date the transcript is lodged with the Arkansas Supreme Court Clerk. 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.

3. Ronald Carey Nichols' conduct violated Rule 8.4(d) when his failure to file a brief on behalf of his client, Anthony K. Randle, resulted in a delay in the orderly and timely resolution of

appellate proceedings, and when his failure to file a brief on behalf of his client, Anthony K. Randle, required the Court to expend additional time and effort which would not have been necessary otherwise. 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 B, that RONALD CAREY NICHOLS, Arkansas Bar ID No. 90009, be, and hereby is, REPRIMANDED; fined the sum of FIVE THOUSAND DOLLARS ($5,000); and assessed costs in the amount of FIFTY DOLLARS ($50.00) for his conduct in this matter. Mr. Nichol's sanction in this matter was enhanced pursuant to Section 19.L of the Procedures Regulating Professional Conduct of Attorneys at Law based upon his prior sanctions relating to appellate matters in CPC Docket Nos. 2002-156; 2003-004; and 2006-046. Panel B further imposes a separate sanction of CAUTION and a fine in the amount of FIVE HUNDRED DOLLARS ($500.00) for his failure to respond to the formal complaint as required by Section 9.B. The separate sanction is permitted under Section 9(c) of the Procedures Regulating Professional Conduct of Attorneys at Law. The fines and 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 within thirty (30) days of the date this Findings and Order is filed

of record with the Clerk of the Arkansas Supreme Court.

IT IS SO ORDERED.

ARKANSAS SUPREME COURT COMMITTEE ON
PROFESSIONAL CONDUCT - PANEL B

By: _____
Henry Hodges, Chair, Panel B

Date: Dec. 27, 2007