

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

PANEL A

IN RE: KENNETH GEORGE FUCHS

ARKANSAS BAR ID #81063

CPC DOCKET No. 2002-059

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. No affidavit was received from Mr. Fuchs within thirty days of January 31, 2002. The Arkansas Supreme Court Clerk sent a letter advising Mr. Fuchs that no affidavit was received. Mr. Fuchs filed an affidavit with the Court on March 26, 2002, and admitted that the transcript in the matter was never filed and that it was solely his fault. The Arkansas Supreme Court accepted Mr. Fuchs's affidavit and granted Mr. Looney's *pro se* Motion for Rule on the Clerk on April 18, 2002. The Arkansas Supreme Court forwarded a copy of their April 18, 2002, Per Curiam Order to the Office 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 personal service on August 9, 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. Fuchs's conduct violated Model Rule 3.4(c) when he failed, as directed by the Arkansas Supreme Court, to file, within thirty (30) days of January 31, 2002, an affidavit accepting fault for failing to perfect an appeal on behalf of his client, Warren Looney. 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.
2. That Mr. Fuchs's conduct violated Model Rule 8.4(d) when his failure to file an affidavit within thirty (30) days of January 31, 2002, as directed by the Arkansas Supreme Court, resulted in a delay in the orderly and timely resolution of appellate proceedings and required the Arkansas Supreme 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, CAUTIONED 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: _____