

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

PANEL C

IN RE: SAM WHITFIELD, JR.

Arkansas Bar ID #82056

CPC Docket No. 2002-086

FINDINGS & CONSENT ORDER OF DISCIPLINE

The formal charges of misconduct upon which this Consent Order is based, involving respondent attorney Sam Whitfield, Jr. of Helena, Phillips County, Arkansas, arose from information brought to the attention of the Committee on Professional Conduct by Mrs. Lillie Simpson of Newport, Arkansas.

Mrs. Simpson hired Mr. Whitfield in May 1998 to pursue her interest in a real estate matter by filing a quiet title action in Jackson County, and she paid him a fee and costs totaling \$975.00 over the next two years. After difficulties in communication, Mr. Whitfield finally filed a quiet title action for her in May 2000. Without notice from Mr. Whitfield to Mrs. Simpson before or after the fact, the court dismissed her action without prejudice in November 2001, based on Whitfield's failure to take any action in the case in over one year.

Following Respondent Attorney's receipt of the formal complaint, the attorney entered into discussion with the Executive Director which has resulted in an agreement to discipline by consent pursuant to Section 20.B of the Arkansas Supreme Court Procedures Regulating Professional Conduct of Attorneys at Law (2002). Upon consideration of the formal complaint and attached exhibits, admissions made by the respondent attorney, the terms of the written consent, the approval of Panel C of the Committee on Professional Conduct, and the Arkansas Model Rules of Professional Conduct, the Committee on Professional Conduct finds:

1. That Mr. Whitfield's conduct violated Model Rule 1.2(a) when he allowed his client's case to be dismissed by the court, after notice to him, but without consulting with his client, on his failure to take any action in it for over one year. Model Rule 1.2 (a) requires that a lawyer shall abide by a client's decisions concerning the objectives of representation, and shall consult with the client as to the means by which they are to be pursued.
2. That Mr. Whitfield's conduct violated Model Rule 1.3, when he failed to take action for over one year in his client's pending suit, resulting in the court dismissing the suit for his failure to take action. Model Rule 1.3 requires that a lawyer shall act with reasonable diligence and promptness in representing a client.
3. That Mr. Whitfield's conduct violated Model Rule 1.4(a) in failing to advise his client his lack of action in her case would result in it being dismissed for failure to prosecute for over one year; in failing to advise his client her case had been dismissed and the one year period within which she can refile has been running since November 6, 2001; and in failing since October 2000 to respond to his client's many requests for information and status reports on her legal matter entrusted to him.

Model Rule 1.4(a) requires that a lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

4. That Mr. Whitfield's conduct violated Model Rule 1.4(b) in failing to advise his client his lack of action in her case would result in it being dismissed for failure to prosecute for over one year; and in failing to advise his client her case had been dismissed and the one year period within which she can refile has been running since November 6, 2001. Model Rule 1.4(b) requires that a lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

5. That Mr. Whitfield's conduct violated Model Rule 3.2 when his failure to take any action in his client's pending case for over one year resulted in the court, after notice to him, dismissing the case in November 2001. Model Rule 3.2 requires that a lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

6. That Mr. Whitfield's conduct violated Model Rule 8.4(c) in that, without notice to his client, he deceitfully permitted the court to dismiss her suit in November 2001, based on his failure to take any action in it for over one year prior to the dismissal; and in that after the court entered its order of dismissal in November 2001, he deceitfully failed to notify his client of this action, substantially depriving her of the opportunity to seek legal representation to refile the suit within the one year period allowed by law. Model Rule 8.4(c) requires that a lawyer shall not engage in conduct involving deceit.

7. That Mr. Whitfield's conduct violated Model Rule 8.4(d) in that by permitting his client's case to be dismissed in November 2001 for his failure to take any action in it for over one year, he further delayed his client being able to obtain a judicial resolution to her claim. Model Rule 8.4(d) requires that a lawyer shall not engage in conduct that is prejudicial to the administration of justice.

WHEREFORE, in accordance with the consent to discipline presented by Mr. Whitfield and the Executive Director, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct that Respondent Sam Whitfield, Jr., Arkansas Bar No. 82056, be, and he hereby is, **SUSPENDED FOR FOUR (4) MONTHS** from the practice of law for his conduct in this

matter, and ordered to pay restitution for the benefit of Lillie K. Simpson in the amount of \$975.00 to the Committee on Professional Conduct within thirty (30) days of the filing of this order. The suspension ordered herein shall be effective on the date this order is filed with the Clerk of Court.

ARKANSAS SUPREME COURT COMMITTEE

ON PROFESSIONAL CONDUCT - PANEL C

By _____

David Newbern, Chairperson

Date _____