

# SUPREME COURT OF SOUTH CAROLINA

## In re Samaha

399 S.C. 2 (2012) · Decided August 1, 2012

### SUMMARY

The South Carolina Supreme Court imposed a one-year definite suspension on attorney George Thomas Samaha, III, for misconduct arising from his representation of a widow in matters involving her late husband's estate. The misconduct included charging excessive fees, failing to cooperate in probate proceedings, making a false statement under oath, and engaging in conflicts of interest by preparing documents that gave him control over the client's affairs. The court also ordered Samaha to reimburse \$3,086.64 in disciplinary-proceeding costs.

### CASE DETAILS

|                       |                                                                                                                                                                                                                                        |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of South Carolina                                                                                                                                                                                                        |
| WRITING FOR THE COURT | Per Curiam; Toal, C.J.; Pleicones, J.; Beatty, J.; Kittredge, J.; Hearn, J.                                                                                                                                                            |
| JURISDICTION          | South Carolina                                                                                                                                                                                                                         |
| DECIDED               | August 1, 2012                                                                                                                                                                                                                         |
| DISPOSITION           | other                                                                                                                                                                                                                                  |
| PROCEDURAL POSTURE    | Attorney disciplinary proceeding in which the Supreme Court reviewed the Commission on Lawyer Conduct's findings of misconduct and recommended one-year suspension.                                                                    |
| STANDARD OF REVIEW    | The Supreme Court independently reviews the record, is not bound by the panel's recommendation, and may make its own findings of fact and conclusions of law. Disciplinary violations must be proven by clear and convincing evidence. |
| PRECEDENTIAL VALUE    | Published South Carolina Supreme Court attorney-disciplinary opinion; precedential on the Court's disciplinary authority, proof standard, and sanction.                                                                                |
| PARTIES               | Office of Disciplinary Counsel v. George Thomas Samaha, III                                                                                                                                                                            |

### TOPICS

- probate procedure
- estate planning
- trusts
- power of attorney
- estate litigation

### PRACTICE AREAS

## QUESTIONS PRESENTED

1. Whether the record established Samaha's violations of the South Carolina Rules of Professional Conduct and Rules for Lawyer Disciplinary Enforcement by clear and convincing evidence.
2. Whether a one-year definite suspension and assessment of proceeding costs were appropriate sanctions for the established misconduct.

## HOLDINGS

1. The record supported findings that Samaha committed misconduct by charging excessive fees, failing to cooperate in probate proceedings and making a false statement under oath, and engaging in conflicts of interest involving documents that gave him control over Lillian's affairs.
2. The Supreme Court has sole authority to determine the appropriate attorney-discipline sanction and is not bound by the Hearing Panel's recommendation.
3. A one-year definite suspension from the practice of law, reimbursement of \$3,086.64 in proceeding costs, and compliance with Rule 30 were appropriate sanctions for Samaha's misconduct.

## KEY QUOTATIONS

*"The authority to discipline attorneys rests entirely with this Court."* (at 9-10)

*"A disciplinary violation must be proven by clear and convincing evidence."* (at 10)

*"The Court is not bound by the panel's recommendation and may make its own findings of fact and conclusions of law."* (at 10)

## FACTUAL BACKGROUND

George Thomas Samaha represented Lillian McLure after her husband's death in matters involving the estate and funds removed by Lillian's sister-in-law under a power of attorney. Samaha charged a 25 percent contingency fee to marshal estate assets, charged a fee on the sale of Lillian's home, and prepared documents appointing himself as Lillian's attorney-in-fact, sole trustee, and personal representative without advising her to obtain independent counsel. He withheld estate documents, failed to disclose Lillian's location during probate proceedings, and falsely stated under oath that he did not know where she resided. The Hearing Panel found excessive fees, lack of cooperation and a false statement to the probate court, and conflicts of interest.

## PROCEDURAL HISTORY

The Office of Disciplinary Counsel filed formal charges on August 14, 2009. After a two-day hearing, the Hearing Panel found misconduct, and its report was filed with the Commission on December 15, 2011. Neither Respondent nor Disciplinary Counsel filed exceptions, so the factual findings were deemed admitted. The Supreme Court independently reviewed the record, agreed that misconduct had been established, imposed a one-year definite suspension, and assessed costs.

## DISPOSITION

other

## CASES CITED

- In re White, 391 S.C. 581, 707 S.E.2d 411 (2011)
- In re Thompson, 343 S.C. 1, 10, 539 S.E.2d 396, 401 (2000)
- In re Hazzard, 377 S.C. 482, 488, 661 S.E.2d 102, 106 (2008)
- In re Greene, 371 S.C. 207, 216, 638 S.E.2d 677, 682 (2006)
- In re Hursey, 395 S.C. 527, 719 S.E.2d 670 (2011)
- In re Prendergast, 390 S.C. 395, 402-04, 702 S.E.2d 364, 367-68 (2010)
- In re Crummey, 388 S.C. 286, 289-91, 696 S.E.2d 589, 591 (2010)
- In re Jones, 359 S.C. 156, 597 S.E.2d 800 (2004)
- In re Wilmeth, 373 S.C. 631, 632-33, 647 S.E.2d 185, 186 (2007)