BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL B

FILED
JUN 24 2010
LESLIE W. STEEN
CLERK

IN RE: **JAMES P. CLOUETTE**
Arkansas Bar ID # 74025
CPC Docket No. 2010-002

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based were developed from information provided to the Committee from a Pulaski County Circuit court case file and a newspaper article of November 25, 2009. The information related to a criminal case in which attorney James P. Clouette of Little Rock was the defendant. On January 11, 2010, Respondent was served with a formal complaint, Respondent filed a Response to the complaint, and the case proceeded to ballot vote before Panel A on March 19, 2010. Respondent then requested a public hearing, which was conducted on June 18, 2010, before Panel B, with Searcy Harrell, Jr. and Kenneth Mourton from Panel C sitting as substitutes for regular Panel B members Henry Hodges and Barry Deacon, who were unavailable.

James P. Clouette is a veteran Arkansas criminal defense attorney. On March 27, 2009, he was charged by Information in Pulaski County Circuit Case No. CR-2009-1191 with the Class C Felony offense of possession of a controlled substance, methamphetamine, that occurred on or about August 1, 2008, in a public bank lobby in Little Rock during business hours. At a bench trial on November 23, 2009, Mr. Clouette was found guilty of the felony charge, judgment was deferred under ACA § 5-64-413, and he was placed on probation for two years, as shown by the Order of Probation filed January 5, 2010. Any felony is defined as

a "serious crime" by the Court's Procedures Regulating Professional Conduct of Attorneys at Law, Section 2.J.

Mr. Clouette responded that he maintained his innocence throughout his criminal case; that no judgment of conviction has been entered against him; that if he successfully completes his two year probation period no judgment of conviction will be entered against him; that a finding of guilt against him should not be used by the Committee; that his alleged criminal act was not an offense involving violence, dishonesty, breach of trust, or serious interference with the administration of justice; that the Arkansas Supreme Court has recognized the problem in the legal community by establishing its Arkansas Lawyer Assistance Program (now JLAP) to assist lawyers with certain problems by their referral to that program, instead of the Committee taking action against them; and that possession of drugs is not alone prejudicial to the administration of justice.

At the hearing Mr. Clouette testified that he had an alcohol problem for many years and had used controlled substances for recreational purposes for several years before the incident in August 2008. He testified that he had no specific recollection of having possessed the methamphetamine found in the bank lobby on August 1, 2008. He stated after he became aware of the arrest warrant being issued for him in October 2008, he had enrolled in ARLAP (now JLAP), was meeting his contract requirements there, had been subjected to periodic random drug testing since May 2009 in circuit court, and had been "clean" or negative at every test. Little Rock attorney Bill Luppen testified for Mr. Clouette that he had known Clouette for many years, saw Clouette several times a week in criminal court, and that he had never seen Clouette impaired or in a condition where Luppen thought Clouette's ability or

performance as a lawyer was an issue. Pulaski Circuit Court, Fourth Division, Bailiff Clyde Steelman testified for Mr. Clouette that he had administered the drug tests to Clouette at the Pulaski County Courthouse on an almost weekly basis since May 2009, that all tests had been negative for controlled substances, and that the testing continued.

Upon consideration of the formal Complaint and attached exhibit materials, the Response to it, testimony of Mr. Clouette and other witnesses, trial exhibits, and other matters before it, and the Arkansas Rules of Professional Conduct, Panel B of the Arkansas Supreme Court Committee on Professional Conduct finds:

A. The Panel unanimously found that the conduct of James P. Clouette violated Rule 8.4(b) in that on or about August 1, 2008, he illegally possessed a controlled substance, methamphetamine, in violation of ACA § 5-64-401, a Class C Felony and a "serious crime" as defined by the Court's Procedures Regulating Professional Conduct of Attorneys at Law, and at trial he was found guilty of said criminal charge and was placed on probation, as shown by the Order of Probation filed January 5, 2010. This conduct constitutes a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects. Arkansas Rule 8.4(b) provides that it is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.

B. The conduct of James P. Clouette did not violated Rule 8.4(d) which prohibits an attorney from engaging in conduct prejudicial to the administration of justice system. As to this Rule, members Orton, Morris, Harrell and Mourton voted it was not proven. Members Crane, Kelly, and Dunham voted it was proven.

C. As to sanction, members Morris, Dunham, Harrell, and Mourton voted for a caution, while members Crane, Orton, and Kelly voted for a reprimand.

D. As part of the sanction, the Panel voted to place Respondent on probation for the same time period ordered by the Pulaski Circuit Court in its order, and subject to the same conditions, including drug testing as performed by the Court's agent. Bill Luppen, or another attorney mutually agreeable to both Mr. Clouette and the Executive Director, is to be Mr. Clouette's probation monitor for the Committee and to report to the Office of Professional Conduct any violations of terms of Clouette's probation order with the circuit court.

E. Respondent Clouette is ordered to pay as costs of this case the standard minimum case fee of $50.00 and the court reporter's hearing appearance fee of $100.00.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel B, that **JAMES P. CLOUETTE**, Arkansas Bar ID# 74025, be, and hereby is, **CAUTIONED** for his conduct in this matter, he is assessed $150.00 in total case and hearing costs, and is placed on monitored probation for a period of time to coincide with the time period of his circuit court probation order and as further specifically stated in this Findings & Order. The $150.00 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 with 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: _____
Steve R. Crane, Chair, Panel B

Date: 6-23-10