BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL A

FILED
SEP 21 2009
LESLIE W. STEEN
CLERK

IN RE: WILLIAM H. MCKIMM, Respondent
Arkansas Bar ID#78110
CPC Docket No. 2009-075

CONSENT FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Betty Pass Simmons in an Affidavit dated June 26, 2009. The information related to the representation of Betty Pass Simmons by William H. McKimm, an attorney practicing primarily in Mount Ida, Arkansas.

On July 2, 2009, Mr. McKimm was served with a formal complaint, supported by affidavit from Ms. Simmons. A response was filed. The Respondent and the Executive Director negotiated a discipline by consent proposal, which was submitted to this Panel pursuant to the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law. (2002).

The information before the Committee reflected that on September 22, 2006, Betty Pass Simmons hired William Harry McKimm, an attorney practicing primarily in Mount Ida, Arkansas, to file a claim or an appeal for Social Security benefits related to her deceased husband and also an appeal of a denial of disability benefits. Mr. McKimm prepared a Contract of Employment which both he and Ms. Simmons signed. After the contract was signed, Ms. Simmons trusted Mr. McKimm to handle the matter diligently and effectively. Shortly after hiring Mr. McKimm, Ms. Simmons called his office to ask about the matter and Mr. McKimm explained that it could take as long as fourteen (14) months to obtain a hearing. Ms. Simmons

waited to hear something from Mr. McKimm but did not. Eventually, she began to make weekly phone calls to Mr. McKimm. When she was allowed to speak with him, Ms. Simmons was always assured that "any day we will get a court date." On several occasions, Mr. McKimm told her that he would check on it and call her back.

Ms. Simmons personally went to Mr. McKimm's office on March 5, 2009, to find out why the matter was taking such a long period of time. She understood from Mr. McKimm that he had mailed the appeal documents by certified mail when he undertook representation. At the time of the personal visit to the office, Mr. McKimm tried locating the receipt but could not. He told Ms. Simmons that he would locate it and call her the next week. Ms. Simmons called Mr. McKimm the next week and was informed that he does not send them all requests certified and that she would just have to start the process over again. Ms. Simmons also understood Mr. McKimm to say that he saw no reason why she would not be awarded disability.

Finally, Ms. Simmons called the Social Security office and learned that no one ever filed an appeal on her behalf. For over 30 months, Mr. McKimm was not truthful with Ms. Simmons. It was explained to Ms. Simmons by the representative at the Social Security office that she cannot recover all the back pay at this stage. Mr. McKimm has acknowledged that his actions created unnecessary delay for Ms. Simmons. He also admitted that he wanted to keep up on the issue with Ms. Simmons and her new counsel, when obtained, on the determination of what restitution he may owe to Ms. Simmons.

In responding to the formal disciplinary complaint, Mr. McKimm advised that he thought he had mailed the request for an ALJ Hearing to the administration. He also admitted that he did not check up on the status of the appeal. Mr. McKimm stated that he simply lost track of what

should have been happening with the appeal.

Ms. Simmons had a difficult time understanding why Mr. McKimm treated her this way in this situation. She had hired him in four (4) matters before this matter. Mr. McKimm represented her in a divorce proceeding, two guardianship matters and a visitation matter.

Upon consideration of the formal complaint and attached exhibit materials, the consent proposal, other matters before it, and the Arkansas Rules of Professional Conduct, Panel A of the Arkansas Supreme Court Committee on Professional Conduct finds:

1. That Mr. McKimm's conduct violated Rule 1.3, because his conduct with regard to Ms. Simmons' Social Security issues was neither diligent nor prompt after he was entrusted with the matter on her behalf in September 2006. Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

2. That Mr. McKimm's conduct violated Rule 1.4(a)(4), when he failed to promptly reply to Ms. Simmons with information about the Social Security matter(s) with which Mr. McKimm had been entrusted, in that only after she learned from Social Security that no appeal had been made on her behalf did Mr. McKimm tell her this significant fact. Rule 1.4(a)(4) requires that a lawyer promptly comply with reasonable requests for information.

3. That Mr. McKimm's conduct violated Rule 8.4(d), because his failure to take any action to follow up with Social Security or to check the status of the appeal he advised was filed for Ms. Simmons created an unnecessary delay in her pursuit of any remedies she may have had available to her and because his failure to take any action to follow up with Social Security or to check the status of the appeal he advised was filed for Ms. Simmons caused her to lose certain amounts of back pay which she may never recover. Rule 8.4(d) requires that a lawyer not engage

in conduct that is prejudicial to the administration of justice.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel A, that WILLIAM H. MCKIMM, Arkansas Bar ID#78110, be, and hereby is, CAUTIONED for his conduct in this matter. Further, pursuant to Section 18.A. of the Procedures, Mr. McKimm is assessed the costs of this proceeding in the amount of $100. The costs 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 thirty (30) 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 A

By: Steven Shults
Steven Shults, Chair, Panel A

Date: September 21, 2009

(13.M, Rev.1-1-02)