BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL A

FILED
OCT 12 2010
LESLIE W. STEEN
CLERK

IN RE: ERWIN L. DAVIS
ARKANSAS BAR ID# 71022
CPC DOCKET NO. 2010-021

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided by the Arkansas Supreme Court in a referral from *Jim Henry Henson v. State of Arkansas*, Arkansas Supreme Court Case No. CR09-1100. The conduct referred to the Committee related to the representation of Jim Henry Henson by Erwin L. Davis, Attorney at Law, Fayetteville, Arkansas.

The hearing in this matter requested by Mr. Davis September 17, 2010, before Panel A of the Committee on Professional Conduct. The hearing was conducted by Panel B Chair T. Benton Smith, Jr.. Panel A was comprised of members Rita Mitchell Harvey, L. Scott Stafford, Jerry D. Pinson, Steven T. Shults, Win A. Trafford, and Elaine Dumas. Rita Mitchell Harvey substituted for Panel Member Helen Herr and L. Scott Stafford substituted for Gwendolyn Hodge. Ms. Herr and Ms. Hodge were unable to attend the hearing. The Office of Professional Conduct was represented by Michael E. Harmon, Senior Staff Attorney. Mr. Davis was present and not represented by counsel.

The Office of Professional Conduct called Erwin L. Davis to testify. Mr. Davis testified that he represented Jim Henry Henson in a Rule 37 Post-Conviction Matter in Washington County Circuit Court and that after a decision was entered by the court, Mr. Davis filed a timely notice of appeal. Mr. Davis filed the record with the Arkansas Supreme Court Clerk and a

briefing scheduled was issued. Mr. Davis began to work on a brief on Mr. Hudson's behalf and requested two extensions to file the brief. The last extension granted by the court extended the time to file the brief to December 23, 2009. Mr. Davis admitted that he did not file a Motion for Extension of Time on or before December 23, 2009, but did ship a Motion for Extension of Time on December 22, 2009. Mr. Davis testified that he received a letter dated January 5, 2010, which stated that his Motion for Extension of Time had not been filed timely and nothing was filed by him until February 16, 2010, even though the State of Arkansas had filed a Motion to Dismiss Appeal on February 3, 2010. On February 16, 2010, Mr. Davis filed a Motion to File Belated Brief. The Arkansas Supreme Court granted Mr. Davis his Motion for Belated Brief and denied the State's Motion to Dismiss. Mr. Davis testified that Mr. Henson's appeal was still pending before the Arkansas Supreme Court.

Mr. Davis then testified on his behalf. Mr. Davis testified that he had been using couriers for years and there have been occasions where items had not been delivered on time from Fayetteville to Little Rock. Mr. Davis stated that he has learned that the Arkansas Supreme Court Clerk's Office has a built-in grace period which is helpful to attorneys who practice in the four corners of the state where it is impractical for the attorney to drive to Little Rock to file the brief. The grace period Mr. Davis described is one that as long as the appeal has not actually been dismissed and the briefs are tendered to the Clerk along with a Motion For Belated Appeal, the motion will be granted. At no time, Mr. Davis stated, did he believe that his client's case was in jeopardy of being dismissed. Mr. Davis stated that there was no undue delay as the briefs have been filed and the court has issued a ruling in the case. Mr. Davis testified that he accepted responsibility for the motion for extension of time not having been filed on or before December

23, 2009.

Mr. Davis believed that he acted with reasonable diligence and promptness even though he did not get the motion for extension of time to the Clerk on the due date but the appeal was preserved and therefore his conduct was not unreasonable. As to the delay in the orderly and timely resolution of appellate proceedings, Mr. Davis stated that there was a delay of a few weeks but it did not operate to delay the case from being heard by the Court. Mr. Davis pointed out that the briefs have been filed and are still awaiting a ruling by the Court.

On cross-examination, Mr. Davis stated that he shipped the motion for extension of time by Federal Express priority overnight delivery on December 22, 2009. Mr. Davis testified that he could not provide a copy of any receipt from Federal Express showing that the package was sent on December 22.

Upon consideration of the formal complaint and attached exhibit materials, the response to it, the testimony presented, the prior disciplinary history, if any, and other matters before it, and the Arkansas Rules of Professional Conduct, Panel A of the Arkansas Supreme Court Committee on Professional Conduct finds, by unanimous vote unless otherwise indicated, the following:

1. Erwin L. Davis violated Rule 1.3 of the Arkansas Rules of Professional Conduct when he failed to file on behalf of his client, Jim Henry Henson, a brief and abstract with the Clerk of the Arkansas Supreme Court on or before the extended deadline of December 23, 2009. Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client. The Panel found this Rule to have been violated by a vote of 5-2 with Panel Members Harvey, Stafford, Smith, Pinson and Dumas comprising the majority. Panel Members comprising the

minority were Shults and Trafford.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel A, that ERWIN L. DAVIS, Arkansas Bar No. 71022, be, and hereby is, CAUTIONED and assessed costs of One Hundred Dollars ($100.00) for court reporter fees; and Fifty Dollars ($50.00) for administrative fees, for his conduct in this matter. All fines and costs assessed herein, totaling One Hundred Fifty Dollars ($100.00) 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: T. Benton Smith, Jr.
T. Benton Smith, Jr., Chair, Panel A

Date: October 12, 2010