

SUPREME COURT OF SOUTH CAROLINA

In the Matter of Kenneth L. Mitchum

385 S.C. 618, 685 S.E.2d 811 (2009) · No. No. 26740 · Decided November 9, 2009

SUMMARY

The Supreme Court of South Carolina accepted Kenneth L. Mitchum's Agreement for Discipline by Consent after finding violations involving inadequate client communication, lack of diligence, unauthorized dismissal, improper financial assistance, and failure to respond to discovery. The court indefinitely suspended Mitchum from practicing law in South Carolina and ordered him to surrender his certificate of admission and file a compliance affidavit.

CASE DETAILS

COURT	Supreme Court of South Carolina
WRITING FOR THE COURT	Chief Justice Toal; Justice Waller; Justice Pleicones; Justice Beatty; Justice Kittredge
JURISDICTION	South Carolina
DECIDED	November 9, 2009
DOCKET	No. 26740
DISPOSITION	other
PROCEDURAL POSTURE	Attorney disciplinary matter submitted to the Supreme Court of South Carolina on an Agreement for Discipline by Consent between the respondent and the Office of Disciplinary Counsel.
PRECEDENTIAL VALUE	Published South Carolina Supreme Court disciplinary opinion

TOPICS

- remedies
- civil procedure

PRACTICE AREAS

- legal ethics
- attorney discipline
- professional responsibility

QUESTIONS PRESENTED

- Whether the court should accept the parties' Agreement for Discipline by Consent after respondent admitted violations of the Rules of Professional Conduct and the Rules for Lawyer Disciplinary Enforcement.

2. What sanction should be imposed for the admitted professional misconduct.

HOLDINGS

1. The court accepted the Agreement for Discipline by Consent after respondent admitted misconduct and consented to a sanction authorized by the disciplinary rules.
2. Respondent was indefinitely suspended from the practice of law in South Carolina.

KEY QUOTATIONS

“We accept the Agreement for Discipline by Consent and indefinitely suspend respondent from the practice of law.” (621)

FACTUAL BACKGROUND

Mitchum failed to keep clients informed, failed to diligently pursue civil actions, and signed a stipulation of dismissal without one client's knowledge or consent. During a prior suspension, he provided a client with a \$19,480 check that was not tied to an actual settlement and was intended as financial assistance in connection with litigation. In another matter, he failed to respond to interrogatories, document requests, and a motion to compel, resulting in dismissal with prejudice, and then falsely led the client to believe the case remained set for trial.

PROCEDURAL HISTORY

The Office of Disciplinary Counsel and Kenneth L. Mitchum entered into an Agreement for Discipline by Consent under Rule 21 of the Rules for Lawyer Disciplinary Enforcement. Mitchum admitted misconduct and consented to any sanction authorized by Rule 7, RLDE. The Supreme Court accepted the agreement and imposed an indefinite suspension from the practice of law.

DISPOSITION

other

REMAND INSTRUCTIONS

Within fifteen days of the opinion date, respondent must surrender his certificate of admission to practice law to the Clerk of Court and file an affidavit showing compliance with Rule 30, RLDE, Rule 413, SCACR.

CASES CITED

- In the Matter of Mitchum, 378 S.C. 597, 663 S.E.2d 482 (2008)
- In the Matter of Mitchum, 333 S.C. 265, 510 S.E.2d 214 (1998)
- In the Matter of Mitchum, 331 S.C. 34, 501 S.E.2d 733 (1998)
- In the Matter of Two Anonymous Members of the South Carolina Bar, 278 S.C. 477, 298 S.E.2d 450 (1982)

OPINION

PER CURIAM.

385 S.C. 618 (2009) 685 S.E.2d 811 In the Matter of Kenneth L. MITCHUM, Respondent. No. 26740. Supreme Court of South Carolina. Submitted October 13, 2009. Decided November 9, 2009. *619 Lesley M. Coggiola, Disciplinary Counsel, and Ericka M. Williams, Assistant Disciplinary Counsel, both of Columbia, for the Office of Disciplinary Counsel. Kenneth L. Mitchum, pro se, of Georgetown.

PER CURIAM: In this attorney disciplinary matter, respondent and the Office of Disciplinary Counsel (ODC) have entered into an Agreement for Discipline by Consent pursuant to Rule 21, RLDE, Rule 413, SCACR. In the agreement, respondent admits misconduct and consents to any sanction provided by Rule 7, RLDE, Rule 413, SCACR.

We accept the agreement and indefinitely suspend respondent from the practice of law in this state. The facts, as set forth in the agreement, are as follows. FACTS I. Respondent represented Complainant A in a civil action. Respondent failed to keep Complainant A reasonably informed regarding the status of the case and failed to diligently pursue the case.

In addition, respondent signed a Stipulation of Dismissal in the case without Complainant A's knowledge or consent and failed to inform Complainant A that he had signed the Stipulation of Dismissal. II. Respondent represented a client in a civil action. Respondent failed to diligently pursue the case. During the representation, *620 respondent was placed on definite suspension for nine (9) months and an attorney was appointed to protect the interests of respondent's clients (ATP).

In the Matter of Mitchum, 378 S.C. 597, 663 S.E.2d 482 (2008). On or about September 26, 2008, respondent delivered a check to the ATP in the amount of \$19,480.00 made payable to the client and requested the ATP deliver the check to the client.

The \$19,480.00 check tendered to the client was not the result of any actual settlement in the client's case. Instead, by tendering the check to the client, respondent was attempting to provide financial assistance to the client in connection with pending or contemplated litigation. III. Respondent was retained to represent Complainant B in a civil action against a defendant.

Respondent was served with the defendant's Interrogatories and Request for Documents; he failed to timely respond to either document. Respondent was served with a Notice of Motion and a Motion to Compel, but failed to respond to the Motion to Compel. Based on respondent's failure to respond to the Interrogatories, the Request for Documents, or the Motion to Compel, Complainant B's case was dismissed with prejudice.

Respondent did not notify Complainant B that the matter had been dismissed and falsely led Complainant B to believe the case was still on the docket for trial. LAW Respondent admits that

by his misconduct he has violated the following provisions of the Rules of Professional Conduct, Rule 407, SCACR: Rule 1.1 (lawyer shall provide competent representation); Rule 1.2 (lawyer shall abide by client's decision whether to accept settlement); Rule 1.3 (lawyer shall act with reasonable diligence and promptness in representing clients); Rule 1.4 (lawyer shall keep clients informed); Rule 1.8(e) (lawyer shall not provide financial assistance to client in connection with pending or contemplated litigation); Rule 3.2 (lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client); Rule 8.4(a) (lawyer shall not violate Rules of Professional Conduct); Rule 8.4(e) *621 (lawyer shall not engage in conduct that is prejudicial to administration of justice).

In addition, respondent admits his misconduct constitutes a violation of Rule 7, RLDE, of Rule 413, SCACR, specifically Rule 7(a)(1) (lawyer shall not violate Rules of Professional Conduct or any other rules of this jurisdiction regarding professional conduct of lawyers).[1] CONCLUSION We accept the Agreement for Discipline by Consent and indefinitely suspend respondent from the practice of law.

Within fifteen days of the date of this opinion, respondent shall surrender his certificate of admission to practice law in this state to the Clerk of Court and shall file an affidavit with the Clerk of Court showing that he has complied with Rule 30, RLDE, Rule 413, SCACR. INDEFINITE SUSPENSION. TOAL, C.J., WALLER, PLEICONES, BEATTY and KITTREDGE, JJ., concur.

NOTES [1] Respondent's disciplinary history includes a definite suspension for nine (9) months, a definite suspension for ninety (90) days, a public reprimand, a private reprimand, and an admonition. In the Matter of Mitchum, 378 S.C. 597, 663 S.E.2d 482 (2008); In the Matter of Mitchum, 333 S.C. 265, 510 S.E.2d 214 (1998); In the Matter of Mitchum, 331 S.C.

34, 501 S.E.2d 733 (1998); In the Matter of Two Anonymous Members of the South Carolina Bar, 278 S.C. 477, 298 S.E.2d 450 (1982).