BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL B

IN RE: DAVID MARK GUNTER, Respondent

　　　　　 Arkansas Bar ID#94004

　　　　　 CPC Docket No. 2004-114

CONSENT FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information

provided to the Committee through the Orders of the Supreme Court of Arkansas. The information related to

the representation of James Lee in an attempted appeal of a decision to terminate his parental rights by

Respondent, David Mark Gunter, an attorney practicing law primarily in Hope, Arkansas.

On July 3, 2004, Respondent was served with a formal complaint, supported by documents and Orders

from the Arkansas Supreme Court file with case number 04-497, *James Lee v. Arkansas Department of Human*

Services. A response was filed. The Respondent and the Executive Director negotiated a discipline by consent

proposal, which was submitted to this Panel.

The information before the Panel revealed that David Mark Gunter, Respondent herein, represented

James Lee in his attempt to appeal the decision of the lower court in the matter involving his minor children, in

the Circuit Court of Hempstead County, Arkansas, Juvenile Division, Case No. 02-17-2. Mr. Gunter filed a

Motion for Belated Appeal on April 21, 2004, with the Arkansas Supreme Court Clerk. The Motion was not

docketed until May 5, 2004, when Mr. Gunter submitted a partial record to the Clerk of the Court. The Motion

for Belated Appeal reflected that the Order terminating Mr. Lee's parental rights was entered of record on

February 4, 2004. Mr. Gunter filed no Notice of Appeal to that Order. He did acknowledge responsibility for

the delay in seeking an appeal for Mr. Lee and requested the ability to file a belated appeal for his client. A

Response was filed to the Motion by the attorney for the Department of Human Services.

After consideration of the Motion and Response, the Arkansas Supreme Court denied Mr. Gunter's

Motion. On May 27, 2004, the Court issued an Order denying the Motion which effectively barred Mr. Lee

from having an appeal of the lower court's Order terminating his parental rights.

In responding to the formal disciplinary complaint, Mr. Gunter admitted each and every allegation set forth in the formal disciplinary complaint. There was no information provided with regard to mitigation, there an admission of violation of the Model Rules of Professional Conduct.

Upon consideration of the formal complaint and attached exhibit materials, the response, the consent proposal, 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. Gunter's conduct violated Model Rule 1.1 when he was not thorough enough in his representation of Mr. Lee to make certain that he filed a Notice of Appeal on Mr. Lee's behalf so that he could have appellate review of the decision of lower court which terminated his parental rights. 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. Gunter's conduct violated Model Rule 1.2(a) when he failed to comply with all the procedural rules to pursue the appeal, which Mr. Lee wished to have pursued, of the lower court's decision from Hempstead County Circuit Court thereby denying Mr. Lee the opportunity for such an appeal. 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. Gunter's conduct violated Model Rule 1.3 when he failed to be certain that a Notice of Appeal was filed in Mr. Lee's matter within thirty (30) days of the entry of the Order terminating his parental rights. Model Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

4.   That Mr. Gunter's conduct violated Model Rule 3.4(c) when he failed to adhere to the requirements of Rule 4(a) of the Rules of Appellate Procedure - Civil when he failed to be

certain that the Notice of Appeal was filed with the Hempstead County Circuit Clerk's Office within thirty (30) days of the entry of the Judgment he was filing on Mr. Lee's behalf. 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. Gunter's conduct violated Model Rule 8.4(d) because his failure to timely pursue the appeal for Mr. Lee resulting in Mr. Gunter's client being denied his opportunity to appellate review of the Hempstead County Circuit Court's decision in *James Lee v. Arkansas Department of Human Services*, Case #JV-DN-02-17-2. 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 DAVID MARK GUNTER, Arkansas Bar ID#94004, be, and hereby is, REPRIMANDED for his conduct in this matter. Pursuant to Section 18.A. of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law (2002), Mr. Gunter is assessed the costs of this proceeding in the amount of $50. Further, pursuant to Section 18.B of the Procedures, Mr. Gunter is ordered to pay a fine in the amount of $1000. The costs assessed and fine imposed 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: _____