

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

IN RE: **JUSTIN BYRUM HURST**
 ARKANSAS BAR ID #2005021
 CPC Docket No. 2014-026

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information related to Justin Byrum Hurst's representation of Kristin Kuelbs in the matter of *Kristin Kuelbs, Donald Hill, and Edwardena Hill v. Kimberly Hill*, CA 09-1326, and the Opinion issued by the Arkansas Court of Appeals in this matter. Mr. Hill, in addition to being licensed in Arkansas, is also licensed in Nevada, California, and Minnesota.

1. In 2007, Donald Hill moved his mentally ill sister Kristin Kuelbs to Garland County, Arkansas. His other sister, Kimberly Hill, then filed a Petition to be appointed as guardian in the Garland County Circuit Court Probate Division.

2. Mr. Hill initially hired Attorney Justin Hurst to represent himself and his wife Edwardena Hill. At some point he also hired Mr. Hurst to represent his sister Kristin. During the pendency of the case, Kristin was appointed several guardians, including at one point Mr. Hill, who was later removed by court order. On March 21, 2008, the probate court entered an order recusing Mr. Hurst and his law firm as Kristin's attorney. Mr. Hurst was allowed to continue his representation of Mr. Hill and his wife.

3. On April 9, 2009, Mr. Hurst, along with Mr. Hill, filed a Notice of Appeal on behalf of Mr. Hill, his wife, and Kristin. They were appealing any and all orders entered between March 5, 2009, and April 9, 2009. On September 8, 2009, Mr. Hurst, along with Mr. Hill, filed another Notice of Appeal, appealing all orders entered in the probate case since April 9, 2009. On

September 9, 2009, Mr. Hurst, along with Mr. Hill filed another Notice of Appeal, making corrections to the notice filed on September 8.

4. This appeal is one of five appellate opinions filed in the probate matter. The opinion arises from an issue raised in the third appeal, specifically the probate court's orders entered on March 26, 2009, April 2, 2009, and April 24, 2009. The argument raised by appellants was that the orders were entered erroneously and without hearing or notice.

5. The Court of Appeals ruled that it had no jurisdiction to hear an appeal of the April 24, 2009, order as the appeal was not timely filed. The two remaining orders were timely appealed, however the court ruled that the argument was raised for the first time on appeal and the court does not address arguments raised for the first time on appeal.

6. All appeals in the probate case were filed by Mr. Hurst and/or Donald Hill on behalf of Mr. Hill, Edwardena Hill, and Kristin Kuelbs. In the October 26, 2011, opinion, the Court of Appeals took the opportunity to address Mr. Hurst's representation of Kristin. Despite having been recused, Mr. Hurst persisted in filing pleadings and appeals on Kristin's behalf.

7. The Court of Appeals found that the notices of appeal in the case filed in April and September 2009, were filed long after the recusal order removing Mr. Hurst as Kristin's attorney had been entered. There is no record of orders entered in the probate court reinstating Mr. Hurst as Kristin's attorney, nor is there any authority by Kristin's guardian, Kimberly Hill, for Hurst to file appeals on Kristin's behalf.

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

A. That Justin Byrum Hurst's conduct violated Rule 1.7(a)(1) when after being recused by court order as attorney for Kristin, Mr. Hurst persisted in filing appeals on Kristin's behalf,

while at the same time still representing Mr. Hill and his wife. Arkansas Rule 1.7(a)(1) states that except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if the representation of one client will be directly adverse to another client.

B. That Justin Byrum Hurst's conduct violated Rule 1.7(a)(2) when after being recused by court order as attorney for Kristin, Mr. Hurst persisted in filing appeals on Kristin's behalf, while at the same time still representing Mr. Hill and his wife. Arkansas Rule 1.7(a)(2) states that except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if there is 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. That Justin Byrum Hurst's conduct violated Rule 1.14(b) when (a) Mr. Hurst, aware of Kristin Kuelbs' mental incapacity, persisted in representing Kristin by filing appeals on her behalf despite being recused by court order, and (b) he failed to consult with or obtain authority from Kristin's legally appointed guardian, Kimberly Hill, to file the appeals in the case.

Arkansas Rule 1.14(b) states in part, when a lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial, or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take actions to protect the client....

D. That Justin Byrum Hurst's conduct violated Rule 1.16(a)(1) when after Mr. Hurst was recused as Kristin's attorney by probate court order entered March 21, 2008, he persisted in

filing appeals on Kristin's behalf. Arkansas Rule 1.16(a)(1) states that except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if the representation will result in violation of the Rules of Professional Conduct or other law.

E. That Justin Byrum Hurst's conduct violated Rule 1.16(a)(3) when Mr. Hurst persisted in filing appeals on Kristin's behalf in violation of the probate court order of March 21, 2008, recusing him as her attorney. Arkansas Rule 1.16(a)(3) states that except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if the lawyer is discharged.

F. That Justin Byrum Hurst's conduct violated rule 8.4(c) when Mr. Hurst persisted in filing appeals on Kristin's behalf in violation of the March 21, 2008, probate court order recusing him as her attorney, thus misrepresenting his relationship with Kristin. Arkansas Rule 8.4(c) states that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

G. That Justin Byrum Hurst's conduct violated Rule 8.4(d) when despite the probate court's March 21, 2008, order recusing Mr. Hurst as Kristin's attorney, Mr. Hurst continued to file appeals on Kristin's behalf in clear violation of the probate court's order. Arkansas Rule 8.4(d) states that it is professional misconduct for a lawyer to 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 A, that Justin Byrum Hurst, Arkansas Bar ID#2005021, be and hereby is, **CAUTIONED** for his conduct in this matter. In assessing a sanction, Mr. Hurst's prior disciplinary record was a factor. Pursuant to Section 18.A of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys

at Law (2011). Mr. Hurst is assessed the costs of this proceeding in the amount of FIFTY DOLLARS (\$50.00). The costs of \$50.00 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 A

By:/s/ Danyelle J. Walker, Chair, Panel A

Date: October 2, 2014

Original filed with the Arkansas Supreme Court on
October 29, 2014.