

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

IN RE: GENE MCKISSIC

ARKANSAS BAR ID #76075

CPC DOCKET No. 2001-044

**FINDINGS AND ORDER**

The formal charges of misconduct arose from the Arkansas Supreme Court case of Brian Gooden v. State of Arkansas, CR 2000-845. Gene McKissic, an attorney practicing law in Pine Bluff, Arkansas, represented Brian Gooden in 1995 in a matter involving the revocation of Mr. Gooden's probation. On October 24, 1995, a judgment was entered reflecting that Mr. Gooden's term of probation had been revoked and he was sentenced on four felony offenses to six years' imprisonment. Mr. McKissic filed a timely notice of appeal from the judgment on October 26, 1995. The time to lodge the appeal record was extended to May 24, 1996. The appeal was not, however, perfected.

On July 19, 2000, Brian Gooden filed a *pro se* Motion for Belated Appeal. The Motion stated that Mr. McKissic filed a timely Notice of Appeal. According to Mr. Gooden, he requested the return of money used to post bond in another case and Mr. McKissic told Gooden that he would have to sign a blank document if he wanted the refund. Gooden later discovered that document he signed was attached to a Motion to Withdraw Appeal. The partial record which was filed by Mr. McKissic on May 3, 1996, reflected that a Motion to Withdraw Appeal was filed but did not contain an order dismissing the appeal. It additionally contained an amended judgment entered on August 29, 1996, which made unclear the disposition of the charges for which Gooden's probation was revoked in 1995. The Arkansas Supreme Court on November 30, 2000, issued a Per Curiam Opinion referring the matter to the Circuit Court of Jefferson County for an evidentiary hearing on the issue of whether there was an order entered dismissing the appeal of the original judgment, the effect of the amended judgment, and whether the original judgement had been executed on before the amended judgment was entered.

At an evidentiary hearing in Jefferson County Circuit Court, Mr. McKissic conceded that no order dismissing the appeal had been entered. It was also determined that the amended judgment entered in 1996 pertained to a separate offense that Gooden had committed in 1996, not the 1995 revocation of probation. The findings of the Jefferson County Circuit Court were submitted to the Arkansas Supreme Court and, on March 22, 2001, the Supreme Court issued a Per Curiam Order finding that as there was no order dismissing the appeal or otherwise relieving attorney McKissic from his obligation to perfect the appeal of the 1995 revocation of probation and that Mr. McKissic was obligated to lodge the record in the appellate court and continue his representation of Gooden until such time as the appellate court relieved him pursuant to Ark. Sup. Ct. R. 4-3(j)(1). The Court thereupon referred the matter to the Committee on Professional Conduct.

On April 20, 2001, Mr. McKissic was served with a copy of the formal complaint and advised that he had twenty (20) days from the date of receipt in which to respond to Complaint. No timely response was received from Mr. McKissic. On June 6, 2001, Mr. McKissic filed an untimely response. In his untimely response, Mr. McKissic offered that Mr. Gooden signed off on a Motion to Withdraw Appeal in exchange for an agreement to reduce Mr. Gooden's sentence from six (6) years to four (4) years. Mr. McKissic admitted that no order was entered permitting the withdrawal of the appeal but an amended judgment and commitment order was entered and disposed of the matter. Mr. McKissic attributed this to an oversight. The untimely response was submitted to the Committee for whatever consideration it chose to give to the untimely response.

Upon consideration of the formal complaint, the untimely response herein, and the Arkansas Model Rules of Professional Conduct, the Committee on Professional Conduct finds:

1. That Mr. McKissic's conduct violated Model Rule 1.3 when he failed to file in a timely manner with the Arkansas Supreme Court the record of the lower court proceedings on behalf of Brian Gooden, his client, as he had filed a Notice of Appeal and was not relieved as counsel by an appellate court. Model Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.
2. That Mr. McKissic's conduct violated Model Rule 8.4(d) when his failure to file in a timely manner the record with the Supreme Court resulted in a delay in the orderly and timely resolution of appellate proceedings, and when his failure to timely file his client's record required the Court to expend additional time and effort which would not have been necessary otherwise. Model Rule 8.4(d) requires that a lawyer not 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 that GENE MCKISSIC, Arkansas Bar ID No. 76075, be, and hereby is, REPRIMANDED for his conduct in this matter.

ARKANSAS SUPREME COURT COMMITTEE

ON PROFESSIONAL CONDUCT

By: \_\_\_\_\_

Bart Virden

Chairman

Date: \_\_\_\_\_