

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL A

FILED

IN RE: JEFFREY KEARNEY, Respondent
Arkansas Bar ID #91249
CPC Docket No. 2010-039

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 Helen Parker on December 9, 2008. 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 Helen Parker and members of her immediate family in a civil matter.

The factual information before the Committee reflects that Helen Parker, her daughter, and granddaughter, all residents of Mississippi, were involved in an automobile accident in Mississippi on or about March 17, 2006. Mrs. Parker's vehicle was insured with Safeway Insurance Company, of Illinois, d/b/a Big H Insurance Company of Greenville, Mississippi (hereinafter "Safeway"). The vehicle was "totaled out" in the accident and Mrs. Parker, the driver, and her passengers all sustained serious bodily injuries.

Mrs. Parker's insurance policy with Safeway Insurance Company was due to lapse on March 13, 2006. Mrs. Parker alleges that she contacted Big H Insurance Company and requested an extension of her pre-existing collision coverage on the automobile and the extension was granted for a period of one (1) year. Mrs. Parker made a claim on her policy for the accident, which was denied by the insurance company.

Based on a recommendation from a co-worker, Mrs. Parker contacted Kearney Law Offices and hired them in 2006 on a contingency fee basis, with the exception of \$250.00 paid to

subpoena phone records, to represent her and her family in a civil action against her insurance company. According to Mrs. Parker neither of the attorneys at Kearney Law Offices advised her they were not licensed to practice in the State of Mississippi.

On several occasions after hiring the firm, Mrs. Parker attempted to call and get information on her case. Mrs. Parker at first would speak to John Kearney, and eventually Jeffrey Kearney took over her case. After a couple of years with rarely any contact with Mr. Kearney and no action on the case, Mrs. Parker filed her complaint with the Office of Professional Conduct.

On February 24, 2009, after contact from the Office of Professional Conduct and a few weeks shy of the statute of limitations running, Mr. Kearney filed a civil action in the Circuit Court of Bolivar County, Mississippi, docket no. 2009-0016, on behalf of Mrs. Parker, her daughter, and her granddaughter. Mr. Kearney filed the action in Mississippi State Court without being granted pro hac vice status and continued to represent Mrs. Parker despite not getting pro hac vice status approval.

Upon being served with the Complaint and Summons, Safeway filed with the Mississippi Federal District Court it's Notice of Removal of the case from Mississippi Circuit Court to Federal District Court. At the same time Safeway filed its Motion for Dismissal of Claims of Helen Parker, Motion for Dismissal of Claims if Sheterica Parker, Motion for Dismissal of Claims of Kayla Parker, and its Answer. Mr. Kearney failed to file responses to Safeway's motions.

On July 31, 2009, Mr. Kearney submitted a letter to the district court judge summarizing the case and Plaintiff's Initial Disclosures. After submission of these documents, a case

management conference was held on August 10, 2009 in which Mr. Kearney appeared by telephone. Mr. Kearney still had not petitioned for pro hac vice admission to practice before the Mississippi Court. At the case management conference, the judge ordered Mr. Kearney to retain local counsel and have him or her make an entry of appearance and Mr. Kearney was to file his motion to appear pro hac vice no later than August 21, 2009. After the case management conference, no other action was taken by Mr. Kearney in the matter. There is no record in the docket of Mr. Kearney making an application to the District Court for pro hac vice admission as ordered by the court.

On October 15, 2009, Safeway served Mr. Kearney with Interrogatories and Requests for Production of Documents. Mr. Kearney failed to respond and on February 5, 2010, Safeway filed a Motion to Compel. The Court, on it's own, issued an Order to Show Cause on March 9, 2010, due to Mr. Kearney's failure to obtain local counsel in the case, his failure to file a motion for pro hac vice admission, and his failure to respond to any of Safeway's motions and discovery. Mr. Kearney was directed to show cause by March 23, 2010, as to why the case should not be dismissed for failure to take any action or for failure to follow the Local Rules and Orders of the court. Mr. Kearney failed to respond to the Order to Show Cause.

After Mrs. Parker made several attempts to contact Mr. Kearney regarding her case, Mr. Kearney finally contacted Mrs. Parker regarding the status of her case. However, Mr. Kearney's contact was done to simply advise Mrs. Parker that she had to either hire local counsel or he would have to dismiss her case as he was not licensed to practice in the State of Mississippi or the U.S. District Court of Mississippi. Armed with this information, on January 14, 2010, Mrs. Parker wrote Mr. Kearney, terminating his representation of her and her family and requesting he send her the contents of her file. According to Mrs. Parker, Mr. Kearney did return the file in

March 2010, however, he failed to return her complete file to her. Missing from the records were prescription bottles for medications that were given to him. Mrs. Parker states that Mr. Kearney advised her he would request the medical records related to her and her family's injuries which were not included in the file. In addition, Mr. Kearney failed to return to Mrs. Parker the \$250.00 she paid at the request of Mr. Kearney to subpoena phone records. Mr. Kearney failed to respond to her and Mr. Kearney failed to file the appropriate motion with the Court removing himself from the case.

Mrs. Parker then hired a local attorney, who filed entry of appearance on March 17, 2010. On April 8, 2010, the court granted Safeway's Motion to Compel. In that order the court noted that it had already entered a show cause order directing Mr. Kearney to demonstrate why the case should not be dismissed for lack of prosecution by March 23, 2010, and that although a new attorney had made an entry of appearance, Mr. Kearney had yet to contact the court. The Court was hesitant to dismiss Mrs. Parker and her family's claim because of Mr. Kearney's failures, and ordered that the outstanding discovery requests be answered by April 19, 2010, or the Parkers' subjected themselves to sanctions, including monetary fines and dismissal of their case with prejudice. Mrs. Parker's new attorney responded to Safeway's discovery requests on April 19, 2010.

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 (a) he failed to file the complaint on behalf of his client until shortly before the expiration of the statute of limitations on the matter, and only after contact from the Office Of Professional Conduct, (b) he failed to

respond within the required time frame to Motions filed in the lawsuit by opposing counsel, (c) he failed to seek pro hac vice status in both Mississippi State Court and Federal District Court as required by the rules of each court, (d) he failed to make sure his clients responded within the required time frame to discovery requests propounded to plaintiffs by opposing counsel, (e) he failed to respond to the court's orders directing him to file his petition for pro hac vice status in the US District Court and to associate local counsel in the matter by August 21, 2009, and (f) he failed to respond to the district court's order to show cause by March 23, 2010, as directed. Arkansas Rule 1.3 states that a lawyer shall act with reasonable diligence and promptness in representing a client.

2. That Jeffrey Kearney's conduct violated Rule 1.4(a)(3) when (a) he failed to notify his clients about the discovery requests propounded upon them and failed to assist them in responding. Even after the Court entered an order compelling response, Mr. Kearney failed to notify his clients of such discovery requests, and (b) he failed to notify his clients of the Order to Show Cause issued by the federal district court in their case, and to advise them of the implications such order would have on their claims. Arkansas Rule 1.4(a)(3) provides that a lawyer shall keep the client reasonably informed about the status of the matter.

3. That Jeffrey Kearney's conduct violated Rule 1.4(a)(4) he failed to keep in contact with his client regarding the status of her case despite her repeated attempts at contacting him by telephone to get an update on the status of the case. Arkansas Rule 1.4(a)(4) provides that a lawyer shall promptly comply with reasonable requests for information.

4. That Jeffrey Kearney's conduct violated Rule 1.16(a)(1) when he failed to withdraw as attorney of record for his clients when he failed to complete the pro hac vice petitions in both Mississippi State and Federal District Court as required by the admissions

authority of each court. Arkansas Rule 1.16(a)(1) states that a lawyer shall not represent a client, or where representation has commenced, shall withdraw from the representation of a client if the representation will result in violation of the Rules of Professional Conduct or other law.

5. That Jeffrey Kearney's conduct violated Rule 1.16(d) when (a) he failed to protect his client's interests in the matter when after his termination, he failed to properly withdraw from the case. As Mr. Kearney was still attorney of record, he was obligated to respond to pleadings filed by opposing counsel in the matter until such time as the clients could obtain other counsel, (b) he failed to return his client's file to her within a reasonable time after her termination of his services. The client terminated Mr. Kearney's services in January 2010, Mr. Kearney did not submit the file to his client until March 2010, a file which the client states was incomplete, and (c) he failed to refund to his client, the \$250.00 paid to him to subpoena telephone records. Arkansas Rule 1.16(d) provides that upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payment of fee or expense that has not been earned or incurred.

6. That Jeffrey Kearney's conduct violated Rule 3.4(c) when the court ordered Mr. Kearney to retain local counsel and have him or her make an entry of appearance and Mr. Kearney was to file his motion to appear pro hac vice no later than August 21, 2009, which Mr. Kearney disobeyed by failing to associate local counsel and file his pro hac vice motion, (b) the court entered an order directing Mr. Kearney to show cause by March 23, 2010, as to why the case should not be dismissed for failure to take any action or for failure to follow the Local Rules and Orders of the court. He failed to respond to the Order to Show Cause, and (c) the Court

entered an order directing the response to discovery propounded to Mr. Kearney on behalf of his clients by opposing counsel, which order he disobeyed by failing to respond. Arkansas Rule 3.4(c) states that a lawyer shall 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.

7. That Jeffrey Kearney's conduct violated Rule 3.4(d) when he failed to respond to the discovery propounded to his clients by opposing counsel, even after the court entered an order compelling response. Arkansas Rule 3.4(d) states that a lawyer shall not, in pretrial procedure, make a frivolous discover request or fail to make a reasonably diligent effort to comply with a legally proper discovery request by an opposing party.

8. That Jeffrey Kearney's conduct violated Rule 5.5(a) when his failure to submit a pro hac vice petition in Mississippi State Court resulted in him practicing in said court without permission to do so by the admissions authority of that court, and (b) his failure to submit a pro hac vice petition in the Federal District Court of Mississippi as directed to do by the Court resulted in him practicing in said court without permission to do so by that court. Arkansas Rule 5.5(a) states that a lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

9. That Jeffrey Kearney's conduct violated Rule 8.4(d) when (a) he failed to respond within the required time frame to Motions filed in the lawsuit by opposing counsel, (b) he failed to seek pro hac vice status in both Mississippi State Court and Federal District Court as required by the rules of each court, (c) he failed to respond within the required time frame to discovery requests propounded to plaintiffs by opposing counsel, (d) he failed to respond to the court's orders directing him to file his petition for pro hac vice status in the US District Court and to associate local counsel in the matter by August 21, 2009, and (e) he failed to respond to

the district court's order to show cause by March 23, 2010, as directed. Arkansas Rule 8.4(d) states that it is professional misconduct for a lawyer to 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 **JEFFREY KEARNEY**, Arkansas Bar ID #91249, be, and hereby is, **REPRIMANDED** 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)**. In addition, the Committee imposes a fine of **ONE THOUSAND DOLLARS (\$1,000.00)** and restitution in the amount of **TWO HUNDRED FIFTY DOLLARS (\$250.00)** pursuant to Section 18.B of the Procedures. The fine restitution, and costs assessed herein, totaling **ONE THOUSAND THREE HUNDRED DOLLARS (\$1,300.00)**, 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.
T. Benton Smith, Jr., Chair, Panel A

Date: September 23, 2010