

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL B

IN RE: NAIF SAMUEL KHOURY, Respondent
 Arkansas Bar ID#75070
 CPC Docket No. 2003-160

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information obtained by the Committee in the Orders of the Arkansas Supreme Court in the matter of Kevin Matthew Cholousky v. State of Arkansas, 03-01040. The information related to the representation of Kevin Matthew Cholousky by Respondent in the attempted appeal of a decision entered by the lower court involving Mr. Cholousky in the Probate Court of Crawford County, Case No. P-03-62.

On November 17, 2003, Respondent was served with a formal complaint, supported by the Orders of the Arkansas Supreme Court in case number 03-01040, Kevin Matthew Cholousky v. State of Arkansas. Mr. Khoury filed a timely response and the matter proceeded to ballot vote before Panel B of the Committee on Professional Conduct.

The information received by the Committee revealed that on September 15, 2003, Naif Samuel Khoury, an attorney practicing in Fort Smith, Arkansas, filed a Motion for Rule on the Clerk with the Arkansas Supreme Court. In the Motion, Mr. Khoury explained that an Order of Involuntary Commitment was filed on April 21, 2003. The Order committed Mr. Khoury's client, Kevin Cholousky, to the Arkansas State Hospital for a period of up to forty-five (45) days. Mr. Khoury filed a Notice of Appeal and Designation in a timely manner on May 8, 2003. Thereafter, Mr. Khoury presented an Order to the trial court to extend the time for filing the record but he did not make certain that the Order was considered, signed and entered within the time allowed by law. The Order was not entered until September 2, 2003. This was 27 days late inasmuch as the Order must have been filed no later than August 6, 2003, in order to have been timely.

In the Motion for Rule on the Clerk, Mr. Khoury offered to the Supreme Court that Mr. Cholousky's case involved two commitment hearings, two Judges and two court reporters. It was also explained that part of the delay in preparing the transcript was a result of a fire that badly damaged the prosecuting attorney's office and one of the Judge's offices. Mr. Khoury took full responsibility for the Order not being timely entered of record. After consideration of the information submitted by Mr. Khoury, the Supreme Court denied the Motion. The denial occurred on October 2, 2003. Mr. Cholousky was unable to pursue an appeal of the commitment order because of the denial of the Motion for Rule on the Clerk.

In his response to the formal disciplinary complaint, Mr. Khoury admitted that he violated Model Rules 1.1, 1.2(a), 3.4(c), and 8.4(d). Mr. Khoury explained that the Motion for Additional Time in Which to File Record on Appeal was timely filed. The Order granting the Motion did accompany the Motion. Due to confusion between the two presiding Judges, the Order was not entered in a timely manner. Mr. Khoury did not follow up on the Order until he was contacted by one of the Court Reporters who advised that she could not locate an Order extending the time to complete the record.

Mr. Khoury admitted that he violated Model Rule 3.4(c) when he failed to adhere to the requirements of Rule 5(a) of the Rules of Appellate Procedures by not making certain that the Order extending the time to file the transcript was entered within ninety days of the filing of the Notice of Appeal. Mr. Khoury explained that he did not knowingly disobey an obligation of the rules of the tribunal because he did make a good faith effort to assist both Judges in determining which should sign the proposed Order extending the time for lodging the transcript. Mr. Khoury also admitted that his failure to be certain the Order was timely entered resulted in his client being denied his right to appellate review of the Crawford County Probate Court's decision in Case No. P-03-62.

Upon consideration of the formal complaint and attached exhibit materials, the response to it, 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. That Mr. Khoury's conduct violated Model Rule 1.1 because he was not thorough enough in his representation of Mr. Cholousky to make certain that the Order extending the time to file the transcript was filed in a timely manner. 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. Khoury's conduct violated Model Rule 1.2(a) in that despite the fact that his client, Mr. Cholousky, wished to pursue an appeal of the lower court's Order of Involuntary Commitment to the Arkansas State Hospital, he failed to comply with all the procedural rules to do so and therefore denied him the right to an appeal of the lower court's decision. Model Rule 1.2(a) requires that a lawyer abide by a client's decisions concerning the objectives of representation, subject to paragraphs (c), (d), and (e), and consult with the client as to the means by which they are to be pursued.
3. That Mr. Khoury's conduct violated Model Rule 1.3 when he failed to be certain that the Order extending the time to file the transcript on appeal was entered of record within ninety (90) days of the Notice of Appeal filed in the matter involving Mr. Cholousky. Model Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.
4. That Mr. Khoury's conduct violated Model Rule 3.4(c) when he failed to adhere to the requirements of Rule 5(a) of the Rules of Appellate Procedure - Civil when he failed to be certain that an Order extending the time to file the record on appeal was entered within ninety (90) days of the filing of the Notice of Appeal. Model 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.
5. That Mr. Khoury's conduct violated Model Rule 8.4(d) because his failure to be certain that the Order extending the time to file his client's record on appeal was timely entered resulted in his client being denied his right to appellate review of the Crawford County Probate Court's

decision in Case P-03-62. 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 B, that NAIF SAMUEL KHOURY, Arkansas Bar ID# 75070, be, and hereby is, CAUTIONED 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. Khoury is assessed the costs of this proceeding in the amount of \$50. 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: _____

Richard F. Hatfield, Vice-Chair, Panel B

Date: _____