

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

IN RE: JOHN FRANK GIBSON, JR., Respondent
 Arkansas Bar ID#66021
 CPC Docket No. 2004-123

CONSENT FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Mr. Gibson, the Respondent, on February 11, 2004. The information related to the representation of Joe Lee Bennett by Respondent in 2003 and 2004.

On July 21, 2004, Respondent was served with a formal complaint, supported by the information contained in his self-referral and additional information obtained from the Circuit Clerk of Drew County, Arkansas. A response was filed. The Respondent and the Executive Director negotiated a discipline by consent proposal, which was submitted to this Panel.

The information before the Panel reflected that John Frank Gibson, Jr., an attorney practicing primarily in Monticello, Arkansas, represented Joe Lee Bennett in his criminal proceeding in Drew County, Arkansas. Mr. Bennett was convicted of possession of methamphetamine with intent to deliver on May 30, 2003. According to Mr. Gibson's self-referral, he immediately prepared a Notice of Appeal. However, it was not filed at the time it was prepared because of other post-conviction matters which were occurring.

The Judgment and Commitment Order related to Mr. Bennett was filed on July 21, 2003. The Notice of Appeal was not filed within thirty (30) days following the entry of the Judgment nor was the transcript ordered from the Court Reporter. Mr. Gibson advised that he did not discover this fact until February 10, 2004. Mr. Gibson advised in his self-referral that he took full responsibility for the failure to file the Notice of Appeal and also averred that he would be seeking a belated appeal on Mr. Bennett's behalf.

The docket sheet on file with the Drew County Circuit Clerk reflects that Mr. Gibson filed no other pleadings on his client's behalf following the filing of the Notice of Appeal. There has been no Motion filed seeking to extend the time for filing the record in the criminal appeal which Mr. Gibson was to pursue on Mr. Bennett's behalf.

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

1. That Mr. Gibson's conduct violated Model Rule 1.1 when he was not thorough enough in his representation of Mr. Bennett to be certain that he filed a timely Notice of Appeal on Mr. Bennett's behalf from his criminal conviction out of Drew County Circuit Court and when he was not thorough enough in his representation of Mr. Bennett to pursue a Motion for Belated Appeal on Mr. Bennett's behalf in an effort to seek his right to appeal of his criminal conviction for which he was sentenced to twelve (12) years in the Arkansas Department of Correction. Model Rule 1.1 requires that a lawyer provide competent representation to a client, including the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.
2. That Mr. Gibson's conduct violated Model Rule 1.3 when he failed to file a Notice of Appeal on Mr. Bennett's behalf within thirty (30) days of entry of Mr. Bennett's Judgment and Commitment Order; when he failed to file the record in Mr. Bennett's appeal within ninety (90) days of the date of filing the Notice of Appeal; when he failed to obtain an Order extending the time for filing Mr. Bennett's record on appeal; and, when he failed to file a Motion to Seek a Belated Appeal on Mr. Bennett's behalf despite having acknowledged the error with regard to filing the Notice of Appeal was his and not that of his client. 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) because his failure to timely file his client's record with the Supreme Court or to obtain a timely Order Extending the Time to File the Record on appeal caused Mr. Bennett to be deprived of a timely appellate review of his criminal conviction. 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, acting through its authorized Panel B, that JOHN FRANK GIBSON, JR., Arkansas Bar ID# 66021, be, and hereby is, REPRIMANDED for his conduct in this matter. Further, pursuant to Section 18.A of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law (2002) (Procedures), Mr. Gibson is assessed the cost of this proceeding in the amount of \$50. Pursuant to Section 18.B of the Procedures, Mr. Gibson is ordered to pay a fine in the \$1500. The costs assessed and fine imposed 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 B

By:

J. Michael Cogbill, Chair, Panel B

Date: _____