

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL B

FILED

JUL 10 2012

IN RE: JEFFERY H. KEARNEY
 ARKANSAS BAR ID #91249
 CPC Docket No. 2012-024

**LESLIE W. STEEN
CLERK**

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose in regards to Jeffery H. Kearney, of Pine Bluff, Arkansas in his representation on an appeal in the matter of *Peter Daniels, Jr. vs Daryl Davis*, CA 11-1017.

The instant appeal is the second appeal in the case, with the first having been dismissed because there were unresolved issues in the lower court case. The Jefferson County Circuit Court then held another hearing in the lower court and entered a final appealable order. Mr. Kearney filed the Notice of Appeal in the civil case on July 1, 2011. The record was lodged with the Court of Appeals and Mr. Kearney's brief was due by November 7, 2011. The case summary sheet from the Clerk file shows that the cost of the appeal was \$165.00 filing fee and \$964.15 transcript cost.

On November 1, 2011, Mr. Kearney telephoned the Supreme Court Clerk requesting a seven day extension of his time to file his brief, making his brief due on November 14th. That conversation was confirmed in a letter to the Clerk on November 1, 2011. Mr. Kearney did not file his brief on November 14th, the date it was due.

On November 17, 2011, Mr. Kearney filed Appellant's Motion for Expansion of Time requesting the Court grant him an additional fourteen (14) days, or until November 30th, in which to file his brief. Mr. Kearney then filed a Motion for Belated Brief on November 29, 2011, repeating the request he made in his November 17th Motion. In between these two Motions, Mr. Kearney did not submit a brief. On December 8, 2011, Appellee's attorney filed a

Response to Mr. Kearney's Motion for Belated Brief and a Motion to Dismiss. The Court granted Mr. Kearney's Motion for Belated Brief on December 14, 2011, giving Mr. Kearney until December 20th to file his brief.

Mr. Kearney failed to file his brief on December 20th, and instead filed a Motion for Further Belated Brief. On December 29, 2011, Appellee's attorney filed another Motion to Dismiss. In a Formal Order entered on January 11, 2012, the Appeals Court denied Mr. Kearney's Motion for Further Belated Brief and granted Appellee's Motion to Dismiss the appeal.

Mr. Peter Daniels, Jr., the appellant and Mr. Kearney's client, was contacted by the Office of Professional Conduct Staff Attorney, Charlene Fleetwood, regarding the appeal of his case and his willingness to sign an Affidavit stating he paid Mr. Kearney \$1,250.00 to handle the appeal. The Staff Attorney was later advised that Mr. Daniels had spoken with Mr. Kearney regarding the matter and that the parties had reached an agreement and that Mr. Kearney had returned to Mr. Daniels the fees paid to Mr. Kearney for the appeal. Mr. Kearney submitted a signed statement acknowledging the agreement between he and Mr. Daniels.

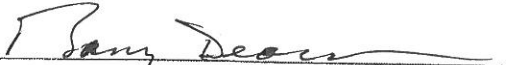
Upon consideration of the formal complaint and attached exhibit materials and the Arkansas Rules of Professional Conduct, Panel B of the Arkansas Supreme Court Committee on Professional Conduct finds:

1. Mr. Kearney's conduct violated Arkansas Rule 1.3 when after obtaining several extensions to file a brief, Mr. Kearney failed to submit a brief on behalf of his client, Peter Daniels, Jr., in a timely manner. Arkansas Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.
2. Mr. Kearney's conduct violated Arkansas Rule 8.4(d) when (a) Mr. Kearney's failure

to submit the brief to the Arkansas Court of Appeals in a timely manner resulted in a delay in the orderly and timely resolution of appellate proceedings, and when (b) Mr. Kearney's failure to timely submit the brief on behalf of his client with the Arkansas Court of Appeals required the Court to expend additional time and effort which would not have been necessary otherwise. Arkansas 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 the Arkansas law license of **JEFFERY H. KEARNEY**, Arkansas Bar ID #91249, be, and hereby is, **SUSPENDED FOR A PERIOD OF TWO (2) MONTHS** for his conduct in this matter. Mr. Kearney's prior disciplinary record was a factor in assessing a sanction of suspension in this matter. The suspension in this matter shall become effective immediately upon the filing of this Findings and Order with the Clerk of the Arkansas Supreme Court. Jeffery H. Kearney shall also pay costs in the amount of \$50.00 in accordance with Section 18.A. of the Procedures. 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: 
Barry Deacon, Chair, Panel B

Date: June 18, 2012