

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

PANEL B

IN RE: RICKEY H. HICKS, Respondent
 Arkansas Bar ID#89235
 CPC Docket No. 2005-101

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from a referral made by the Arkansas Supreme Court in the matter of Robert McIntosh v. State of Arkansas, Case Number 02-01266. Rickey H. Hicks, an attorney practicing primarily in Pulaski County, Arkansas, filed the Notice of Appeal on Mr. McIntosh's behalf on February 8, 2002.

On August 7, 2005, Respondent was served with a formal complaint, supported by the Supreme Court Opinion delivered on June 9, 2005. Respondent filed a timely response to the formal disciplinary complaint. The matter then proceeded to ballot vote before Panel B of the Committee on Professional Conduct pursuant to the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law (Procedures).

The factual background included in the record before the Arkansas Supreme Court reflects that on January 14, 2002, a Judgment of Conviction was entered against Mr. McIntosh in Perry County Circuit Court. On February 8, 2002, Mr. Hicks filed a timely Notice of Appeal. Mr. Hicks took no additional action to perfect the appeal of Mr. McIntosh. He also failed to seek permission to withdraw from Mr. McIntosh's case. Mr. Hicks advised that he did not handle Mr. McIntosh's case at trial. Mr. Hicks admitted that he filed the Notice of Appeal and said he did so only to preserve Mr. McIntosh's appeal rights, not to undertake the appeal.

On February 19, 2002, Reginald Shelton McCullough entered an appearance in Mr. McIntosh's matter. Even with this appearance by Mr. McCullough, Mr. Hicks did not seek to be relieved by the appellate court from Mr. McIntosh's appeal. Mr. Hicks stated that he was unaware that he should have filed a Motion to be

Relieved as Counsel. He believed that because Mr. McCullough had agreed to undertake representation of Mr. McIntosh in the appeal that the appeal would be done.

After a Motion for Rule on the Clerk was filed by Mr. McCullough and denied by the Court, Mr. McIntosh filed a *pro se* Motion for Rule on the Clerk. The Court considered the *pro se* Motion and also directed Mr. Hicks to appear before them on a Show Cause Order. After Mr. Hicks entered a plea of not guilty to the contempt charge, a Master was appointed to make Findings of Fact with regard to the appeal.

The hearing before the Master was scheduled for April 18, 2005. All parties, including Mr. Hicks, had notice of the hearing. Mr. Hicks failed to appear before the Master on that date. Mr. Hicks advised that he had received proper notice of the hearing in writing but had written the wrong date on his calendar and therefore simply did not make the hearing. Following the hearing, the Master found both Mr. Hicks and Mr. McCullough represented Mr. McIntosh in the appeal and that neither had ever sought to be relieved.

Rule 16 of the Rules of Appellate Procedure - Criminal requires trial counsel, whether retained or court appointed, to continue to represent a convicted defendant throughout any appeal, unless permitted by the trial court or the appellate court to withdraw in the interest of justice or for other sufficient cause. Mr. Hicks did not comply with the requirements of this Supreme Court rule, even after becoming the attorney of record and causing jurisdiction to lie with the appellate court by filing the Notice of Appeal on Mr. McIntosh's behalf.

Mr. Hicks was removed as attorney for Mr. McIntosh. He was also ordered to pay a fine of \$250 for his failure to appear at the April 18, 2005, hearing. Mr. Hicks complied with the Order and paid the fine. The Court also pointed out that Mr. Hicks was not able to represent Mr. McIntosh in the appeal as his license to practice law was suspended for his failure to pay his annual license fee. Mr. Hicks acknowledged that he was late in paying his annual license fee and did not pay them until some time around June 15, 2005. Mr. Hicks asserted that he never took Mr. McIntosh on as a client. He offered that there was never an agreement or any intent on his part to do an appeal for Mr. McIntosh.

Upon consideration of the formal complaint and attached exhibit materials, the response to it, and other matters before it, and the Arkansas Model Rules of Professional Conduct, Panel B of the Arkansas Supreme

Court Committee on Professional Conduct finds:

1. That Mr. Hicks' conduct violated Model Rule 1.2(a) when he failed to perfect the appeal to the Arkansas Supreme Court in the matter of State of Arkansas v. Robert McIntosh after filing a timely Notice of Appeal and thereby becoming the attorney of record for Mr. McIntosh. 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. Hicks' conduct violated Model Rule 1.3 when he failed to follow through with the appeal of Mr. McIntosh after filing the Notice of Appeal on his behalf. Model Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

3. That Mr. Hicks' conduct violated Model Rule 3.4(c) when he failed to adhere to the requirements of Rule 16 of the Arkansas Supreme Court Rules of Appellate Procedure - Criminal, when he failed to pursue the appeal for Mr. McIntosh or to request that he be allowed to withdraw from representation; when he failed to appear before the Master on April 18, 2005, after being ordered to do so; and, when he failed to obey the obligation of the Court by failing to comply with Rule VII.A, Arkansas Supreme Court Rules Governing Admission to the Bar, which requires that all Arkansas licensed attorneys pay an annual license fee as set by the Court not later than March 1 of each year. 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. Hicks' conduct violated Model Rule 8.4(d) because his failure to preserve the appeal of Mr. McIntosh or to seek to be relieved from such representation resulted in the need for the Supreme Court to appoint a Master and to conduct proceedings which would not have been necessary otherwise, with regard to your participation, or lack thereof, in the appeal of Mr. McIntosh. 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 RICKEY H. HICKS, Arkansas Bar ID# 89235 be, and hereby is, REPRIMANDED 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, Mr. Hicks is ordered to pay the costs of this matter in the amount of \$50. Mr. Hicks is also ordered to pay a fine in the amount of \$500 pursuant to Section 18.B. of the Procedures. 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 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: _____

J. Michael Cogbill, Chair, Panel B

Date: _____