

**BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL A**

IN RE: WILLIAM McNOVA HOWARD, JR.
ARKANSAS BAR ID NO. 87087
CPC DOCKET NO. 2008-036

FILED

DEC 29 2008

**LESLIE W. STEEN
CLERK**

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information the Committee obtained from files maintained by the Arkansas Supreme Court Clerk. The information related to the representation of Marcus D. Young by William McNova Howard, Jr., Attorney at Law, Pine Bluff, Arkansas.

Marcus Young entered a plea of guilty to a charge of committing a terroristic act in Drew County and was sentenced to a term of 240 months in the Arkansas Department of Correction. Mr. Young appealed his sentence and the Arkansas Court of Appeals affirmed. Thereafter, Mr. Young filed a Rule 37 Petition.

On April 3, 2007, the Honorable Robert Bynum Gibson, Jr., entered an Order denying the relief requested in the Rule 37 Petition. On May 1, 2007, Mr. Howard, filed a Motion for Reconsideration on behalf of Mr. Young. The Motion was deemed denied on May 31, 2007. On June 6, 2007, Mr. Howard filed a Notice of Appeal on behalf of Mr. Young. The Notice of Appeal only referenced the denial of the Motion for Reconsideration. Mr. Howard then filed the record with the Arkansas Supreme Court Clerk on June 15, 2007, and a briefing schedule was issued. A brief was due to be filed on Mr. Young's behalf on or before July 25, 2007.

On July 24, 2007, Mr. Howard filed a Motion for Extension of Time stating that he needed an additional thirty (30) days within which to file the brief. The motion was granted and the brief

was then due on August 24, 2007.

On August 24, 2007, Mr. Howard filed a second Motion for Extension of Time stating the brief was almost complete and that he needed an additional thirty (30) days to file the brief. The motion was granted and Mr. Howard was given an extension of fifteen days to September 8, 2007. The extension was granted as a final extension as written on the clerk's copy of the Motion for Extension of Time and as reflected in the letter notice sent by the clerk's office.

On September 10, 2007, Mr. Howard tendered a brief to the clerk. Mr. Howard was advised that he needed to file a Motion for Belated Brief as the brief was not filed prior to September 8. No response from Mr. Howard to the letter was received by the clerk.

On November 8, 2007, the Arkansas Supreme Court Clerk wrote Mr. Howard and advised him that a brief on Mr. Young's behalf was tendered on September 10; that he needed to file a Motion for Rule on the Clerk; and that no response had been received. Mr. Howard was given ten days from the date of the letter to file a brief or motion in the matter.

On December 17, 2007, Mr. Howard filed a Motion to File Belated Brief. On January 24, 2008, the Arkansas Supreme Court granted the Motion to File Belated Brief and referred the matter to the Committee on Professional Conduct.

On February 25, 2008, the State of Arkansas filed a Motion to Dismiss, stating that the appeal must be dismissed because it was not timely filed as Mr. Howard did not file a Notice of Appeal within thirty (30) days of the April 3, 2007, Order denying the Rule 37 Relief. Rule 37.2(d) states that "[t]he decision of the court in any proceeding under...[R]ule [37] shall be final when the judgment is rendered. No petition for rehearing shall be considered." As the Notice of Appeal was not filed until June 6, 2007, the notice was untimely. On March 13, 2008, Mr. Howard tendered an

Opposition to Motion to Dismiss Appeal. Rule 2-1(d) of the Rules of the Arkansas Supreme Court require that responses may be filed within 10 calendar days of the filing of a motion. Mr. Howard's response was received seventeen days after the filing of the Motion to Dismiss Appeal and was, therefore, late. On April 17, 2008, the Arkansas Supreme Court issued a *Per Curiam* Order granting the State's Motion to Dismiss Appeal.

Mr. Howard admitted the allegations contained in the Complaint concerning the filing of the Notice of Appeal and the subsequent requests for extension of time. Mr. Howard stated that he had previously appealed an Order of the Drew County Circuit Court in the same matter and was successful in getting that matter reversed. When the matter was presented to the Drew County Circuit Court following reversal, the trial court then dismissed the Rule 37 Petition. Mr. Howard then filed a Motion for Reconsideration. The trial court never ruled on the Motion for Reconsideration and Mr. Howard filed a Notice of Appeal within thirty days of the deemed denial. The Court's April 17, 2008, *Per Curiam* Order stated the "deemed denied" appellate rule does not apply in Rule 37 Petitions pursuant to Rule 37.2(d). Mr. Howard stated that he was unaware of Rule 37.2(d), which provided that no petition for rehearing shall be considered and that he did not know that the deemed denied appellate rule did not apply in this type of cases.

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

1. William McNova Howard, Jr.'s conduct violated Rule 1.3 when he failed to file a timely Notice of Appeal on behalf of his client, Marcus Young, in the case of Marcus Young v. State of Arkansas, Arkansas Supreme Court Case No. CR07-268, following the filing of an Order dismissing

his client's Rule 37 Petition; when he failed to file a brief on behalf of his client, Marcus Young, on or before the expiration of the final extension on September 8, 2007; when he failed to file a Motion for Belated Brief from September 8, 2007, until December 17, 2007; and when he failed to file a timely response to the Motion to Dismiss Appeal filed by the State of Arkansas. Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

2. William McNova Howard, Jr.'s conduct violated Rule 8.4(d) when he failed to file a brief on behalf of his client, Marcus Young, which resulted in a delay in the orderly and timely resolution of appellate proceedings; when he failed to file a brief on behalf of his client which required the Court to expend additional time and effort which would not have been necessary otherwise; and when he failed to file a brief on behalf of his client which resulted in the appeal being dismissed. 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 A, that William McNova Howard, Jr., Arkansas Bar ID No. 87087, be, and hereby is, REPRIMANDED; fined the sum of ONE THOUSAND DOLLARS (\$1000.00); and assessed costs in the amount of FIFTY DOLLARS (\$50.00) for his conduct in this matter. 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 within thirty (30) days of the date this Findings and Order is filed

of record with the Clerk of the Arkansas Supreme Court.

IT IS SO ORDERED.

ARKANSAS SUPREME COURT COMMITTEE ON
PROFESSIONAL CONDUCT - PANEL A

By: *Steven Shults*
Steven Shults, Chairperson, Panel A

Date: October 14, 2008