



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

IN RE: William McNova Howard, Respondent Attorney
Arkansas Bar No. 87087
Case No. CPC-2023-025

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Deric Smith.

1. William M. Howard (Howard) is licensed by the Supreme Court of Arkansas and has been assigned Arkansas Bar No. 87087.

2. Howard represented Deric Smith (Smith) at trial and Smith was convicted of Capital Murder and Battery in the First Degree and was sentenced to life without parole by sentencing order filed on February 24, 2022.

3. On March 12, 2022, Howard filed a Notice of Appeal.

4. Howard filed a Motion for Extension of Time to Tender Record/Transcript. Howard's Motion was granted, and the deadline was extended to September 12, 2022.

5. On November 1, 2022, OPC spoke to Howard by phone regarding Howard's failure to lodge the record, and failure to obtain another extension.

6. Howard told OPC that he tried several times, unsuccessfully, to electronically file the record.

7. On November 9, 2022, Howard filed a Motion for Rule on Clerk, admitting that the appeal has merit, that it was his first time to use eFlex electronic filing for an appeal, and that his attempts to lodge the record were repeatedly unsuccessful.

8. Howard's Motion was granted, and the record was lodged on December 20, 2022. Briefing commenced and Smith's brief was due on January 24, 2023.

9. On January 23, 2023, Howard filed a Motion for Extension of Time, which was granted, and Howard was given a new deadline of February 23, 2023.

10. Howard never filed a brief.

11. After the brief deadline passed, Smith began filing *pro se* motions to pursue the appeal. Smith submitted a motion that was returned by the Court unfiled in April 2023, and filed motions in May 2023, and June 2023.

12. On July 18, 2023, the State of Arkansas filed a Motion to Dismiss.

13. There is currently no decision on the State's Motion to Dismiss.

14. Information concerning prior disciplinary sanctions against an attorney is normally not divulged to the Committee until after a finding of misconduct has been made in the present complaint. Pursuant to Section 7.G of the Supreme Court Procedures Regulating the Professional Conduct of Attorneys at Law (Rev. 2002), information relevant for such purposes as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident (see Ark. R. Evid. 404(b)) may be divulged to the Committee prior to a finding of misconduct. William M. Howard was previously disciplined by the Committee in the cases listed below for conduct of a similar nature.

15. Howard's conduct in this matter is similar to Case No. CPC-2004-026, where Howard was found to have violated Rules 1.3, 3.4(c), and 8.4(d).

- a. In CPC-2004-026, Howard's client requested an appeal from a denial of a Rule 37 Petition. Howard did not file a notice of appeal. Howard's client filed a *pro se* Motion for Belated Appeal, which was granted, and Howard was directed to file a brief. After the brief deadline, Howard filed a Motion to File Belated Brief and Supplement Record. Howard's motion was denied, and Howard was directed to file a motion for rule on clerk. Howard filed a Motion for Rule on Clerk and admitted

responsibility for failure to timely file the brief and transcript. Howard's conduct resulted in a caution, a fine, and costs.

16. Howard's conduct in this matter is similar to Case No. CPC-2005-079, where Howard was found to have violated Rules 1.3 and 8.4(d).

- a. In CPC-2005-079, Howard represented a client in an appeal of a criminal conviction. Howard's Motion to Supplement the Record was granted. Howard's Motion for Extension of Time was granted. The State of Arkansas filed a Motion to Dismiss for failure to supplement the record and failure to file a brief, which was granted. Howard's conduct resulted in a reprimand, a fine, and costs.

17. Howard's conduct in this matter is similar to Case No. CPC-2005-103, where Howard was found to have violated Rules 1.1, 1.3, and 8.4(d).

- a. In CPC-2005-103, Howard was hired to represent a client in an appeal of a Murder in the First-Degree conviction. Briefing commenced and Howard was granted timely motions for an extension and a second (final) extension to file his brief. Howard tendered a brief that was rejected for errors and he filed a Motion for Time to Correct Brief. Howard tendered another brief that still contained errors and the court granted Howard's Motion to File Corrected Brief, with an order to show cause for why he should not be held in contempt for failure to comply. At the show cause hearing, Howard did not give a plausible justification and was held in contempt. Howard's conduct resulted in a reprimand and costs.

18. Howard's conduct in this matter is similar to Case No. CPC-2007-002, where Howard was found to have violated Rules 1.3 and 8.4(d).

- a. In CPC-2007-002, Howard represented a client to appeal a criminal conviction. Howard did not timely file the record and was requested to file a motion for rule on clerk. Howard's conduct resulted in a reprimand, a fine, and costs.
19. Howard's conduct in this matter is similar to Case No. CPC-2007-029, where Howard was found to have violated Rules 1.3 and 8.4(d).
- a. In CPC-2007-029, Howard represented a client to appeal a criminal conviction. Howard did not timely file the record and was requested to file a motion for rule on clerk. Howard's conduct resulted in a caution, a fine, and costs.
20. Howard's conduct in this matter is similar to Case No. CPC-2007-131, where Howard was found to have violated Rules 1.3, 3.4(c), and 8.4(d).
- a. In CPC-2007-131, Howard represented a client in a criminal matter in which the client was convicted of Capital Murder. Howard timely filed a notice of appeal and timely lodged the record. Howard's timely Motion for Extension of Time to file the brief was granted. Howard missed the deadline, and subsequently filed another Motion for Extension of Time, which was granted as a final extension. Howard never filed a brief and the State of Arkansas's Motion to Dismiss was granted. Howard's conduct resulted in a reprimand, a fine, and costs.
21. Howard's conduct in this matter is similar to Case No. CPC-2008-036, where Howard was found to have violated Rules 1.3 and 8.4(d).
- a. In CPC 2008-036, Howard represented a client after the denial of a Rule 37 Petition. Howard filed a Motion for Reconsideration, admittedly unaware that a reconsideration is not allowed under the rules. After no response to his motion, Howard was under the impression that it was deemed denied and attempted to appeal the denial of reconsideration. Howard untimely filed a Notice of Appeal of

the reconsideration denial and filed the record. Howard was timely granted an extension and a second (final) extension of time to file the brief. Howard filed the brief late and was advised he needed to file a motion for belated brief within ten (10) days. Over a month later, Howard filed a Motion to File Belated Brief. The State of Arkansas filed a Motion to Dismiss, and Howard untimely filed a response, and the State's Motion was granted on April 17, 2008. Howard's conduct resulted in a reprimand, a fine, and costs.

22. Howard's conduct in this matter is similar to Case No. CPC-2009-061, where Howard was found to have violated Rules 1.1, 1.3, and 8.4(d).

- a. Howard was disciplined again on a second attempt at appealing the Rule 37 Petition denial described in CPC-2008-036. In his continued attempt to appeal the denial, Howard filed a Motion for Rule on Clerk, and the court treated it as a Motion for Belated Appeal. Howard failed to file the motion within the eighteen (18) months following the order denying postconviction relief, and the motion for belated appeal was denied. Howard's conduct resulted in a four (4) month suspension that was stayed on the condition that Howard agree to one (1) year supervised probation, and costs.

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

- A. Rule 1.1 requires that a lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

The conduct of William H. Howard, as set forth in the formal complaint, violated Rule 1.1, to wit: Howard failed to lodge the record on time, admittedly due to his inability to use the eFile system. Howard did not seek help or explore other avenues to timely lodge the record. A lawyer should keep abreast of changes in the law and how it is practiced, including the use of technology.

B. Rule 1.3 requires that a lawyer shall act with reasonable diligence and promptness in representing a client.

The conduct of William H. Howard, as set forth in the formal complaint, violated Rule 1.3, to wit: Howard failed to lodge the record on time. After his untimeliness was forgiven, he failed to timely file a brief and/or ask for an extension of time to file a brief. There was no action by Howard on the case for over six (6) months since the brief was due.

C. Rule 3.4(c) requires that a lawyer shall not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists.

The conduct of William H. Howard, as set forth in the formal complaint, violated Rule 3.4(c), to wit: Howard is required under Rule 16 of the Arkansas Rule of Appellate Procedure—Criminal to continue to represent a convicted defendant throughout any appeal unless permitted to withdraw in the interest of justice. Howard's conduct fell well below the standard of representation, and he failed to meet his obligations.

D. Rule 8.4(d) provides that it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

The conduct of William H. Howard, as set forth in the formal complaint, violated Rule 8.4(d), to wit: Howard's conduct caused unreasonable delay in a resolution to Smith's appeal. Howard caused the Court to expend time and resources to consider Howard's motions and Smith's

pro se motions. Howard's conduct caused a motion to dismiss to be filed, which may result in a decision without considering the merits of the appeal.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel, that William H. Howard, Arkansas Bar Number 87087, be **SUSPENDED** for a period of **TWELVE (12) MONTHS** for his conduct in this matter, and assessed costs of \$150.00. In assessing Howard's sanction, his prior disciplinary record was a factor.

In addition, Section 9.C(1) of the Procedures provides that the failure to provide a written response to a formal complaint may result in the separate imposition of a sanction less than a suspension of license. The Panel imposes a separate sanction of **REPRIMAND** for Howard's failure to respond to the formal complaint.

The costs assessed herein totaling ONE HUNDRED AND FIFTY DOLLARS (**\$150.00**) 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

Mark Rees

Mark W. Rees, Panel Chair

12-27-2023

Date