

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

PANEL A

IN RE: **ALVIN L. SIMES**

Arkansas Bar ID #89188

CPC Docket No. 2004-129

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by the Opinions of the Arkansas Supreme Court in No. 03-1249, *Bobby Jones v. Phillips County Election Commission and Maxine Ball*, on May 12 and July 1, 2004. The information related to the representation of Bobby Jones in 2004 by Respondent, an attorney practicing primarily in Forrest City, Arkansas.

On October 1, 2004, Respondent was served with a formal complaint. He filed a timely response. Mr. Simes represented Jones, a school board candidate. Ms. Ball, who was not a candidate, filed an action in August 2003 in Phillips County Circuit Court to prevent Jones from remaining on the ballot in a school board election. The trial court held in favor of Ms. Ball and the election commission was ordered not to certify Jones as the winner. Mr. Simes appealed for Jones. On May 12, 2004, the Supreme Court ordered rebriefing in the case due to Mr. Simes' flagrantly deficient abstract. On July 1, 2004, the Court affirmed the lower court ruling against Jones because Simes' substituted brief for Jones failed to include two crucial documents, the petition for writ of mandamus and declaratory judgment. The Court stated that without these missing documents, it could not determine the issues to be reached on the appeal. Mr. Jones lost his chance for an appellate review. Mr. Simes responded that he did nothing that violated either Model Rule as set out in the Complaint; that appellee Ball, not being an opponent of Jones' in the school board race, did not have standing to bring the action; and the circuit court should have ruled in favor of his client Jones. Mr. Simes stated Jones was elected to the same office in 2004, has been sworn in, is now serving a term on the same school board, and has not

complained about Mr. Simes in this case.

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:

A. Mr. Simes' conduct violated Model Rule 1.1 in that in both his filed briefs, he failed to apply the required degree of legal knowledge, skill, thoroughness and preparation necessary to comply with the Court's Rule 4-2(8)(b)(3) and to persuade the Court to accept his brief, abstract and addendum. In his initial brief, his abstract was determined by the Court to be flagrantly deficient and a re-briefing was ordered. In his substituted brief, he failed to include in the addendum the required basic pleading, his writ of mandamus and declaratory judgment, precluding the Court from considering his client's case on appeal under Ark. R. Sup. Ct. 4-2(8)(b)(3). Model Rule 1.1 requires that a lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

B. Mr. Simes' conduct violated Model Rule 8.4(d) in that his failure to properly abstract testimony in his first abstract and brief caused the Supreme Court to have to spend time and resources to consider his matter and order him on May 12, 2004, to re-brief and re-abstract the testimony to make it comply with Court rules. His failure to properly revise his original addendum in his substituted brief filed May 26, 2004, and to include in it his basic pleading, his petition for writ of mandamus and declaratory judgment, resulted in the Court affirming the appeal based on the insufficiency of his brief, abstract and addendum on July 1, 2004, thereby depriving his client of his right to have his appeal decided on the merits. Model Rule 8.4(d) requires that a lawyer shall 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 A, that **Alvin L. Simes**, Arkansas Bar ID#98188, be, and hereby is, **reprimanded** for his conduct in this matter. The costs assessed 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 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, Panel A Chair

Date: _____