

BEFORE THE ARKANSAS SUPREME COURT  
COMMITTEE ON PROFESSIONAL CONDUCT  
PANEL B

IN RE: **JAMES PAUL CLOUETTE**, Respondent  
Arkansas Bar ID # 74025  
CPC Docket No. 2014-052

**FILED**  
MAY 15 2015  
STACEY PECTOL  
CLERK

**FINDINGS AND ORDER**

The formal charges of misconduct upon which this Findings and Order is based were taken from a Supreme Court Per Curiam of October 13, 2013, in No. CR-13-496, and developed from information provided to the Committee by Janice Flowers. The information related to the representation of James Flowers in 2009-2013 by Respondent James Paul Clouette, an attorney practicing primarily in Little Rock, Arkansas. On October 22, 2014, a formal complaint, supported by the affidavit of Janice Flowers, was filed and served on Respondent, who filed a timely response.

1. James Flowers was convicted by a jury of capital murder and aggravated robbery and sentenced to life without parole and 480 months imprisonment. The conviction and sentences were affirmed on appeal in April 2008. See 373 Ark. 119. Mr. Clouette was not the attorney for Flowers in the trial or the direct appeal.

2. Mr. Clouette appeared on the circuit court case docket sheet for No. 60CR-06-346 as counsel for Flowers in the Rule 37 matter as early as May 11, 2009.

3. On April 29, 2013, an Order was entered by the trial court denying Flowers' motion for Rule 37 relief. Mr. Clouette filed a timely notice of appeal and timely lodged the record on the Rule 37 appeal on June 6, 2013, as No. CR-13-496.

4. Mrs. Flowers paid Mr. Clouette \$3,000.00 as a fee for the Rule 37 proceeding. After

Clouette filed the present appeal, he asked her for \$3,500 to pursue the appeal, which she was unable to pay.

5. Ms. Flowers gave Clouette her check for \$205.50 for his use in paying for the circuit clerk's record to be used in her husband's appeal. Clouette gave the check to the clerk and received the clerk's record.

6. Ms. Flowers gave Clouette \$165.00 in cash for his use in paying the appellate filing fee. No such fee was charged or paid to lodge the Flowers appeal. Mr. Clouette has failed to account to Ms. Flowers for the \$165.00 or refund it to her.

7. Mr. Clouette then abandoned the appeal of his client James Flowers, without notice to Ms. Flowers or her husband, by failing to file a brief for Mr. Flowers or a response to the State's motion to dismiss.

8. Mr. Clouette failed to file to withdraw as attorney for James Flowers in his Rule 37 appeal or to obtain permission to withdraw, leaving Flowers without counsel at a critical stage in his Rule 37 appeal.

9. The Arkansas Attorney General's office filed a motion to dismiss the Flowers appeal on September 13, 2013. Clouette filed no response.

10. By per curiam issued October 10, 2013, the Court granted the motion to dismiss.

11. As a result of this dismissal, Flowers may now be procedurally barred from seeking further court relief.

12. For her imprisoned husband's use, Ms. Flowers has requested a copy of the record or transcript Clouette obtained from the circuit clerk with her \$205.50, but he has not provided her this case file document.

Upon consideration of the formal complaint and attached exhibit materials, the response to it, 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 conduct of James Paul Clouette violated Rule 1.1 in that he failed to file any brief on appeal for his client James Flowers, and he failed to file any response for his client James Flowers to the State's motion to dismiss appeal, causing the dismissal of the appeal. Arkansas Rule 1.1 requires that a lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

B. The conduct of James Paul Clouette violated Rule 1.2(a) in that it was the decision of his client James Flowers that Clouette would file a brief in the Flowers Rule 37 appeal, and Clouette failed to abide by his client's objective or inform the client he would not file any brief. Arkansas Rule 1.2 (a) requires that a lawyer shall abide by a client's decisions concerning the objectives of representation, subject to paragraphs (c) and (d), and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued.

C. The conduct of James Paul Clouette violated Rule 1.3 in that Clouette's opening appeal brief for his client Flowers was due to be filed within forty (40) days after the record was lodged on June 6, 2013, and no brief was filed. Arkansas Rule 1.3 requires that a lawyer shall act with reasonable diligence and promptness in representing a client.

D. The conduct of James Paul Clouette violated Rule 1.4(b) in that if Clouette had advised his client Flowers before the Flowers appeal brief was due that circumstances and situations not involving Flowers might cause Clouette to file no brief, the client would have

had an opportunity to consider employing other counsel to represent the client, or seeking to be declared indigent and entitled to appointment of appellate counsel, get a brief filed, and possibly receive the relief the client sought. Arkansas Rule 1.4(b) requires that a lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

E. The conduct of James Paul Clouette violated Rule 1.16(d) in that (1) Clouette has failed to account for or refund the \$165.00 appellate filing fee given to him in cash by Mrs. Flowers, funds not expended by Clouette on the Flowers appeal and which rightfully belong to Flowers; (2) for her imprisoned husband's use, Mrs. Flowers has requested from Clouette a copy of the circuit clerk's record or transcript purchased by Clouette with her \$205.50, but Clouette has failed to provide her with this client file document, property to which the client is entitled; and (3) by failing to file any brief for James Flowers, after using the \$205.50 given him by Mrs. Flowers to pay for the circuit clerk's record on appeal, Clouette has caused the Flowers to expend \$205.50 uselessly and to stand for the loss caused by Clouette's failure to file a brief causing the Flowers appeal to be dismissed. Arkansas Rule 1.16(d) requires that, upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

F. The conduct of James Paul Clouette violated Rule 8.4(d) in that by failing to file

any appeal brief for his client James Flowers, or seek a determination of indigency for Flowers on his Rule 37 appeal, Clouette caused the Flowers appeal to be dismissed, conduct by Clouette prejudicial to the administration of justice. Arkansas Rule 8.4(d) provides that it is professional misconduct for a lawyer to 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 James Paul Clouette, Arkansas Bar ID# 74025, be, and hereby is, **REPRIMANDED** for his conduct in this matter, and assessed and ordered to pay \$50.00 costs to the Committee and \$370.50 in restitution through the Committee for the benefit of Janice Flowers. The restitution 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:   
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Niki T. Cung, Chair, Panel B

Date: April 20, 2015