

SUPREME COURT OF GEORGIA

In the Matter of Nakata S. Smith Fitch

S14Y1394 · No. S14Y1394 · Decided September 22, 2014

SUMMARY

The Georgia Supreme Court rejected Nakata S. Smith Fitch’s petition for voluntary discipline arising from her handling of a minor’s conservatorship estate. The Court found that her failure to reimburse the estate and pay court costs constituted additional misconduct and that the proposed sanction imposed no genuinely additional discipline. Fitch therefore remained suspended, having also failed to satisfy conditions imposed in an earlier disciplinary matter.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Georgia
DECIDED	September 22, 2014
DOCKET	S14Y1394
DISPOSITION	other
PROCEDURAL POSTURE	The attorney filed a petition for voluntary discipline arising from misconduct in a conservatorship matter. The Supreme Court of Georgia rejected the petition.
STANDARD OF REVIEW	The Court reviewed the petition and record to determine whether to accept the proposed voluntary discipline.
PRECEDENTIAL VALUE	Published disciplinary opinion

TOPICS

conservatorship probate procedure guardianships appellate procedure

PRACTICE AREAS

legal ethics attorney discipline probate conservatorship

QUESTIONS PRESENTED

1. Whether the Court should accept Smith Fitch's petition for voluntary discipline proposing an additional indefinite suspension conditioned on payment of amounts she was already required to pay under prior probate-court orders.
2. Whether the proposed discipline constituted a meaningful additional sanction for her additional misconduct.

HOLDINGS

1. The Court rejected the petition for voluntary discipline because the proposed additional indefinite suspension, conditioned on compliance with preexisting reimbursement and court-cost obligations, imposed no actual additional sanction.

KEY QUOTATIONS

“Thus, the “additional” sanction that Smith Fitch proposes is really no sanction at all.” (at 4)

FACTUAL BACKGROUND

Smith Fitch filed a conservatorship petition for a minor who received \$344,756.77 in life-insurance proceeds. She later reported disbursing \$20,935.40 from the minor's estate to herself for legal fees and expenses, and the probate court found nearly 30 percent of those fees and expenses unreasonable. The court ordered her to reimburse \$6,002.50 and pay \$1,260 in court costs; she did not comply and was held in contempt. She admitted that her conduct violated Georgia Rules of Professional Conduct Rules 1.5 and 8.4(a)(5).

PROCEDURAL HISTORY

Smith Fitch represented a mother and stepfather in a conservatorship proceeding involving life-insurance proceeds belonging to a minor. The probate court ordered her to reimburse the minor's estate for unreasonable fees and to pay court costs; after she failed to comply, the court held her in contempt. The Court of Appeals affirmed the reimbursement order. Smith Fitch then petitioned the Supreme Court of Georgia for voluntary discipline, proposing an additional indefinite suspension conditioned on payment of the existing obligations.

DISPOSITION

other

CASES CITED

- In the Matter of Fitch, 289 Ga. 253, 710 S.E.2d 563 (2011)

OPINION

in the Matter of Nakata S. Smith Fitch

PER CURIAM.

In the Supreme Court of Georgia Decided: September 22, 2014 S14Y1394. IN THE MATTER OF NAKATA S. SMITH FITCH. PER CURIAM. This Court suspended the authorization of Nakata S.

Smith Fitch (Bar No. 262068) to practice law for a period of one year, beginning on May 31, 2011, for conduct in 2005 to 2007 that violated Rules 1.15 (I) and (II), 1.3, and 1.4 of the Georgia Rules of Professional Conduct contained in Bar Rule 4-102 (d). See *In the Matter of Fitch*, 289 Ga. 253 (710 SE2d 563) (2011). We imposed two conditions on Smith Finch's authorization to practice law thereafter: (1) her attendance, prior to reinstatement, at an Ethics School offered by the State Bar; and (2) her submission to an evaluation by the State Bar's Law Practice Management Program, at her expense and with successful implementation of the resulting recommendations, within six months of reinstatement. See *id.* at 256. Smith Fitch has not fulfilled either of these conditions and thus remains suspended. The disciplinary matter now at issue arose out of Smith Fitch's involvement in a conservatorship case beginning in August 2008. In November 2008, Smith Fitch filed a petition for letters of conservatorship on behalf of a mother and step-father whose minor child received \$344,756.77 in life insurance proceeds upon the death of the child's father. The probate court entered a final order in May 2009, and in June 2009, Smith Fitch filed the required annual return for the estate indicating that she had disbursed \$20,935.40 from the minor's estate to herself for legal fees and expenses. After reviewing the return, the probate court set a show cause hearing for December 2, 2009, to address these disbursements. In August 2010, Smith Fitch relocated to New York. On September 15, 2010, the court entered an order finding that almost 30% of the fees and expenses that Smith Fitch paid herself were unreasonable. The court ordered her to reimburse the minor's estate \$6,002.50 within 30 days. Smith Fitch appealed that order, but the Court of Appeals affirmed it in May 2011 – the same month that this Court suspended her authorization to practice law for one year. Six months later, in November 2011, the probate court held Smith Finch in contempt of court for willfully disobeying the order to reimburse the minor's estate \$6,002.50 and for failing to pay court costs of \$1,260. On June 4, 2014, Smith Fitch filed a petition for voluntary discipline, 2 admitting that her conduct in connection with the conservatorship case violated Rules 1.5 and 8.4 (a) (5) of the Georgia Rules of Professional Conduct. In her petition, Smith Fitch claims that she has been unable to comply with the probate court's orders to reimburse the minor's estate and pay court costs due to her August 2010 relocation to New York, where the cost of living is higher; her unemployment since her move to New York; her unemployability as an attorney since her May 2011 suspension by this Court; and her husband's sudden illness in 2013 and subsequent death in January 2014. Smith Fitch, who was admitted to practice in Georgia in 1998, says that she deeply regrets being unable to comply with the probate court's orders and asserts that she has performed volunteer work and often provided pro bono and discounted legal services. She also claims to have a government contract opportunity that would enable her to comply with the probate court's orders, pay her Bar dues, and pursue her plans of returning to Georgia to practice law in the future. Smith Fitch asks the Court to accept her petition and to impose "an additional indefinite suspension with reinstatement conditioned on [her] payment in full of the \$6,002.50 to the minor's estate, with any interest assessed by the Henry County Probate Court, and payment of the \$1,260.00 appeal costs 3 that [she] owe[s] to the court."

The State Bar raises no objection, stating that Smith Fitch has cooperated fully with the Bar in this disciplinary matter and that she has experienced personal difficulties that may have affected her ability to comply with the probate court's September 2010 and November 2011 orders. Having reviewed the record, however, we reject Smith Fitch's petition for voluntary discipline. Although she identifies some potential mitigating factors, she still has not complied with the conditions that we imposed in May 2011 for her ongoing suspension to be lifted, and all she is offering to do now – as discipline for serious additional misconduct in another case – is to comply with her preexisting obligations to reimburse the minor's estate \$6,002.50 plus any assessed interest and to pay \$1,260 in court costs. Thus, the "additional" sanction that Smith Fitch proposes is really no sanction at all. Smith Fitch's ethical failings in connection with the conservatorship case are more serious than she appears to take them. Accordingly, we reject her petition. Petition for voluntary discipline rejected. All the Justices concur, except Benham and Melton, JJ., who dissent. 4