

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

PANEL C

IN RE: SAM WHITFIELD, JR.

Arkansas Bar ID #82056

CPC Docket No. 2002-070

**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 Karen Williams of Ponca City, Oklahoma. Mrs. Williams alleged she hired Mr. Whitfield in November 1999 to handle probate administration of the estate of Florence Henderson in Phillips County and paid him the \$710.00 fee and costs he requested. She complained of lack of communication and action from Whitfield. In the Fall of 2001, Whitfield gave a copy of a petition for probate he had allegedly filed in the Florence Henderson matter to a Helena acquaintance of Williams who provided it to Williams. Whatever the circumstances, the petition had not actually been filed, only file-marked, and no probate case exists in the clerk's office. There is no evidence Whitfield deposited the advance payment of fees and costs into a trust account.

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 1.1 when he was hired to prepare and file appropriate probate administration documents in the probate clerk's office, but prepared a petition for an intestate decedent, when he had been told by his client that the decedent, Florence Henderson, died testate - with a will. Model Rule 1.1 requires that a lawyer shall provide competent representation to a client, which requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.
2. That Mr. Whitfield's conduct violated Model Rule 1.3, in that since being hired and paid on November 29, 1999, by Karen Sue Williams to perform legal services in an estate probate administration, he failed to perform such services. He delayed from November 29, 1999, to September 21, 2001, filing, albeit incompletely then, the Petition for Appointment of Administrator in the Florence Henderson estate on behalf of his client. No action has been taken in the representation since then. 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 that since being employed by Karen Sue Williams on November 27, 1999, and being paid his requested fee, he failed, without good cause, to respond to her numerous calls and inquiries for a status report 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 that at his first meeting with his client, Karen Sue Williams, she told him that Florence Henderson died leaving a will that named Mrs. Williams and her mother, Shirley Lambert, as co-beneficiaries of Ms. Henderson's estate, yet he had Mrs. Williams sign a blank form Petition for Appointment of Administrator, which recited Florence Henderson died intestate. He failed to explain to his client that he had her sign the incorrect form for the objective she hired him to accomplish for her. 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 1.5(b) when, having never previously represented Karen Sue Williams, he quoted her a fee for handling probate of an estate without providing her a written communication explaining the basis for his fee or explaining to her that such fees are normally set by state statute and approved by the probate court. Model Rule 1.5(b) requires that when the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.
6. That Mr. Whitfield's conduct violated Model Rule 1.15(a) in that on November 29, 1999, he received from Karen Sue Williams \$710.00 for legal services to be performed in the future and costs to be expended in connection with the probate administration of the estate of Florence Henderson and he failed to place these funds in an attorney trust account. Model Rule 1.15(a) requires that a lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds of a client shall be kept in a separate trust account.
7. That Mr. Whitfield's conduct violated Model Rule 8.4(a), when on or about September 21, 2001, he caused the Petition for Appointment of Administrator in the Florence Henderson estate he prepared to be presented at the Phillips County Probate Clerk's office, file-marked by a deputy clerk, and an actual case number assigned. No case was ever actually opened in this matter because  
  
the Petition was not actually accepted for filing when the filing fee was not paid. A file-marked copy of the Petition was later provided to the client as evidence of action by Whitfield in the matter. By these actions, Mr. Whitfield violated Model Rule 3.3 by making a false statement to a tribunal about the existence of a case in which a pleading was file-marked and a case number assigned by the clerk's office but the file was not actually opened. He also committed the other Model Rules violations described herein. Model Rule 8.4(a) requires that a lawyer shall 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.
8. That Mr. Whitfield's conduct violated Model Rule 8.4(b) when, on September 21, 2001, he, or a person within his control and/or knowledge, presented for filing to the Phillips County Probate Clerk's office a Petition for Appointment of Administrator for the estate of Florence Henderson prepared by him or at his direction. The petition was file-marked

by a deputy clerk and had the official case number P-2001-153 placed on it. The Petition was then removed from the clerk's office without being permanently filed of record in that office. These acts could constitute the offense of tampering with a public record in violation of Arkansas Code Section 5-54-121, to which Mr. Whitfield could be either the principal or an accomplice. Mr. Whitfield states the petition was withdrawn from being filed when the filing fee failed to be paid. Model Rule 8.4(b) requires that a lawyer shall not commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.

9. That Mr. Whitfield 's conduct violated Model Rule 8.4(c) by his engaging in conduct involving deceit or misrepresentation when he provided to his client Karen Sue Williams, through a mutual acquaintance, a copy of the file-marked and case-numbered Petition for Appointment of Administrator in the Florence Henderson estate, falsely allowing his client to believe he had finally filed the Petition she signed in November 1999 for his use. Model Rule 8.4(c) requires that a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

10. That Mr. Whitfield's conduct violated Model Rule 8.4(d) when, by failing to actually file a petition for probate of the will of Florence Henderson from November 1999 to present date, he has delayed the processing of this legal matter for almost three years to this point. 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 Sam Whitfield, Jr. 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 Karen Sue Williams in the amount of \$710.00 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 \_\_\_\_\_