BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL B

FILED
SEP 24 2007
LESLIE W. STEEN
CLERK

IN RE: **Q. BYRUM HURST, JR.**
Arkansas bar ID No. 74082
CPC Docket No. 2007-070

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based were developed from information provided to the Committee by Lee Jablonski of Hot Springs on August 17, 2006. The information related to the representation of Mr. Jablonski in 2003-2006 by Respondent Q. Byrum Hurst, Jr., an attorney practicing primarily in Hot Springs, Garland County, Arkansas. On June 22, 2007, Respondent Hurst was served with a formal Complaint, supported by the affidavit of Mr. Jablonski.

Mr. Jablonski was a party in a divorce in Jablonski v. Jablonski, Faulkner County Circuit Case No. E-97-73, which became final in July, 1998. His appeal to the Arkansas Court of Appeals, as No. CA-99-1089, was affirmed as modified and reversed in part on September 6, 2000. Since September, 2000, there have been numerous Petitions for Contempt filed against him and Citations for Contempt entered against him. In July, 2003, he employed Q. Byrum Hurst, Jr., Attorney at Law, Hot Springs, Arkansas, to sue his ex-wife for the harassment of the numerous Petitions for Contempt. Jablonski and Hurst entered into an agreement for representation on July 22, 2003, for a retainer of $10,000, against which Hurst would bill at the rate of $200 per hour. The letter also stated the $10,000 retainer was "nonrefundable." Jablonski paid the $10,000.

After July, 2003, Mr. Jablonski waited for Mr. Hurst to file suit for him. On August 31, 2005, Jablonski signed a Complaint prepared by Mr. Hurst. No suit was filed. Mr. Jablonski made

telephone calls to Mr. Hurst at his office to find out about the status of his case, but he received no real substantive communication from Mr. Hurst.

By July 2006, Mr. Jablonski, despairing of Mr. Hurst's inaction, contacted Hot Springs attorney Byron C. Rhodes about taking the over the matter. Mr. Jablonski signed a Fee Agreement with Mr. Rhodes on July 10, 2006, and paid Mr. Rhodes a $10,000 retainer. On August 16, 2006, Mr. Jablonski mailed a complaint against Mr. Hurst to the Office of Professional Complaint.

Letters and documents were exchanged between the Office and Mr. Hurst, from November 28, 2006, through April 2007. In February 2007, Mr. Hurst provided a copy of his Jablonski file to Mr. Rhodes for his use in representing Mr. Jablonski. On April 24, 2007, Mr. Hurst provided Mr. Jablonski an accounting for the $10,000, which showed $2,212.36 to be unearned. Mr. Jablonski has received no refund from Mr. Hurst.

Mr. Hurst claims Mr. Jablonski clearly agreed to a $10,000 "nonrefundable" retainer for the representation. The written agreement between them is unclear on its face, and under the circumstances present, upon Mr. Jablonski's termination of Mr. Hurst's services, a refund of the unearned portion of the fee paid is required pursuant to Rule 1.16(d).

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 B of the Arkansas Supreme Court Committee on Professional Conduct finds:

A. Mr. Hurst's conduct violated Rule 1.16(d) in that Mr. Jablonski terminated the legal services of Mr. Hurst not later than July 10, 2006, when Mr. Jablonski employed and paid attorney

Byron C. Rhodes to handle the matters earlier entrusted to Mr. Hurst. Mr. Jablonski requested that Mr. Hurst provide a copy of Mr. Jablonski's file to either Mr. Jablonski or Mr. Rhodes, for use by Mr. Rhodes. The file copy was not made available to either Mr. Jablonski or Mr. Rhodes until February 7, 2007, after the intervention of the Office of Professional Conduct. Upon termination of his attorney-client relationship with Mr. Hurst by July 2006, Mr. Jablonski requested an accounting of the $10,000 retainer he had paid Mr. Hurst in 2003. An accounting was provided to Mr. Jablonski in Mr. Hurst's letter of April 24, 2007, which indicated an unearned balance of at least $2,212.36 remained from the retainer. That unearned balance has not been paid to Mr. Jablonski. Arkansas Rule 1.16(d) requires 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. The lawyer may retain papers relating to the client to the extent permitted by other law.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel B, that **Q. BYRUM HURST, JR.**, Arkansas Bar ID#74082, be, and hereby is, **CAUTIONED** for his conduct in this matter, **FINED $500.00**, **ORDERED TO PAY $2,212.36 RESTITUTION** for the benefit of Lee Jablonski, and is assessed $50.00 Committee case costs. The fine, restitution, and costs assessed herein, totaling $2,762.36, 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: _____
Henry Hodges, Chair, Panel B

Date: August 29, 2007