

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL B

IN RE: CHARLES R. KARR
ARKANSAS BAR ID NO. 68027
CPC DOCKET NO. 2005-143

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Dora Gillean. The information related to the representation of Dora Gillean, Mary A. Graham, Martha Sprabery, Margie Gillean, Marvin Gillean and Marcia Call, Heirs at Law of Olen Gillean, Deceased, by Charles Karr, Attorney at Law, Fort Smith, Arkansas.

Olen Gillean died on December 15, 1998, while in the care of Health South Rehabilitation Center in Fort Smith. It was the family's belief that Health South Rehabilitation was negligent in the care given to Mr. Gillean. Dora Gillean, the wife of Olen Gillean, and other members of the family, met with Charles R. Karr, Attorney at Law, in his office to discuss any legal causes of action they may have had against Health South Rehabilitation Hospital. Prior to the filing of the lawsuit, there was never an interview with all of the living heirs at law of Olen Gillean. There was no probate proceeding opened on the behalf of Olen Gillean, deceased.

On November 20, 2000, a wrongful death lawsuit was filed by Mr. Karr in the names of the heirs at law. During the pendency of the litigation, there were depositions taken. One of the depositions was of Marvin Gillean, son of Olen Gillean. During his deposition, Marvin stated that his father was survived by a half-sister, Dorothy. Dorothy had not been made a party to the lawsuit as an heir at law. Under Arkansas Code Annotated §16-62-102, actions for wrongful death shall be brought by the heirs at law of the deceased person. Beneficiaries of the action are defined in Ark. Code Ann. §16-62-102(d) as the surviving spouse, children, father and mother, brothers and sisters of the deceased, persons standing in loco parentis to the deceased person, and persons to who the deceased stood in loco parentis.

On March 3, 2003, a Motion to Dismiss for Lack of Subject Matter Jurisdiction was filed by Health South Rehabilitation Hospital as the lawsuit did not comply with the statutory requirements for bringing suit under Ark. Code Ann. §16-62-102 by failing to include all living heirs at law. As the lawsuit did not comply with Ark. Code Ann. §16-62-102, claims were barred by the two-year statute of limitations set forth in Ark. Code Ann. §16-114-203. The matter was presented to the Honorable James R. Marshewski, Sebastian County Circuit Court Judge. On March 11, 2003, Judge Marschewski granted the Motion to Dismiss and the matter was dismissed with prejudice.

Karr filed a Notice of Appeal on March 20, 2003, to the Arkansas Court of Appeals from the dismissal of the lawsuit by Judge Marschewski. On January 7, 2004, the Arkansas Court of Appeals issued an opinion in the case of Dora Gillean, et al., Heirs at Law of Olen Gillean, Deceased v. Healthsouth of Fort Smith, Inc. d/b/a Healthsouth Rehabilitation Hospital of Fort Smith, CA03-551, (Ark. App. January 7, 2004).

In the opinion, the Arkansas Court of Appeals affirmed Judge Marschewski's decision and stated that, as no estate was ever opened for Olen Gillean and no personal representative was ever appointed as administrator of the estate, any wrongful-death action stemming from the death of Olen Gillean had to be brought by all of his heirs at law. Because all of the statutory beneficiaries did not join in the suit, the suit was a nullity.

Karr admitted that he was employed to prepare an action on behalf of the heirs at law of Olen Gillean, deceased. Prior to preparing the Complaint, Karr inquired of the family as to who the heirs at law might be. He provided a copy of the Complaint to Ms. Gillean but was not advised of the existence of Dorothy Gillean. He stated that he was unaware of her existence until the deposition of Marvin Gillean.

Karr stated that it was his decision not to set up an estate on behalf of Olen Gillean because Mr. Gillean was a resident of Oklahoma, he died in the State of Oklahoma, and his personal representative would have been his wife who was a resident of Oklahoma. It was Karr's belief that if he brought suit in the names of all the heirs at law, it was safe to file the claim on their behalf without establishing an estate and having a personal representative appointed. Panel Member J. Michael Cogbill recused from any consideration of this Formal Complaint.

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

1. Charles R. Karr violated Arkansas Model Rule 1.1 when he failed to sufficiently inquire as to the names of all statutory heirs at law prior to filing the wrongful-death action and when he failed to open a probate matter for the Estate of Olen Gillean, to have a personal representative appointed and to file the action in the name of the personal representative, thereby avoiding the problem and risk of bringing the suit in the names of all heirs at law. Model Rule 1.1 provides that a lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel B, that Charles R. Karr, Arkansas Bar ID No. 68027, 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: _____
Harry Truman Moore, Chairman

Date: _____

