

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

PANEL B

IN RE: **ELLIOTT DION WILSON, Respondent**

Arkansas Bar ID #94014

CPC Docket No. 2002-046

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 Affidavit of Wanda McIntosh, Circuit Clerk of Phillips County, Arkansas, correspondence between the Executive Director and E. Dion Wilson, a certified transcript of a hearing September 14, 2001, in Phillips Chancery Case Nos. E-99-288 and E-99-180, styled *Linda Whitfield v. Sam Whitfield, Jr.*, and a compilation of billing invoices from Respondent and members of his firm to the City of Helena for services as special district judge or special city attorney. The information related to the representation of Judge Sam Whitfield, Jr. by Respondent on September 14, 2001.

On April 23, 2002, Respondent was served with a formal complaint, supported by the affidavit and other materials described above. Respondent claims he had known the judge, his client that day, most of his life, was a friend, and the money was given to the judge so he would not have to go to jail that day for nonpayment of child support. He states the money was not given to influence the judge in any manner, but as an act of good will to a friend.

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

1. Respondent Wilson is an attorney in private practice in Helena, Arkansas, in the firm of Wilson and Valley. Sam Whitfield, Jr. is an attorney in Helena, and the part-time District Court Judge of Helena, Arkansas.
2. On September 14, 2001, Respondent appeared as the attorney of record for Judge Sam Whitfield, Jr. in a hearing in post-decree matters in *Linda Whitfield v. Sam Whitfield, Jr.*, Phillips Chancery No. E-99-288 & E-99-180, and announced to the court that Mr. Whitfield was prepared to pay an agreed \$1,800 on his child support arrearage in lieu of going forward with the hearing,
3. After court, Judge Whitfield and Respondent went to Respondent's bank, where Respondent gave Whitfield, \$1,800.00 cash from Respondent's law office expense account, which funds were used to pay Whitfield's child support obligation due that date. The funds, whether a gift or loan, have not been repaid to Respondent.
4. Neither Judge Whitfield or the Respondent has reported the \$1,800 cash gift to any appropriate authority.
5. Respondent and other members of his law firm regularly appear in cases before Judge Whitfield, and sit as special judges at his request when he will not be on the bench, or as special city attorneys, presumably when the city attorney is not available. On at least twelve (12) instances since September 1999, members of the firm of Wilson and Valley have been paid by the City of Helena for such services totaling \$3,002.25. On four (4) occasions since Respondent's \$1,800 gift to Judge Whitfield on September 14, 2001, the judge has apparently asked Respondent to serve as special district court judge and the city paid Respondent a total of \$925.00 for these services. In February 2002, the judge asked two members of the Wilson and Valley firm to serve as special judge and the city has been billed a total of \$500 for their services.

Panel B of the Arkansas Supreme Court Committee on Professional Conduct finds:

- A. Wilson's conduct violated Model Rule 1.8(e) when he provided financial assistance in the form of a \$1,800.00 cash gift to his client Judge Sam Whitfield on September 14, 2001, so the client would not go to jail for nonpayment of child support. Model Rule 1.8(e) provides that a lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that (1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and (2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.
- B. Wilson's conduct violated Model Rule 8.3(b) when, having direct personal knowledge that Judge Sam Whitfield accepted a cash gift of \$1,800.00 on September 14, 2001, in violation of Section 4.D.5 of the Arkansas Code of Judicial Conduct, from Respondent, a local attorney who appears in his court. Respondent failed to inform the appropriate disciplinary authority. Model Rule 8.3(b) provides that a lawyer having knowledge that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.
- C. Wilson's conduct violated Model Rule 8.4(a) when he made a cash gift of \$1,800.00 to Judge Sam Whitfield on September 14, 2001, thereby violating Model Rules 1.8(e) and 8.4(f). 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.
- D. Wilson's conduct violated Model Rule 8.4(d) because his cash gift to Judge Sam Whitfield placed the judge in the position of having to disqualify from any case in which Respondent, and probably any member of his law firm are involved in Helena District Court. Special judges will now have to be brought in to handle all such cases, resulting in delay on such cases and the expenditure of additional judicial time and resources on these cases. Model Rule 8.4(d) prohibits a lawyer from engaging in conduct that is prejudicial to the administration of justice.

E. Wilson's conduct violated Model Rule 8.4(f) when, by giving Judge Sam Whitfield a cash gift of \$1,800.00, Respondent assisted the judge in violating Section 3.E.1 of the Code of Judicial Conduct, in that he now will be required to disqualify in any case of Respondent's that comes before him. By giving Judge Sam Whitfield a cash gift of \$1,800.00, Respondent assisted him in violating Section 4.D.5 of the Code of Judicial Conduct, which prohibits the judge from accepting a gift, loan, or favor from a person situated as Respondent was then and is now. Model Rule 8.4(f) requires that a lawyer shall not knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel B, that Elliott Dion Wilson, Arkansas Bar ID# 94014, be, and hereby is, CAUTIONED for his conduct in this matter.

ARKANSAS SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT - PANEL B

By: _____

Richard F. Hatfield, Chair, Panel B

Date: _____