

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL C

FILED

IN RE: Q. BYRUM HURST, JR.
ARKANSAS BAR No. 74082
CPC DOCKET No. 2007-132

MAY 08 2009

**LESLIE W. STEEN
CLERK**

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from a grievance filed by Barbara Primm, attorney-in-fact for her brother, David E. Williams. The grievance and the Formal Complaint prepared as a result of the grievance related to the representation of David E. Williams by Q. Byrum Hurst, Jr., Attorney at Law, Hot Springs, Arkansas.

David E. Williams, was charged with eight (8) counts of rape in Bradley County, Arkansas. Barbara Primm, acting as attorney-in-fact for her brother, employed John F. Gibson, Attorney at Law, Monticello, Arkansas, to represent him in the criminal matter. On August 8, 2006, Mr. Williams was charged with one count of rape in Garland County. Mr. Gibson asked Q. Byrum Hurst, Jr., Attorney at Law, Hot Springs, Arkansas, to appear on behalf of Mr. Williams at the August 15 first appearance hearing and Mr. Hurst did so. At the first appearance, Mr. Williams was charged with an additional count of rape and his bond was raised from \$100,000 to \$1,000,000.

On August 23, 2006, Barbara Primm and her mother went to Hot Springs to visit Mr. Williams and then to meet with Mr. Hurst about representation. Mr. Hurst agreed to assist Mr. Gibson in the Garland County matter, but agreed that Mr. Gibson would be the lead counsel. Mr. Hurst stated that he had a good working relationship with the judges, sheriff, prosecutor, and law enforcement personnel in Hot Springs and Garland County. Mr. Hurst stated, however, that there

would be a tremendous amount of work including court appearances, consultations with Mr. Williams, and telephone updates with the family.

According to Ms. Primm, Mr. Hurst agreed to represent David Williams but that he would need the sum of Twenty-Five Thousand Dollars (\$25,000) to represent Mr. Williams and that he would "draw" against this fee. Barbara Primm then wrote Mr. Hurst a check for Twenty-Five Thousand Dollars (\$25,000.)

On September 5, 2006, a bond reduction hearing was held in Garland County Circuit Court. Mr. Hurst was present but did not speak on David's behalf. The Motion to Reduce Bond was denied.

Ms. Primm called Mr. Hurst the following day and spoke to him. Mr. Hurst said that he would file a motion to get Mr. Williams out of jail and prepare an appeal to the Arkansas Supreme Court on the denial of the Motion to Reduce Bond. According to records of the Garland County Circuit Court, Mr. Hurst did neither. It was Mr. Gibson ordered the transcript from the court reporter and filed a Petition for Certiorari with the Arkansas Supreme Court.

Ms. Primm stated that she had numerous telephone calls with Mr. Hurst and his office staff. On September 12, 2006, Ms. Primm called Mr. Hurst and asked that he visit Mr. Williams at the Garland County Detention Center. Ms. Primm also faxed to Mr. Hurst a list of Hot Springs doctors, as David was having problems with Garland County Sheriff's Office administering his prescriptions. At that time, Ms. Primm asked Mr. Hurst for a contract for his representation of David Williams.

On September 19, 2006, Ms. Primm called Mr. Hurst's office twice and left messages asking about whether he contacted a doctor and whether he had prepared an employment agreement. Ms. Primm stated that Mr. Hurst did not return the telephone calls.

Ms. Primm called Mr. Hurst on September 20, 2006, and asked for the same information requested on September 19. According to Ms. Primm, there was no returned telephone call.

After requesting a copy of the written confirmation of the fee agreement, Ms. Primm received a letter from Mr. Hurst dated September 28, 2006. The letter stated that the Twenty-Five Thousand Dollars (\$25,000) was a "flat fee," which differed from the conversation she had with Mr. Hurst in August. Mr. Hurst also stated in his letter that "[i]f this letter reflects our agreement please execute your signature on the line marked "AGREED AND ACCEPTED" and return to me in the self-addressed stamped envelope I have enclosed for your convenience." Ms. Primm did not sign and return the document, as it was not what was agreed to verbally and it was six weeks after the discussion when the contract was received.

On October 5, 2006, the Arkansas Supreme Court denied the Petition for Certiorari. Ms. Primm called Mr. Hurst and asked him to go to the Garland County Jail and tell her brother about the decision. According to Ms. Primm, he did not go.

Ms. Primm stated that she made several telephone calls to Mr. Hurst asking that he go to the Garland County Detention Center which was across the street from Mr. Hurst's office to talk to David Williams about his legal matter. Ms. Primm and her brother state that he did not do so.

On October 24, 2006, a hearing was held in Garland County Circuit Court on a Motion for Mental Evaluation to be conducted by the Johns Hopkins Medical School in Maryland. This motion was, according to Ms. Primm, prepared by Mr. Gibson. Mr. Gibson and Mr. Hurst appeared at this hearing. Mr. Gibson presented the motion on Mr. Williams' behalf. The matter was continued to November 7 where Mr. Hurst appeared for Mr. Williams. The matter was again continued to November 14. At the November 14, 2006, hearing, Mr. Gibson acted as the lead attorney.

On November 24, 2006, Ms. Primm, acting as attorney-in-fact for her brother, sent a letter to Mr. Hurst asking him to refund the balance of the \$25,000, and provide an accounting for money he retained. Ms. Primm also asked that he forward all records and documents to her. Mr. Hurst received the letter and called to talk about it. He spoke to Ms. Primm's husband, Allen, who confirmed that it was what she and David wanted.

Ms. Primm made several calls thereafter to Mr. Hurst and left messages for him to call her. She did not receive a return call. On December 27, 2006, Ms. Primm wrote Mr. Hurst again. In the letter she reiterated that she had called numerous times to speak to him about her November 24, 2006, letter. She reaffirmed that she was requesting David's files be sent to her and that he refund the remainder of the fees paid.

On January 9, 2007, there was a hearing in Garland County Circuit Court. Mr. Gibson and Mr. Hurst appeared. Ms. Primm stated that she met with both attorneys after the hearing. During the meeting, she discussed Mr. Hurst's release from representation. According to Ms. Primm, Mr. Hurst stated that David "needed" him. While Mr. Hurst apologized for being uninvolved, unresponsive and unaccessible, Ms. Primm stated that she did not tell him in any way that she would reconsider releasing him from the representation.

On April 2, 2007, Ms. Primm wrote Mr. Hurst another letter wherein she stated that she had asked for a refund on two previous occasions and that he had not returned anything. Mr. Williams confirmed that he had discussed the situation concerning Mr. Hurst with his sister and they were in agreement. Mr. Williams wrote this in a letter dated April 18, 2007, when he directed Mr. Hurst to return the money paid to his sister.

Mr. Hurst responded to the requests with a letter dated April 23, 2007. In his letter, he stated

that he was surprised to have received the April 2 letter. Mr. Hurst ended the letter by stating that “If you desire, you can obtain other counsel and I will formally withdraw. I will have to ask the permission of the Court as required by the Arkansas Rules of Criminal Procedure. I think this would be very detrimental to your brother as I could not think of any attorneys that could assist any better than myself, or my firm.”

On April 30, 2007, Mr. Hurst responded to David’s letter of April 18 and sent it to Ms. Primm at her address. In the letter Mr. Hurst stated that “[i]f it is your desire for me and my firm to withdraw from representing you we will, of course, be willing to do so. We will apply to the Court to withdraw.”

On August 28, 2007, Ms. Primm met with Mr. Hurst at his office in Hot Springs. According to Ms. Primm, she again asked that Mr. Hurst withdraw from the case and refund the unearned portion of the \$25,000 she had paid to him. Mr. Hurst agreed to do so.

Ms. Primm received a letter dated September 14, 2007, which was addressed to her brother but mailed to her address. The letter contained a copy of the Motion to Withdraw and the Brief in Support which Mr. Hurst finally filed on September 14, 2007. According to Ms. Primm, she had not received the balance of any funds remaining or any records she requested when Mr. Hurst was requested to withdraw from the matter.

Mr. Hurst was served with the Formal Complaint and filed a timely response on his behalf. In his response, Mr. Hurst denied that he violated the rules alleged in the Formal Complaint. Mr. Hurst confirmed that he met with Ms. Primm to discuss representation of her brother, David Williams, but stated that he informed her that he set flat fees in criminal cases which must be paid in advance and that his fee was non-negotiable. Ms. Primm then wrote Mr. Hurst a check for

\$25,000.

This matter was presented to one of the Panels of the Committee on Professional Conduct for ballot vote. The decision of that Panel's decision was communicated in writing to Mr. Hurst who filed a timely request for a public hearing. The matter was then scheduled for a *de novo* public hearing before Panel C on April 7, 2009.

Prior to the start of the hearing, Mr. Hurst, through his attorney, Bart Virden, asked the Committee whether it would be amenable to a plea offer without considering any prior disciplinary history of Mr. Hurst. The Office of Professional Conduct objected to the request as it believed that the factors listed in Section 19 of the Procedures Regulating Professional Conduct of Attorneys at Law, specifically 19(L), should be considered when determining whether a sanction, whether in a consent or a last minute plea to the Panel on the day of hearing. The Panel then went into executive session to render a decision on Mr. Hurst's request. The Panel then returned and announced that it would consider the merits of a plea without examining the prior disciplinary history of the respondent attorney.

Mr. Hurst then proposed a plea to the Panel wherein Mr. Hurst would admit to a violation of Rule 1.16(d), would accept a sanction of Caution, would agree to pay restitution in the amount of \$25,000, and would pay the standard costs of \$50. The Panel took the matter into executive session to render a decision on the proposed plea. Upon return from executive session, the Panel announced that, by unanimous vote, it agreed to accept the proposed plea.

The Office of Professional Conduct requested that there be a time frame for payment of the \$25,000 restitution amount. Mr. Hurst proposed sixty (60) days and the Office of Professional Conduct suggested that the restitution be paid within thirty (30) days as in all other disciplinary

cases. Mr. Hurst then agreed to have the restitution paid within thirty (30) days. The Office of Professional Conduct then raised the issue of what to do should the restitution not be paid within the thirty (30) days as agreed. It was the decision of the Chair that should the restitution not be paid in full within the thirty (30) day period of April 7, 2009 as agreed, the plea will be vacated and the matter shall be reset for hearing on the merits of the case.

The Office of Professional Conduct requested that this Findings and Order not be filed until receipt of the \$25,000 restitution so that it may have the thirty (30) days to determine whether it would appeal as provided for under Section 12.A of the Procedures Regulating Professional Conduct of Attorneys at Law. The request was granted. This Findings and Order shall be filed on or after May 7, 2009.

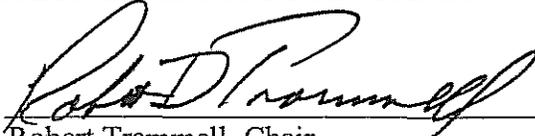
Upon consideration of the formal complaint and attached exhibit materials, the response thereto, the plea to the Panel, other matters before it, and the Arkansas Rules of Professional Conduct, Panel C of the Arkansas Supreme Court Committee on Professional Conduct finds:

1. Q. Byrum Hurst, Jr., by his own admission, violated Rule 1.16(d), when he failed to return any documents to which his client, David E. Williams, was entitled and when he failed to return any unearned advance payment of fee following the termination of representation of his client, David E. Williams. Rule 1.16(d) states that upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on

Professional Conduct, acting through its authorized Panel C, that Q. Byrum Hurst, Jr., Arkansas Bar ID# 74082, be, and hereby is, CAUTIONED, directed to pay Twenty-Five Thousand Dollars (\$25,000) in restitution to Barbara Primm, and assessed costs in the amount of Fifty Dollars (\$50.00) for his conduct in this matter. The restitution 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 of the April 7, 2009, hearing. This Findings and Order shall be filed with the Clerk on or after May 7, 2009.

ARKANSAS SUPREME COURT COMMITTEE ON
PROFESSIONAL CONDUCT - PANEL C

By: 
Robert Trammell, Chair

Date: May 8, 2009