

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

PANEL A

IN RE: ALVIN L. SIMES

Arkansas Bar ID# 89188

CPC Docket No. 2002-039

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Bobbie Jo Virgies. The information related to the representation of Bobbie Jo Virgies and her daughter, Shalawn, by Alvin L. Simes, Attorney at Law, Forrest City, Arkansas.

In January 1993, Ms. Virgies employed Mr. Simes to represent her and her daughter in a racial discrimination case against Melrose Apartment Complex and its owners. Mr. Simes filed suit on September 9, 1993, in the United States District Court, Eastern Division, on Ms. Virgies' behalf. The case was dismissed on March 10, 1994 for failure by Mr. Simes to obtain service of process on the defendants. In December 1994, Mr. Simes re-filed an identical lawsuit. On December 12, 1995, Judge Stephen Reasoner entered an Order dismissing Ms. Virgies' lawsuit against Defendant Chris Welch and Melrose Apartment Complex. One defendant remained in the lawsuit. Three days later, on December 15, 1995, Mr. Simes re-filed the lawsuit against Chris Welch and Melrose Apartment Complex and filed a motion to consolidate the two cases. The motion to consolidate was granted, the cases were consolidated, and Mr. Simes was given an opportunity to obtain service of Eva Lubin and Melrose Apartment Complex. The case then went to trial before a jury on January 7th, 8th, and 9th, 1997. The jury returned a verdict in Ms. Virgies' favor in the amount of \$20,000 against Melrose Apartment Complex, and \$2,000 against Annette Terry. Ms. Virgies' daughter, Shalawn, was awarded a verdict in her favor in the amount of \$3,000 against Melrose Apartment Complex and \$2,000 against Annette Terry.

Following the entry of the judgment, post-judgment motions were filed. Mr. Simes filed a Motion for Attorney Fees. Other motions filed included a motion by the defendants for a judgment notwithstanding the verdict or, in the alternative, a new trial. On September 26, 1997, the Court entered an Order granting the defendant's motion for judgment notwithstanding the verdict as to Melrose Apartment Complex as service was never completed against it. In its order, the Court stated that "due to [Mr. Simes'] failure to perform the initial elementary task of obtaining service over Melrose Apartment Complex by serving Eva Lubin personally or by obtaining jurisdiction over the property by warning order, the judgment represents 15% of the total possible award." The Court thereafter reduced the requested attorney's fees by 75%.

Mr. Simes stated that he employed a process server to obtain service over Melrose Apartment Complex. The process server drove to Memphis, Tennessee, where Eva Lubin, an owner of Melrose Apartment Complex, resided. The process server provided a copy of a complaint and summons upon Ms. Lubin's fifteen year-old son. According to Mr. Simes, proof of service was thereafter filed with the United States District Court. Mr. Simes contended that service on Ms. Lubin's son was effective as he was over the age of fourteen and he resided in the residence. The United States District Court found that the service was ineffective. Mr. Simes stated that he disagreed with the court's ruling and informed Ms. Virgies that the matter could be appealed but that Ms. Virgies requested that an appeal not be filed.

Ms. Virgies placed numerous calls to Mr. Simes' office concerning when she would receive her judgment. Mr. Simes failed to return Ms. Virgies' calls. It was only after Ms. Virgies filed a grievance with the Arkansas Supreme Court Office of Professional Conduct that Ms. Virgies learned that her judgment against Melrose Apartment Complex had been set aside.

Upon consideration of the formal complaint and attached exhibit materials, the response thereto, 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. Simes' conduct violated Model Rule 1.1 when he had been placed on notice on two occasions by the United States District Court that service over Melrose Apartment Complex was needed and he failed to perfect service on Melrose Apartment Complex. Model Rule 1.1 requires that a lawyer provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation necessary for the representation.
2. That Mr. Simes' conduct violated Model Rule 1.3 when he was placed on notice by an Order of the United States District Court on May 23, 1996 that he had to obtain service over Melrose Apartment Complex by June 15, 1996 but failed to do so. Model Rule 1.3 requires a lawyer to act with reasonable diligence and promptness in representing a client.
3. That Mr. Simes' conduct violated Model Rule 1.4(a) when he failed to notify his client, Bobbie Jo Virgies, that the United States District Court had set aside part of the judgment previously entered in her favor. Model Rule 1.4(a) requires a lawyer to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel A, that ALVIN L. SIMES, Arkansas Bar

ID# 89188, be, and hereby is, REPRIMANDED for his conduct in this matter.

ARKANSAS SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT - PANEL A

By: _____

Win Trafford, Chair, Panel A

Date: _____