

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

**PANEL B**

IN RE:           JOHNNY E. GROSS, Respondent  
                  Arkansas Bar ID#95156  
                  CPC Docket No. 2003-131

**FINDINGS AND ORDER**

The formal charges of misconduct upon which this Findings and Order is based arose from information contained in the Orders of the Arkansas Court of Appeals in the appellate matter of *Alvie Leon Phillips v. State of Arkansas*, CACR 03-12. This information related to the representation of Alvie Leon Phillips by Respondent in the attempted appeal of the judgment out of Washington County Circuit Court, Case No. CR-2002-596-1.

On October 7, 2003, Respondent was served with a formal complaint, supported by the Orders of the Arkansas Court of Appeals. A timely response was submitted by Respondent pursuant to Section 9 of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law (2002).

The information considered by the Committee, acting through Panel B, disclosed that on December 27, 2002, Johnny E. Gross, an attorney practicing in Bentonville, Arkansas, mailed to the Clerk of the Arkansas Supreme Court and Court of Appeals, the record to be filed in the matter of *Alvie Leon Phillips v. State of Arkansas*. The record was received on December 30, 2002. On that same date, a Deputy Clerk contacted Mr. Gross and advised him that he had failed to include the filing fee necessary to lodge the record. Mr. Gross mailed the filing fee that day. The brief was due to be filed by Mr. Gross on or before February 10, 2003. On February 7, 2003, Mr. Gross obtained a seven day Clerk's extension until February 17, 2003, to file the brief. No brief was filed on or before that date. Mr. Gross did not request any additional extension of time to file a brief. At no time did Mr. Gross notify anyone that the appeal was not to be pursued. On April 2, 2003, the State of Arkansas, through David R. Raupp, Assistant Attorney General, filed a Motion to Dismiss the appeal. Mr. Gross did not respond to the Motion. Two (2) weeks later, on April 16,

2003, the Arkansas Court of Appeals delivered an Order granting the Motion to Dismiss the Appeal.

With complete disregard for Rule 16 of the Arkansas Rules of Appellate Procedure - Criminal, Mr. Gross submitted as his defense the fact that Mr. Phillips did not pay him for the costs of the appeal. Mr. Gross stated that because Mr. Phillips did not pay the required costs of the transcript and the filing fee, the appeal was dropped. At no time did Mr. Gross seek to comply with the requirements of Rule 16 by seeking to be relieved by the Arkansas Court of Appeals. He merely abandoned the appeal in direct contradiction to the requirements of Rule 16.

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

1. That Mr. Gross' conduct violated Model Rule 1.2(a) because, despite the fact that his client wished to pursue an appeal of the lower court's decision out of Washington County Circuit Court, he failed to file a brief or respond to the State's Motion to Dismiss and therefore denied Mr. Phillips the right to an appeal of the lower court's decision. Model Rule 1.2(a) requires that a lawyer abide by a client's decisions concerning the objectives of representation, subject to paragraphs (c), (d), and (e), and consult with the client as to the means by which they are to be pursued.

2. That Mr. Gross' conduct violated Model Rule 1.3 when he failed to file a brief in the appeal he initiated on behalf of Alvie Leon Phillips with the Arkansas Court of Appeals causing the same to be dismissed; when he failed to file to request an extension of time seeking additional time to allow him to file a brief on Mr. Phillips' behalf when the time to file the appeal was upon him; and when he failed to file a response to the Motion to Dismiss filed on behalf of the State in the appeal involving Alvie Leon Phillips. Model Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

3. That Mr. Gross' conduct violated Model Rule 3.4(c) when he failed to adhere to the requirements of the Arkansas Court of Appeals when he failed to file a timely brief on behalf of his client, Alvie Leon Phillips. Model Rule 3.4(c) requires that a lawyer not knowingly disobey an obligation under the

rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists.

4. That Mr. Gross' conduct violated Model Rule 8.4(d) because his failure to file a brief for his client resulted in the State's Motion to Dismiss being granted and his client being denied his right to appellate review of the Washington County Circuit Court's decision in *State of Arkansas v. Alvie Leon Phillips*, Case #CR-2002-596-1. 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 JOHNNY E. GROSS, Arkansas Bar ID# 95156, be, and hereby is, REPRIMANDED for his conduct in this matter. Further, pursuant to Section 18A of the Procedures, Mr. Gross is assessed the costs of this proceeding in the amount of \$50. Pursuant to Section 18B of the Procedures, Mr. Gross is ordered to pay a fine in the amount of \$250. The costs and fine assessed 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 with 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: \_\_\_\_\_

John Rush, Chair, Panel B

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