

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

**PANEL B**

IN RE: JAMES RUSSELL GREEN, Respondent  
Arkansas Bar ID#73043  
CPC Docket No. 2004-181

**FINDINGS AND ORDER**

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Ada M. Johnson in an Affidavit dated December 13, 2004. The information related to the representation of Mrs. Johnson and her husband by Respondent beginning in 1999.

On December 31, 2004, Respondent was served with a formal complaint, supported by affidavit from Mrs. Johnson. Pursuant to the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law (2002), Mr. Green filed a timely response and the matter proceeded to ballot vote before Panel B of the Committee.

The information before the Committee reflected that during May 1999, Mrs. Johnson and her husband hired J. Russell Green, an attorney practicing primarily in Heber Springs, Arkansas, to represent them in pursuit of all claims arising out of an automobile accident in which they were involved. The agreement was for Mr. Green to receive 25% of any recovery made on behalf of Mrs. Johnson and her husband. Mr. Green was initially contacted by Mrs. Johnson's husband who died in September 1999.

Mrs. Johnson hired Mr. Green to handle the probate proceedings for her and to continue to seek damages for the injuries suffered in the automobile accident. On April 5, 2000, Mr. Green filed a Petition for Probate of Will and Appointment of Personal Representative on Mrs. Johnson's behalf. On that same date an Order was entered admitting the Will to probate. The proof of publication was filed on May 24, 2000. That was the last action Mr. Green took with regard to the probate proceeding. The probate proceeding was ultimately dismissed and placed in the inactive files of the Cleburne County probate clerk's office on January 16, 2004.

Mr. Green's communication with the Claims Adjuster for Allstate with regard to the automobile accident in which Mrs. Johnson and her husband were involved was very limited. On August 8, 2000, Bobbie Waddell sent Mr. Green a letter setting out that repeated telephone calls and letters had been sent to him with no response. After Mrs. Johnson received a copy of the letter, she contacted Mr. Green who assured her that everything was being handled.

On May 27, 2002, Mr. Green filed a lawsuit on Mrs. Johnson's behalf. A Summons for service of process was issued on that same date. Mr. Green did not contact Mrs. Johnson during the time he was allegedly pursuing the lawsuit on her behalf. There was actually never any action taken with regard to the lawsuit. Service was never accomplished and no additional time was requested in an effort to extend the time to serve the defendant. On January 16, 2004, the lawsuit was dismissed without Mrs. Johnson ever having an opportunity to seek her remedies through court action. Mr. Green did not advise Mrs. Johnson that the case was dismissed. She learned of the dismissal from the Clerk's office.

Mrs. Johnson reported that she called Mr. Green on a regular basis to ask about the status of the two proceedings. On many occasions Mr. Green told her that he was negotiating with the insurance. At some point during the representation, Mr. Green quit returning the telephone calls. At no time did Mr. Green provide an explanation of why he did not pursue the claims.

Mr. Green admitted the conduct as alleged in the formal disciplinary complaint. He explained that many of the events described herein took place during a difficult period of time in his life. He also offered as mitigation the workload of the public defender office in the 16<sup>th</sup> Judicial District. Mr. Green is one of the public defenders for that district. According to Mr. Green, because of the increasing workload, he has ceased to accept any cases involving civil matters.

Upon consideration of the formal complaint and attached exhibit materials, the response to it, 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. That Mr. Green's conduct violated Model Rule 1.1 when he failed to be thorough enough in his representation of Mrs. Johnson to effectively pursue her claims and those of her husband with Allstate Insurance Company and when he failed to seek and perfect service of the defendant in the lawsuit he filed on Mrs. Johnson's behalf during March 2002. Model Rule 1.1 requires that a lawyer provide competent representation to a client, including the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.
2. That Mr. Green's conduct violated Model Rule 1.2(a) because although Mrs. Johnson's objective was for him to actively pursue all claims arising out of the automobile accident in which she and her husband were involved, he failed to do so. Model Rule 1.2(a) requires, in pertinent part, that a lawyer abide by a client's decisions concerning the objectives of representation, subject to paragraphs (c), (d), and (e), and consult with the client as to the means by which they are to be pursued.
3. That Mr. Green's conduct violated Model Rule 1.3 when he failed to diligently pursue Mr. and Mrs. Johnson's claims with Allstate Insurance Company as evidenced by the letter from Allstate setting out the difficulty which was being experienced in communicating with him; when he failed to serve the defendant with the Summons after filing suit on Mrs. Johnson's behalf thereby allowing the case to be dismissed; when he took no action in the civil proceeding he filed on Mrs. Johnson's behalf after filing the initial complaint; and, when he allowed the statute of limitation to expire on Mrs. Johnson's claims against Stan Miller and Allstate Insurance Company. Model Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.
4. That Mr. Green's conduct violated Model Rule 1.4(a) when he failed to keep Mrs. Johnson informed about the status of her claims and legal matter during the course of his representation of her; when he failed to promptly comply with the requests for information which Mrs. Johnson made of you concerning her legal matters in which he was entrusted; when he failed to

keep Mrs. Johnson informed of the actions, if any, he was undertaking on her behalf; when he failed to advise Mrs. Johnson when her legal matter was dismissed; and, when he failed to advise Mrs. Johnson when the time for serving the defendant in the civil litigation expired. Model Rule 1.4(a) requires that a lawyer keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

5. That Mr. Green's conduct violated Model Rule 8.4(c) because his failure to advise Mrs. Johnson that he had not perfected service on the defendant in her lawsuit and the failure to advise her of the dismissal of the lawsuit amounted to dishonest and deceitful conduct. Model Rule 8.4(c) requires that a lawyer not engage in conduct involving deceit, dishonesty, fraud or misrepresentation.
6. That Mr. Green's conduct violated Model Rule 8.4(d) because his failure to accomplish service of the defendant or to actively pursue the civil litigation and claims of Mrs. Johnson resulted in the statute of limitation expiring and Mrs. Johnson losing the ability to seek recovery of her claims in any forum. Model Rule 8.4(d) requires that a lawyer 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 B, that JAMES RUSSELL GREEN, Arkansas Bar ID# 73043, be, and hereby is, REPRIMANDED for his conduct in this matter. Further, pursuant to Section 18.A of the Procedures, Mr. Green is assessed the costs of this proceeding in the amount of \$50. In addition, Mr. Green is ordered pursuant to Section 18.B of the Procedures to pay a fine in the amount of \$500. The costs assessed and fine ordered 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 within 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 B

By: \_\_\_\_\_

J. Michael Cogbill, Chair, Panel B

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