

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

**IN RE: JOHN FRANK GIBSON, JR., Respondent**  
**Arkansas Bar ID#66021**  
**CPC Docket No. 2005-147**

**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 Cindy Forrest in an Affidavit dated November 9, 2005. The information related to the representation of Mark and Phyllis Hunt by Respondent in 2004 and 2005.

On November 21, 2005, Respondent was served with a formal complaint, supported by affidavit from Ms. Forrest. 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 Committee reflected that Ms. Forrest is the President of Monticello Pools, Inc. Monticello Pools, Inc. is a recreational association located in a subdivision in Drew County with the purpose of owning and maintaining a swimming pool for the residents of a certain subdivision. John Frank Gibson, Jr., an attorney practicing primarily in Monticello, Arkansas, filed a lawsuit for Mark and Phyllis Hunt in the County Court of Drew County seeking an easement from lands owned by Mr. and Mrs. Hunt, lying north of the swimming pool, through the small lot owned by Monticello Pools. The Hunts had previously gained access to their lands through lands of another adjacent owner, but became landlocked and wanted a route through the property of Monticello Pools which would better suit plans to develop their property.

At the first hearing on the matter, Drew County Judge Damon Lampkin decided that "viewers" should be appointed to review the property. The viewers were then appointed pursuant to Court Order. On August 17, 2004, the viewers were sworn in and went to the area to view the situation. The viewers were to consider both the requested route and any other route which they believed would be better for the purpose of providing access and which would create the least inconvenience to all persons involved. While viewing the area, the viewers were permitted to question counsel for both parties in the presence of the other counsel and to request additional information as they thought appropriate.

Following the initial viewing, Ms. Forrest believed that the viewers had agreed that the route requested was too burdensome compared to an alternate route. Shortly after the viewing took place, Ms. Forrest received notice from her attorney David Hoffman that the report of the viewers had been submitted and found that the easement should go through the pool area. After the report was submitted, it was discovered that Mr. Gibson had been contacted by one of the viewers without notice to Mr. Hoffman.

Mr. Hoffman filed a Motion with the Court and requested a hearing about the contact by Mr. Gibson with the viewers. During the hearing, which transcript was provided to the Committee members for consideration in the formal disciplinary matter, Mr. Smith, one of the viewers, testified that he initially contacted Mr. Gibson to find out what the viewers should do next. Mr. Gibson did not advise Mr. Smith to contact the Court or Mr. Hoffman as well as Mr. Gibson. Mr. Gibson's support staff prepared the report for submission by the viewers. Mr. Gibson did not solicit any viewer to have ex parte discussion with him, rather Mr. Smith sought out Mr. Gibson to get the report typed reflecting the decision of the viewers. According to Mr. Gibson, he believed he was acting as an officer of the Court in allowing his office staff to assist the viewers in reducing their recommendation to writing, a purely administrative or ministerial matter. Mr. Gibson had no contact with any of the other viewers in this matter. He did notice in the report which his secretary typed that there was no valuation in the report for compensation due to the landowner so he advised that the viewers needed to make a recommendation on that amount and gave Mr. Smith the accessor's card from his file.

The presiding Judge found that the Motion filed by Mr. Hoffman should be granted but he made no award of sanctions. Judge Lampkin set aside the initial report and directed new viewers be appointed, with a new report to be prepared.

The subsequent report was not in favor of Monticello Pools. The Circuit Court dismissed the appeal of Monticello Pools.

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 A of the Arkansas Supreme Court Committee on Professional Conduct finds:

1. That Mr. Gibson's conduct violated Model Rule 8.4(d) because his conduct in communicating with the court appointed viewer in an ex parte manner about the subject matter of the proceeding he brought on behalf of his clients created the need for additional pleadings, hearing and appointment of new viewers before the tribunal where the proceeding was being pursued. Such actions would not have become necessary but for his ex parte communication with the court appointed viewer. 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 A, that JOHN FRANK GIBSON, JR., Arkansas Bar ID# 66021, be, and hereby is, CAUTIONED 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), Mr. Gibson is ordered to pay costs in the amount of \$100. Mr. Gibson is also ordered to pay a fine in the amount of \$1000, pursuant to Section 18.B. of the Procedures. The costs assessed herein and the fine imposed shall be paid in the form of a money order or cashier's check made payable to the Office of Professional Conduct and delivered to the Office of Professional Conduct within thirty (30) days of the filing of this Findings and Order with the Clerk of the Arkansas Supreme Court.

ARKANSAS SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT - PANEL A

By: \_\_\_\_\_  
Phil D. Hout, Chair, Panel A

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

