

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL A

FILED

IN RE: JEFFREY SCOTT HARRELSON
 ARKANSAS BAR ID #96118
 CPC Docket No. 2011-088

FEB 29 2012

**LESLIE W. STEEN
CLERK**

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee when, on September 29, 2011, the Arkansas Supreme Court referred Mr. Harrelson based upon his conduct in the case of Derek Sales v. State of Arkansas, CR10-53. Jeffrey S. Harrelson, an attorney practicing primarily in Texarkana, Arkansas, is the attorney who was appointed by the circuit court to pursue Mr. Sales' Rule 37.5 proceeding in a death sentence case. Mr. Harrelson's failure to file an adequate brief after being granted two extensions of time to do so and then filing a belated brief resulted in the Supreme Court of Arkansas referring the conduct to the Committee on Professional Conduct for consideration and action.

On November 18, 2011, Respondent was served with a formal complaint, supported by information from the Clerk's file in the Sales appeal. Mr. Harrelson filed a timely response. The matter then proceeded to ballot vote before Panel A of the Committee pursuant to the Arkansas Supreme Court Procedures Regulating Professional Conduct of Attorneys at Law. (2011)

The factual background present in the appellate matter from which the referral was sent to the Committee by the Court is as follows:

On January 15, 2010, Mr. Harrelson filed with the Arkansas Supreme Court Clerk the record from the denial of Mr. Sales' Rule 37 proceeding from Bradley County Circuit Court. The

brief on Mr. Sales' behalf was initially due to be filed on February 24, 2010. Mr. Harrelson received a seven day Clerk's extension on February 24, 2010, and was granted until March 3, 2010 to file the Appellant's brief. On March 3, 2010, Mr. Harrell requested another extension of time to file the brief. On March 5, 2010, the Court granted Mr. Harrelson until April 10, 2010, to file a brief and noted the extension as a final extension. Mr. Harrelson did not file a Brief at that time. On April 12, 2010, Mr. Harrelson again requested an extension of time to file the brief. The Court denied the request and noted that when Mr. Harrelson tendered a brief, it would have to be accompanied by a Motion to File Belated Brief. It was not until June 14, 2010, that Mr. Harrelson tendered an appellant's brief which was accompanied by a Motion to File Belated Brief. The Court granted the Motion on August 6, 2010 and allowed the brief to be filed.

On September 29, 2011, the Supreme Court delivered a Per Curiam Opinion on the matter. In the Per Curiam, the Court held that the brief submitted by Mr. Harrelson on behalf of Mr. Sales, his appointed client, was inadequate for the Court's review. The Court went on to explain that the argument portion of the brief was not sufficient for the comprehensive state-court review required for capital cases.

Mr. Harrelson was under a duty to file a brief that adequately and zealously presented the issues and cited the Court to persuasive authority. The Court included information in the Per Curiam that demonstrated Mr. Harrelson was aware of his duty because he had previously been ordered to rebrief a post-conviction appeal brief because of his failure to comply with his responsibilities, and was then relieved from the appeal matter by the Court in that previous Rule 37 appeal.

Mr. Harrelson's brief filed on behalf of Mr. Sales was woefully deficient, with

conclusory arguments lacking in authority or development. Many of Mr. Harrelson's points on appeal were merely single-sentence statements of the allegations. Mr. Harrelson acknowledged that several of the argument sections failed to include persuasive authority but explained that the sole reason for that failure was because such authority did not, and does not, currently exist.

The Court ordered re-briefing. Because Mr. Harrelson had previously been advised of the requirements for Rule 37 briefs, he was referred to the Committee on Professional Conduct. Justice Brown wrote a concurring Opinion in which he set out that he would go further and relieve Mr. Harrelson as counsel for Mr. Sales. Justice Brown explained that Mr. Harrelson had demonstrated a casual disregard for the magnitude of the stakes entrusted to him and his obligations in representing Mr. Sales who is subject to the most severe penalty that the law recognizes. Mr. Harrelson admitted that he was removed as attorney of record from a similar death penalty habeas case but explained that the removal and subsequent disciplinary action in that particular death penalty case occurred almost four (4) months after he filed the brief for Mr. Sales.

Mr. Harrelson offered to the Committee that he met with another attorney who handles this type of case after the Supreme Court's Opinion and referral and sought advice on how to better prepare an appellate brief in death penalty matters to preserve issues and avoid future disciplinary issues. In addition, Mr. Harrelson stated that he will not seek or accept appointment to another Rule 37.5 proceeding unless forced to by a Court, because the issues that has accompanied these cases has convinced him this is not the line of work for which he was meant to be a lawyer.

In responding to the formal disciplinary complaint, Mr. Harrelson offered that if he was at

fault, it was for being too thorough and too zealous on Mr. Sales' behalf. Mr. Harrelson explained he included all the issues he did in the brief to the Supreme Court so that they would be preserved for federal habeas corpus proceeding.

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 A of the Arkansas Supreme Court Committee on Professional Conduct finds:

1. That Mr. Harrelson's conduct violated Rule 1.1, because Mr. Harrelson was not thorough enough in his representation of Mr. Sales to be certain he filed a compliant Appellant's Brief; because Mr. Harrelson failed to zealously present the issues on appeal to the Court in Mr. Sales' appellate matter; and, because Mr. Harrelson failed to cite the Court persuasive authority for the issues presented on behalf of Mr. Sales. 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.

2. That Mr. Harrelson's conduct violated Rule 8.4(d), because Mr. Harrelson's failure to file a brief which met the requirements of the Supreme Court caused the Court to have to order rebriefing and created a delay in Mr. Sales' appeal. 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 JEFFREY SCOTT HARRELSON, Arkansas Bar ID# 96118, be, and hereby is, REPRIMANDED for his conduct in this matter. Mr. Harrelson's prior disciplinary record was specifically considered when determining the appropriate sanction in this matter. Pursuant to Section 18.A. of the Procedures,

Mr. Harrelson is assessed the costs of this proceeding in the amount of FIFTY (\$50) DOLLARS. 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 A

By: Steven Shults
Steven Shults, Chair, Panel A

Date: February 6, 2012

(11.A, Rev 5-26-11)