

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

IN RE: **JOSH QUINCY HURST**

Arkansas Bar ID No. 2004016

CPC Docket No. 2012-054

CONSENT FINDINGS & ORDER

The formal charges of misconduct upon which this Consent Order is premised, involving respondent attorney Josh Quincy Hurst of Hot Springs, Arkansas, arose from information sent to the Committee on Professional Conduct by Donna “Tina” House of Hot Springs. Following Respondent’s receipt of the formal complaint, the attorney and his counsel entered into discussion with the Executive Director which has resulted in an agreement to discipline by consent pursuant to Section 20.B of the Arkansas Supreme Court Procedures Regulating Professional Conduct of Attorneys at Law (2011).

1. Donna C. “Tina” House (House) was a passenger in a vehicle driven by Frank Staggs (Staggs), her former spouse, which was involved in a motor vehicle accident in Hot Springs on January 5, 2007, in which House suffered injuries.

2. Staggs set up an appointment for them with the Hurst law firm, and House and Staggs met there with Josh Hurst (Hurst) in January 2007. House did not have a written fee agreement with Hurst or his firm, but Hurst told her his fee would be a percentage of any recovery. House signed a medical authorization form so Hurst could obtain her medical records. House thereafter operated on the understanding that Hurst was her attorney for the January 2007 accident matter. She was not informed that Hurst might also represent Staggs in the same matter as her claim.

3. After the initial meeting with Hurst, House began experiencing difficulties with her medical provider over insurance coverage. House called Hurst for assistance in the matter, but

her calls were not returned. House finally was able to set up a meeting with Hurst for September 2, 2008. Hurst assured House he would take steps to ensure that she continue receiving medical care, including calling Ms. House's treating physician. Hurst agreed to return her calls when she asked for his help.

4. After the September 2, 2008, meeting, House placed a call to Hurst for him to call her. Her call was not returned. Dissatisfied with Hurst, on September 12, 2008, House engaged Little Rock attorney Greg Kitterman to represent her in the 2007 accident matter. On the same date, House faxed a letter to Hurst informing Hurst she had employed Kitterman and stating she would be by the Hurst office to pick up a copy of her file. House appeared at the Hurst office on September 16, 2008, where she was presented with a document by which the Hurst firm was asserting a thirty percent attorney's fee lien in her matter. House was asked to sign the document in order to get a copy of her file. She refused to sign the lien and was not provided a copy of her file. House faxed a letter dated September 18, 2008, to Hurst asking him to tell her why he was not providing her the requested copy of her file.

5. House heard that a lawsuit had been filed in Garland County Circuit Court in her name. At the courthouse, House discovered that a lawsuit naming Frank Staggs and Donna House as plaintiffs had been filed by Josh Hurst on September 19, 2008, at 10:23 a.m. and the subject of the lawsuit was her accident in January 2007. When Hurst filed suit for Staggs and House in September 2008, he named "Jason Johns" as the sole defendant. The at-fault driver, Jason Johns, died in the collision in January 2007. Hurst did not take steps to name Johns' Estate as the defendant, or to have a special administrator for Johns' Estate appointed to be sued.

6. At no point after September 12, 2008, when House gave her notice of discharge and

employment of new counsel to Hurst did she ask him to continue his representation of her or request or assent to a lawsuit being filed by Hurst on her behalf.

7. At no time did House agree to be represented by Hurst while Staggs was also represented by Hurst in the same underlying matter. House may have had legal claims to assert against Staggs as the driver of the vehicle in which she was a passenger.

8. House's new attorney, Kitterman, faxed a letter dated October 14, 2008, to Hurst requesting certain information about Hurst's actions concerning the lawsuit filed in Garland County Circuit Court. Kitterman stated in his letter that he had called Hurst's office several times but had received no return calls. Hurst did not respond to the Kitterman letter.

9. Kitterman wrote to Hurst again on January 29, 2009, requesting certain information, specifically a complete copy of House's file, including medical bills and records, any documentation associated with the lawsuit field, and documentation of any offers that had been made on House's behalf. Hurst did not respond.

10. Kitterman also wrote Hurst on June 19, 24, and July 1, 2009, asking Hurst for a copy of the House file, as Kitterman was in the final stages of negotiating a settlement for her and wanted to be sure he had not missed any bills that might appear in the Hurst file. Kitterman finally got a copy of the House file from Hurst in July 2009.

11. In late July 2009, Kitterman settled House's claim with Farm Bureau for \$75,000. No fee was paid from her settlement to Hurst.

12. Examination of the court docket for the Staggs-House case shows it had no action by filings after Hurst filed the lawsuit in September 2008, until it was dismissed on January 12, 2010, for lack of activity, and on motion filed by Hurst.

Upon consideration of the formal complaint and attached exhibits, admissions made by the Respondent, the terms of the written consent, the approval of Panel B of the Committee on Professional Conduct, and the Arkansas Rules of Professional Conduct, the Committee on Professional Conduct finds:

A. Josh Hurst's conduct violated Rule 1.5(c) in that he agreed to represent Donna House on a contingent fee basis, yet he failed to reduce that agreement to writing as required by AR Rule 1.5(c). Rule 1.5(c) requires, in pertinent part, that a contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated.

B. Josh Hurst's conduct violated Rule 1.7(a)(2) in that on September 19, 2008, Hurst filed a lawsuit on behalf of Donna House and Frank Staggs, when there was a concurrent conflict of interest as defined in Rule 1.7(a)(2) of the Arkansas Rules of Professional Conduct between the legal interest of House, a passenger in the vehicle operated by Staggs, and Staggs, the driver. Rule 1.7(a)(2) requires that a lawyer not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

C. Josh Hurst's conduct violated Rule 1.16(d) in that Hurst failed to surrender to his former client, Donna House, or her new attorney Greg Kitterman, papers and property to which

she was entitled, and especially a copy of her file, from September 2008, when the first request for the file was made, until July 2009. Rule 1.16(d) requires 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, in accordance with the consent to discipline presented by Josh Hurst and the Executive Director, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct that Respondent **JOSH QUINCY HURST**, Arkansas Bar No. 2004016, be, and he hereby is, **CAUTIONED** for his conduct in this matter and assessed \$100.00 costs. 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:/s/ Stephen R. Crane, Chairperson, Panel B

Date: August 15, 2014

Original filed with the Arkansas Supreme Court
Clerk on August 15, 2014.