

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL A

FILED

IN RE: JOHN FRANK GIBSON, JR., Respondent
Arkansas Bar ID#66021
CPC Docket No. 2008-038

NOV 24 2008

**LESLIE W. STEEN
CLERK**

CONSENT FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee in a referral by the Arkansas Supreme Court. The information related to the representation of Randolph Morris by Respondent in 2007 and 2008.

On May 15, 2008, Respondent was served with a formal complaint, supported by pleadings and Orders filed with the Arkansas Supreme Court in the matter of *Randolph Morris v. State of Arkansas*, CR08-298. Respondent filed a timely response and the matter proceeded to ballot vote before Panel B of the Committee, pursuant to the provisions of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law. (2002). Thereafter Respondent was served with notice of the decision of that Panel and requested a public *de novo* hearing. Prior to the time for hearing, Respondent and the Executive Director negotiated a discipline by consent proposal, which was submitted to this Panel.

The information before the Committee reflected that John Frank Gibson, an attorney practicing primarily in Monticello, Arkansas, represented Randolph Morris in his criminal proceeding in Ashley County, Arkansas. On July 17, 2007, Mr. Morris was convicted of possession with intent to deliver and fleeing. Mr. Gibson filed the Notice of Appeal on the same day the Judgment was entered against his client. Thereafter Mr. Gibson obtained an extension of time to file the record on appeal. The Order was filed in a timely fashion. However, the date for the

extension was past the seven (7) months allowed by Court rule. An extension was only permitted by court rule through February 17, 2008, not the March 2, 2008, the Order appeared to grant. Mr. Gibson tendered the record to the Clerk of the Court on March 3, 2008. Thereafter, Mr. Gibson was notified by the Clerk that he needed to file a Motion for Rule on the Clerk.

Mr. Gibson filed a Motion for Rule on the Clerk on March 6, 2008. In his Motion, Mr. Gibson stated that the Clerk was in error for refusing to accept the record. Mr. Gibson offered that the Judgment being appealed was the Judgment entered on August 2, 2007, not the one entered on July 17, 2007. Mr. Gibson also explained that he filed an Amended Notice of Appeal on August 21, 2007, which specifically set out the Judgment from which he was appealing.

The Court delivered an Opinion on April 10, 2008, granting the Motion for Rule on the Clerk. In the Per Curiam, the Court explained that the Amended Judgment was entered to amend the error in the first Judgment which set out that Mr. Morris was being transferred to the Department of Community Punishment. There was no other change to the Judgment. The Court found that the Clerk properly refused the record because it was tendered outside the time for docketing the case based on the date the original Judgment was entered.

The Court also set out that the Amended Judgment was only to correct the clerical error concerning Mr. Morris being transferred to the Department of Community Punishment. In addition, the Court explained that both the original notice of appeal and the amended notice of appeal state that Appellant is appealing from the Judgment in favor of the State. As such, the original Judgment is that from which the appeal is taken. Based on this fact, the time period for filing the record expired on February 18, 2008. Mr. Gibson's tendering of the record on March 3, 2008, was untimely.

Mr. Gibson did not admit fault in the Motion. The Court, however, found that Mr. Gibson's fault was clear from the record.

On April 18, 2008, Mr. Gibson filed a Motion for Reconsideration. In the Motion, Mr. Gibson set out that his misinterpretation of the rules was attributable to circumstances which might not be clear from the record. The Court denied the Motion for Reconsideration on May 8, 2008.

In responding to the formal disciplinary complaint, Mr. Gibson admitted representing Mr. Morris in his criminal proceeding. He explained that before he filed the Motion to Extend the Time to file the Record on Appeal (at the Court Reporter's request), he received an amended judgment. After receiving the Amended Judgment, Mr. Gibson reported that out of an abundance of caution, he filed an Amended Notice of Appeal. He also changed the designation of the judgment on appeal from the one filed on July 17, 2007, to the one entered August 2, 2007. Mr. Gibson explained that he incorrectly misconstrued Rule 5(b)(2) to mean the judgment being appealed and not the judgment subject to the first notice of appeal. When Mr. Gibson tendered the record to the Clerk for filing, he was advised that it was untimely because the amended judgment did not change the sentence imposed by the original judgment. Mr. Gibson explained that prior to the Court's Per Curiam referring him to the Committee and granting his Motion for Rule on the Clerk, he was unaware of any case that interpreted Rule 5(b)(2) as being applicable to the judgment identified in the first notice of appeal and inapplicable to certain types of amended judgments. Mr. Gibson said he would have readily admitted his fault had he been aware of any such cases.

Upon consideration of the formal complaint and attached exhibit materials, 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. Mr. Gibson's conduct violated Rule 1.1, when he was not thorough enough in his representation of Mr. Morris to be certain that he obtained an Order which properly set out the allowable time for an extension to file the record with the appellate court and when he was not thorough enough in his representation of Mr. Morris to be certain he filed the record on appeal within the time allowed by Court rule. 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. Mr. Gibson's conduct violated Rule 8.4(d), because his failure to timely file his client's record with the Supreme Court Clerk required the Court to expend additional time and effort which would not have been necessary otherwise in order to consider the Motion for Rule on the Clerk and then his Motion for Reconsideration. 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. In addition, pursuant to Section 18.B of the Procedures, Mr. Gibson is fined in the amount of \$1500. Mr. Gibson is also assessed the costs of this proceeding in the amount of \$50. The fine and costs assessed herein, totaling \$1550, 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 A

By: Steven Shults
Steven Shults, Chair, Panel A

Date: November 24, 2008