

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

PANEL B

IN RE: JACK R. KEARNEY

ARKANSAS BAR ID# 77194

CPC DOCKET NO. 2003-184

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by referral from the Arkansas Supreme Court on October 2, 2003. The information related to the representation of Billy Welch by Respondent in 2003 in the case of Billy Welch v. State of Arkansas, CR 2003-539.

Billy Welch had been convicted in Dallas County Circuit Court of possession of a controlled substance with intent to deliver, being a felon in possession of a firearm, simultaneous possession of drugs and a firearm, and possession of drug paraphernalia. The convictions had been affirmed following appeal. Welch thereafter filed a Rule 37 post-conviction relief petition alleging ineffective assistance of counsel. Jack R. Kearney, Attorney at Law, Little Rock, Arkansas, represented Billy Welch in Dallas County Circuit Court in the Rule 37 matter. A hearing was held on April 22, 2002 and the Dallas County Circuit Court entered an order on December 26, 2002, denying the relief sought by Welch. Kearney filed a timely notice of appeal and designation of record on January 3, 2003.

On April 30, 2003, Kearney tendered a partial record to the Arkansas Supreme Court Clerk. The record was refused as it was tendered untimely. Rule 5(a) of the Arkansas Rules of Appellate Procedure—Civil provides that the record on appeal shall be filed with the clerk of the Arkansas Supreme Court and docketed within ninety (90) days from the filing of the first notice of appeal, unless the time is extended by order of the circuit court. Kearney stated that he filed a motion to enlarge the time for filing the record in the case on April 1, 2003, and that the Dallas County Circuit Judge signed the order. The order was never entered into the official records of the Dallas County Circuit Clerk's office.

Kearney filed a Motion for Rule on the Clerk with the Arkansas Supreme Court on May 14, 2003. In the Motion, Kearney asserted that the record was not tendered late and attached a copy of the unrecorded order signed by the Dallas County Circuit Court Judge extending the time to file the record to May 1, 2003. On June 12, 2003, the Arkansas Supreme Court issued an order denying the Motion for Rule on the Clerk. The Court ruled that the order attached to the Motion for Rule on the Clerk was ineffective, as an order becomes effective only when file-marked by the circuit clerk.

On September 10, 2003, Kearney filed a second Motion for Rule on the Clerk wherein he accepted responsibility for tendering the record on appeal to the clerk late. On October 2, 2003, the Arkansas Supreme Court Clerk granted the Motion for Rule on the Clerk and referred the matter to the Office of Professional Conduct.

Kearney stated that he was ultimately responsible to insure that his client's right to appeal is protected. Kearney admitted that he did not have an order enlarging the time to tender the record filed in a timely manner with the Dallas County Circuit Clerk. Kearney stated, however, that the failure was not due to a lack of reasonable diligence and promptness on his part and not a violation of Model Rule 1.3.

Kearney admitted that because of his failure to have the order enlarging time for filing the record entered with the Dallas County Circuit Court records, that the record was not timely filed with the Arkansas Supreme Court Clerk. However, Kearney stated that his failure was not based upon negligent or intentional conduct prejudicial to the administration of justice and in violation of Model Rule 8.4.

Upon consideration of the formal complaint and attached exhibit materials, the response, the prior disciplinary history of Attorney Jack R. Kearney, and the Arkansas Model Rules of Professional Conduct, Panel B of the Arkansas Supreme Court Committee on Professional Conduct finds:

1. That JACK R. KEARNEY violated Model Rule 1.3 when he failed to undertake the necessary steps to obtain an Order extending the time to file the record on appeal and have it filed with the Dallas County Circuit Clerk prior to the expiration of the time for filing the record and when he failed to timely file, on behalf of his client, the record of the lower court proceedings with the Arkansas Supreme Court. Model Rule 1.3

requires that a lawyer act with reasonable diligence and promptness in representing a client.

2. That JACK R. KEARNEY violated Model Rule 8.4(d) when he failed to file the record with the Supreme Court in a timely manner which resulted in a delay in the orderly and timely resolution of appellate proceedings and, when he failed to timely file his client's record, he required the Court to expend additional time and effort which would not have been necessary otherwise. 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 JACK R. KEARNEY, Arkansas Bar ID#77194, be, and hereby is, CAUTIONED, and assessed costs in the amount of FIFTY DOLLARS (\$50.00) for his conduct in this matter. 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: _____

J. Michael Cogbill, Chair, Panel B

Date: _____