

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

PANEL A

IN RE: JAMES E. MCMENIS, Respondent
Arkansas Bar ID#73157
CPC Docket No. 2004-065

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information obtained through the Orders of the Arkansas Supreme Court. The information related to the representation of Lou Ella Benton and others by Respondent in 2003 and 2004.

On April 23, 2004, Respondent was served with a formal complaint, supported by Orders of the Arkansas Supreme Court. A response was filed. The matter then proceeded to ballot vote pursuant to the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law.

The information before the Panel revealed that James E. McMenis, an attorney practicing primarily in El Dorado, Union County, Arkansas, was co-counsel with George Van Hook and represented Lou Ella Benton in an attempt to appeal the decision in the lower court matter from the Union County Circuit Court Case No. CIV 2002-463.

A final Judgment was entered in the Circuit Court of Union County on August 6, 2003. Mr. McMenis was one of two attorneys who represented Ms. Benton and five (5) other plaintiffs at the trial court level in Union County. Mr. Van Hook filed a Notice of Appeal for the plaintiffs on September 4, 2003. The transcript was delivered to the Circuit Clerk by the Court Reporter on November 30, 2003. Mr. Van Hook was notified by letter, dated November 30, 2003, that the deposit which had been made was insufficient to cover the cost of transcription. Thereafter, on December 5, 2003, the balance due was paid in full along with the costs owed to the Circuit Court Clerk.

The record was required to be filed with the Clerk of the Arkansas Supreme Court on or before December 3, 2003. At no time did Mr. McMenis, nor his co-counsel, seek an extension of time in which to file

the record. Mr. McMennis did not take any steps to be certain that the record was filed in a timely manner. The record was not tendered to the Clerk of the Court until sixteen (16) days past the deadline for filing the same. On December 19, 2003, Mr. McMennis filed a Motion for Rule on the Clerk. The Motion was denied by the Supreme Court on January 15, 2004.

Mr. McMennis admitted that he failed to ensure that there were appropriate safeguards to ensure an Order was entered extending the time to file the record on appeal. Mr. McMennis also admitted that he failed to comply with the procedural rules necessary to ensure the clients an appeal of the lower court's decision. Mr. McMennis explained that he was "second chair" in the case involving Ms. Benton. He did acknowledge that he was ethically responsible to ensure that all aspects of the case were in accordance with the law and Rules of Court, to include rules for appellate practice.

Upon consideration of the formal complaint and attached exhibit materials, the response, 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. McMennis' conduct violated Model Rule 1.1 because he was not thorough enough in his representation of Ms. Benton and the remaining plaintiffs to make certain that an Order extending the time to file the transcript was filed in the Union County Circuit Court matter, *Benton et al v. McHenry, et al*, CIV 2002-463. 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. McMennis' conduct violated Model Rule 1.2(a) because despite the fact that his clients wished to pursue an appeal of the lower court's decision out of Union County Circuit Court, he failed to comply with all the procedural rules to do so and therefore denied them the opportunity 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.

3. That Mr. McMennis' conduct violated Model Rule 1.3 when he failed to be certain that the record on appeal for his clients, Ms. Benton and others, was filed with the Clerk of the Court within ninety (90) days of the first Notice of Appeal filed in the lower court and when he failed to seek an extension of time within which to file the record on appeal in Ms. Benton's matter. Model Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.
4. That Mr. McMennis' conduct violated Model Rule 3.4(c) when he failed to adhere to the requirements of Rule 5(a) of the Rules of Appellate Procedure - Civil when he failed to be certain that the record on appeal was filed within ninety (90) days of the filing of the first Notice of Appeal. 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.
5. That Mr. McMennis' conduct violated Model Rule 8.4(d) because his failure to be certain that the record on appeal in his clients' matter was timely filed with the Clerk of the Court resulted in his clients being denied an opportunity to appellate review of the Union County Circuit Court's decision in *Lou Ella Benton, etal v. Vickie McHenry, etal*, Case #CV-2002-463. 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 JAMES E. MCMENIS, Arkansas Bar ID# 73157, 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. McMennis is assessed the costs of this proceeding in the amount of \$50. The costs 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 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: _____

Gwendolyn D. Hodge, Chair, Panel A

Date: _____