

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

PANEL B

IN RE: STUART VESS, Respondent
 Arkansas Bar ID#73124
 CPC Docket No. 2003-199

CONSENT FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by the Arkansas Supreme Court Referral in the matter of *Kelly Vest v. State of Arkansas*, CR2003-1300 on December 11, 2003. The information related to the representation of Kelly Vest by Respondent in an appeal filed with the Supreme Court of Arkansas on November 17, 2003.

On December 26, 2003, Respondent was served with a formal complaint, supported by the Per Curiam Order of the Arkansas Supreme Court. A response was filed. The Respondent and the Executive Director negotiated a discipline by consent proposal, which was submitted to this Panel.

The information before the Panel revealed that on November 17, 2003, Mr. Vess, an attorney practicing in North Little Rock, Arkansas, filed a Motion to File Belated Appeal with the Arkansas Supreme Court Clerk. In his Motion, Mr. Vess explained that he filed a timely Notice of Appeal for his client, Kelly Vest, on June 18, 2003. The record was due to be filed with the Court on or before September 17, 2003. However, it was not filed by that date. Mr. Vess offered that he failed to properly calendar the due date of the lodging of the record and therefore it was not timely filed. The record was not tendered by Mr. Vess until November 4, 2003. Mr. Vess accepted full responsibility for the late filing.

When considering the Motion, the Court treated it as a Motion for Rule on the Clerk. The Court, in the Per Curiam delivered December 11, 2003, found that the error in the late filing, admittedly made by the attorney for a criminal defendant, was good cause to grant the Motion. The Motion was granted allowing the appeal to go forward. In addition, the Per Curiam was forwarded to the Committee for review.

In his response to the Committee Panel, Mr. Vess admitted the facts set forth in the formal disciplinary complaint. He offered no mitigation other than the Motion was granted based upon his admission of fault.

Upon consideration of the formal complaint and attached exhibit materials, the response, the consent proposal, and other matters before it, and the Arkansas Model Rules of Professional Conduct, Panel B of the Arkansas Supreme Court Committee on Professional Conduct finds:

1. That Mr. Vess' conduct violated Model Rule 1.3 when he failed to undertake the necessary steps to obtain an Order extending the time to file the record on appeal for his client, Kelly Vest, beyond the initial ninety (90) day limit and when he failed to file in a timely manner with the Arkansas Supreme Court the record of the lower court proceedings on behalf of Kelly Vest, his client. The facts reveal that the record was to be filed no later than September 17, 2003, but was not tendered by Mr. Vess until fifty-one (51) days later on November 4, 2003. Model Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.
2. That Mr. Vess' conduct violated Model Rule 8.4(d), to wit: His failure to file the record with the Clerk of the Supreme Court in a timely manner resulted in a delay in the orderly and timely resolution of appellate proceedings 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 STUART VESS, Arkansas Bar ID# 73124, be, and hereby is, CAUTIONED for his conduct in this matter. Further, Mr. Vess is assessed the costs in this matter in the amount of \$50 pursuant to Section 18.A. of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law. The 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 B

By: _____

J. Michael Cogbill, Chair, Panel B

Date: _____

(13.M, Rev.1-1-02)