

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

PANEL A

IN RE: STUART CARL VESS

ARKANSAS BAR ID #73124

CPC DOCKET No. 2001-078

FINDINGS AND ORDER

The formal charges of misconduct arose from the Arkansas Supreme Court case of Cecil Ballew v. State of Arkansas, CR 2001-081. Stuart Carl Vess, an attorney practicing law in North Little Rock, Arkansas, represented Cecil Ballew at trial in Pulaski County Circuit Court. Mr. Ballew was found guilty of violating controlled substances statutes and sentenced to an aggregate term of eighteen (18) years in the Arkansas Department of Corrections. Mr. Vess filed a timely Notice of Appeal on September 9, 1996. The appeal was not perfected.

On August 10, 2001, Ballew filed with the Arkansas Supreme Court Clerk, a Motion for Rule on the Clerk or Alternatively Motion for Leave to File a Belated Appeal. On October 4, 2001, the Arkansas Supreme Court issued a Per Curiam Opinion wherein the Court stated that it would treat the motion as a Motion for Rule on the Clerk as a timely Notice of Appeal had been filed in 1996. As the record from the trial court did not contain an order relieving Mr. Vess as attorney of record, the Court directed Mr. Vess to prepare the record if it had been prepared or file a writ of certiorari to bring up the record. The Court then referred the matter to the Committee on Professional Conduct.

Based upon the referral from the Arkansas Supreme Court, the Office of Professional Conduct initiated a formal complaint against Mr. Vess alleging violations of Model Rules 1.3, 3.2, 3.4(c), and 8.4(d). Mr. Vess filed a timely response to the formal complaint. In his response, Mr. Vess stated that Ballew did indicate that he wanted to appeal the conviction but could not afford to pay for the transcript. Ballew could not afford to pay for the transcript and Vess petitioned the Court to have him declared indigent. Following the entry of an order declaring Ballew indigent, the transcript was ordered from the court reporter and the record from the Pulaski County Circuit Clerk. Vess stated in his response that he did not receive notice from the Circuit Clerk that the record was complete until March 15, 1997, after the time to lodge the record had passed. Vess admitted that it was the responsibility of counsel of record to insure that the record is timely lodged.

Following receipt of the record, Vess stated that he reviewed the matter and determined that the appeal was without merit. Vess informed Ballew that, while the appeal is without merit, he would have to seek a belated appeal and referred Ballew to another attorney.

Upon consideration of the formal complaint, the response herein, and the Arkansas Model Rules of Professional Conduct, the Committee on Professional Conduct finds:

1. That Mr. Vess's conduct violated Model Rule 1.3 when he failed to file in a timely manner with the Arkansas Supreme Court the record of the lower court proceedings on behalf of Cecil Ballew, his client, as he had filed a Notice of Appeal and was not relieved as counsel by an appellate court. Model Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.
2. That Mr. Vess's conduct violated Model Rule 3.2 when, having a duty to continue to represent a convicted defendant throughout any appeal unless permitted by the trial court or the appellate court to withdraw, he failed to pursue an appeal on behalf of his client, Cecil Ballew. Model Rule 3.2 requires that a lawyer make reasonable efforts to expedite litigation consistent with the interests of the client.
3. That Mr. Vess's conduct violated Model Rule 3.4(c) when he failed to comply with Rule 16 of the Rules of Appellate Procedure-Criminal, which requires that trial counsel shall continue to represent a convicted defendant throughout any appeal unless permitted by the trial court or the appellate court to withdraw. Model Rule 3.4(c) requires that a lawyer not knowingly disobey an obligation under the rules of a tribunal.
4. That Mr. Vess's conduct violated Model Rule 8.4(d) when he failed to perfect the appeal in a timely manner which resulted in a delay in the orderly and timely resolution of appellate proceedings; when he caused the Court to expend additional time and effort which would not have been necessary otherwise; and when he left his client without effective appellate representation guaranteed to a convicted criminal defendant by the United States Constitution, Sixth Amendment.

Model 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 that STUART CARL VESS, Arkansas Bar ID No. 73124, be, and hereby is, CAUTIONED for his conduct in this matter.

ARKANSAS SUPREME COURT COMMITTEE

ON PROFESSIONAL CONDUCT

By: _____

Win A. Trafford, Chair, Panel A

Date: _____