

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

PANEL B

IN RE: DAVID LEWIS CLARK

Arkansas Bar ID#95093

CPC Docket No. 2003-023

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by referral from the Arkansas Supreme Court on January 15, 2003. The information related to the representation of Sherrell Jean Whisenant by Respondent in 2002 in the case of Sherrell Jean Whisenant v. State of Arkansas, CACR 2001-1418.

On March 21, 2003, Respondent was served, pursuant to Section 9.A(2)(a) of the Procedures Regulating Professional Conduct ("Procedures"), with a formal complaint. Respondent failed to file a timely response to the complaint, which, pursuant to Section 9.C(4) of the Procedures, constitutes an admission of the factual allegations of the formal complaint and extinguishes Respondent's right to a public hearing.

Sherrell Jean Whisenant employed Respondent to represent her on charges of possession of a firearm by certain persons and theft of property. On May 25, 2001, a judgment was entered reflecting that Whisenant had been convicted of possession of a firearm and theft of property and was sentenced to a term of seventy-two months' imprisonment in the Arkansas Department of Correction. A Motion for New Trial was filed on June 20, 2001 and was deemed denied on July 20, 2001. A Notice of Appeal was effective on July 20, 2001. The record was lodged on December 21, 2001.

On February 6, 2002, Respondent filed a Motion for Extension of Time to file a brief on behalf of his client. The Arkansas Supreme Court Clerk granted the request and extended the time for filing the brief to March 6, 2002. On March 6, 2002, Respondent filed a second Motion for Extension of Time. The Motion was granted and the time for filing the brief was extended to March 15, 2002. A third Motion for Extension of Time was filed on March 15, 2002. The Arkansas Supreme Court Clerk granted Respondent until April 1, 2002, to file the brief. Respondent filed a fourth Motion for Extension of Time on April 1, 2002 and the Clerk extended the time for filing a brief to April 10, 2002. On April 10, 2002, Respondent filed a fifth Motion for Extension of Time and the time for filing a brief was extended to April 22, 2002. On April 22, 2002, Respondent filed a sixth Motion for Extension of Time. The Motion was granted and the time for filing the brief was extended to May 9, 2002. On May 9, 2002, Respondent attempted to file a seventh Motion for Extension of Time. Respondent appeared at the Arkansas Supreme Court Clerk's Office fifteen minutes late.

On July 17, 2002, the Arkansas Attorney General's Office filed a Motion to Dismiss as the brief had not been filed. The Arkansas Court of Appeals granted the Motion to Dismiss on July 31, 2002. Whisenant filed a *pro se* Motion for Reinstatement of her appeal. The Arkansas Court of Appeals granted the Motion, relieved Respondent as attorney of record, and referred the matter to the Office of Professional Conduct.

Upon consideration of the formal complaint and attached exhibit materials, the failure to respond to it, and the Arkansas Model Rules of Professional Conduct, Panel B of the Arkansas Supreme Court Committee on Professional Conduct finds:

1. Mr. Clark violated Model Rule 1.3 when he failed to file in a timely manner a brief on behalf of his client, Sherrell Jean Whisenant, despite receiving numerous extensions of time and when he failed to file a timely Motion for Extension of Time prior to the expiration of the time for filing the brief. Model Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.
2. Mr. Clark violated Model Rule 8.4(d) when his failure to file a brief on behalf of Sherrell Jean Whisenant resulted in a delay in the orderly and timely resolution of appellate proceeding and required the Court to expend additional time and effort which would not have been necessary otherwise. Model 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 B, that DAVID L. CLARK, Arkansas Bar ID# 95093, be, and hereby is, REPRIMANDED; 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. For his failure to respond to the formal complaint, DAVID L. CLARK, Arkansas Bar ID# 95093, is, pursuant to Section 9.C(1) and (3), SUSPENDED from the practice of law for a period of SIX (6) MONTHS and fined the sum of FIVE HUNDRED DOLLARS (\$500.00) for his conduct in this matter. The suspension shall become effective on the date this Findings and Order is filed of record with the Clerk of the Arkansas Supreme Court. 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 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: _____

John Rush, Chair, Panel B

Date: _____

