

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

**IN RE: WILLIAM KURT MORITZ  
ARKANSAS BAR ID No. 99021  
CPC Docket No. 2012-020**

**FINDINGS AND ORDER**

William Kurt Moritz is an attorney licensed to practice law in the State of Arkansas in 1999 and assigned Arkansas Bar Number 99021. Mr. Moritz was employed to represent Michael Anderson in a criminal proceeding in Ashley County Circuit Court.

On December 28, 2006, the State of Arkansas charged Michael Anderson with six counts of Terroristic Act and of being a Felon in Possession of a Firearm in the case of *State of Arkansas v. Myron Newjean Anderson, Jr. and Michael Lee Anderson*, Ashley County Circuit Court Case No. CR-2006-197-4(A) & (B). Myron Newjean Anderson, Jr., Michael's brother, was also charged in the case. Myron Newjean Anderson, Jr., was represented at all times by Mark E. Barton, Attorney at Law, El Dorado, Arkansas. On January 22, 2007, Mr. Moritz filed an Entry of Appearance and Request for Discovery wherein he stated that he had been retained to represent Michael Lee Anderson. Mr. Moritz was paid \$5,000 to represent Michael Anderson in Mr. Anderson's criminal matter.

On September 19, 2007, a joint trial was held in Ashley County Circuit Court. Following the testimony and presentation of evidence, a jury returned a verdict finding both Andersons guilty. Michael Anderson was found guilty of five counts of terroristic act and one count of possession of firearm by certain person. A Judgment and Commitment Order was filed with the Ashley County Circuit Clerk on September 20, 2007, sentencing Michael Anderson to a term of 1320 months, or 110 years.

On October 10, 2007, a Motion for New Trial was filed by Mark E. Barton. The motion was filed on behalf of both of the Andersons though signed only by Mr. Barton. On October 18, 2007, Mr. Moritz filed a joint Notice of Appeal and Designation of Record on behalf of his client, Michael Anderson, and Mr. Anderson's co-defendant, Myron Anderson. On October 29, 2007, the Ashley County Circuit Court denied the Motion for New Trial and an Order was filed with the Ashley County Circuit Court Clerk.

On November 28, 2007, Mr. Barton filed on behalf of his client, Myron, an Amended Notice of Appeal and Designation of Record. No Amended Notice of Appeal was filed by Mr. Moritz on behalf of his client, Michael.

On December 17, 2007, Mr. Barton filed on behalf of Myron Anderson, a Motion for Enlargement of Time to Lodge Appeal with Supreme Court Clerk. An Order Enlarging Time to Lodge Appeal With Supreme Court Clerk was filed on December 17, 2007, with the Ashley County Circuit Clerk. The Order granted Mr. Barton the full seven month period allowed for extensions of time under Rule 4(c)(2) of the Rules of Appellate Procedure—Criminal. In this matter, the Judgment and Commitment Orders in both Andersons' cases were filed on September 20, 2007. Application of Rule 4(c)(2) made April 20, 2008, as the deadline for filing the record with the Arkansas Supreme Court Clerk in both cases. Both the Motion for Enlargement of Time and the Order Enlarging Time had hand-written notations adding Michael Anderson as a Defendant in the style of the case and in the opening sentence of the motion.

On April 14, 2008, Mr. Barton lodged the record with the Arkansas Supreme Court Clerk on behalf of his client, Myron. After requesting several extensions of time, Mr. Barton filed a brief on behalf of his client, Myron, on July 21, 2008. No brief was filed by Mr. Moritz on behalf

of his client, Michael.

On January 28, 2009, the Arkansas Court of Appeals affirmed Myron's conviction. In its Opinion, the Court addressed the issues of the sufficiency of the evidence in the denial of the motion for directed verdict and the trial court's denial of (1) objections to the addition of a second panel of prospective jurors and (2) the denial of the motion for new trial based on the seating of the second panel of jurors. The Court stated that the *entire argument* [emphasis provided by the Court] was: "Appellant argues that testimony from the witnesses was so inconsistent that it was unreliable." The Court found that Mr. Barton neither cited authority nor advanced any argument and deemed the argument made "untenable." Further the court stated that the motion for directed verdict made at trial was inadequate and the argument on appeal to be frivolous. As to the argument concerning the seating of the second panel of prospective jurors, the Court stated that again no authority was cited, that counsel were provided ample opportunity to interview the jurors prior to being seated, and counsel still had peremptory strikes that could have been used.

On January 29, 2009, Michael Anderson wrote the Arkansas Supreme Court, requesting information about the status of his appeal. Mr. Anderson wanted a copy of any rulings or decisions because his attorney had not provided him with a copy. Sue Newbery, Criminal Justice Coordinator for the Arkansas Supreme Court, wrote Mr. Anderson and informed him that the Court of Appeals had affirmed Myron's case but that Mr. Moritz had not filed a brief on his behalf and Michael's case remained open. Mr. Anderson wrote Ms. Newbery again on February 5, 2009, asking for an update on his appeal as he had written his attorney but Mr. Moritz had not responded to his letter.

On February 11, 2009, Mr. Moritz filed a Motion to File Belated Brief. In the motion, Mr. Moritz stated that he had made inquiry with the Clerk of the Supreme Court to ascertain whether separate briefs were required for the Anderson brothers as they were tried together, shared the same facts, same case, same objections, and same motion for post trial relief. Mr. Moritz stated in his motion that he understood that a single brief would be filed on behalf of both Michael and Myron Anderson. On February 25, 2009, the Arkansas Court of Appeals granted Mr. Moritz's Motion to File Belated Brief and a brief was due to be filed on March 25, 2009.

On March 25, 2009, Mr. Moritz tendered to the Arkansas Supreme Court Clerk a brief for Michael Anderson. The brief was rejected by the Clerk as there was no table of contents in volume 2 and there was no cover page on the outside of volume 2. Mr. Moritz was given seven days to correct the errors. On March 27, 2009, Mr. Moritz filed a brief on behalf of Michael Anderson.

On November 18, 2009, the Arkansas Court of Appeals issued a Rebriefing Order and directed Mr. Moritz to cure the deficiencies within fifteen days from the date of the Court's order. In its Order, the Court stated that the following:

“One significant error is his failure to include the order appealed from in the addendum. The judgment of conviction in the addendum is not Michael's but instead is his brother's. A comparison of appellant's abstract and addendum with that submitted by Myron suggests strongly that appellant's attorney may have simply duplicated the abstract and addendum submitted by his brother's attorney.”

On December 10, 2009, Mr. Moritz filed a substituted brief.

On February 24, 2010, the Arkansas Court of Appeals issued an opinion affirming Michael Anderson's conviction in Ashley County Circuit Court. In its opinion, the Court stated the evidence showed that Mr. Anderson was a felon, that he was in the nightclub shooting a firearm on the night in question, and that seven people were shot. The entire argument put forth was that "testimony of the witnesses was so inconsistent that it was unreliable." The Court stated that Mr. Moritz "neither cite[d] authority nor advance[d] any argument for the untenable assertion that mere inconsistency in the testimony of different witnesses is of itself so destructive of the jury's ability to discern the truth that it somehow renders otherwise sufficient evidence insufficient to support a criminal conviction." The Court then addressed the motion for directed verdict at trial. The Court stated that Mr. Moritz's motion for directed verdict "merely state[d] that the evidence [wa]s insufficient; it [did] not preserve for appeal issues relating to a specific deficiency such as insufficient proof on the elements of the offense." The Court concluded by stating that it found the directed-verdict motion to be inadequate and the argument on appeal to be frivolous. The Court addressed Mr. Moritz's second argument, that the trial court summoned a second panel of prospective jurors without informing Mr. Anderson, and stated that it was without merit as, again, there was no citation to authority. Further, the Court stated, the record showed that Mr. Moritz "was given ample opportunity to interview the jurors prior to their being seated, that he did not exercise all of his peremptory strikes, and that he affirmatively informed the trial court that he did not disapprove of the jurors actually selected." In sum, the Court stated, Mr. Moritz waived any objection after concurring in the makeup of the jury and could not show prejudice because he failed to exercise all of his peremptory strikes.

Following the decision of the Arkansas Court of Appeals, Mr. Anderson filed a Rule 37

Petition in Ashley County Circuit Court on May 10, 2010. The State of Arkansas filed a Response to Rule 37 Petition on May 11, 2010. On July 25, 2011, an Order from the Honorable Don E. Glover was filed with the Ashley County Circuit Court Clerk. Judge Glover dismissed the Petition for Rule 37 Relief. On August 16, 2011, Mr. Anderson filed a Notice of Appeal from the July 25, 2011, denial of Rule 37 relief. The appeal is styled as *Michael Anderson v. State of Arkansas*, Arkansas Supreme Court Case No. 2011-891, which at the time this matter was filed with the Office of Professional Conduct was pending before the Arkansas Supreme Court. At the conclusion of this matter, Mr. Anderson's Rule 37 appeal remains pending before the Arkansas Supreme Court.

Mr. Moritz filed a timely answer to the Complaint filed by the Office of Professional Conduct. In his answer, Mr. Moritz did not dispute the dates in the Complaint. Mr. Moritz stated that the issues in both cases were the same and that he did not know until February, 2009, that he would be required to file a separate brief on behalf of his client. Mr. Moritz stated that the brief he filed was not untimely, but deficient, and had he included in the brief and abstract the Judgment and Commitment Order for Michael Anderson, the brief and abstract would not have been rejected. Mr. Moritz stated that the Court of Appeals made it appear that the brief he filed on behalf of his client was a duplicate of the brief filed on behalf of Myron Anderson but that the Court of Appeals opinion in his Michael Anderson's case was nearly a verbatim recitation of the opinion rendered in Myron Anderson's case. Mr. Moritz explained that the arguments made in Michael Anderson's brief were the same arguments made in Myron's brief, as the basis for the appeals were made at the same time during both Andersons' trials.

Upon consideration of the formal complaint and attached exhibits, the response to the

Complaint filed by Mr. Moritz, and the Arkansas Rules of Professional Conduct, the Committee on Professional Conduct finds:

1. William Kurt Moritz's conduct violated Rule 1.1 when, after filing a timely notice of appeal, he failed to file a timely brief on behalf of his client. 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. William Kurt Moritz's conduct violated Rule 1.3 when, even though the record had been filed with the Arkansas Supreme Court Clerk on April 14, 2008, William Kurt Moritz failed to file a brief on behalf of his client, Michael Lee Anderson, until March 27, 2009. Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

3. William Kurt Moritz's conduct violated Rule 1.4(a)(3) when he failed to keep his client, Michael Lee Anderson, informed about the status of his appeal. Rule 1.4(a)(3) requires that a lawyer keep the client reasonably informed about the status of the matter.

4. William Kurt Moritz's conduct violated Rule 8.4(d) when he failed to cite authority or advance any argument for his client concerning the sufficiency of the evidence and when he failed to cite authority in his argument concerning alleged error on the part of the trial court, which resulted in his client's conviction being affirmed on appeal. 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 WILLIAM KURT MORITZ, Arkansas Bar No. 99021, be, and hereby is, SUSPENDED ONLY from representing clients before the Arkansas Court of Appeals or the Arkansas Supreme Court for a period of twelve

months, and assessed costs in the amount of FIFTY DOLLARS (\$50.00). The effective date of the twelve month suspension shall be the date of the filing of this Findings and Order with the Arkansas Supreme Court Clerk. 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 B

By: /s/ Barry Deacon, Chair, Panel B

Date: February 20, 2013

Original filed with the Arkansas Supreme Court on  
February 20, 2013