

NORTH CAROLINA

HERTFORD COUNTY

4668

OCV 00512

IN THE GENERAL COURT OF JUSTICE

CC NC 127 AM 9:52

SUPERIOR COURT DIVISION

BY

[Signature]

IN RE:

Conduct of ROSBON D. B. WHEDBEE,
Attorney

CONSENT ORDER OF DISCIPLINE

This matter came on for hearing on September 11, 2000, pursuant to an Amended Order to Show Cause issued by Judge W. Russell Duke, Jr. that was properly served upon the respondent, Rosbon D. B. Whedbee. Rosbon D. B. Whedbee was present and represented by counsel, Grover P. Hopkins of Tarboro, NC. The North Carolina State Bar acted as prosecutor in this matter and was represented by its deputy counsel, A. Root Edmonson. Based upon the consent of the parties, as evidenced by the signatures of counsel affixed hereto, and the record before this Court, the undersigned makes the following:

FINDINGS OF FACT

1. On May 18, 1998, Southern States Cooperative, Inc. (hereinafter, Southern States) sued Larry Fairless and his wife, Gloria Fairless, in Hertford County Superior Court, file number 98-CVS-223, to collect a debt owed to Southern States. The respondent, Rosbon D. B. Whedbee (hereinafter, Whedbee), appeared for and represented both of the Fairlesses in Southern States' suit.
2. After taking both of the Fairlesses' depositions, counsel for Southern States filed a motion for summary judgment against each of them. On March 22, 1999, summary judgment for Southern States was granted against Larry Fairless and denied as to Gloria Fairless.
3. On April 22, 1999, at a mediated settlement conference was held in Plymouth, NC, Gloria Fairless agreed to pay Southern States \$7,000 and to release all claims she had to the proceeds from the sale of the Fairlesses' farm equipment in exchange for Southern States releasing Gloria Fairless from any further claims.
4. At the settlement conference, Gloria Fairless signed the following statement in the presence of Whedbee:

Mrs. Fairless agrees not to claim or otherwise take any action to impede the collection by SS of the money proceeds held for husband. She agrees

not to stop any collection attempt by SS [and] agrees she has no further claim to the proceeds of sale.

5. On May 4, 1999, Southern States' counsel filed a notice of right to have exemptions designated and served it on Larry Fairless.

6. On May 5, 1999, as a result of the agreement reached with Ms. Fairless, Southern States filed a voluntary dismissal of their claims against Gloria Fairless.

7. As a result of a motion to claim exempt property filed by Larry Fairless, an order designating exempt property was signed on June 30, 1999. On that date, counsel for Southern States filed a writ of execution against Larry Fairless with the Sheriff of Hertford County.

8. On August 9, 1999, Deputy Ronald Stallings returned the writ of execution unserved because he could not locate property upon which to levy.

9. On August 13, 1999, upon motion of Southern States, Hertford County Clerk of Superior Court Shirley Johnson (hereinafter, the Clerk) ordered Larry Fairless to appear before her at a supplemental proceeding to answer under oath all proper questions concerning property which he had that could be applied toward the satisfaction of the judgment in 98-CVS-223. The Clerk also ordered that:

Defendant [Larry Fairless], and all other persons, be and he [sic] hereby are enjoined from transferring or making any disposition of or interfering with any property belonging to the defendant which is exempt from execution.

10. On August 17, 1999 Deputy Ronnie Stallings served the Clerk's order upon Larry Fairless.

11. The Fairlesses had creditors in addition to Southern States who were owed money, including the Internal Revenue Service and the NC Department of Revenue. Whedbee had been negotiating with all of the Fairlesses' creditors seeking to have each of them agree to accept payment of a reduced amount in complete satisfaction of the Fairlesses' obligations.

12. In anticipation of the taxing authorities accepting partial payments as a result of the negotiations, Gloria Fairless delivered to Whedbee a Centura Bank certified check dated October 19, 1999 payable to Gloria Fairless in the sum of \$21,050.50. The certified check was purchased with a portion of the proceeds from the sale of Larry Fairless' farm equipment that had been forced by Centura Bank pursuant to the bank's security interest in the equipment.

13. On October 28, 1999, upon Whedbee's request, Gloria Fairless took the October 19, 1999 certified check back to Centura Bank and get two certified checks, one payable to the Internal Revenue Service for \$16,443.08 and one payable to the N.C. Department of Revenue for \$4,607.42, and delivered them to Whedbee.

14. On October 28, 1999, prior to Larry Fairless' supplemental proceeding, Whedbee mailed the certified checks brought to him by Gloria Fairless to the Internal Revenue Service and the NC Department of Revenue.

15. In the afternoon on October 28, 1999, Larry Fairless appeared and testified under oath in the supplemental proceeding. Whedbee represented Larry Fairless at the proceeding. Initially, the Clerk was not present while Southern States's counsel, Luther Starling, examined Larry Fairless.

16. During the supplemental proceeding, Starling asked Larry Fairless about the balance of the proceeds from the sale of Fairless' farm equipment. Fairless testified that the proceeds had been used to pay some debts, his lawyer's fees and that some had been used to pay his wife's payment to Southern States. Fairless testified that he thought that "some twenty thousand" of the proceeds remained.

17. When Starling asked him where the remaining money was, Fairless testified, "My lawyer's holding it for the government payment of taxes."

18. After securing the Clerk's presence at the proceeding, Starling again asked Fairless about the money left over from Centura Bank's sale of his farm equipment. After again establishing that some twenty thousand in sales proceeds remained, Starling asked, "and you're holding that in an account with your attorney; is that correct?" Fairless answered, "Right."

19. After the Clerk determined that the taxing authorities had not issued a levy and that no other creditor of Larry Fairless had a judgment or lien of record, the Clerk ordered Larry Fairless to hold the proceeds from the equipment sale so that they could be turned over to Southern States. Fairless told Starling on the record that he understood what the Clerk was ordering.

20. Although Whedbee knew that the equipment sale proceeds had been disbursed prior to the proceeding, he made no effort to have Larry Fairless correct or change his sworn testimony.

21. On November 2, 1999, the Clerk signed and filed a written Order requiring Fairless to pay over all moneys being held by Whedbee to the Clerk by 5:00 p.m. on November 5, 1999. That order further ordered Fairless and his attorney not to dispose of any funds in their possession related to the matter.

22. On November 9, 1999, after getting a copy of the Clerk's order, Whedbee called Starling to advise him that he never had held any of the Fairlesses' funds in his trust account, but that he had mailed certified checks to the taxing authorities for the Fairlesses prior to the Clerk's order being entered. Whedbee subsequently filed an affidavit to this effect.

23. At a hearing on November 30, 1999, Judge W. Russell Duke, Jr. held Larry Fairless in willful criminal contempt for disbursing funds to the taxing authorities in violation of the terms of the Court's orders.

24. Had Whedbee advised the Clerk on October 28, 1999 that the \$21,050.50 had already been mailed to the taxing authorities after Larry Fairless testified to the contrary, his client may have avoided being cited for criminal contempt.

Based upon the foregoing Findings of Fact, the Court makes the following:

CONCLUSIONS OF LAW

1. This Court, pursuant to its inherent power over officers of the Court, has jurisdiction of the subject matter of this proceeding and personal jurisdiction over the respondent, Rosbon D. B. Whedbee.

2. Whedbee's conduct, as set out above, is grounds for discipline pursuant to NCGS §84-28(b)(2) in that he violated the NC Revised Rules of Professional Conduct as follows:

- a. By failing to take steps to correct the consequences of his client's testimony that he knew to be misleading concerning whether Whedbee was "holding" "some twenty thousand" in farm equipment proceeds for Larry Fairless, Whedbee failed to disclose a necessary material fact to a tribunal in violation of Revised Rule 3.3(a)(2).
- b. By failing to take steps to correct the consequences of his client's testimony which resulted in further court proceedings and resulted in his client, Larry Fairless, being held in willful criminal contempt, Whedbee engaged in conduct prejudicial to the administration of justice in violation of Revised Rule 8.4(d).

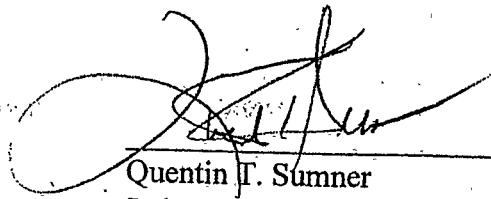
THEREFORE, IT IS HEREBY ORDERED, JUDGED AND DECREED:

1. The respondent, Rosbon D. B. Whedbee is suspended from the practice of law in North Carolina for six months.

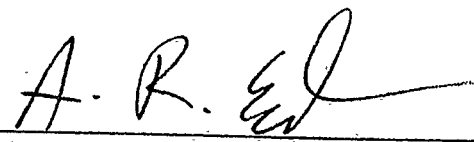
2. The suspension of Whedbee's license is stayed for three years upon the following conditions:

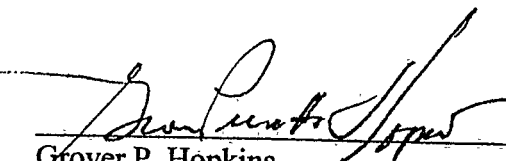
- a. That Whedbee not violate any of the Revised Rules of Professional Conduct during the stay.
- b. That Whedbee pay the costs of this proceeding by December 31, 2000, including reimbursing the NC State Bar \$300.96 for the travel costs of its deputy counsel for two overnight trips relating to this matter.

This is the 15th day of November, 2000.


Quentin T. Sumner
Judge Presiding

Consented to:


A. Root Edmonson
Deputy Counsel
North Carolina State Bar


Grover P. Hopkins
Attorney for the Respondent