

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL A

FILED

IN RE: JEFFREY KEARNEY, Respondent
Arkansas Bar ID #91249
CPC Docket No. 2010-049

NOV 17 2010

**LESLIE W. STEEN
CLERK**

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from a grievance filed by Terry Otter on April 30, 2010. The information in the formal charges of misconduct involved Jeffrey Kearney, an attorney practicing primarily in Pine Bluff, Jefferson County, Arkansas, in his representation of Terry Otter in an administrative review matter.

The factual information before the Committee reflects that in August 1991, complainant Terry Otter pled guilty to kidnaping and two counts of rape and is currently serving a forty (40) year sentence in the Arkansas Department of Corrections. In May 2008, the Arkansas Sex Offender Assessment Committee (hereinafter "SOAC"), assessed Otter to determine the level of risk he would pose to the public upon release. SOAC concluded that Otter was a level-four sexually violent predator. Shortly afterwards, Otter contacted and hired Kearney Law Office and John Kearney to represent him. Otter requested administrative review of SOAC's assignment in June 2008. On October 24, 2008, SOAC upheld the assignment and advised Otter he had thirty (30) days from receipt of the findings to petition for judicial review. Otter signed a Receipt of SOSRA Documents form evidencing receipt of the written findings on November 3, 2008. John Kearney also received the written findings on November 3, 2008. After receiving the findings, Otter advised John Kearney that he wanted to file a petition for judicial review of SOAC's determination.

Before the petition could be filed, John Kearney left the private practice of law and

became a Pine Bluff District Court Judge. Otter then contacted Respondent Jeffrey Kearney (hereinafter "Kearney") regarding Kearney Law Office's representation of him and Kearney agreed to continue the representation. At the time of Kearney's agreement to continue the representation, Otter was still within the required time frame for filing his petition for judicial review.

Kearney filed Otter's Petition for Judicial Review on December 4, 2008. On March 31, 2009, Kearney filed an Amended Petition for Judicial Review. SOAC responded to the Amended Petition on April 21, 2009, requesting that the action be dismissed because the court lacked jurisdiction under the Administrative Procedures Act to determine whether or not Otter was required to register as a sex offender or was eligible for parole, among other things.

The court took the matter under advisement and entered his findings and order on July 22, 2009. The court found that Otter was served with the written findings of SOAC on October 27, 2008. At arriving at this date, the court found that SOAC took final action on the matter on October 24, 2008, and pursuant to Rule 6 (d) of the Arkansas Rules of Civil Procedure added an additional three (3) days on to that date, which is October 27, 2008. Because Kearney did not file the Petition for Judicial Review until December 4, 2008, the petition was not timely and the court was without jurisdiction to hear the matter on the merits. The Petition for Judicial Review was dismissed with prejudice.

On August 18, 2009, Kearney filed a Notice of Appeal from the court's dismissal. The Arkansas Court of Appeals, in an opinion issued April 7, 2010, affirmed the trial court's dismissal. The Court of Appeals, however, found that the trial court's calculation of the time for filing the Petition for Review was miscalculated by the trial court. The Appeals Court found that

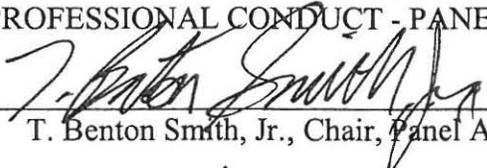
Otter actually received SOAC's decision on November 3, 2008. The Appeals Court found that Otter had until December 3 to file his Petition for review. However, because Kearney did not file the Petition for Review until December 4, the petition was still untimely as it was thirty-one days past the November 3 date. Therefore, the petition was untimely and Otter was precluded from seeking a remedy under the Administrative Procedures Act to have his petition heard on the merits.

Upon consideration of the formal complaint and attached exhibit materials and the Arkansas Rules of Professional Conduct, Panel A of the Arkansas Supreme Court Committee on Professional Conduct finds:

1. That Jeffrey Kearney's conduct violated Rule 1.3 when he failed to file the Petition for Judicial Review on behalf of his client in a timely manner, thereby causing his client to lose the opportunity to have his petition heard on the merits and resulting in a dismissal with prejudice. Arkansas Rule 1.3 states that a lawyer shall act with reasonable diligence and promptness in representing a client.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel A, that JEFFREY KEARNEY, Arkansas Bar ID #91249, be, and hereby is, **CAUTIONED** for his conduct in this matter. Further, pursuant to Section 18.A of the Procedures, Mr. Kearney is assessed the costs of this proceeding in the amount of **FIFTY DOLLARS (\$50.00)**. 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 A

By: 
T. Benton Smith, Jr., Chair, Panel A

Date: September 23, 2010