BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL B

FILED
APR 22 2009
LESLIE W. STEEN
CLERK

IN RE: DAVID L. DUNAGIN, Respondent
Arkansas Bar ID#84040
CPC Docket No. 2009-008

CONSENT FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by the Arkansas Supreme Court in a Per Curiam dated January 15, 2009. The information related to the representation of Kenneth Dana Brewton by Respondent in 2008 in an appeal of the denial of his Rule 37 petition.

On or about February 5, 2009, Respondent was served with a formal complaint, supported by the records before the Arkansas Supreme Court. A response was filed. The Respondent and the Executive Director negotiated a discipline by consent proposal, which was submitted to this Panel.

The information before the Panel reflected that on September 4, 2008, David L. Dunagin, an attorney practicing law primarily in Fort Smith, Arkansas, filed the record on appeal with the Arkansas Supreme Court Clerk, from the denial of Mr. Brewton's Rule 37 Petition which occurred on May 23, 2008. The Appellant's brief in the matter was due to be filed on or before October 14, 2008. Mr. Dunagin did not file a brief on or before that date, nor did he seek an extension of time for doing so.

On December 8, 2008, the Office of the Attorney General, on behalf of the State, filed a Motion to Dismiss the Appeal. Mr. Dunagin did not file a response to that Motion. The Motion was submitted to the Court on December 19, 2008. Prior to the Court delivering a decision on

the Motion to Dismiss, Mr. Dunagin filed a Motion for Rule on the Clerk. In the Motion, Mr. Dunagin accepted full responsibility for the failure to file the brief in time. He explained in the Motion that the brief was due on October 14, 2008 and that he failed to obtain an extension due to being called to federal court on that date.

The Court treated the Motion for Rule on the Clerk as a Motion for Belated Brief. On the date he filed the Motion, Mr. Dunagin also tendered the brief. Based upon his acceptance of full responsibility and his admission of fault for failing to timely file the brief for his client, the Court granted the Motion. The Court also referred the matter to the Committee in the Order of January 15, 2009.

Upon consideration of the formal complaint and attached exhibit materials, the response, the consent proposal, and other matters before it, and the Arkansas Rules of Professional Conduct, Panel B of the Arkansas Supreme Court Committee on Professional Conduct finds:

1. That Mr. Dunagin's conduct violated Rule 1.3 when he failed to file Mr. Brewton's brief in case number CR08-1042 by the due date of October 14, 2008 and when he did not file a Motion for Rule on the Clerk or for Belated Brief until January 7, 2009, eighty-five days after the brief was due to be filed. Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

2. That Mr. Dunagin's conduct violated Rule 8.4(d) because his failure to file a timely brief on appeal on Mr. Brewton's behalf created unnecessary delay in the appeal he was pursuing on Mr. Brewton's behalf and created the need to additional proceedings before the Arkansas Supreme Court which would not have been necessary but for his failure. 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 DAVID L. DUNAGIN, Arkansas Bar ID# 84040, be, and hereby is, REPRIMANDED for his conduct in this matter. Further, pursuant to Section 18.A of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law (2002), Mr. Dunagin is assessed the costs of this proceeding in the amount of $100. The 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.

ARKANSAS SUPREME COURT COMMITTEE
ON PROFESSIONAL CONDUCT - PANEL B

By: Valerie L. Kelly
Valerie Kelly, Chair, Panel B

Date: April 22, 2009

(13.M, Rev.1-1-02)