

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

**PANEL B**

IN RE: STUART VESS, Respondent

Arkansas Bar ID# 73124

CPC Docket No. 2003-192

**CONSENT FINDINGS AND ORDER**

The formal charges of misconduct upon which this Findings and Order is based arose from information from the Arkansas Supreme Court Case of J & J Bonding, Inc. v. Arkansas Professional Bail Bondsman Licensing Board, Arkansas Supreme Court Case No. 2003-1125. The information related to the representation of J & J Bonding, Inc., by Respondent on appeal from the Arkansas Professional Bail Bondsman Licensing Board.

Vess' client, J & J Bonding, Inc. ("J & J", herein), had a license issued by the Arkansas Professional Bail Bondsman Licensing Board ("Board", herein). The Board imposed a temporary suspension of the license held by J & J without a hearing. J & J, through its attorney, filed an appeal to the Pulaski County Circuit Court for review of the Board's decision to temporarily suspend J & J's license. The case was assigned to Pulaski County Circuit Court, Sixth Division, and assigned case number CV02-9451. The Board thereafter held a hearing and suspended J & J's license for a period of nine (9) months. The decision to suspend J & J's license was appealed to Pulaski County Circuit Court. The case was assigned to Pulaski County Circuit Court, First Division, and assigned case no. CV02-9803. Pulaski County Case No. CV02-9803 was transferred and consolidated with CV02-9451.

On June 10, 2003, the Pulaski County Circuit Court, Sixth Division, entered an order denying J & J's request for review of the Board's decision. On June 18, 2003, J & J filed a Notice of Appeal of the Pulaski County Circuit Court's decision. The Notice of Appeal, however, was styled with Pulaski County Circuit Court Case No. CV92-9803, a case which no longer existed. On June 26, 2003, Respondent noticed the error and filed a Notice of Appeal with the correct case number.

On September 22, 2003, Respondent tendered to the Arkansas Supreme Court Clerk the record of the lower court proceedings. The Arkansas Supreme Court Clerk refused to receive the record as it was tendered more than ninety (90) days from the filing of the first Notice of Appeal, June 18, 2003. Rule 5(a) of the Arkansas Rules of Appellate Procedure–Civil, requires that “[t]he 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...” Had the June 26, 2003, Notice of Appeal been used to start the time for filing the Notice of Appeal, the lodging of the record with the Clerk on September 22, 2003, would have been timely.

Respondent filed a Motion for Rule on the Clerk with the Arkansas Supreme Court on September 29, 2003, in an attempt to require the Clerk to accept the record as timely. On October 23, 2003, the Arkansas Supreme Court denied the Motion for Rule on the Clerk and the appeal was dismissed.

Respondent admitted that he filed the initial Notice of Appeal with the wrong case number. Upon becoming aware that the Notice of Appeal listed the wrong case number, Respondent corrected the error and used the date the corrected Notice of Appeal was filed to start the time period required under Rule 5(a) of the Rules of Appellate Procedure–Civil. Respondent admitted that he erred in determining the time to lodge the record and that his error resulted in delay to the orderly and timely resolution of appellate proceedings. Respondent’s client, J & J, is fully satisfied with the representation of it by Respondent.

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

1. That Respondent Stuart Vess violated Model Rule 1.1 when he failed to be thorough enough in his representation of J & J to file the June 18, 2003, Notice of Appeal in the appropriate case. Model Rule 1.1 requires that a lawyer provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation necessary for the representation.

2. That Respondent Stuart Vess violated Model Rule 8.4(d) when he failed to file the record with the Arkansas Supreme Court in a timely manner which resulted in a delay in the orderly and timely resolution of

appellate proceedings; required the Court to expend additional time and effort which would not have been necessary otherwise; and, failed to timely file the record on appeal which resulted in the appeal being dismissed. 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, acting through its authorized Panel B, that STUART VESS, Arkansas Bar ID#73124, be, and hereby is, CAUTIONED for his conduct in this matter and is assessed costs in the amount of FIFTY (\$50.00) 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 B

By: \_\_\_\_\_

J. Michael Cogbill, Chair, Panel B

Date: \_\_\_\_\_