

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL A

FILED

IN RE: JUSTIN B. HURST
ARKANSAS BAR ID NO. 2005021
CPC DOCKET NO. 2009-001

APR 29 2009

LESLIE W. STEEN
CLERK

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from referral to the Office of Professional Conduct by the Arkansas Supreme Court. The information related to the representation of Latore Durand Gossett by Justin B. Hurst, Attorney at Law, Hot Springs, Arkansas.

Justin B. Hurst represented Mr. Gossett in the criminal case of *State of Arkansas v. Latore Durand Gossett*, Clark County Circuit Court, Case No. CR 2006-185, where Mr. Gossett was charged with several criminal offenses. Mr. Gossett entered a conditional plea of guilty to possession of a controlled substance with intent to deliver; possession of drug paraphernalia; simultaneous possession of drugs and firearms; unauthorized use of property to facilitate a crime; and possession of a controlled substance. Mr. Gossett was then sentenced to a term of 168 months in the Arkansas Department of Correction. A Judgment and Commitment Order was entered on July 31, 2007. Following the filing of the Judgment and Commitment Order, Mr. Hurst filed a timely notice of appeal on August 16, 2007.

Rule 5(a) of Rules of Appellate Procedure—Civil provides that the record on appeal shall be filed with the clerk of the Arkansas Supreme Court and docketed therein within 90 days from the filing of the first notice of appeal, unless the time is extended by order of the circuit court as hereinafter provided. Ninety days from August 16, 2007, would have made the record due on or

before November 14, 2007. A motion for enlargement of time to lodge the record was filed by Mr. Hurst on October 9, 2007, but the order granting the motion was not entered until November 16, 2007, after the time for filing the record had expired. As the Order was not filed prior to November 14, 2007, that order granting the request for extension of time was ineffective.

On April 16, 2008, Mr. Hurst tendered the record to the Arkansas Supreme Court Clerk. The Clerk refused to file the record and informed Mr. Hurst that a Motion for Rule on the Clerk needed to be filed. On May 30, 2008, the Clerk returned the transcript to Mr. Hurst as no motion for Rule on the Clerk had been filed.

On June 16, 2008, Mr. Hurst filed a Motion for Rule on the Clerk. Mr. Hurst failed to provide the court with the record. On November 3, 2008, the Clerk returned to Mr. Hurst the Motion for Rule on the Clerk as there was no record tendered to the Clerk. The Clerk informed Mr. Hurst that he needed to return both the record and the motion should he wish to proceed with Mr. Gossett's appeal.

On November 19, 2008, Mr. Hurst filed a Motion for Rule on the Clerk along with the record. The Arkansas Supreme Court issued a *Per Curiam* Order on December 11, 2008, granting the Motion for Rule on the Clerk and referred the matter to the Office of Professional Conduct.

On January 31, 2009, Mr. Hurst was served with a formal complaint, supported by related exhibits. Mr. Hurst failed to file a timely response to the complaint but, pursuant to the ruling in *Gillaspie v. Ligon*, 160 S.W. 3d 33, 357 Ark. 50 (2004), an attorney is not required to file a response to a disciplinary complaint involving a *Per Curiam* referral when the Motion for the Rule on the Clerk filed is part of the Office of Professional Conduct's formal complaint. Mr. Hurst did provide an untimely response which was provided to Panel A for whatever consideration the Panel chose to

give it.

Upon consideration of the formal complaint and attached exhibit materials, Mr. Hurst's untimely response, and the Arkansas Rules of Professional Conduct, Panel A of the Arkansas Supreme Court Committee on Professional Conduct finds:

1. Justin B. Hurst's conduct violated Arkansas Rule 1.3 when he failed to file on or before November 14, 2007, with the Arkansas Supreme Court the record of the lower court proceedings on behalf of Latore Durand Gossett, his client; and failed to file the record of the lower court proceedings along with his Motion for Rule on the Clerk he filed with the Arkansas Supreme Court on June 16, 2008. Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

2. Justin B. Hurst's conduct violated Arkansas Rule 8.4(d) when his failure to file the record with the Supreme Court on or before November 14, 2007, resulted in a delay in the orderly and timely resolution of appellate proceedings; his failure to tender the record along with his Motion for Rule on the Clerk on June 16, 2008, resulted in delay in the orderly and timely resolution of appellate proceedings; and his failure to timely file his client's record with the Supreme Court required the Court to expend additional time and effort which would not have been necessary otherwise. 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 JUSTIN B. HURST, Arkansas Bar ID No. 2005021, be, and hereby is, CAUTIONED, fined the sum of FIVE HUNDRED DOLLARS (\$500.00) 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

Steven Shults
Steve Shults, Chair, Panel A

Date: *April 6, 2009*