

BEFORE THE ARKANSAS SUPREME COURT  
COMMITTEE ON PROFESSIONAL CONDUCT  
PANEL C

IN RE: **RICKEY H. HICKS**, Respondent  
Arkansas Bar ID #89235  
CPC Docket No. 2015-096

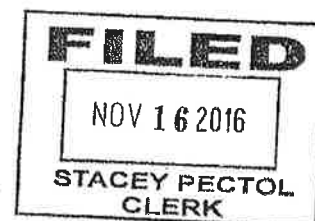
**HEARING FINDINGS AND ORDER**

The formal charges of misconduct upon which this Findings and Order is based were developed from information provided to the Committee in 2014 regarding Case No. CR-14-529, Evans v. State, a criminal appeal. The information related to the representation of Desmond Evans in that appeal by Respondent Rickey H. Hicks, an attorney from Little Rock, Arkansas. The formal complaint was filed August 18, 2015. Hicks was served and filed a timely Answer. A ballot vote was had before another panel and Hicks then requested a hearing. The hearing was conducted in Little Rock on October 21, 2016, before Committee Panel C.

In the absence of Panel C Chair Mike Mayton, Vice-Chair Joe Hickey chaired the hearing. Regular Panel C members Sheila Brown, Keith Chrestman, Mark Limbird, and Scott Stafford served, along with Panel D members James Ross, Jr. and Kent Hirsch, who substituted for Panel C members Mayton and Tonya Patrick who were not available. Stark Ligon represented the Office of Professional Conduct. Luther Sutter represented Respondent Hicks. Testimony was received from witnesses Hicks, David Butler, and Timothy Dudley.

The Complaint alleged the following facts, which Respondent admitted in his Answer, and which are now found and incorporated in this order by the Panel, supplemented with additional information provided at the hearing.

1. By a Sentencing Order filed on November 8, 2012, Evans, represented by private counsel



Hicks, was convicted of capital murder and sentenced to life in prison without parole after his jury trial on October 26, 2012. Hicks accepted the representation of what was initially a death penalty case for a \$30,000 fee, of which he testified only \$10,000 was ever paid to him for the trial and appeal work.

2. On November 14, 2012, Hicks filed Evans' Notice of Appeal, indicating his client was then indigent.

3. On December 3, 2012, the Evans trial judge wrote Hicks informing him he needed to file a motion for Evans to proceed in forma pauperis (IFP) in the appeal.

4. On December 7, 2012, Hicks wrote Evans in the Union County jail and requested Evans sign the attached Affidavit and Petition to proceed IFP.

5. On February 1, 2013, Hicks mailed Evans an affidavit of indigency to sign and return as part of Hicks' effort to gain Evans IFP status and get the State to pay for his appeal transcript. Hicks resent this letter to Evans on February 26, 2013.

6. On May 29, 2013, Hicks again wrote Evans in jail about the unsigned and unreturned IFP affidavit.

7. On July 1, 2013, the Evans IFP Affidavit, executed by Evans in an ADC unit, was filed.

8. On September 12, 2013, the Order granting the Evans IFP petition was approved by the trial judge and filed in Union County.

9. On November 21, 2013, the court reporter wrote Hicks about the status of the Evans trial transcript for the appeal and informed him he needed to file for a belated appeal, as Hicks had failed to notify the reporter of the September 21, 2013, IFP order.

10. On January 9, 2014, Hicks filed a motion for belated appeal and extension of time to file

the Evans appeal record with the Union County circuit clerk, and not with the Supreme Court Clerk.

11. On April 29, 2014, the order granting Evans' IFP petition was filed.

12. On May 9, 2014, the Union county circuit clerk notified Hicks the Evans transcripts were complete.

13. On May 22, 2014, Hicks tendered the record to the Supreme Court Clerk, who noted the tender was late and a motion for rule on clerk would be required.

14. The rule for lodging the record on appeal requires tender of the record to the appellate clerk within ninety (90) days after the notice of appeal is filed. Here Hicks did not tender the record until over eighteen (18) months after the judgment was entered (November 2012 - May 2014).

15. On June 17, 2014, Hicks filed a motion for rule on the clerk.

16. By Order issued July 31, 2014, the Court granted the motion for rule on clerk and a briefing schedule was set, with Hicks' brief due September 9, 2014. The case docket shows a two volume record consisting of 811 pages was tendered and filed. The record tendered consisted only of the trial transcript and did not contain the required clerk's portion of the record.

17. On August 29, 2014, Hicks filed a motion for extension of time to file brief, seeking a thirty (30) day extension, and he was granted an extension to October 9, 2014.

18. On October 7, 2014, Hicks filed a motion for extension of time to file brief, seeking a thirty (30) day extension, and he was granted a "final" extension to October 24, 2014.

19. After Hicks failed to file a brief by the "final" extension date of October 24, 2014, OPC emailed him about the status of the appeal and he replied on October 27, 2014.

20. The docket indicates Hicks checked out the two volume record from the Supreme Court Clerk on November 17, 2014.

21. On December 22, 2014, Hicks filed a motion to file a belated brief after supplementation of the record, which was granted on January 15, 2015, by letter order.

22. In his motion filed December 22, 2014, Hicks mentioned the possible role of attorney David Bowden in assisting Hicks with the Evans brief, stating Hicks had supplied Bowden with a copy of what he (Hicks) took to be the record supplied by the local court reporter, indicating that Hicks did not obtain or look through the record until on or after he is shown on the case docket as checking it out from the Clerk on November 17, 2014.

23. On January 15, 2015, the Supreme Court Clerk issued a writ of certiorari to the clerk of Union County to file the complete trial record by February 14, 2015.

24. The docket shows the 35 page supplemental record was filed January 29, 2015.

25. On February 27, 2015, Hicks filed appellant's brief.

26. After the State's brief was filed, no reply brief was filed for Evans.

27. On May 28, 2015, the Supreme Court affirmed the Evans conviction, finding, among other matters, that Hicks failed to preserve for appellate review the issue of the trial court's refusal to give Hicks' requested jury instructions for lesser included offenses of first- and second-degree murder, finding the basis that Evans' defense was his actual innocence.

28. An on-line docket search on August 12, 2015, showed Hicks had been appellant's counsel in over ten (10) cases, indicating he should have had sufficient experience in criminal cases and appeals to avoid the problems and conduct alleged and charged here.

At the hearing, Hicks characterized the Evans case as a "train wreck," stating that Evans had caused the delays in his appeal by repeatedly failing to execute the required affidavit of indigency to go with the IFP petition Hicks had to file to get the State to pay for the appeal record. The attorney

who did all Hicks' appeals was having serious health issues during this period, causing further delays in the Evans appeal. Hicks has handled twelve capital murder cases in his career, and has many criminal cases in Columbia, Ouachita, and Union (where he was raised) Counties. Hicks testified Sutter and he had received a \$1,000,000 jury verdict in a medical malpractice case they tried in late 2015 in Pulaski County Circuit Court. Prosecuting Attorney David Butler testified he had dealt with Hicks for many years in a number of criminal cases in South Arkansas and found him to be a good, cooperative defense lawyer. Attorney Tim Dudley testified he has known Hicks for at least thirty years, they had tried a capital murder case together, and Hicks was a fine lawyer with a busy case load.

Upon consideration of the formal complaint and attached exhibit materials, the response to it, witness testimony, and other matters before it, and the Arkansas Rules of Professional Conduct, Panel C of the Arkansas Supreme Court Committee on Professional Conduct finds:

A.1 - By a unanimous vote, the conduct of Respondent Hicks was NOT PROVEN to have violated Rule 1.1, which charged Hicks failed to take effective and timely action to get his client Evans declared indigent and eligible for a State-provided trial transcript after his trial and entry of judgment.

A.2 - By a 6-1 vote, with Ross voting in the minority, the conduct of Respondent Hicks was NOT PROVEN to have violated Rule 1.1, which charged that at trial Hicks failed to preserve an issue on appeal for his client Evans when Hicks requested the trial court instruct the jury on the lesser-included offenses of first- and second-degree murder, but then failed to proffer an instruction on first- and second degree murder in a case where his client was tried on only capital murder and received a life-without parole jury verdict, a mistake or oversight by Hicks that was so fundamental

in criminal trial procedure as to be a clear lack of competence, especially for any lawyer who would attempt to try a capital murder case.

A.3 - By a unanimous vote, the conduct of Respondent Hicks was PROVEN to have violated Rule 1.1, which charged that on September 12, 2013, an order prepared by Hicks and granting Evans IFP status for his appeal was filed, but Hicks failed to insure that a copy of the order got to the trial court reporter so she could begin preparation of the trial transcript. The reporter did not learn of the order until November 21, 2013, and then had to ask Hicks about the order, so she could start work on the trial transcript.

Rule 1.1 requires that a lawyer provide competent representation to a client, including the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

B.1 - By a unanimous vote, the conduct of Respondent Hicks was NOT PROVEN to have violated Rule 1.3, which charged that Hicks failed to obtain an IFP order from the trial court until September 12, 2013, thereby delaying the start of preparation by the trial court reporter of the Evans transcript for appeal use by about ten (10) months from the date of Hicks' filing the notice of appeal for Evans.

B.2 - By a unanimous vote, the conduct of Respondent Hicks was PROVEN to have violated Rule 1.3, which charged that Hicks failed to adequately examine the transcript he obtained from Union County on or after May 9, 2014, for content and completeness, filed same with the appellate court clerk on May 22, 2014, and caused more delay in the appeal when he discovered the record was incomplete and filed a motion to supplement the record on December 23, 2014, after receiving two briefing extensions.

B.3 - By a unanimous vote, the conduct of Respondent Hicks was NOT PROVEN to have

violated Rule 1.3, which charged that the Evans judgment appealed from was filed November 8, 2012, and Hicks did not file any record on appeal until May 22, 2014, over eighteen (18) months after the judgment, instead of within the maximum period of seven (7) months allowed by Supreme Court Rule 5(b)(2) (Civil).

Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

C.1 - By a unanimous vote, the conduct of Respondent Hicks was PROVEN to have violated Rule 3.4(c), which charged that Hicks failed to adhere to the requirements of Rule 5(a) of the Rules of Appellate Procedure - Civil when he failed to be certain that an Order extending the time to file the record on appeal was entered within ninety (90) days of the filing of the first Notice of Appeal.

Rule 3.4(c) requires that a lawyer not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists.

D.1 - By a 5-2 vote, with Chrestman and Ross in the minority, the conduct of Respondent Hicks was NOT PROVEN to have violated Rule 8.4(d), which charged that Hicks' failure to timely obtain the record for appeal and then get the record lodged and a brief filed for Evans delayed the Court's consideration of the Evans appeal for over a year beyond the time at which such an appeal should have reached the Court.

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 C, by a unanimous vote, that Respondent **RICKEY H. HICKS**, Arkansas Bar ID# 89235, be, and hereby is,

**REPRIMANDED and FINED \$7,500.00** for his conduct in this matter. In assessing this sanction, Respondent attorney's prior disciplinary record was a factor. Respondent is also assessed total costs of \$550.00, being \$50.00 case cost and \$500.00 hearing reporter cost. In assessing the sanctions ordered here, Respondent's prior disciplinary record was a factor. 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 C

By:   
Joseph Hickey, Vice-Chair, Panel C

Date: 11-16-16

Prepared by Stark Ligon 

Approved as to form:

  
Luther Sutter, Respondent's counsel