

**BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL B**

IN RE: KENNETH A. OLSEN, Respondent
Arkansas Bar ID#83139
CPC Docket No. 2012-076

CONSENT FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information obtained from the records of the Arkansas Court of Appeals after the Court dismissed the appeal filed in the matter of *James Robertson v. Almyra Farmers Association, etal*, CA11-417. Kenneth A. Olsen, an attorney practicing in Bryant, Arkansas, was counsel of record for Mr. Robertson at the appellate level.

On November 19, 2012, Respondent was served with a formal complaint, supported by records from the appellate matter, letter from Mr. Olsen and responsive letter from Mr. Robertson. A timely 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 Panel reflected that on July 23, 2009, an Opinion was issued and filed by Administrative Law Judge Elizabeth W. Hogan in James Robertson's Workers' Compensation Claim with case number F711405. At the time of the ALJ Opinion, Mr. Robertson was represented by Mr. Olsen.

A subsequent ALJ Opinion was issued on August 31, 2010, with regard to determining Mr. Robertson's entitlement to payment of additional permanent partial disability benefits and attorney's fees. An Amended ALJ Opinion was issued and filed on September 15, 2010, with regard to the same issue.

The Respondents in the Workers' Compensation matter requested review of the

September 15, 2010, Opinion before the Full Commission. Mr. Olsen represented Mr. Robertson before the Full Commission.

On February 7, 2011, the Full Commission delivered an Opinion reversing the Opinion of the ALJ. Commissioner Hood wrote a dissent with regard to the issues and disagreed about the additional benefits being denied to Mr. Robertson.

On March 2, 2011, Mr. Olsen filed Notice of Appeal to the Arkansas Court of Appeals on behalf of Mr. Robertson. The record was lodged on April 25, 2011. Appellant's brief was initially due on June 6, 2011. On June 3, 2011, Mr. Olsen requested and was granted a seven day Clerk's extension to file a brief on Mr. Robertson's behalf, making the brief due on or before June 13, 2011. Ten (10) days after the Appellant's brief was due to be filed, Mr. Olsen checked the record out from the Clerk's office.

No brief was filed. No further extension was requested. On August 29, 2012, the appeal was dismissed for failure to file brief in accordance with Arkansas Supreme Court Rule 4-5.

The day after the appeal was dismissed, Mr. Olsen was contacted and asked to provide information with regard to the dismissal of the appeal in the Robertson matter. Mr. Olsen was specifically asked about the filing fee, cost of transcript, reason for not filing a brief, and whether his client, Mr. Robertson, was aware that Mr. Olsen was not going to file a brief and whether Mr. Robertson had been given written notice of that decision.

Mr. Olsen's response to the inquiry was received on September 19, 2012. Mr. Olsen explained that it was oversight that the new due date for filing the brief after being granted the seven day Clerk's extension was not placed on his calendar. Mr. Olsen also explained that all costs for the filing of the appeal was paid by Mr. Olsen not Mr. Robertson.

Mr. Olsen went on to explain once the oversight was discovered he discussed the matter with Mr. Robertson and told Mr. Robertson that he was not inclined to attempt to file a late brief on his behalf. Mr. Olsen stated that since Mr. Robertson was receiving Social Security Disability benefits that any benefits awarded Mr. Robertson would be subject to a set-off by the Social Security Administration and be of no net gain to Mr. Robertson.

After receiving Mr. Olsen's response, he was contacted again and requested to provide a copy of any written notice to Mr. Robertson concerning the dismissed appeal or if no written notice available to provide contact information for Mr. Robertson. Mr. Olsen provided the contact information, because no written notice was given Mr. Robertson of the dismissal of the appeal.

Following receipt of the contact information, Mr. Robertson was contacted about the matter. Mr. Robertson was provided a copy of Mr. Olsen's letter and asked to let the Office of Professional Conduct know whether the information in Mr. Olsen's letter was factually correct and if he so desired to provide any additional information he wished to provide in connection with the letter.

Mr. Robertson's response was received on October 26, 2012. Mr. Robertson explained that Mr. Olsen did not tell him that he had missed the deadline for filing the appeal until Mr. Robertson called Mr. Olsen in August 2011. According to Mr. Robertson, he told Mr. Olsen that he wanted Mr. Olsen to file a brief. In December 2011, Mr. Robertson called Mr. Olsen again and learned that Mr. Olsen had not filed a brief.

Mr. Robertson was denied the opportunity to have his legal matter heard by the appellate courts through no fault of his own but through the fault of Mr. Olsen. Mr. Robertson was not

told of the failure to file the brief at the time that the brief was not filed, nor was he told that Mr. Olsen was not going to seek permission to file a belated brief. Although Mr. Robertson requested that Mr. Olsen seek to file a belated brief on his behalf, Mr. Olsen did not do so.

Upon consideration of the formal complaint and attached exhibit materials, the consent proposal, other matters before it, and the Arkansas Rules of Professional Conduct, Panel A of the Arkansas Supreme Court Committee on Professional Conduct finds:

1. That Mr. Olsen's conduct violated Rule 1.1, because Mr. Olsen was not thorough enough in his representation of James Robertson to be certain that he filed Mr. Robertson's appellant's brief by the date given him when he requested a seven day Clerk's extension to file the brief. 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. Olsen's conduct violated Rule 1.2(a), because Mr. Olsen did not abide by Mr. Robertson's objectives for the representation when he did not timely file a brief and when he failed to seek to file a belated brief as Mr. Robertson desired for Mr. Olsen to do. Rule 1.2(a) requires that a lawyer 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. Olsen's conduct violated Rule 1.3, when Mr. Olsen failed to file a brief on behalf of Mr. Robertson and instead allowed Mr. Robertson's appeal of the Workers' Compensation Full Commission decision to be dismissed. Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

4. That Mr. Olsen's conduct violated Rule 1.4(a)(1), because Mr. Olsen failed to advise Mr. Robertson when Mr. Olsen first missed the deadline for filing the appeal brief on behalf of Mr. Robertson and therefore denied Mr. Robertson the opportunity to either seek other counsel or to make immediate request for Mr. Olsen to seek a belated brief on Mr. Robertson's behalf before the passage of too much time. Rule 1.4(a)(1) requires that a lawyer promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules.

5. That Mr. Olsen's conduct violated Rule 1.4(a)(3), when Mr. Olsen did not keep Mr. Robertson reasonably informed about the status of the matter in that he did not inform Mr. Robertson when he failed to file a brief with Mr. Robertson only learning that fact after contacting Mr. Olsen in August 2011, and, when Mr. Olsen did not tell Mr. Robertson that he had not filed a brief at all until Mr. Robertson called Mr. Olsen in December 2011. Rule 1.4(a)(3) requires that a lawyer shall keep the client reasonably informed about the status of the matter. 6. That Mr. Olsen's conduct violated Rule 8.4(d), because Mr. Olsen's failure to file a brief on behalf of Mr. Robertson resulted in Mr. Robertson being denied the opportunity to appellate review of the Final Order of the Full Commission of the Workers' Compensation Commission. Rule 8.4(d) requires that a lawyer not engage in conduct 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 KENNETH A. OLSEN, Arkansas Bar ID# 83139, be, and hereby is, CAUTIONED for his conduct in this matter.

In addition, pursuant to Section 18.A of the Arkansas Supreme Court's Procedures Regulating Professional Conduct of Attorneys at Law, Mr. Olsen is assessed the costs of this proceeding in the amount of FIFTY DOLLARS (\$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 B

By: /s/ Henry Hodges, Chair, Panel B

Date: February 15, 2013

Original filed with the Arkansas Supreme Court on
February 15, 2013

(13.M, Rev.5-26-11)