

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

PANEL A

IN RE: PHILLIP A. MOON, Respondent
 Arkansas Bar ID#84109
 CPC Docket No. 2004-132

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Josephine Perry in an Affidavit dated September 1, 2004. The information related to the representation of Billy Kerr by Respondent beginning in 2000.

On September 28, 2004, Respondent was served with a formal complaint, supported by affidavit from Josephine Perry. Respondent filed a timely response. The matter thereafter proceeded to ballot vote pursuant to the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law (2002).

The information before the Committee reflected that in December 2000, Ms. Perry hired Phillip A. Moon, an attorney practicing in Harrison, to represent her son in a federal habeas corpus proceeding. Thereafter, Mr. Moon was hired by Ms. Perry to assist her son with an executive clemency application.

When Ms. Perry and Mr. Moon first met, Mr. Moon advised Ms. Perry that her son, Billy Kerr, had a good case for the federal habeas corpus proceeding. Mr. Moon was paid in December 2000 to file the proceeding but did not do so until March 2001. After filing the proceeding, Mr. Moon did not stay in contact with Ms. Perry nor with her son. Mr. Moon never met with Mr. Kerr about the matter. During October 2001, Ms. Perry was finally able to meet with Mr. Moon. At that time, she was advised by Mr. Moon that everything was proceeding forward. She was told the same thing each time she was able to speak with Mr. Moon. Since she was not able to receive any details from Mr. Moon, she contacted the Clerk of the United States District Court. When she made that contact is when Ms. Perry learned that the case had been dismissed. Ms. Perry learned that on April 2, 2001, Judge Forster ordered that Mr. Moon serve a copy of the petition on the respondent in the case. Mr. Moon did not comply with the Order nor take any other action in the matter. On

February 20, 2002, Judge George Howard, Jr., entered an Order requiring Mr. Moon to file a report within fifteen (15) days indicating whether he wished to proceed and if so when he served the respondent. Mr. Moon took no action with regard to that Order either. On April 4, 2002, an Order was entered dismissing the matter without prejudice. Mr. Moon did not make Ms. Perry aware of any of these pleadings or Orders. During April 2003, when Ms. Perry asked Mr. Moon if there was still a case pending, he advised her yes, he was working on it. When she took Mr. Moon a copy of the Order of Dismissal, he said that he would take care of it. He did not take any action.

Because he had not completed the action he was requested to take, Ms. Perry asked that Mr. Moon assist with an Executive Clemency application. Mr. Moon said that he would do so. Mr. Moon never advised Ms. Perry nor Mr. Kerr what they should do in the executive clemency matter nor did he ever contact the Governor's Office on behalf of Billy Kerr.

Mr. Moon stated that he had stayed in contact with Ms. Perry and is still working on a Petition for Clemency for Billy Kerr. According to Mr. Moon, the reason for the delay is that he is still waiting on information from Ms. Perry to complete the forms obtained from the Governor's office. Mr. Moon stated that the fee paid was for other legal matters not merely the matters relating to Mr. Kerr.

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 A of the Arkansas Supreme Court Committee on Professional Conduct finds:

1. That Mr. Moon's conduct violated Model Rule 1.1 because he was not thorough enough in his representation of Billy Kerr to be certain that he served the Respondent in the federal habeas corpus proceeding which he filed on behalf of Mr. Kerr, thereby causing the matter to be dismissed. 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.

2. That Mr. Moon's conduct violated Model Rule 1.2(a) because Ms. Perry retained him to pursue a post conviction matter on behalf of her son, Billy Kerr, and after being retained and filing the petition, he did not actively pursue the matter on Mr. Kerr's behalf and allowed the matter to be dismissed without notice to Mr. Kerr or his family. 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 shall consult with the client as to the means by which they are to be pursued.
3. That Mr. Moon's conduct violated Model Rule 1.3 when he failed to be diligent or prompt in serving the Respondent in Mr. Kerr's post conviction proceeding in federal court and when he did not timely advise Mr. Kerr or his family of the Order requiring him to serve the Respondent nor of the Order dismissing the lawsuit as a result of his failure to comply with the previous Orders of the Court. Model Rule 1.3 requires that a lawyer shall act with reasonable diligence and promptness in representing a client.
4. That Mr. Moon's conduct violated Model Rule 1.4(a) when he failed to keep Mr. Kerr or his family advised of what efforts, if any, he was undertaking on Mr. Kerr's behalf in the post conviction proceeding he filed on Mr. Kerr's behalf in the United States District Court and when he failed to return telephone messages left for him by Mr. Perry and failed to respond to the correspondence sent to him by Mr. Kerr. Model Rule 1.4(a) requires that a lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.
5. That Mr. Moon's conduct violated Model Rule 3.4(c) when he failed to comply with the Court's Order of April 2, 2001, directing him to serve the Respondent with a copy of the Petition for Habeas Corpus and when he failed to comply with the Court's Order of February 2, 2002, directing him to file a statement of his intention with regard to the legal proceeding he filed on behalf of Billy Kerr. 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.

6. That Mr. Moon's conduct violated Model Rule 8.4(c) because he was not honest with Ms. Perry when he advised her that her son's legal matter was still being pursued at a time when he knew the matter had been dismissed for his failure to serve the Respondent; because his conduct in failing to advise Mr. Kerr or his family that Mr. Kerr's legal matter had been dismissed was deceitful; and because although he advised Ms. Perry that he would assist with a request for Executive Clemency on behalf of Billy Kerr, he did not contact the Governor's Office about the same nor undertake any efforts in that regard. Model Rule 8.4(c) requires that a lawyer not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.
7. That Mr. Moon's conduct violated Model Rule 8.4(d) because his failure to take action on behalf of Mr. Kerr with regard to serving the Respondent in the federal habeas matter caused the matter to be dismissed with no notice to Mr. Kerr. 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 PHILLIP ASHLEY MOON, Arkansas Bar ID# 84109, be, and hereby is, REPRIMANDED for his conduct in this matter. In addition, Mr. Moon is assessed the cost of this proceeding in the amount of \$50 pursuant to Section 18.A. of the Procedures. The cost 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: _____

Gwendolyn D. Hodge, Chair, Panel A

Date: _____