

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL A

IN RE: J.F. ATKINSON, JR., Respondent
Arkansas Bar ID#76003
CPC Docket No. 2007-030

FILED
JUL 20 2007
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 James Kelly Haynes in an Affidavit dated March 26, 2007. The information related to the representation of Mr. Haynes by Respondent in 2005 and 2006.

On April 5, 2007, Respondent was served with a formal complaint, supported by affidavit from James Kelly Haynes. A response was filed. The Respondent and the Executive Director negotiated a discipline by consent proposal, which was submitted to this Panel.

During June 2005, Joe F. Atkinson, Jr., an attorney practicing primarily in Fort Smith, Arkansas, was appointed by the Circuit Court to represent James Kelly Haynes in his Rule 37 Petition proceedings. Mr. Haynes' Rule 37 Petition was denied by the Circuit Judge. Following the hearing, on August 11, 2005, Mr. Haynes asked Mr. Atkinson if he was going to appeal for him. Mr. Atkinson advised that he would not do so. However, on August 25, 2005, the Circuit Judge appointed Mr. Atkinson to pursue the appeal to the Arkansas Supreme Court. Mr. Haynes heard nothing about the appeal for several weeks after that appointment. On October 18, 2005, Mr. Atkinson wrote Mr. Haynes and provided him the office address. That was the last communication Mr. Haynes had with Mr. Atkinson.

The Court Reporter requested an Extension of Time to prepare the transcript in December

2005. The Court granted the request. A Second Order was entered on December 20, 2005.

On January 11, 2006, Mr. Haynes wrote a letter to Sue Newbery, Criminal Justice Coordinator, concerning Mr. Atkinson and his failure to respond to the letters Mr. Haynes had sent. The following day, Mr. Haynes wrote a letter to the Circuit Judge in Fort Smith and requested new counsel. Judge Marschewski denied the request.

Mr. Haynes sent Mr. Atkinson an Inmate Phone Call system sheet for Mr. Atkinson to complete but he never sent it back. On February 7, 2006, Mr. Haynes wrote Mr. Atkinson again but he did not respond to the letter. Sue Newbery corresponded with Mr. Haynes on May 5, 2006, and advised that no transcript had been lodged pertaining to the denial of the Rule 37 Petition. Mr. Haynes wrote Mr. Atkinson again on September 8, 2006, but he did not respond to that letter either. Ms. Newbery sent other letters to Mr. Haynes on October 26, 2006, and on November 17, 2006, confirming that there was no appeal pending on the denial of the Rule 37 Petition.

On February 2, 2007, the Sebastian County Circuit Clerk sent a letter to Mr. Haynes advising that a transcript had been filed and that the matter was now before the Arkansas Supreme Court. After receipt of the letter Mr. Haynes again wrote Sue Newbery. In her letter of response, she advised that there was no record of the trial court record being tendered to the Clerk of the Arkansas Supreme Court. After the Court Reporter filed the transcript with the Circuit Clerk's office, Mr. Atkinson took no action to perfect the appeal even though he had been appointed to do so.

Mr. Atkinson admitted the conduct as set forth in the formal disciplinary complaint. He also admitted that he had experienced previous problems in handling post-conviction

proceedings such as this one involving Mr. Haynes. There was also an admission by Mr. Atkinson that he did not keep Mr. Haynes informed of the status of the matter nor did he inform him that no appeal had been pursued.

Following the filing of the formal disciplinary complaint, Mr. Atkinson's Motion for Belated Appeal in the Haynes' matter was granted by the Arkansas Supreme Court. As a result, Mr. Haynes is allowed the appellate review he requested.

Upon consideration of the formal complaint and attached exhibit materials, the 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:

1. That Mr. Atkinson's conduct violated Rule 1.1, because he was not thorough enough in his representation of Mr. Haynes to file the record on appeal from the denial of his Rule 37 Petition and because he was not thorough enough in his representation of Mr. Haynes to make certain that he pursued the appeal in a timely manner following his appointment to represent Mr. Haynes on appeal. 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. Atkinson's conduct violated Rule 1.2(a), because despite the fact that his client, Mr. Haynes, wished to pursue an appeal of the denial of his request for post conviction relief, Mr. Atkinson did not do so on Mr. Haynes' behalf even though the Circuit Judge appointed him to do so. Rule 1.2(a) requires that subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation, and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued.

3. That Mr. Atkinson's conduct violated Rule 1.3, when he failed to file the record on appeal with the Arkansas Supreme Court Clerk in order to pursue an appeal of the Order denying Mr. Haynes' request for post conviction relief, when he failed to tender the record in Mr. Haynes' appellate matter in a timely manner following the filing of the same with the Circuit Clerk in January 2006, when he failed to pursue any Motion for Belated Appeal on behalf of Mr. Haynes until after served with the formal disciplinary complaint herein, when he did not advise Mr. Haynes that his record from the denial of his request for post-conviction relief had never been filed with the Clerk of the Arkansas Supreme Court, and when he failed to make certain that a timely Order was entered extending the time for filing the record on appeal with the Arkansas Supreme Court Clerk in the matter involving the denial of Mr. Haynes' request for post-conviction relief. Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

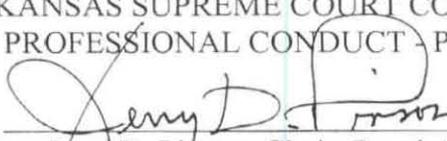
4. That Mr. Atkinson's conduct violated Rule 1.4(a)(3), when he failed to advise Mr. Haynes that he had not perfected the appeal to the Arkansas Supreme Court from the denial of Mr. Haynes' request for post conviction relief and when he failed to inform Mr. Haynes of any efforts he undertook on Mr. Haynes' behalf after being appointed to pursue the appeal of the denial of his request for post-conviction relief. Rule 1.4(a)(3) requires that a lawyer keep a client reasonably informed about the status of a matter.

5. That Mr. Atkinson's conduct violated Rule 1.4(a)(4), when he failed to respond to Mr. Haynes' numerous requests for information about the status of the appeal of the Order denying him post-conviction relief. Rule 1.4(a)(4) requires that a lawyer shall promptly comply with reasonable requests for information.

6. That Mr. Atkinson's conduct violated Rule 3.4(c), when he failed to comply with the Order of the Circuit Court Judge appointing him to represent Mr. Haynes on appeal, in that he failed to perfect and pursue the appeal on Mr. Haynes' behalf. 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.

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, REPRIMANDED for his conduct in this matter. Further, pursuant to Section 18.A of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law, Mr. Atkinson is assessed the costs of this proceeding in the amount of \$100. In addition, pursuant to Section 18.B. of the Procedures, Mr. Atkinson is to pay a fine in the amount of \$750. The costs assessed and fine imposed herein, totaling \$850, 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: 
Jerry D. Pinson, Chair, Panel A

Date: July 20, 2007