

WESTERN CARROLL COUNTY
AMBULANCE DISTRICT
(aka WCCAD); Bayard Biosat, Jack Faulkner,
and William W. Woodward, in Their Official Capacities as
Commissioners of WCCAD;
City of Eureka Springs, Arkansas;
Carroll County, Arkansas; Carolyn Williams,
Phillip Jackson, Kay Phillips, Cindy Vowell,
and Shirley Doss, In Their Official
Capacities as Assessor, County Judge,
Collector, Treasurer, and Clerk for
Carroll County, Arkansas v.
C. Rodney JOHNSON, Leonard R. Fowler,
and Marvin D. Hoffman

00-1271

42 S.W.3d 495

Supreme Court of Arkansas
Opinion delivered May 8, 2001

1. APPEAL & ERROR — MOTION TO FILE BELATED BRIEF — SUPREME COURT'S DISCRETION. — Unlike the requirement for timely filing a record, the supreme court has discretion to consider the belated filing of a brief tendered late.
2. APPEAL & ERROR — MOTION TO FILE BELATED BRIEF — GRANTED. — Noting that appellee's motion to file belated brief

was filed before the case was taken under submission by the supreme court and that opposing counsel did not object to the belated filing but that counsel for appellee made no inquiries concerning the case from the time appellee's brief was due until the motion for a belated submission of the brief was tendered, the supreme court granted the motion and directed that a copy of the *per curiam* be forwarded to the Committee on Professional Conduct.

Motion to File Belated Brief; granted.

John Casteel, Prosecuting Att'y, for appellants.

Oscar Stilley, for appellees.

PER CURIAM. On February 8, 2001, appellants timely filed their brief in this matter. Under Ark. Sup. Ct. R. 4-4(b), appellee had thirty days from February 8, 2001, to file his brief with this court. According to counsel for appellee, he attempted to mail his brief on March 5, 2001, but the brief was sent to a mail recovery center in Atlanta, Georgia. Once the mistake was discovered, he filed a motion for belated brief on May 2, 2001, and he also tendered appellee's brief on that date. In his motion, counsel for appellee states that appellants' counsel, Mr. John Casteel, acknowledged timely receipt of appellee's brief and authorized appellee's attorney to state that Mr. Casteel has no opposition to the court allowing the belated filing of the brief.

[1] Unlike the requirement for timely filing a record, as discussed in *Ortho-Neuro Medical Assoc. v. Jeffery*, 343 Ark. 466, 37 S.W.3d 577 (2001), the court has discretion to consider the belated filing of a brief tendered late. We note that the motion was filed before the case was taken under submission by this court, and that opposing counsel does not object to the belated filing.

[2] Arkansas Supreme Court Rule 4-4(b) clearly states that appellee's brief is due thirty days after the filing of appellant's brief. Counsel made no inquiries concerning this case from the time his brief was due until the motion for a belated submission of the brief was tendered on May 2, 2001. Therefore, a copy of this *per curiam* will be forwarded to the Committee on Professional Conduct. See *Board of Trustees v. Stodola*, 326 Ark. 581, 931 S.W.2d 443 (1996).

Motion granted.