

**BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT  
PANEL A**

IN RE:           JACK R. KEARNEY, Respondent  
                  Arkansas Bar ID#77194  
                  CPC Docket No. 2006-131

**FINDINGS AND ORDER**

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee in a referral by the Arkansas Supreme Court. The information related to the representation of Leon Harden by Respondent in 2006.

On October 10, 2006, Respondent was served with a formal complaint, supported by Orders and pleadings before the Arkansas Supreme Court in the matter of *Leon Harden v. State of Arkansas*, CR06-966. Respondent filed a timely response. The matter then proceeded to ballot vote before Panel A of the Committee on Professional Conduct in accordance with the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law (2002). (“Procedures”).

The factual background before the Committee in this disciplinary matter was as follows:

Leon Harden was convicted in case No. CR-05-102-3B in Drew County Circuit Court on April 25, 2006. The Judgment and Commitment Order sentencing Mr. Harden to eighty (80) years in the Arkansas Department of Correction was filed with the Clerk on that date. On May 10, 2006, a Notice of Appeal was filed on Mr. Harden’s behalf, by Jack R. Kearney, an attorney practicing primarily in Little Rock, Arkansas. On June 8, 2006, Mr. Kearney filed a Motion for New Trial on Mr. Harden’s behalf. Judge Bynum Gibson, Jr., denied the Motion for New Trial, in an Order filed June 23, 2006. On June 28, 2006, Mr. Kearney filed a Motion to Be Relieved

as Attorney of Record. The Circuit Court was without authority to relieve Mr. Kearney because he had already filed a Notice of Appeal on Mr. Harden's behalf. On August 10, 2006, Mr. Kearney filed a Motion for Extension of Time to File Appellate Record. Judge Gibson granted the Motion on August 11, 2006. The Order was three (3) days outside the time allowed by law in order to be timely and effective. The Order granting extension had to be filed within ninety (90) days of the filing of the Notice of Appeal in order to be timely. Mr. Kearney did not obtain the Order granting extension until the ninety-third day. As such, it was untimely and ineffective.

On August 21, 2006, Judge Bynum Gibson mailed a partial transcript in the matter for filing with the Clerk of the Arkansas Supreme Court. After Judge Gibson delivered the partial transcript to the Clerk of the Court, Mr. Kearney was notified that a Motion for Rule on the Clerk would be necessary because of the failure to obtain the Order Extending the Time to File the Record on appeal within the original ninety (90) day time frame allowed by Court rule.

On August 30, 2006, Mr. Kearney filed his Motion for Rule on the Clerk with the Clerk of the Arkansas Supreme Court. In the Motion, Mr. Kearney denied that the Motion for Enlargement of Time was filed untimely. He did not address the issue of the Order being untimely. Also on August 30, 2006, Mr. Kearney filed a Motion to Be Relieved as Attorney of Record. On September 28, 2006, the Court denied the Motion to be Relieved as Counsel. In the same Per Curiam, the Motion for Rule on the Clerk was granted.

In responding to the formal disciplinary complaint, Mr. Kearney explained that he practices law primarily in Little Rock and that the trial at issue occurred in Drew County. Mr. Kearney denied that he ignored the ninety (90) day requirements for filing the record on appeal or obtaining an extension of time in which to do so, he explained that he interpreted the filing

deadlines differently than did the Supreme Court.

Mr. Kearney offered that he interpreted the relevant rules to have extended the time for filing the transcript to ninety (90) days after the denial of his Motion for New Trial. He believed he had until September in which to obtain an extension. He filed the Motion for Extension of Time when the circuit court staff notified him that their calculations were to the contrary. However, the Order was entered too late. Mr. Kearney stated that the lateness of entry of the Order was not the result of any intentional misconduct or negligence but rather from his reading of the rules. The Supreme Court determined that his reading was not correct.

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

1. That Mr. Kearney's conduct violated Rule 1.1, when he was not thorough enough in his representation of Mr. Harden to be certain that he secured the Order for Extension of Time to File the Record on Appeal in a timely manner, i.e., within ninety (90) days of the filing of the Notice of Appeal. 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 Rule 1.3 when he failed to secure an Order for Extension of Time to File the Record on Appeal on Mr. Harden's behalf within ninety (90) days of the filing of the Notice of Appeal in his criminal proceeding. Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

3. That Mr. Kearney's conduct violated Rule 8.4(d), because his failure to secure an

Order Extending the Time to File the Record on Appeal in a timely fashion on behalf of his client delayed the process of his client's appeal until a Motion for Rule on the Clerk could be considered and because his failure to secure an Order Extending the Time to File the Record on Appeal in a timely fashion for Mr. Harden resulted in a delay in the orderly and timely resolution of appellate proceedings. 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 JACK R. KEARNEY, Arkansas Bar ID# 77194, be, and hereby is, CAUTIONED for his conduct in this matter. Further, pursuant to Section 18.A. of the Procedures, Mr. Kearney 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 A

By: \_\_\_\_\_  
Jerry D. Pinson, Chair, Panel A

Date: \_\_\_\_\_