

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

PANEL A

IN RE: JEFFREY H. KEARNEY, Respondent
 Arkansas Bar ID# 91249
 CPC Docket No. 2004-099

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Donald Jackson on October 2, 2002. The information related to the representation of Mr. Jackson by Respondent in 2000.

On June 10, 2004, Respondent was served with a formal complaint, supported by an affidavit from Donald Jackson. Respondent filed a timely response on July 14, 2004.

The facts giving rise to the formal complaint are that Mr. Jackson hired Kearney Law Offices to handle his divorce in 2000. A hearing was held in the divorce case on Mary 31, 2000. Mr. Jackson never received notice of the hearing. Respondent also failed to appear at the hearing. The court ordered Mr. Jackson to pay \$162 bi-weekly in child support and \$279 bi-weekly in spousal support, both by wage assignment, plus attorneys fees and costs of \$300. Mr. Jackson said the amount was much higher than he could have paid but since he was not represented in court the Judge entered the Order on June 20, 2000.

Respondent filed a Motion on June 12, 2000, to set aside the Order, arguing that he was not provided proper notice of the hearing in that service was apparently made by hand-delivering an envelope that was placed on an office desk at the Kearney Law Office. Jane Townsend, opposing counsel, filed a response to the motion explaining that the envelope containing the notice of the hearing had “NOTICE OF HEARING ENCLOSED” printed on the outside of the envelope. Ms. Townsend’s response, made on behalf of her client, also explained that a phone call was made to the Law Office to verify that notice had been received. Ms. Townsend stated in her response that John Kearney answered the phone and that he said he remembered seeing the letter and would tell Jeff Kearney that she had called. Ms. Townsend explained further in her response that

on May 18, 2000, she called the judge's office to set a date for the hearing and that she called Jeffrey Kearney's office to verify that he did not have a conflict with the date. She said Jeffrey Kearney was not in the office so she told his secretary the purpose of the call and left a message for him to call her. Ms. Townsend said she sent a letter to the judge's office verifying the hearing date and that she hand delivered a copy of the same letter to Jeffrey Kearney's office that same day.

Mr. Jackson said a final divorce decree was entered on January 29, 2001, and a wage assignment was entered on March 5, 2001. He said once his employer received the wage assignment he was terminated and was unable to comply with the court's order. As a result, his ex-wife filed a contempt petition. John Kearney appeared at the contempt hearing with him but both Jeffrey Kearney and John Kearney failed to subpoena certain records regarding the marital debt which would have reduced his liability.

Jeffrey Kearney never requested a hearing on the motion to set aside the order, which motion he filed on June 12, 2000. On July 13, 2001, the Kearney Law Office filed an objection to the Entry of the Proposed Order. On August 15, 2001, the court entered an amended order stating that no hearing had ever been requested to be set on the motion to set aside the order which had been filed almost a year earlier. The court further found that two hearings had been held in the matter since the motion and all issues had been addressed. As a result, the motion was dismissed. The Kearney Law Office appealed the dismissal. Ultimately, the dismissal was affirmed by the Arkansas Court of Appeals, The finding was that proper notice had been received of the hearing.

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

1. That Jeffrey Kearney violated Model Rule 1.1 when he failed to appear at the initial hearing and failed to subpoena credit card records to show that Mr. Jackson was not responsible for all the marital debt. Model Rule 1.1 requires lawyers to provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation

reasonably necessary for the representation.

2. That Jeffrey Kearney violated Model Rule 1.3 when he failed to appear at the hearing and failed to set a hearing on his motion to set aside the order. Model Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.
3. That Jeffrey Kearney violated Model Rule 1.4(a) when after receiving notice of the May 31, 2000, hearing he failed to notify his client of the hearing. Model Rule 1.4(a) requires that a lawyer keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.
4. That Jeffrey Kearney violated Model Rule 3.2 when he failed to appear at the May 31, 2000, hearing and failed to notify his client of the hearing thereby causing an Order to be entered against his client in an amount which his client would have contested and which ultimately led to a contempt petition being filed and a judgment being entered against him. Model Rule 3.2 requires that a lawyer make reasonable efforts to expedite litigation consistent with the interests of his client.
5. That Jeffrey Kearney violated Model Rule 8.4(d) when he failed to appear for the May 31, 2000, hearing and failed to set a hearing on the motion to set aside the order resulting in an order being entered adverse to his client's interests which was ultimately affirmed on appeal. Model 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 A, that Jeffrey H. Kearney, Arkansas Bar ID# 91249, be, and hereby is, Reprimanded, ordered to pay restitution of \$1,350 on behalf of his client and costs of \$50 for his conduct in this matter.

The restitution 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.

ARKANSAS SUPREME COURT COMMITTEE ON
PROFESSIONAL CONDUCT - PANEL A

By: _____

Gwendolyn D. Hodge, Chair, Panel A

Date: _____