

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

**PANEL A**

IN RE: Carl D. Plumlee, Respondent  
Arkansas Bar ID# 76094  
CPC Docket No. 2003-133

**FINDINGS AND ORDER**

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Paul Culbreath on October 4, 2001. The information related to a dispute over a property easement or right-of-way in Fulton County beginning in March 1997.

On September 22, 2003, Attorney Carl DeWayne Plumlee was served with a formal complaint, supported by an affidavit from Mr. Culbreath and Mrs. Marjoria DeShazo. Mr. Plumlee filed a timely response on October 24, 2003, and Mr. Culbreath filed a rebuttal on October 31, 2003. Mr. Plumlee is an attorney practicing primarily in Fulton County but is also the local prosecutor for Fulton County.

The facts giving rise to the formal complaint are that a property owner, Mr. David Hicks, with land contiguous to Mr. Culbreath's land in Fulton County, listed 160 acres for sale with Perryman Realty. Mr. Hicks was purchasing the land under a time-purchase agreement from Mrs. Marjoria DeShazo. Mr. Plumlee contacted Mrs. DeShazo, about the original escrow deeds to the property and told her that he was handling the closing on the property for the buyer, Mrs. Bonnie Hodge. Mr. Culbreath accessed his property via an easement across the property Mrs. Hodge wanted to buy. Mr. Culbreath's deed did not contain an easement, however, Mr. Hicks' original deed did contain the easement. Mrs. Hodge's offer to buy the property was contingent on there being no right of ways or easements. Mrs. Hodge testified in a deposition and in court that she told Danny Perryman of Perryman Realty that she did not want to purchase any property that had easements, restrictions or covenants. She further testified that neither Perryman nor Mr. Plumlee ever told her about the easements. Mrs. Hodge also testified that her attorney, Mr. Plumlee, had notice of the easement prior to closing the real estate transaction.

Mr. Culbreath discovered on April 14, 1997, that the Hicks' property had been sold after he went to his land and found out he could not get through to his property because there was a new lock put on his gate and a sold sign of Perryman Realty was in the middle of the right-of-way road. Mr. Culbreath contacted Perryman Realty and was told that the existing easement was done away with and he could no longer use the road. Mr. Culbreath went to Salem to see Mr. Plumlee but Mr. Plumlee refused to see him or talk to him. Mr. Culbreath then contacted Mrs. DeShazo and she told him that she had received a phone call from Mr. Plumlee informing her that the closing documents on the Hicks' sale were ready and that she needed to come in and get her money. She said Mr. Plumlee did not mention the easement being removed from the deed. Mrs. DeShazo said when she went to Mr. Plumlee's office to sign the new documents he had prepared, one of the ladies in the office told her where to sign but no one explained to her anything about the documents. Mrs. DeShazo stated that she did not find out about the removal of the easement until Mr. Culbreath contacted her after he was denied access to his land. Mr. Culbreath stated that he went to the Bank of Salem with Mrs. DeShazo's son to get the original escrow deed but a bank employee told them that Mr. Plumlee had come in and taken the file.

Mr. Culbreath contacted the Hodges around April 1, 1998, and explained to them he needed access across their property to get to his land or he would have to file a lawsuit. Mrs. Hodge responded by sending Mr. Culbreath a letter offering to buy some of his land. Mr. Culbreath refused her offer. Two weeks later, on July 14, 1998, Mr. Culbreath received a letter from Mr. Plumlee telling him that any license or privilege to enter the premises was revoked effective immediately and any further entry would be considered a criminal trespass and dealt with according to the law.

On July 15, 1998, Mrs. DeShazo filed a complaint with the Arkansas Real Estate Commission against Perryman Realty. The Commission investigated the complaint and concluded that the investigation failed to produce sufficient evidence to prove a violation of Arkansas Licensing Law and/or Commission Regulations had occurred. The report included an answer filed and signed by Barbara Perryman and Danny Perryman, stating, "The easement contingency was discussed with the seller and Mrs. DeShazo." Later, at trial for the lawsuit, Danny Perryman testified that his answer to the Real Estate Commission was prepared by Mr. Plumlee

and that it contained an error in that he never did discuss the easement with Mrs. DeShazo.

Mr. Culbreath filed a lawsuit against Mrs. DeShazo, Mrs. Hodges and Robert McCauley, Mrs. Hodge's brother. All three defendants gave depositions in the case and Mrs. Hodges testified under oath at the hearing that at no time was she ever told by Mr. Plumlee, Mr. Hicks or Mr. Perryman that there was an existing right-of-way across the land she was buying. A hearing was heard in the matter on November 16, 2001, in the Circuit Court of Fulton County by Judge Norman Harkey. The Judge entered a decree stating, among other things, that the facts failed to establish that the alleged easement was utilized as a means of access to the Culbreath lands. The Judge denied Mr. Culbreath's claim of an easement or for injunctive relief or damages. Mr. Culbreath appealed the decision and the Arkansas Court of Appeals issued its opinion on December 23, 2002, reversing Judge Harkey and remanding the case. The Court of Appeals held that the trial court erred in failing to find that appellants had established an easement by necessity. Mr. Culbreath hired a new attorney to pursue the case on remand however, for reasons unknown, a court date has not been set for the remand. It has been six years and Mr. Culbreath is still barred from his property.

In his Response to the Formal Complaint, Mr. Plumlee stated that he did prepare the document before the Real Estate Commission for the Perryman's but that they signed the document and attested it was true and correct and that he did not knowingly make a false statement. He stated that the statement in the answer to the complaint before the Real Estate Commission is actually the statement of Danny and Barbara Perryman and he relied on their statement to be true.

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 A of the Arkansas Supreme Court Committee on Professional Conduct finds:

1. That Mr. Plumlee's conduct violated Model Rule 3.3(a)(1) when he prepared an answer for the Perrymans to submit to the Arkansas Real Estate Commission, and included a statement that, "the easement contingency was discussed with the seller and Mrs. DeShazo." This was a false statement according to testimony by Mrs. DeShazo and Mr. Perryman. Model Rule 3.3(a)(1)

provides that a lawyer shall not make a false statement of material fact or law to a tribunal.

2. That Mr. Plumlee's conduct violated Model Rule 4.1(a) when he prepared an answer for Barbara and Danny Perryman to submit to the Arkansas Real Estate Commission and included a false statement that, "the easement contingency was discussed with the seller and Mrs. DeShazo." Model Rule 4.1(a) requires that in the course of representing a client, a lawyer shall not knowingly make a false statement of material fact of law to a third person.
3. That Mr. Plumlee's conduct violated Model Rule 8.4(a) when he prepared an answer for Barbara and Danny Perryman to submit to the Arkansas Real Estate Commission and included a false statement that, "the easement contingency was discussed with the seller and Mrs. DeShazo." Model Rule 8.4(a) requires that lawyer not violate or attempt to violate the rules of professional conduct, knowingly assist or induce another to do so, or do so through the acts of another.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel A, that CARL DEWAYNE PLUMLEE, Arkansas Bar ID# 76094, be, and hereby is REPRIMANDED and assessed costs in the amount of FIFTY DOLLARS (\$50) for his conduct in this matter. The costs assessed herein shall be paid in the form of a money order or cashier's check made payable to the "Clerk, Arkansas Supreme Court" and delivered to the Office of Professional Conduct with 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 A

By: \_\_\_\_\_  
Gwendolyn D. Hodge, Chair, Panel A

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