BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL A

FILED
APR 29 2009
LESLIE W. STEEN
CLERK

IN RE: JUSTIN B. HURST
ARKANSAS BAR ID NO. 2005021
CPC DOCKET NO. 2009-002

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from referral to the Office of Professional Conduct by the Arkansas Supreme Court. The information related to the representation of Victor Rasmussen by Justin B. Hurst, Attorney at Law, Hot Springs, Arkansas.

Justin B. Hurst represented Victor Rasmussen at trial in Garland County Circuit Court. A jury found Mr. Rasmussen guilty of sexual assault in the first degree and sexual assault in the fourth degree. Mr. Rasmussen was sentenced to 180 months on the first degree sexual assault and 72 months for the fourth degree sexual assault. A Judgment and Commitment Order was entered on March 24, 2008. Mr. Hurst filed a timely Notice of Appeal on April 14, 2008.

Rule 5(a) of the Rules of Appellate Procedure–Civil requires that the record of the lower court proceedings be filed with the Arkansas Supreme Court Clerk within 90 days from the filing of the first notice of appeal, unless the time is extended by order of the circuit court. The record was due to be filed on or before July 13, 2008. On June 11, 2008, Mr. Hurst filed a motion to extend the time for filing the record. No order was entered and filed with the Garland County Circuit Clerk.

On October 10, 2008, Mr. Hurst tendered the record to the Arkansas Supreme Court Clerk, who refused to file the record as it was untimely as there was no order entered extending the time to file the record. On October 28, 2008, Mr. Hurst filed a Motion for Rule on the Clerk. The motion

contained incorrect language and the Clerk informed Mr. Hurst to submit a corrected motion. On November 12, Mr. Hurst filed with the Clerk an Amended Motion for Rule on the Clerk. On December 11, 2008, the Arkansas Supreme Court issued a *Per Curiam* Order wherein it granted the Motion for Rule on the Clerk and referred the matter to the Committee on Professional Conduct.

On January 31, 2009, Mr. Hurst was served with a formal complaint, supported by related exhibits. Mr. Hurst failed to file a timely response to the complaint but, pursuant to the ruling in *Gillaspie v. Ligon*, 160 S.W. 3d 33, 357 Ark. 50 (2004), an attorney is not required to file a response to a disciplinary complaint involving a *Per Curiam* referral when the Motion for the Rule on the Clerk filed is part of the Office of Professional Conduct's formal complaint. Mr. Hurst did provide an untimely response which was provided to Panel A for whatever consideration the Panel chose to give it.

Upon consideration of the formal complaint and attached exhibit materials, Mr. Hurst's untimely response, and the Arkansas Rules of Professional Conduct, Panel A of the Arkansas Supreme Court Committee on Professional Conduct finds:

1. Justin B. Hurst's conduct violated Arkansas Rule 1.3 when he failed to file on or before July 13, 2008, with the Arkansas Supreme Court the record of the lower court proceedings on behalf of Victor Rasmussen, his client. Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

2. Justin B. Hurst's conduct violated Arkansas Rule 8.4(d) when his failure to file the record with the Arkansas Supreme Court on or before July 13, 2008, resulted in a delay in the orderly and timely resolution of appellate proceedings, and his failure to timely file his client's record with the Arkansas Supreme Court 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 decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel A, that JUSTIN B. HURST, Arkansas Bar ID No. 2005021, be, and hereby is, CAUTIONED, fined the sum of FIVE HUNDRED DOLLARS ($500.00) and assessed costs in the amount of FIFTY DOLLARS ($50.00) 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.

IT IS SO ORDERED.

ARKANSAS SUPREME COURT COMMITTEE ON
PROFESSIONAL CONDUCT - PANEL A

Steven Shults

Steve Shults, Chair, Panel A

Date: April 6, 2009