

**BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL A**

IN RE: L. T. SIMES, II
Arkansas Bar ID #75114
CPC Docket No. 2005-162

CONSENT FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based were developed from information provided to the Committee by Arnold Chandler, personal representative of the Estate of Quincy Chandler, Phillips County Probate No. P-76-10, on September 1, 2005. The information related to the representation of the Estate in 1976-2005 by Respondent L. T. Simes, II, an attorney practicing primarily in Phillips County, Arkansas, until he became a circuit judge in January 1997. On or about December 24, 2005, Respondent was served with a formal complaint, supported by affidavits or sworn statements from Arnold Chandler and attorney Jesse Daggett.

As an attorney, Mr. Simes opened probate administration of the Estate of Quincy Chandler, Deceased, in Phillips County Probate, as No. P-76-10, on January 14, 1976. On March 19, 1976, an Order was entered appointing him as administrator of the Chandler Estate. Thereafter he served the estate as both administrator and attorney until relieved of those duties by order entered May 20, 2005. On July 18, 1986, an order was entered directing that all farm rental income of the Estate was to be paid to him, as administrator. Thereafter he received certain annual rental checks from the tenants on the Estate's farm lands. Some of these checks he deposited into his attorney trust account. Some of these checks he did not deposit, and they were found years later by him in his file unnegotiated. He failed to timely account for these payments to the Estate.

In January 1997, Simes assumed duties as a full-time Circuit Judge, and was thereafter prohibited by Canon 4.G of the Arkansas Code of Judicial Conduct from engaging in the private practice of law practice. He took no action to remove himself as either the administrator or the attorney for the Quincy Chandler estate. He continued to receive annual rental checks, but did not account for them to the Estate. By January 2003, attorney Jesse Daggett had contacted Judge Simes on behalf of Chandler Estate heirs asking for an accounting of the annual farm rental payments. The court ordered Judge Simes to file a final accounting for the Estate by October 29, 2004, covering the period from March 18, 1976, to date, but he did not timely file such a final accounting. The matter was later the subject of a court hearing September 29, 2005. The court there found that at issue were rental payments for the years from 1989-2002. At the hearing Judge Simes admitted that the same tenant, Thomas Young, of Young & Company, had rented the Estate land from 1989-2002 for an annual rental of \$1,440.00. He agreed that he owed the Estate \$1,440.00 annual rent for each of 1989, 1992, 1993, 1994, and 1996. He denied that he owed the Estate rent for the years 1990, 1991, 1998, and 2001, stating he had no data for these years. The checks were voided and Mr. Young replaced them with new checks issued to the Estate. Judge Simes denied that he owed the estate interest for any of the years in question.

The Court found he knew Young was renting the estate lands each of the years in question, and that he had a duty to collect the rents for the Estate as they became due. The Court found he violated a state code section (ACA 28-52-101(c)) by breaching his duty to the Estate, and that he was therefore liable for the loss to the Estate due to his neglect and unreasonable delay in paying over to the Estate property or money which was in his hands. The Court found that Judge Simes owed the Estate the annual rent for the years 1989-1994, 1996, 1998, and 2001, plus interest thereon at 6% per annum. The Court also found he owed the Estate interest for the payments for the years 1995, 1997, 1999, 2000, and 2002, the years when he received the rent checks but they were not applied for the benefit of the Estate. In all, the Court found he owed the Estate rentals for nine (9) years totaling \$12,960.00, and interest for fourteen (14) years totaling \$11,178.03, all totaling a judgment amount of \$24,138.03, which he was ordered to pay within thirty (30) days. Judge Simes timely paid the full amount, and did not appeal that decision. An Order was sought relieving him of all further duties as administrator of the Estate.

On October 10, 2005, Judge Simes filed a "Petition for Attorneys Fees and Executors Fees," seeking court approval of \$13,057.50 in legal fees, \$720.00 in Executor's fees, and \$163.27 in expenses, all totaling \$13,940.77, covering his claimed service to the Estate from January 1976, through March 1998. The Court's Order signed October 25, 2005, also denied him any legal fees, executor's fees, and expenses from the Chandler Estate. The Court specifically found that he had not complied with Rules 1.3 (diligence), 1.4(a) (keeping the client reasonably informed), and 1.4(c) (notifying the client of his receipt of funds to which the client is entitled) of the Arkansas Model Rules of Professional Conduct. It was also noted in the Order that he had failed to comply with Judge Bell's 2004 Orders that he file an accounting for the Estate. Judge Simes did not appeal the court's decision from the September 29, 2005, hearing.

Following Respondent Attorney's receipt of the formal complaint, the attorney entered into discussion with the Executive Director which has resulted in an agreement to discipline by consent pursuant to Section 20.B of the Arkansas Supreme Court Procedures Regulating Professional Conduct of Attorneys at Law (2002). Upon consideration of the formal complaint and attached exhibits, admissions made by the respondent attorney, the terms of the written consent, the approval of Panel A of the Committee on Professional Conduct, and the Arkansas Model Rules of Professional Conduct, the Committee on Professional Conduct finds:

A. Judge Simes' conduct, as an attorney, violated Model Rule 1.3 in that he failed to apply annual farm rental payments received by him for a total of nine years to the Estate account, thereby depriving the Estate and its beneficiaries of the use of these funds. Model Rule 1.3 requires that a lawyer shall act with reasonable diligence and promptness in representing a client.

B. Judge Simes' conduct, as an attorney, violated Model Rule 1.4(a) in that the heirs of Quincy Chandler were his clients, in his dual capacity as both administrator and attorney for the Estate, and he failed to keep them informed about the receipt by him of annual Estate farm rental payments. Model Rule 1.4(a) requires that a lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

C. Judge Simes' conduct, as an attorney, violated Model Rule 1.15(a) in that he received at least three annual farm rental payments for estate lands (checks #5603, #7686, and #9462) that he did not place in a trust account. Model Rule 1.15(a) requires that a lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds of a client shall be deposited and maintained in one or more identifiable trust accounts in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. The lawyer or law firm may not deposit funds belonging to the lawyer or law firm in any account designated as the trust account, other than the amount necessary to cover bank charges, or comply with the minimum balance required for the waiver of bank charges. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

D. Judge Simes' conduct, as an attorney, violated Model Rule 1.15(b), in that he failed to promptly deliver to the Estate of Quincy Chandler the funds represented by three farm rental checks for the years 1997, 2000 and 2002. Model Rule 1.15(b) requires that Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

E. Judge Simes' conduct, as an attorney, violated Model Rule 3.4(c) in that he failed to comply with the Court order filed August 12, 2004, that he file a final accounting by October 29, 2004, of his administration of the Quincy Chandler Estate. Model Rule 3.4(c) requires that a lawyer shall not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists.

WHEREFORE, in accordance with the consent to discipline presented by Judge Simes and the Executive Director, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct that Respondent L. T. SIMES, II, Arkansas Bar ID# 75114, be, and hereby is, CAUTIONED for his conduct in this matter, he is ordered to pay restitution to the Estate of Arnold Chandler of \$2,122.99 to reimburse the Estate for actual legal fees incurred in the civil proceedings the Estate brought to recover funds of the Estate, and he is assessed \$50.00 Committee costs. The restitution and costs assessed herein, and totaling \$2,172.99, shall be payable by cashier's check or money order payable to the "Clerk, Arkansas Supreme Court" delivered to the Office of Professional Conduct with 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: _____
Phillip D. Hout, Chair, Panel A

Date: _____