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BEFORE THE ARKANSAS SUPREME COURT
COMMITTEE ON PROFESSIONAL CONDUCT
PANEL B

IN RE: **ROBERT A. NEWCOMB**, Respondent
Arkansas Bar No. 73087
Docket No. CPC 2019-043

CONSENT FINDINGS & ORDER

The formal charges of misconduct upon which this Consent Findings & Order is premised, involving respondent attorney Robert A. Newcomb of Little Rock, Arkansas, arose from information provided to the Committee on Professional Conduct by James Blackwood.

1. Prior to 2017, Blackwood had decades of experience in the restaurant industry in Arkansas, including ownership of several restaurants.

2. In 2017, Blackwood, Terry Chatelain, and Jeff Born had an agreement by which Blackwood would provide his restaurant expertise, ABC full service liquor permit, and a \$22,500 cash contribution and receive between six and ten percent interest in a restaurant business formed by Chatelain and Born that was going to be named Roux's Cajun and Creole Grill (Roux's), depending on the extent to which Blackwood chose to participate. A written agreement whereby they attempted to memorialize their agreement was prepared by or for Chatelain and Born and presented by them to Blackwood. The agreement was never signed by all the parties, but was the basis on which Blackwood contends they operated thereafter. Blackwood did not pay in the \$22,500 capital contribution, but did his part by completing the menus and theme recipes as well as getting the kitchen operational and necessary employees hired, trained and supervised them and the kitchen for three weeks.

3. The Buy-Sell Agreement also then presented to Blackwood by Chatelain and Born

appears to place the fair market value or the net worth, or maybe both, of the resulting new entity that would own and operate Roux's at \$750,000. According to three Complaints prepared and two filed by Newcomb, Blackwood's CPA later examined records of the Chatelain-Born business, disputed this valuation number, and told Blackwood the value of the business would only be about \$140,000-145,000.

4. As a result of the agreement with Chatelain and Born, Blackwood and others under his supervision devoted time and resources to the project, including production of a menu and recipe book for the new Cajun/Creole-themed restaurant.

5. In early 2017 problems arose among the participants in the new venture. Newcomb, who was at the time representing Blackwood in another matter was also employed by Blackwood to make demand on the other venture participants and file any necessary legal action against Chatelain and Born arising out of the restaurant business venture. By letter dated May 22, 2017, Newcomb made demand for payments to Blackwood and others named therein for payment for their services and work product. Counsel for Roux's wrote Newcomb back on June 19, 2017, mentioning the alleged contract. On August 16, 2017, Newcomb wrote Roux's counsel that Blackwood's promised 6% interest in the business venture was worth \$45,000 and that Blackwood had additional damages to his reputation. Newcomb stated Blackwood would accept prompt payment of \$25,000 for a full release of all claims or a Complaint would be filed in ten days thereafter.

6. On September 25, 2017, Newcomb filed suit for Blackwood with the defendants now named as "Chatlyn" and Born, in Faulkner County Circuit No. 23cv-17-1188 ("first suit"). The first suit alleged a "contract" among Blackwood, "Chatlyn," and Born by which Blackwood would receive a six percent interest in a business formed by defendants that was going to be

named Roux's Cajun and Creole Grill (Roux's) and which Newcomb's Complaint states was represented by the defendants to have a value of \$750,000. According to the first suit Complaint, at paragraph 4(h), the alleged agreement between Blackwood and "Chatlyn" and Born called for Blackwood to also oversee repair and installation of new kitchen equipment in a building owned or controlled by "Chatlyn" and Born. Newcomb had summonses issued for each of "Chatlyn" and Born. Both summonses failed to provide an address or other contact information for Newcomb.

7. By November 1, 2017, Blackwood had paid Newcomb about \$3,000 for Newcomb's representation of Blackwood in these matters.

8. On November 9, 2017, an Answer was filed for Chatelain and Born denying any contract existed among the parties as alleged by Blackwood. A motion to dismiss and brief were filed for Chatelain, alleging a defective summons was issued for Chatelain. Newcomb failed to file a response for Blackwood to Chatelain's motion to dismiss. On December 11, 2017, specifically citing Plaintiff's failure to respond to the motion, the Chatelain motion to dismiss was granted, and the Complaint was dismissed without prejudice as to Chatelain, leaving Born as the sole named defendant.

9. On February 13, 2018, Newcomb refiled basically the same Complaint ("second suit") as the in the first suit, as Faulkner County Circuit No. 23cv-18-212, correctly listing Chatelain and Born as defendants and alleging a verbal contract between Plaintiff Blackwood and Defendants Chatelain and Born, in addition to allegations about transfer of Blackwood's state liquor license and a prayer for \$52,500 in damages for Plaintiff Blackwood. Newcomb had summonses issued for each of Chatelain and Born. Both summonses again failed to contain an address or other contact information for Newcomb.

10. The Answer was filed for Chatelain and Born denied the existence of an enforceable contract between the parties, asserted fraudulent inducement by Plaintiff, and claimed insufficiency of process and service of process. Both Defendants filed a joint motion to dismiss with prejudice and brief, alleging the same defects in the summonses as in the first suit, which was dismissed.

11. On August 2, 2018, Newcomb had new summonses issued for Chatelain and Born in the second suit. Both summonses finally contained Newcomb's correct and full address. The Faulkner County circuit clerk issued new summonses for each of Chatelain and Born, each containing Newcomb's full and correct address.

12. Newcomb again failed to file any response to the motion to dismiss the second suit. On September 10, 2018, the court entered an order granting the motion to dismiss filed for Chatelain and Born, and dismissing Blackwood's second suit with prejudice as to both defendants. Pursuant to Ark. R. Civ. P. 41(b), two dismissals of the same action and claims shall operate as a dismissal with prejudice.

13. On April 1, 2019, Blackwood filed suit against Newcomb in Pulaski Circuit No. 60cv-19-2139, alleging legal negligence and damages caused by Newcomb's conduct in the two Faulkner Circuit Blackwood v. Chatelain and Born cases.

14. On April 24, 2019, Newcomb filed his pro se Answer, denying liability, and denying he caused damage to his former client Blackwood, even though the second Faulkner County circuit court suit Newcomb filed for Blackwood alleged Blackwood had been damaged in the specific amount of \$52,500 by the breach of contract by Chatelain and Born.

15. On April 24, 2019, Blackwood's attorney, Danny Crabtree (Crabtree), served Newcomb with Plaintiff's First Interrogatories and requests for production of Documents. Upon

Newcomb's failure to respond to his April 24, 2019, discovery, Crabtree sent Newcomb a "good faith" letter on June 6, 2019, requesting discovery responses. Upon Newcomb's failure to respond to discovery, on July 10, 2019, Crabtree filed a Motion to Compel. On September 26, 2019, the Motion to Compel was granted and Newcomb was ordered to respond to Plaintiff's discovery within ten days of the entry of the Order.

16. By letter dated September 20, 2019, Newcomb responded informally to the OPC grievance inquiry of July 23, 2019, about the Blackwood matter. (Ex. 28)

17. On December 13, 2019, with Newcomb still not having filed any discovery responses, Blackwood filed a Motion for Contempt, To Strike Answer, For Sanctions and Default Judgment with Brief, alleging Newcomb still had not provided any responses to Plaintiff's discovery in spite of the Order to Compel entered September 26, 2019. On December 27, 2019, Newcomb filed his response to the Blackwood Motion for Contempt and provided his discovery responses to Blackwood's counsel Crabtree. The Blackwood motion is pending court action at this time.

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 (2012). 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 B of the Committee on Professional Conduct, and the Arkansas Rules of Professional Conduct, the Committee on Professional Conduct finds:

A. The conduct of Robert Newcomb violated Rule 1.1 in that, in the second Faulkner County Blackwood case, No. 23cv-18-212, Newcomb failed to file any response to the

defendants' joint motion to dismiss on the basis of service defects, and that lawsuit was dismissed with prejudice, killing Blackwood's claims and his ability to have trial on the merits. There was no appeal for Blackwood. Arkansas 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. The conduct of Robert Newcomb violated Rule 1.3 in that in No. 23cv-17-1188, the first Blackwood case, Newcomb failed to file any response to the motion of defendant Chatelain to dismiss on the basis of service defects, the motion was granted, and that lawsuit was dismissed without prejudice; in No. 23cv-18-212, the second Blackwood case, Newcomb failed to file any response to the defendants' joint motion to dismiss on the basis of service defects, the motion was granted, and that suit was dismissed prejudice; in No. 60cv-19-2139, the Blackwood legal malpractice case, Newcomb, representing both himself and Robert Newcomb, P.A., was served with Plaintiff's discovery on April 24, 2019, and has failed to respond for either client; and even though an order granting Plaintiff's motion to compel was entered and Newcomb was given ten days from September 26, 2019, within which to provide his responses to discovery to Plaintiff Blackwood, Newcomb failed to timely provide responses; and Newcomb now faces a motion filed December 13, 2019, seeking sanctions for contempt including striking his answer and for default as to both defendants as a result of his continuing failure to provide discovery responses to Plaintiff Blackwood. Arkansas Rule 1.3 requires that a lawyer shall act with reasonable diligence and promptness in representing a client.

F. The conduct of Robert Newcomb violated Rule 8.4(d) in that Newcomb failed to file any response to defendants' motion to dismiss his No. 23cv-18-212 Blackwood case, allowing the motion to be granted, and the second case to be dismissed with prejudice, ending any chance

Blackwood had to have a trial on the merits of his claims or to obtain any recovery. Arkansas Rule 8.4(d) provides that it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

WHEREFORE, in accordance with the consent to discipline presented by Mr. Newcomb and the Executive Director, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct that Respondent **ROBERT A. NEWCOMB**, Arkansas Bar No. 73087, be, and he hereby is, **REPRIMANDED** for his conduct in this matter. He is also assessed and ordered to pay \$50.00 case costs and restitution for the benefit of James Blackwood of \$3,000.00. The costs and restitution 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 within ninety (90) 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 Stephen R. Crane
Stephen R. Crane, Chairperson

Date 4-17-20