

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

IN RE: JOHN FRANK GIBSON, JR.  
ARKANSAS BAR ID #66021  
CPC DOCKET NO. 2005-018

**FINDINGS AND ORDER**

The formal charges of misconduct arose from the Arkansas Court of Appeals case of Rebecca Cleghorn v. State of Arkansas, CACR 04-00614. On June 1, 2004, John Frank Gibson, Jr., an attorney practicing primarily in Monticello, Arkansas, lodged the appeal on Ms. Cleghorn's behalf. The information concerning the conduct of Mr. Gibson's conduct came to the attention of the Office of Professional Conduct in the Orders of the Arkansas Court of Appeals. Additional information was submitted to the Committee through the Affidavit of Rebecca Cleghorn.

The information before the Committee reflected that Ms. Cleghorn was convicted of the offense of second degree murder and was sentenced to thirty (30) years in the Arkansas Department of Correction. Mr. Gibson filed a Notice of Appeal on behalf of Ms. Cleghorn on March 1, 2004. On June 1, 2004, Mr. Gibson filed with the Clerk of the Court, the record in the matter. The Clerk notified Mr. Gibson that the brief on Ms. Cleghorn's behalf was due to be filed on or before July 12, 2004. Mr. Gibson failed to file a brief by that date. Mr. Gibson also failed to request an extension of time for filing such a brief.

On August 4, 2004, the State of Arkansas, through David R. Raupp, Assistant Attorney General, filed a Motion to Dismiss appeal. Mr. Gibson did not file a response to the Motion. On August 25, 2004, the Arkansas Court of Appeals delivered an Order granting the appellee's Motion to Dismiss.

From that date until he was served with the formal disciplinary complaint, Mr. Gibson did not act to have Mr. Cleghorn's appeal reinstated. Mr. Gibson did so during late March 2005. Mr. Cleghorn was unaware that her appeal had been dismissed. The Law or Chancery Mandate for Mr. Cleghorn was mailed to Mr. Gibson and not forwarded to her from him. She believed that Mr. Gibson was still pursuing the matter.

For his response, Mr. Gibson offered that the conduct was caused by an accident in not placing the briefing times of Ms. Cleghorn's appeal on his calendar. Mr. Gibson stated that he had heard from his client but that he never intended to terminate his services nor knowingly have her appeal dismissed. Mr. Gibson denied that any of his misconduct was

engaged in knowingly.

Upon consideration of the formal complaint, Mr. Gibson's response, and the Arkansas Model Rules Professional Conduct, the Committee on Professional Conduct finds:

1. That Mr. Gibson's conduct violated Model Rule 1.2(a) because despite the fact that his client, Cleghorn, wished to pursue an appeal of the lower court's decision out of Ashley County Circuit Court, he failed to file a brief or respond to the State's Motion to Dismiss and therefore denied her the right to a timely 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. Gibson's conduct violated Model Rule 1.3 when he failed to file a brief in the appeal initiated on behalf of Rebecca Cleghorn with the Arkansas Court of Appeals thereby 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 Ms. Cleghorn's behalf, when the time to file the brief was upon him; when he failed to file a response to the Motion to Dismiss filed on behalf of the State in the appeal involving Rebecca Cleghorn; and, when he failed to send Ms. Cleghorn a copy of the Mandate which dismissed her appeal. 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 1.4(a) when he failed to keep Ms. Cleghorn informed of the efforts, if any, he was pursuing on her behalf with regard to her appeal from her conviction in Ashley County Circuit Court; when he failed to inform Ms. Cleghorn when the Arkansas Court of Appeals dismissed her appeal based upon his failure to file a brief on her behalf; and, when he failed to advise Ms. Cleghorn of the steps available to her to seek to have her appeal reinstated after the dismissal due to his lack of action. Model Rule 1.4(a) requires that a lawyer keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.
4. That Mr. Gibson's conduct violated Model Rule 1.4(b) because he failed to explain to Ms. Cleghorn that pursuant to Rule 2(e) of the Arkansas Rules of Appellate Procedure - Criminal, she only has eighteen (18) months from the date of the Judgment of Conviction to seek to have a Motion for Belated Appeal

heard and granted by the appellate courts or she will be barred from seeking appellate review of her conviction from Ashley County Circuit Court. Model Rule 1.4(b) requires that a lawyer explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

5. That Mr. Gibson's conduct violated Model Rule 3.4(c) because he failed to adhere to the requirements of Arkansas Court of Appeals when he failed to file a timely brief on behalf of his client, Rebecca Cleghorn, and, when he failed to comply with the requirements of Rule 16 of the Arkansas Rules of Appellate Procedure - Criminal, i.e. trial counsel, whether retained or court-appointed, shall continue to represent a convicted defendant throughout any appeal to the Arkansas Supreme Court or Arkansas Court of Appeals, unless permitted by the trial court or the appellate court to withdraw in the interest of justice or for other sufficient cause. 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.

6. That Mr. Gibson's 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 her right to timely appellate review of the Ashley County Circuit Court's decision in *State of Arkansas v. Rebecca Cleghorn*, Case #CR-2003-93-1. 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 that JOHN FRANK GIBSON, JR., Arkansas Bar ID No. 66021, be, and hereby is, REPRIMANDED for his conduct in this matter. Mr. Gibson is assessed the costs of this proceeding, pursuant to Section 18.A. of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law (2002), in the amount of \$50. Pursuant to Section 18.B of the Procedures Mr. Gibson is fined the sum of \$5000.00. In determining the appropriate sanction, Panel B of the Committee specifically utilized Section 19.L. and considered Mr. Gibson's extensive prior disciplinary record in appellate cases. 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 B

By: \_\_\_\_\_

J. Michael Cogbill, Chair - Panel B

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