BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL A

IN RE: DAVID L. DUNAGIN
ARKANSAS BAR ID NO. 84040
CPC DOCKET NO. 2005-102

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information referred to the Committee by the Arkansas Supreme Court on June 9, 2005. The information related to the representation of Sherry Childers by David L. Dunagin, an attorney practicing primarily in Fort Smith, Arkansas.

The information before the Committee reflected that on December 18, 2003, the Sebastian County Circuit Court, Fort Smith Division, Juvenile Division, entered an Order terminating the parental rights of Sherry Childers. A timely Notice of Appeal was filed by Dale Arnold, the attorney appointed to represent Ms. Childers. On April 16, 2004, an Order was entered extending the time to file the record on appeal. The extension granted until June 5, 2004, to file the record with the Clerk of the Arkansas Supreme Court. The appeal record was not filed by that date.

On January 7, 2005, the Department of Human Services (DHS) filed a partial record with a Motion to Dismiss Appeal. After considering the Motion, the Supreme Court delivered a Per Curiam directing that Ms. Childers' attorney proceed with the appeal.

The complete record on appeal was tendered to the Clerk on February 14, 2005. With the record, Mr. Arnold filed a Motion to Accept Record and Set Briefing Schedule. In the Per Curiam, the Court noted that the fee bill for the record indicated that the record was completed on April 16, 2004. The Motion did not indicate why the record was not secured from the Circuit Clerk and filed before the deadline. The Court remanded the question of attorney error to the trial court to make findings of fact.

Based upon the Findings of Fact of Circuit Judge Mark Hewett, the Court found that after entry of the Order Terminating Ms. Childers' parental rights, Mr. Arnold associated David L. Dunagin, to pursue the appeal of the Termination of Parental Rights. The Notice of Appeal which was filed on January 15, 2004, was signed Dale Arnold by David L. Dunagin.
During the hearing before Judge Hewett, Mr. Dunagin testified that the reason he did not tender the record to the Clerk by June 4, 2004, was because he determined that the ninety (90) days for filing the record on appeal had expired on April 15, 2004. This was one day before the Order extending the time to file the record on appeal was entered. Mr. Dunagin also advised Judge Hewett that he did not attempt to file the record on appeal because his understanding of case law was that Motions for Belated Appeals had not been granted in termination of parental rights cases. It was based upon those Findings of Fact that the Court found Mr. Dunagin to be in error and referred the conduct to the Committee on Professional Conduct. It was determined at the hearing that the Court Reporter delivered the record to attorney one (1) day late.

In responding to the formal disciplinary complaint, Mr. Dunagin admitted that he was in violation of Model Rule 1.2(a) in that the record was not filed on time. According to Mr. Dunagin, the reason for the failure was because the Court Reporter did not deliver it to him and did not inform him, after asked by him, that she needed an extension of time in order to complete the record.

Mr. Dunagin admitted that he was in violation of Model Rules 1.3 and 3.4(c) in that he did not obtain an Order extending the time to file the record on appeal because the Court Reporter told him that she would have the record to him and that she had never been late in her life tendering a record to an attorney. Mr. Dunagin explained that he received the record that day after it was due. He did not file a Motion for Rule on the Clerk because the Supreme Court was denying all motions for a rule on the clerk at that time. Mr. Dunagin also offers that he would have filed a Motion for Rule on the Clerk if the Court was favorably ruling on such, which they were not at the time involving Ms. Childers' appeal.

Mr. Dunagin denied violating Model Rule 8.4(d), because there no merit to the appeal and he decided that it was a waste of the Court's time to pursue the matter. Mr. Dunagin affirmatively stated that the Court created the extra work when they elected to change the law subsequent to the filing date. Mr. Dunagin also explained that the Court of Appeals heard the appeal after the same was docketed. The Court of Appeals upheld the ruling of Judge Hewett.

Upon consideration of the formal complaint and attached exhibit materials, the response to it, 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. Dunagin's conduct violated Model Rule 1.2(a) in that despite the fact that his client, Ms. Childers, wished to pursue an appeal of the lower court's decision out of Sebastian County Circuit Court terminating the her parental rights, he failed to tender the record on appeal and therefore denied her the right to a timely appeal of the lower court's decision. Model Rule 1.2(a) requires that a lawyer abide by a client's decisions concerning the objectives of representation, subject to paragraphs (c), (d), and (e), and consult with the client as to the means by which they are to be pursued.

2. That Mr. Dunagin's conduct violated Model Rule 1.3 when he failed to obtain a timely Order extending the time to file the record on appeal in Ms. Childers' appeal; when he failed to timely obtain the record on appeal from the Circuit Clerk in order to file the same with the Clerk of the Court; when he failed to tender the record on appeal for Ms. Childers until after ordered to do so by the Arkansas Supreme Court; when he failed to file a Motion for Rule on the Clerk or Motion for Belated Appeal after discovering that the Order extending the time to file the record on appeal had been untimely; and when he failed to respond to the State's Motion to Dismiss appeal in Ms. Childers' appeal. Model Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

3. That Mr. Dunagin's conduct violated Model Rule 3.4(c) when he failed to adhere to the requirements of Rule 5(a) of the Rules of Appellate Procedure - Civil, when he failed to file the record on appeal in a timely manner on behalf of Sherry Childers and when he failed to obtain an Order extending the time to file the record on appeal prior to the expiration of the time to file the record on appeal. Model 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.

4. That Mr. Dunagin's conduct violated Model Rule 8.4(d) because his failure to file the record on appeal on Ms. Childers' behalf created unnecessary delay in the appeal of the termination of her parental rights and because his failure to file the record on appeal created the need for additional proceedings before the Arkansas Supreme Court which would not have been necessary but for his failure. Model 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 A, that DAVID L. DUNAGIN, Arkansas Bar ID No. 84040 be, and hereby is, REPRIMANDED for his conduct in this matter and assessed costs in the amount of FIFTY DOLLARS ($50.00) pursuant to Section 18.A. of the Procedures of the Arkansas Supreme Court 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 A

By: _____
Phillip D. Hout, Chairman

Date: _____