BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL A

FILED
MAR 21 2008
LESLIE W. STEEN
CLERK

IN RE: **JOHN MARSHALL MAY**
Arkansas Bar ID # 2000039
CPC Docket No. 2007-115

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 Daniel Sanders. Respondent assisted Mr. Sanders in his criminal defense of Pulaski County Circuit Court Case No. 2006-2975, *State of Arkansas v. Daniel Sanders.* On March 15, 2007, the court sentenced Mr. Sanders to forty-five (45) years in the Arkansas Department of Correction. On April 6, 2007, Mr. Sanders filed a *pro se* Motion for New Trial. The trial court denied the Motion for New Trial on May 7, 2007. On May 17, 2007, Mr. Sanders wrote to Respondent and Greta Falkner, a Public Defender, asking about his appeal. Ms. Falkner responded to Mr. Sanders by letter dated May 29, 2007, that she had been formally relieved from the case before judgment on March 14, 2007, and that Respondent May thereafter became the attorney of record. Mr. Sanders's letter to Respondent was sent to P.O. Box 1717, Little Rock, AR 72203. The letter was returned unclaimed. In response to a letter sent by the Office of Professional Conduct, Respondent wrote that Mr. Sanders fired him on March 15, 2007, and that Sanders informed him that he would use the public defender's office to appeal his conviction. Respondent's address on this letter was P.O. Box 1717, Little Rock, AR 72203, the same address to which Mr. Sanders sent the letter requesting information regarding his appeal. Rule 16 of the Arkansas Rules of Appellate Procedure–Criminal requires trial counsel, whether retained or court-appointed, to continue representation of 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 sufficient cause. Respondent was not

relieved by either the trial court or the appellate court, and he did not file a notice of appeal on behalf of Mr. Sanders.

Upon consideration of the formal complaint, the response thereto, and the Arkansas Rules of Professional Conduct, the Committee on Professional Conduct finds:

A. Mr. May's conduct violated Rule 1.1 in that he failed to provide Daniel Sanders with competent representation by not filing a notice of appeal from Pulaski County Circuit Court Case No. 2006-2975, *State of Arkansas v. Daniel Sanders*. 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. Mr. May's conduct violated Rule 1.2(a) in that he failed to abide by his client's decision concerning the filing of an appeal from his conviction in Pulaski County Circuit Court Case No. CR2006-2975. 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. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

C. Mr. May's conduct violated Rule 1.3 in that he failed to act with reasonable diligence and promptness in filing the notice of appeal from Mr. Sanders's conviction in Pulaski County Circuit Court Case No. CR2006-2975, *State of Arkansas v. Daniel Sanders*. Rule 1.3 requires that a lawyer shall act with reasonable diligence and promptness in representing a client.

D. Mr. May's conduct violated Rule 3.4(c) in that he knowingly disobeyed his obligation under Ark. R. Crim. P.16(a) to represent Mr. Sanders throughout any appeal to the Arkansas Supreme Court or Court of Appeals, as he had not been permitted to withdraw by the trial court or the appellate court. Rule 3.4(c) requires that a lawyer shall 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.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel A, that **JOHN MARSHALL MAY**, Arkansas Bar ID# 2000039, be, and hereby is, **CAUTIONED** for his conduct in this matter, and he is ordered to pay $50.00 Committee case costs, payable by cashier's check or money order to the "Clerk, Arkansas Supreme Court" and 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.

ARKANSAS SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT - PANEL A

By: Steven Shults
Steven Shults, Chairperson

Date: January 28, 2008