

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

PANEL A

IN RE: DAVID L. DUNAGIN, Respondent
 Arkansas Bar ID#84040
 CPC Docket No. 2005-041

CONSENT FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee through Orders of the Arkansas Court of Appeals in the matter of *Raymond Earl Sehorn v. State of Arkansas*, CACR 04-00948. The information related to the representation of Mr. Sehorn by Respondent in 2004.

On March 17, 2005, Respondent was served with a formal complaint, supported by Orders from the Arkansas Court of Appeals. 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 Committee reflected that on September 9, 2004, David L. Dunagin, an attorney practicing in Fort Smith, Arkansas, submitted to the Clerk of the Arkansas Supreme Court and the Court of Appeals, the record to be filed in the matter of *Raymond Earl Sehorn v. State of Arkansas*. Mr. Dunagin was notified by the Clerk that the brief was due to be filed on or before October 19, 2004. He failed to file the brief by that time. Mr. Dunagin also failed to request an extension of time for filing such brief prior to the date it was due to be filed. At no time did the Clerk receive any notification that the appeal was not to be pursued.

On February 10, 2005, the State of Arkansas, through David R. Raupp, Assistant Attorney General, filed a Motion to Dismiss the appeal. The Motion was filed almost four (4) months after the brief was due to be filed. Mr. Dunagin did not file a Response to the Motion. On March 2, 2005, the Arkansas Court of Appeals delivered an Order granting the appellee's Motion to Dismiss. On May 23, 2005, Mr. Dunagin filed a Motion to Reinstate Appeal.

Upon consideration of the formal complaint and attached exhibit materials, 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. Dunagin's conduct violated Model Rule 1.2(a) because despite the fact that his client, Mr. Sehorn, wished to pursue an appeal of the lower court's decision out of Crawford County Circuit Court, he failed to file a brief or respond to the State's Motion to Dismiss and therefore denied him the right to a timely appeal to 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 file a brief in the appeal he initiated on behalf of Raymond Earl Sehorn with the Arkansas Court of Appeals thereby causing the same to be dismissed; when he failed to file to request an extension of time seeking additional time to allow him to file a brief on Mr. Sehorn's behalf; and, when he failed to file a response to the Motion to Dismiss filed on behalf of the State in the appeal involving Raymond Earl Sehorn. 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 the Arkansas Court of Appeals when he failed to file a timely brief on behalf of his client, Raymond Earl Sehorn, or to request that he be allowed to withdraw from representation. 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 a brief on behalf of his client resulted in the State's Motion to Dismiss being granted and his client being denied his right to timely appellate review of the Crawford County Circuit Court's decision in *State of Arkansas v. Raymond Earl Sehorn*, Case #CR-2002-449. 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#84040, be, and hereby is, CAUTIONED 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 (2002), Mr. Dunagin is assessed the costs of this proceeding in the amount of \$50. 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: _____

Bart Virden, Chair, Panel A

Date: _____