

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

PANEL A

IN RE: KENNETH GEORGE FUCHS

ARKANSAS BAR ID #81063

CPC DOCKET No. 2002-031

FINDINGS AND ORDER

The formal charges of misconduct arose from the Arkansas Supreme Court case of Warren Looney v. State of Arkansas, CR 2001-1308. Kenneth George Fuchs, an attorney practicing law in Conway, Arkansas, represented Warren Looney in a criminal matter wherein Mr. Looney was found guilty by a jury of aggravated robbery and sentenced to imprisonment of 360 months in the Arkansas Department of Correction. On October 13, 2000, a judgment was entered reflecting that Mr. Looney was sentenced to the 360 months of imprisonment. Following the filing of a timely Notice of Appeal, the appeal was not perfected.

Warren Looney filed a *pro se* Motion for Belated Appeal and the Arkansas Supreme Court issued a Per Curiam Order on January 31, 2002. The Per Curiam Order stated that as Mr. Fuchs was the attorney of record and filed a notice of appeal, he was obligated to represent Mr. Looney until such time as he was permitted by the court to withdraw. Mr. Fuchs was directed to file within thirty (30) days of the Order a petition for writ of certiorari to bring up the remainder of the record necessary for appeal and an affidavit accepting fault for his failure to perfect an appeal. The Arkansas Supreme Court thereafter granted the Motion and referred the Motion to the Committee on Professional Conduct.

Mr. Fuchs was served with the formal complaint, pursuant to Section 9A(2)(a), Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law (Procedures), by certified mail, restricted delivery on April 12, 2002. Mr. Fuchs failed to respond to the formal complaint. His failure to respond timely to the formal complaint constitutes admission of the factual allegations contained therein pursuant to Section 9C(4) of the Procedures.

Upon consideration of the formal complaint, the failure to respond, and the Arkansas Model Rules of Professional Conduct, the Committee on Professional Conduct finds:

1. That Mr. Fuch's conduct violated Model Rule 1.3 when he failed to file with the Arkansas Supreme Court a record of the lower court proceedings on behalf of Warren Looney, his client. Model Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.
2. That Mr. Fuch's conduct violated Model Rule 3.4(c) when he failed to comply with Rule 16 of the Rules of Appellate Procedure-Criminal, which provides that trial counsel, whether retained or court appointed, shall continue to represent a convicted defendant throughout any appeal, unless permitted by the trial court or the appellate court to withdraw in the interest of justice, when he failed to protect Warren Looney's right to appeal. Model Rule 3.4(c) requires that a lawyer shall 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.
3. That Mr. Fuch's conduct violated Model Rule 8.4(d) when his failure to perfect an appeal on his client's behalf delayed the orderly and timely resolution of appellate proceedings and when his failure to perfect an appeal on his client's behalf 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 that KENNETH GEORGE FUCHS, Arkansas Bar ID No.81063, be, and hereby is, REPRIMANDED for his conduct in this matter. For his failure to timely respond to the formal complaint, Mr. Fuchs is fined the sum of \$500.00, pursuant to Section 9C(2) and 18B of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law. Said fine is to be paid within thirty (30) days of the filing of this Order with the Arkansas Supreme Court Clerk.

ARKANSAS SUPREME COURT COMMITTEE

ON PROFESSIONAL CONDUCT

By: _____

Win Trafford

Chairman, Panel A

Date: _____