

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

PANEL A

IN RE: J.F. ATKINSON, JR, Respondent

Arkansas Bar ID#76003

CPC Docket No. 2003-061

CONSENT FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by the Arkansas Supreme Court in a Per Curiam Referral dated April 3, 2003. The information related to the representation of Alisa Danieal Efurd by Respondent in 1999 and thereafter.

On May 22, 2003, Respondent was served with a formal complaint, supported by the Per Curiam referral. A late response was filed. The Respondent and the Executive Director negotiated a discipline by consent proposal, which was submitted to this Panel.

The information before the Panel demonstrated that J.F. Atkinson, Jr., an attorney practicing primarily in Fort Smith, represented Ms. Efurd in a Rule 37 post conviction matter in Sebastian County, Greenwood District, Arkansas. The Rule 37 Petition was filed on Ms. Efurd's behalf on March 19, 1999. The Order denying the relief was entered by the lower court on August 31, 1999. An untimely Notice of Appeal was filed on November 10, 1999. There are no records of any additional documentation taking place in the matter until February 7, 2003, when the Arkansas Supreme Court Clerk received a letter from Mr. Atkinson, dated February 6, 2003. The letter transmitted the Motion for Belated Appeal and Rule on the Clerk prepared by Mr. Atkinson. In his Motion for Belated Appeal, Mr. Atkinson stated that his client's Rule 37 Petition was denied without hearing and that the Judgment denying relief was entered October 22, 1999. He admitted filing the Notice of Appeal on November 10, 1999. Mr. Atkinson also admitted that he filed the Notice of Appeal on February 10, 2000.

In his statements in the Motion presented to the Supreme Court, Mr. Atkinson explained that he either misplaced, lost or forgot about the transcript and only when looking for another file did he come across Ms. Efurd's transcript. Following submission of the Motion to the Supreme Court, a Per Curiam was entered on March 6, 2003. The facts in the March 6, 2003, Per Curiam demonstrated that Ms. Efurd was convicted of first degree murder and was sentenced to twenty five years in the Arkansas Department of Correction. A Mandate was issued by the Arkansas Court of Appeals affirming the conviction on February 23, 1999. Ms. Efurd, thereafter, filed a timely pro se Rule 37 Petition along with a Motion for Appointment of Counsel. Mr. Atkinson was appointed to represent Ms. Efurd on April 12, 1999. The Rule 37 Petition was summarily denied without an written findings on August 31, 1999. On September 9, 1999, an Order was entered awarding Mr. Atkinson attorney's fees. Thereafter, Ms. Efurd notified Mr. Atkinson that she wished to appeal the denial of her request for Rule 37 relief, which resulted in the filing of the Notice of Appeal on November 10, 1999. After the transcript was delivered to Mr. Atkinson on February 10, 2000, he took no further action on Ms. Efurd's behalf until February 7, 2003. As a result of all of this information, the Arkansas Supreme Court ordered Mr. Atkinson to appeal before the Court on March 20, 2003, to show cause why he should not be held in contempt for failing to timely perfect the appeal.

Mr. Atkinson appeared before the Arkansas Supreme Court on March 20, 2003, and entered a plea of guilty for failing to timely perfect his client's appeal. Based upon all of the facts, the Supreme Court entered an Order denying the Motion to File Belated Appeal on April 3, 2003. The reason for the denial was Mr. Atkinson's failure to comply with Rule 2(2) of the Rules of Appellate Procedure - Criminal which provides that any application for belated appeal has to be made within eighteen (18) months of the Order denying post conviction relief in order to be considered by the Court. Mr. Atkinson did not file the Motion until three (3) years had elapsed since he filed the Notice of Appeal. As such, the Court found that he did not act with diligence and thus waived the right to appeal from the Order denying Rule 37 relief to Ms. Efurd. It was in this April 3, 2003, Order that the Supreme Court referred Mr. Atkinson's conduct to the Committee on Professional Conduct. The Supreme Court accepted Mr. Atkinson's guilty plea and fined him \$500.

Justice Brown and Justice Hannah dissented from the majority opinion because Ms. Efurd's appellate relief was thwarted by ineffective counsel. Justice Brown noted in the dissent that after her Rule 37 Petition was denied, it was Ms. Efurd who filed a Petition for Reconsideration and it was Ms. Efurd who filed a Petition to Amend her Reconsideration Motion. Mr. Atkinson did not take any action until November 10, 1999, when he filed an untimely Notice of Appeal. Justice Brown also explained that before Mr. Atkinson filed his Motion for Belated Appeal, his client, Ms. Efurd had already done so on December 12, 2002. Justice Brown and Justice Hannah did not believe that the eighteen (18) month rule should be read so strictly as to deny due process to Ms. Efurd since the only reason for her appeal not being timely was that Mr. Atkinson was ineffective as her counsel.

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

That Mr. Atkinson's conduct violated Model Rule 1.1 when (1) he was not thorough enough in his representation of Ms. Efurd to file a timely Notice of Appeal to the denial of her Rule 37, Petition; (2) he was not thorough enough in his representation of Ms. Efurd to make certain that he pursued her appeal in a timely manner following his of the untimely notice of appeal; (3) he failed to be thorough enough in his representation of Ms. Efurd to make certain that he filed a Motion for Belated Appeal within eighteen (18) months of the Order denying her request for post conviction relief; and, (4) he failed to be thorough enough in his representation of Ms. Efurd to determine on what date the Order denying her request for post conviction relief was actually entered. 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.

That Mr. Atkinson's conduct violated Model Rule 1.2(a) because despite the fact that his client, Ms. Efurd, wished to pursue an appeal of the denial of her request for post conviction relief, he did not do so on her behalf. 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.

That Mr. Atkinson's conduct violated Model Rule 1.3 when (1) he failed to file a Notice of Appeal within thirty (30) days of entry of the Order denying Ms. Efurd's request for post conviction relief; (2) he failed to tender the record in Ms. Efurd's appellate matter in a timely manner following his receipt of the same on February 20, 2000; (3) he failed to timely pursue a Motion for Belated Appeal on behalf of Ms. Efurd; and, (4) he did not timely advise Ms. Efurd that he failed to file a timely Notice of Appeal on her behalf or that he had not tendered her record to the Arkansas Supreme Court in an effort to pursue her appellate rights. Model Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

That Mr. Atkinson's conduct violated Model Rule 1.4(a) when at no time did he advise Ms. Efurd that he had failed to file a timely Notice of Appeal on her behalf and when he failed to advise Ms. Efurd that he had not perfected her appeal to the Arkansas Supreme Court from the denial of her request for post conviction relief. Model Rule 1.4(a) requires that a lawyer keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

That Mr. Atkinson's conduct violated Model Rule 1.4(b) because at no time did after he failed to file a timely Notice of Appeal on behalf of Ms. Efurd did he explain to her that she only had eighteen (18) months to pursue a request for belated appeal in order to be entitled to have her appeal heard. Model Rule 1.4(b) requires that a lawyer explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

That Mr. Atkinson's conduct violated Model Rule 3.4(c) when he failed to adhere to the requirements of Rule 2(2) of the Rules of Appellate Procedure - Criminal when he failed to file the Motion for Belated Appeal (Rule on the Clerk) on Ms. Efurd's behalf within eighteen (18) months of the Order denying her request for post conviction relief. 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.

That Mr. Atkinson's conduct violated Model Rule 8.4(d) because his failure to file his client's record with the Supreme Court of Arkansas along with his failure to file a Motion for Belated Appeal within eighteen (18) months resulted in his client being denied her right to appellate review of the denial of her request for post conviction relief. 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 A, that J.F. Atkinson, Jr., Arkansas Bar ID# 76003, be, and hereby is, SUSPENDED for a PERIOD of SIXTY (60) DAYS for his conduct in this matter. The suspension shall become effective on 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: _____

Gwendolyn Hodge, Chair, Panel A

Date: _____