

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

IN RE: JOHN LEE KEARNEY

ARKANSAS BAR ID #74090

CPC DOCKET NO. 2000-138

FINDINGS AND CONSENT ORDER OF DISCIPLINE

The formal charges of misconduct upon which this Order is premised arose from the Arkansas Supreme Court case of Herman Folk v. State of Arkansas, CR 99-1319. John Kearney, an attorney practicing in Pine Bluff, Arkansas, represented Herman Folk in an appeal to the Arkansas Supreme Court in the above-mentioned matter. On August 4, 1998, a Judgment and Commitment Order was entered reflecting that Herman Folk had been found guilty by a jury of delivery of a controlled substance and sentenced to imprisonment for 120 months. Mr. Folk was represented at trial by John Kearney. Following trial, a notice of appeal was filed by Mr. Kearney but the appeal was never perfected. Mr. Folk filed a timely *pro se* Motion for Belated Appeal and the Motion was directed to the Criminal Justice Coordinator. The Criminal Justice Coordinator wrote Mr. Kearney on November 9, 1999 and requested that he submit an affidavit responding to the allegations contained in the Motion for Belated Appeal. The affidavit was requested to be in the Criminal Justice Coordinator's office on or before November 23, 1999. No response was received from Mr. Kearney. On November 30, 2000, the Arkansas Supreme Court issued a Per Curiam Opinion directing Mr. Kearney to file within thirty days a petition from writ of certiorari to bring up the record, or that portion of it, necessary for the appeal.

Immediately prior to commencement of a public hearing scheduled for September 21, 2001, Mr. Kearney and his attorney tendered a consent to discipline to the Arkansas Supreme Court Committee on Professional Conduct pursuant to Section 8C(1)(c). Upon being apprised of the proposed consent to discipline, the Committee, in executive session, considered the proposal.

Following discussion in executive session, the Committee accepted the proposed consent to discipline and based upon the proposed consent to discipline, the Committee on Professional Conduct finds:

1. That Mr. Kearney's conduct violated Model Rule 1.1 when he failed to perfect an appeal after being advised that his client desired an appeal of his conviction. Model Rule 1.1 requires that a lawyer provide competent representation to a client, including the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.
2. That Mr. Kearney's conduct violated Model Rule 1.2(a) when he failed to provide an affidavit in response to Mr. Folk's *pro se* Motion for Belated Appeal and, as the allegations in the Motion were not contested, when he failed to appeal the criminal conviction. Model Rule 1.2(a) requires, in pertinent part, that a lawyer abide by a client's decision concerning the objectives of representation.
3. That Mr. Kearney's conduct violated Model Rule 1.3 when he failed to timely file a notice of appeal on Mr. Folk's behalf following entry of the judgment of conviction. Model Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.
4. That Mr. Kearney's conduct violated Model Rule 3.2 when, by failing to provide an affidavit in response to the *pro se* Motion for Belated Appeal, he caused delay of over a year in Mr. Folk's attempt to have his appeal presented to the Arkansas Supreme Court. Model Rule 3.2 requires that a lawyer make reasonable efforts to expedite litigation consistent with the interests of the client.
5. That Mr. Kearney's conduct violated Model Rule 8.4(d) when he delayed the orderly and timely administration and resolution of appellate proceedings by failing to pursue a timely Notice of Appeal and by failing to file an affidavit in response to the *pro se* Motion for Belated Appeal, both of which required the Court to expend additional time and effort which would not have been necessary otherwise.
6. Pursuant to Section 7E(7) of the Procedures of the Arkansas Supreme Court

Regulating Professional Conduct, Mr. Kearney is placed on probation for a period of fifteen (15) months. As a requirement of the terms of probation, Mr. Kearney shall provide the Office of Professional Conduct by the 5<sup>th</sup> day of each month during his period of probation a list of every criminal case for which he is attorney of record. On the list, Mr. Kearney shall state the status of the case, specifically, the next date the case is scheduled for hearing or trial; the date a notice of appeal is due; the date the record is due to be filed with the Arkansas Supreme Court Clerk; and the date appellate briefs are due. In addition, Mr. Kearney is to associate with Darrell Brown as his supervising attorney as required by Section 7E(7) of the Procedures. Mr. Brown shall be required to make periodic reports to the Office of Professional Conduct concerning Mr. Kearney's progress. **The failure of Mr. Kearney to comply with the requirements of the terms of probation will terminate the probation and could subject him to further disciplinary action, to include imposition of a more severe sanction which could have been imposed originally but for the agreement to probation.**

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct that JOHN LEE KEARNEY, Arkansas Bar ID No. 74090, be, and hereby is, SUSPENDED for a period of one (1) month for his conduct in this matter. **The date of suspension shall begin on January 1, 2002.** In conjunction with the period of suspension, JOHN LEE KEARNEY, shall be placed on probation for a period of fifteen (15) months beginning on October 1, 2001, and running through December 31, 2002, with the conditions as set out above herein.

IT IS SO ORDERED.

ARKANSAS SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

By:

Bart Virden

Chairman

Date:

Approved:

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Darrell Brown

Attorney for John L. Kearney