

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

PANEL B

IN RE: JOHN FRANK GIBSON, JR.

ARKANSAS BAR ID #66021

CPC DOCKET NO. 2002-034

**FINDINGS AND ORDER**

The formal charges of misconduct arose from the Arkansas Supreme Court case of Lee Charles Lewis v. State of Arkansas, CR 2001-1327. Lee Charles Lewis was found guilty of Possession of Controlled Substances and sentenced to ten (10) years in the Arkansas Department of Correction. John Frank Gibson, Jr., Attorney at Law, Monticello, Arkansas, represented Lee Charles Lewis on appeal to the Arkansas Supreme Court. The transcript was due to be filed on or before December 1, 2001. On December 5, 2001, Gibson filed a Motion for Rule on the Clerk. Gibson stated in his motion that he sent the transcript via UPS and that UPS assured him that the transcript would arrive at the Supreme Court Clerk's Office in a timely manner. The package containing the transcript did not arrive at the Clerk's office prior to the expiration of the time for filing the transcript. On January 17, 2002, the Arkansas Supreme Court denied the Motion for Rule on the Clerk in a Per Curiam Opinion. In the Per Curiam Order, the Court stated that Mr. Gibson did not admit fault on his part and, therefore, the motion must be denied. On January 29, 2002, Mr. Gibson filed a second Motion for Rule on the Clerk. In the second motion, Mr. Gibson accepted responsibility for not timely filing the transcript. The Arkansas Supreme Court granted the second Motion for Rule on the Clerk on February 14, 2002, and referred the matter to the Office of Professional Conduct.

For his response, Mr. Gibson offered that the conduct was caused by institutional delays beyond his control. Mr. Gibson stated that he received the transcript three days prior to the deadline for it to be filed. Upon receipt of the transcript, he shipped it to the Arkansas Supreme Court Clerk via UPS and was assured that the package containing the transcript would be delivered timely. Mr. Gibson called the Supreme Court Clerk's office to confirm receipt of the transcript but was informed that the package was not delivered. Mr. Gibson thereafter called UPS to check on the status of the package and was told that the package had been placed on the truck for delivery. Mr. Gibson got in his car and, with a copy of the transcript, drove from Monticello to Little Rock to file a copy of the transcript. Mr. Gibson did not arrive at the Supreme Court Clerk's Office until after the close of business. Mr. Gibson asserted that the carelessness on the part of UPS was unforeseeable and was not the type of conduct that should be imputed to its customers. Mr. Gibson stated that an attorney should not be required to ignore his responsibilities to other clients in order to be "overly diligent" to one client.

Upon consideration of the formal complaint, Mr. Gibson's response, and the Arkansas Model Rules of Professional Conduct, the Committee on Professional Conduct finds:

1. That Mr. Gibson's conduct violated Model Rule 1.3 when he failed to file in a timely manner with the Arkansas Supreme Court, a transcript of the lower court proceedings on behalf of his client, Charles Lee Lewis. Model Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.
3. That Mr. Gibson's conduct violated Model Rule 8.4(d) when his failure to file a timely transcript of the lower court proceedings resulted in a delay to the orderly and timely resolution of appellate proceedings, and 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 JOHN FRANK GIBSON, JR., Arkansas Bar ID No. 66021, be, and hereby is, CAUTIONED for his conduct in this matter. Pursuant to Section 18B of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law, JOHN FRANK GIBSON, JR., is fined the sum of \$1000.00, which is to be paid within thirty (30) days of the filing of this Order with the Arkansas Supreme Court Clerk.

ARKANSAS SUPREME COURT COMMITTEE

ON PROFESSIONAL CONDUCT - PANEL B

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

Richard Hatfield, Chair - Panel B

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