

**BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL B**

FILED

IN RE: KEDRON BENHAM, Respondent
Arkansas Bar ID#2007075
CPC Docket No. 2011-036

JUN 17 2011

**LESLIE W. STEEN
CLERK**

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 Jose Mario Zuniga-Garcia and Kedron Benham. The information related to the representation of Mr. Zuniga-Garcia and his wife by Respondent beginning in October 2008.

On or about May 15, 2011, Respondent was served with a formal complaint, supported by an Affidavit he prepared and provided to Mr. Zuniga-Garcia for filing with the Office of Professional Conduct. A 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 reflected that Mr. Zuniga-Garcia filed the grievance with regard to Mr. Benham at Mr. Benham's suggestion. Mr. Zuniga-Garcia and his wife hired Mr. Benham in October 2008 for a flat fee of \$5000 which was to be paid out on a monthly basis. Mr. Benham was hired to represent Mr. Zuniga-Garcia and his wife before the United States Immigration Court in Kansas City. There were three (3) cases on which his representation was needed. Mr. Zuniga-Garcia was applying for cancellation of removal for non-permanent residents. His wife was applying for the same relief as well as applying for asylum / withholding of removal.

Mr. Benham did prepare both the asylum case and the cancellation of removal case. The

hearing on both cases was scheduled for March 2010. The hearing was not allowed to be conducted on the merits because Mr. Benham had not submitted the supporting documents in a timely manner.

At that time, Mr. Benham explained to Mr. Zuniga-Garcia and his wife that Mr. Benham had not prepared their case as he should and because of this failure their case had been prejudiced. A request was made for him to assist them in trying to fix the problem. Mr. Benham promised that he would seek out an attorney who could assist them with a Motion to Reopen.

When Mr. Zuniga-Garcia called about the matter, Mr. Benham explained that Mrs. Garcia-Perez' case had been appealed and that they needed to wait on the appeal. He also assured Mr. Zuniga-Garcia that he would find an attorney willing to help in their Motion to Reopen. Mr. Benham did not do so until February 2011.

Mr. Benham admits that his clients called several times during calendar year 2010. He explained that Mrs. Garcia-Perez' appeal was still pending. Mr. Benham also acknowledges that his clients believed that the Motion to Reopen had been filed.

Mr. Benham also admits his failure in not realizing that the "Lozada" motion, he intended to file or have filed on behalf of his clients was not one that could be filed later but that there was an 180 day deadline for such a filing. Mr. Benham accepted full responsibility for the late-filed Cancellation of Removal Application and subsequent failure to assist them in finding a different attorney to file the Motion to Reopen in a timely manner.

Mr. Benham accepted responsibility for his actions and his omissions. He explained that it was an oversight and he felt awful for what happened. Mr. Benham also explained that his clients had no reason to know that the 180 day window for a Motion to Reopen had run until

February 19, 2011, when he informed them that the time had expired.

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

1. That Mr. Benham's conduct violated Rule 1.1, when he was not thorough enough in his representation of Mr. Zuniga-Garcia and Mrs. Garcia-Perez to be certain that he submitted the necessary documentation and proof prior to the hearing scheduled in March 2010; when he was not thorough enough in his representation of Mr. Zuniga-Garcia and Mrs. Garcia-Perez to be certain that he filed the Motion to Reopen in a timely manner; and, when he was not thorough enough in his representation for his assistance to be effective, rather he offered his clients ineffective assistance of counsel as admitted in his Affidavit of February 19, 2011. 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.

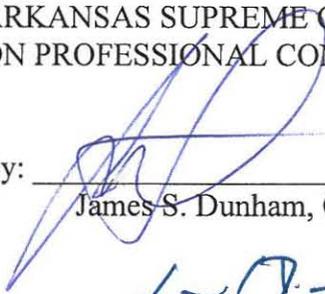
2. That Mr. Benham's conduct violated Rule 1.3 when Mr. Benham failed to file a timely Motion to Reopen after his clients' immigration matter was dismissed based on his failure to submit timely supporting documentation prior to a hearing which was scheduled for March 2010. Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

3. That Mr. Benham's conduct violated Rule 8.4(d) because his failure to submit timely supporting documentation for his clients in their Immigration proceeding created the need for a Motion to Reopen to be filed in order to attempt to pursue the relief he was hired to pursue and because his failure to file a timely Motion to Reopen on behalf of his clients may have

caused them to be unable to seek the relief requested at the time of hire and payment to Mr. Benham. 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 B, that KEDRON BENHAM, Arkansas Bar ID# 2007075, be, and hereby is, CAUTIONED for his conduct in this matter. In addition, Mr. Benham is assessed the costs of this proceeding in the amount of FIFTY DOLLARS (\$50), pursuant to Section 18.A. of the Arkansas Supreme Court Procedures Regulating Professional Conduct of Attorneys at Law. 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:  _____
James S. Dunham, Chair, Panel B

Date: 6-17-2011

(13.M, Rev.1-1-02)