

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL A

IN RE: IAN J. GILBERT

Arkansas Bar ID # 2003012

CPC Docket No. 2006-113

FINDINGS & CONSENT ORDER OF DISCIPLINE

The formal charges of misconduct upon which this Consent Order is premised, involving respondent attorney Ian Gilbert of Washington County, Arkansas, arose from information brought to the attention of the Committee on Professional Conduct by Glenn Wandrey. Following Respondent Attorney's receipt of the formal complaint, the attorney 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 (2002).

Judy Etchison Wandrey retained Ian Gilbert's services in May of 2003 to file a petition for modification of custody and relocation. Following a hearing on August 17, 2004, the Boone County Circuit Court issued a order denying Wandrey's petition and awarding her ex-husband full custody of the parties' minor son. Wandrey sought to appeal and paid Gilbert \$6000 to file her appeal.

On August 20, 2004, Gilbert faxed a Notice of Appeal to the Boone County Circuit Clerk. The Notice of Appeal stated that the appeal was taken from the August 17, 2004, ruling and designated the entire record of the trial. The fax cover sheet asked the clerk to file the Notice of Appeal, and noted that a self-addressed, stamped envelope would follow via U.S. Mail for the return of the file-marked copy. A "message confirmation" indicated that the fax was sent and received without problem on August 20, 2004.

Gilbert never received a file-marked copy in the return envelope nor did he inquire with the clerk as to why it had not been received. For unknown reasons, the August 20, 2004, Notice of Appeal was never file-marked by the clerk's office. Gilbert was not made aware of this problem until November 18, 2004. He immediately filed a "Rule 60 Motion to Correct Misprision of Clerk and Amended Notice for Extension of

Time to Lodge Transcript.” In this motion, Gilbert requested the court to enter an order directing that the Notice of Appeal be entered *nunc pro tunc* to reflect that the notice was received and filed as of the date faxed, in order to correct the “clerical error” of not filing the notice. The court issued an Order on that same date denying the request for the *nunc pro tunc* order, indicating in part that, in addition to the fact that the clerk had not received the faxed copy of the Notice of Appeal, there was no evidence that the original copy of the notice had ever been received by that office. Gilbert thereafter filed a Motion for Rule on the Clerk in the Arkansas Supreme Court; that Motion was denied by Per Curiam Order issued January 13, 2005. Further, the Arkansas Supreme Court delivered an Opinion on June 23, 2005, in No. 05-43, finding that the Boone County Circuit Court did not abuse its discretion in denying the motion to enter a *nunc pro tunc* order.

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

A. Mr. Gilbert’s conduct violated Rule 1.2(a) in that he failed to perfect an appeal on behalf of Judy Wandrey. Model Rule 1.2 (a) requires that a lawyer abide by a client’s decisions concerning the objectives of representation.

B. Mr. Gilbert’s conduct violated Rule 1.3 in that he failed to verify that a timely Notice of Appeal was filed on behalf of Judy Wandrey. Model Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

C. Mr. Gilbert’s conduct violated Rule 8.4(d) in that the failure to timely file the Notice of Appeal prejudiced the administration of justice by denying Judy Wandrey the right to an appeal. Model 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.

WHEREFORE, in accordance with the consent to discipline presented by Ian Gilbert and the Executive Director, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct that Respondent **IAN J. GILBERT**, Arkansas Bar No. 2003012, be, and hereby is, **CAUTIONED** for his conduct

in this matter and assessed Committee costs of \$50.00. 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 with 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 _____
Phil Hout, Chairperson

Date _____