BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL A

FILED
MAY 28 2008
LESLIE W. STEEN
CLERK

IN RE: WILLIAM M. HOWARD, JR
ARKANSAS BAR ID# 87087
CPC DOCKET NO. 2007-131

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee from information obtained from the records of the Arkansas Supreme Court Clerk. The information related to the representation of Allen Phillips by William McNova Howard, Jr., in 2007.

William McNova Howard, Jr., Attorney at Law, Pine Bluff, Arkansas, represented Allen Phillips in a criminal case in Jefferson County Circuit Court, Case No. CR2005-403-2-5, in which Mr. Phillips was convicted of capital murder. On March 8, 2007, Mr. Phillips was sentenced to a term of life without parole in the Arkansas Department of Correction. Mr. Howard filed a timely notice of appeal from the judgment on March 30, 2007. Pursuant to Rule 4-3(a) of the Rules of the Arkansas Supreme Court, the appellant in a criminal appeal shall have 40 days from the date the transcript is lodged to file 17 copies of the brief with the Arkansas Supreme Court Clerk. The record was timely filed on June 15, 2007. A brief on behalf of Mr. Phillips was due to be filed on or before July 25, 2007.

On July 24, 2007, Mr. Howard filed a Motion for Extension of Time to file the brief on behalf of his client, Mr. Phillips. In his motion, Mr. Howard requested an additional 30 days to file the brief. On the motion is a notation written by Chief Justice Jim Hannah granting Mr. Howard's motion and extending the deadline for filing the brief to August 24, 2007. The

deadline was confirmed to Mr. Howard by a letter dated July 25, 2007, from the Arkansas Supreme Court Clerk.

On August 24, 2007, Mr. Howard filed a second Motion for Extension of Time to file the brief on behalf of Mr. Phillips. In his motion, Mr. Howard stated that he needed an additional thirty days to file the brief. On the motion was a notation written by Chief Justice Jim Hannah granting Mr. Howard a final extension and extending the deadline to file the brief to September 8, 2007. The deadline was confirmed to Mr. Howard by a letter dated August 29, 2007, from the Arkansas Supreme Court Clerk. The extension was noted as a final extension.

No brief was ever filed on or before September 8, 2007, by Mr. Howard on behalf of his client, Allen Phillips. On October 18, 2007, the Attorney General for the State of Arkansas filed a Motion to Dismiss the appeal for failure to file a brief. No response to the Motion to Dismiss was filed by Mr. Howard. On November 8, 2007, the Arkansas Supreme Court granted the Motion to Dismiss.

Mr. Howard filed a response to the formal complaint filed by the Office of Professional Conduct. In his response, Mr. Howard admitted that his conduct violated Arkansas Rules of Professional Conduct 1.3 and 8.4(d).

Mr. Howard was notified of a ballot vote decision from Panel B of the Committee on Professional Conduct and, pursuant to Section 10.D(3) of the Procedures Regulating Professional Conduct, requested a *de novo* hearing before Panel A. A hearing was scheduled for May 16, 2008.

On May 16, 2008, the Office of Professional Conduct and Mr. Howard appeared. The Office of Professional Conduct was represented by Michael E. Harmon, Senior Staff Attorney.

Mr. Howard appeared, *pro se*. The Office of Professional Conduct presented its case in chief, consisting of documents contained in the files of the Arkansas Supreme Court Clerk, and rested. Mr. Howard admitted to the allegations contained in the formal complaint and proceeded to discuss issues surrounding his conduct in the matter and his prior disciplinary history.

The Office of Professional Conduct presented the prior disciplinary history of Mr. Howard which consisted of nine prior sanctions, all involving criminal appeals. Mr. Howard testified that, prior to becoming a lawyer, he had been a social worker and went to law school to help people. Though he was no longer a social worker, he continued to assist people even when other lawyers would not. He stated that he often took on more cases that he probably should. As to the facts in this case, Mr. Howard stated that he represented Allen Phillips at trial and, following Mr. Phillips' conviction, filed a notice of appeal. While preparing the brief and researching the matter, Mr. Howard stated that he began to realize that Mr. Phillips' appeal was not going to be successful. He stated that he was a solo practitioner that had no staff support. He answered the telephone, he typed his legal pleadings, and made housecalls when necessary. He stated that he had two other appeals pending and was pressed for time with the upcoming deadlines. He became frustrated and disillusioned when it became apparent that no matter what was done, he could not prevail on Mr. Phillips' behalf. Mr. Howard told the Committee that when he missed the deadline to file the brief, he believed the court would order him to finish the brief and was surprised when the court granted the State's motion to dismiss.

As to the prior sanctions, Mr. Howard stated that he has been licensed to practice law since 1987 and that all of his prior disciplinary sanctions involved criminal appeals. As a result, he testified that he was seriously considering referring all criminal appeals to other attorneys.

Mr. Howard told the Committee that he should receive a sanction in this matter but hoped that the Committee would enter some sanction less than suspension of his license to practice law and a reasonable fine.

Upon consideration of the formal complaint and attached exhibit materials, the response to it, the testimony presented, 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, by unanimous vote unless otherwise indicated:

1. William McNova Howard, Jr.'s conduct violated Rule 1.3, when he failed to timely file a brief on behalf of his client, Allen Phillips, in the case of Allen Phillips v. State of Arkansas, Arkansas Supreme Court Case No. CR07-629, on or before the expiration of the final extension on September 8, 2007. Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

2. William McNova Howard, Jr.'s conduct violated Rule 3.4(c) when he failed to file a brief on behalf of his client, Allen Philips, in the case of Allen Phillips v. State of Arkansas, Arkansas Supreme Court Case No. CR07-629, violating Rule 16 of the Arkansas Rules of Appellate Procedure–Criminal, which requires trial counsel to continue to represent a convicted defendant throughout any appeal unless permitted to withdraw in the interest of justice. 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.

3. William McNova Howard, Jr.'s conduct violated Rule 8.4(d) when his failure to file a brief on behalf of his client, Allen Phillips, resulted in a delay in the orderly and timely resolution of appellate proceedings; when his failure to file a brief on behalf of his client, Allen Phillips,

required the Court to expend additional time and effort which would not have been necessary otherwise; and, when his failure to file a brief on behalf of his client, Allen Phillips, resulted in his client's appeal being dismissed thereby affirming his conviction of Capital Murder and sentence to life in prison without the possibility of parole. Panel Members Steven Shults and the Honorable Kathleen Bell would not have found that Mr. Howard's conduct resulted in a delay in the orderly and timely resolution of appellate proceedings and would not have found that Mr. Howard's conduct required the Court to expend additional time and effort which would not have been necessary otherwise. Rule 8.4(d) requires that a lawyer not engage in conduct that is prejudicial to the administration of justice.

WHEREFORE, it is the unanimous decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel A, that WILLIAM M. HOWARD, JR., Arkansas Bar No. 87087, be, and hereby is, REPRIMANDED; fined the sum of SEVEN HUNDRED FIFTY DOLLARS ($750.00); and assessed costs, including the court reporter's fee, in the amount of ONE HUNDRED DOLLARS ($100.00) for his conduct in this matter. The fine and 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: Steven Shults
Steven Shults, Chair, Panel A

Date: May 28, 2008