

**FILED**

**APR 17 2020**

**STACEY PECTOL  
CLERK**

**BEFORE THE ARKANSAS SUPREME COURT  
COMMITTEE ON PROFESSIONAL CONDUCT  
PANEL B**

IN RE: **ROBERT A. NEWCOMB**, Respondent  
Arkansas Bar No. 73087  
Docket No. CPC 2020-001

**CONSENT FINDINGS & ORDER**

The formal charges of misconduct upon which this Consent Order is premised, involving respondent attorney Robert A. Newcomb of Little Rock, Arkansas, arose from information brought to the attention of the Committee on Professional Conduct by Arthur Kaye.

1. Kaye worked as an insurance claims adjuster for Allstate Insurance Company (“Allstate”) for twenty-eight (28) years from 1988 until his termination by Allstate on December 2, 2015. Kaye filed an EEOC complaint. He received a “right to sue” letter dated December 2, 2016, and sought legal counsel.

2. In February 2017, Kaye employed Newcomb on a retainer plus hourly fee basis for representation in Kaye’s claim against Allstate for wrongful termination. Kaye paid Newcomb a total of \$2,955 in advance for expenses and fees to be incurred in the lawsuit. Newcomb promptly filed suit for Kaye, as USDC No. 17-cv-117, paying a \$400 filing fee. On November 9, 2017, the case was set for jury trial during the week of August 20, 2018.

3. On November 22, 2017, Allstate filed a Motion to Compel as to discovery it had sent to Kaye/Newcomb, for which no responses had been provided. On January 22, 2018, an Order was entered which recited that Kaye had failed to file any response to the Motion to Compel, and ordered Kaye to produce his discovery responses to Allstate by February 21, 2018. Newcomb did not provide Kaye’s discovery responses to Allstate, so on March 20, 2018, Allstate filed an Expedited Motion for Sanctions. Kaye filed a response. As a result, by Order filed May 3, 2018,

the Court removed the case from its trial docket for the week of August 20, 2018. Kaye worked with Newcomb to amend or supplement responses to discovery by May 17, 2018.

4. The court conducted a hearing on May 18, 2018, at which Newcomb and Kaye were ordered to be present. Discovery issues were addressed. The court instructed Kaye to provide status reports concerning written discovery at 15 and 30 days after the May 18 hearing. Alleging Newcomb and Kaye had not provided complete discovery responses, on August 7, 2018, Allstate filed a supplement to its motion for sanctions.

5. On May 6, 2019, reciting that Newcomb and Kaye had not responded to the supplement to the motion for sanctions, a Show Cause Order was entered directing Newcomb/Kaye to file a written response within ten days stating why his case should not be dismissed without prejudice for failure to prosecute. The Show Cause order also noted that some claims Kaye was asserting might actually be dismissed with prejudice even if the dismissal that might be entered was without prejudice.

6. On July 21, 2019, reciting that Kaye had failed to file any response to the Show Cause Order, an Order and a Judgment were entered dismissing Kaye's case without prejudice.

7. Newcomb failed to inform Kaye of the July 2019 dismissal of Kaye's lawsuit. Kaye only found out about the dismissal by personally going to the court clerk's office in Little Rock and reviewing the file in August 2019.

8. Kaye has now suffered one involuntary dismissal of his Allstate lawsuit, and, as the court noted, maybe a dismissal with prejudice as to some of his claims for other reasons, possibly including statute of limitations that have expired.

9. Kaye is not aware of any expenses or costs incurred on his behalf in his suit and case other than the filing fee, nor has he received any fee and expense billings from Newcomb.

10. According to Kaye's affidavit dated January 8, 2019, he has had no contact with Newcomb since August 2019, including no information or advice from Newcomb about the status of Kaye's lawsuit, particularly as to whether it can be refiled or if Newcomb will refile it.

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 Newcomb failed to file any response to the Show Cause Order, causing the court to dismiss Kaye's case without prejudice on July 21, 2019, for failure to prosecute. 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 Newcomb failed to file any response to the Show Cause Order, causing the court to dismiss Kaye's case without prejudice on July 21, 2019, for failure to prosecute. Arkansas Rule 1.3 requires that a lawyer shall act with reasonable diligence and promptness in representing a client.

C. The conduct of Robert Newcomb violated Rule 1.4(a)(2) in that from November 2017-July 2019, Newcomb failed to reasonably consult with his client Arthur Kaye about the means by which the client's objectives were to be accomplished, leading to Kaye's case being dismissed and without any opportunity for Kaye to have a decision on the merits of his claims. Arkansas Rule

1.4(a)(2) requires that a lawyer shall reasonably consult with the client about the means by which the client's objectives are to be accomplished.

D. The conduct of Robert Newcomb violated Rule 1.4(a)(3) in that Newcomb failed to inform his client Arthur Kaye that Kaye's lawsuit against Allstate was dismissed in July 2019. Arkansas Rule 1.4(a)(3) requires that a lawyer shall keep the client reasonably informed about the status of the matter.

E. The conduct of Robert Newcomb violated Rule 8.4(d) in that Newcomb's conduct during 2018-2019 caused Kaye's case against Allstate to be dismissed in July 2019 for Newcomb's repeated failure to fulfill his discovery obligations, possibly denying Kaye an opportunity to have his claims decided on their merits. 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 Arthur Kaye 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