

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

PANEL A

IN RE: CHARLES L. STUTTE, Respondent

Arkansas Bar ID# 83174

CPC Docket No. 2001-133

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Lendell Wilson on July 25, 2001. The information related to the representation of Tammy L. Wilson by Respondent from 1999 to 2001.

On December 10, 2001, Respondent was served with a formal complaint, supported by an affidavit from Lendell Wilson. Respondent filed a timely response on January 7, 2002.

The facts giving rise to the formal complaint stem from Respondent's representation of Ms. Wilson in a personal injury action, from which Ms. Wilson executed an assignment of the proceeds of the settlement to Mr. Wilson. Mr. Wilson's attorney, Abe Paul, submitted a copy of the assignment to Respondent. Mr. Wilson stated that he was contacted directly by Respondent to sign a release, even though Respondent knew he was represented by an attorney. Paul requested that Respondent send the release to his office and he would have Mr. Wilson sign it. However, Respondent refused to send the release to Paul. Additionally, at the time Paul was communicating with Respondent to get the release, Respondent had already disbursed the settlement funds the previous month, unbeknownst to Paul and Mr. Wilson.

The settlement was for \$25,000 from State Farm and Respondent received a check for \$20,510.35 and a separate check payable to Ms. Wilson and Medicare Services for \$4,489.65. Respondent alleged in his response that he sent Medicare their check, however, he could not produce a transmittal letter evidencing this fact and the check was never negotiated. On February 12, 2001, Respondent paid his client \$4,000. Respondent paid \$14,204.14 on February 23, 2001, on a subrogation lien from Continental Casualty and retained \$2,306.21 as his fee. Respondent failed to deposit any of these funds into his IOLTA interest-bearing trust account, but rather deposited them into a business or personal account. Additionally, after he deposited the funds into the account, Respondent's balance dropped below what it should have been before he issued some of the checks.

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

1. Mr. Stutte's conduct, collectively and singularly, violated Model Rule 4.2, when he was notified by Mr. Abe Paul on June 1, 2000, that Paul was representing Mr. Lendell Wilson in regards to the assignment executed by Stutte's client, yet Stutte contacted Mr. Wilson directly. Model Rule 4.2 provides, that a lawyer shall not communicate about the subject of the representation with a party the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.
2. Mr. Stutte's conduct, collectively and singularly, violated Model Rule 4.4, when he failed and refused to cooperate with the reasonable requests of Paul to forward the indemnification release to Paul's office in Missouri so that Paul could have his client sign it. Model Rule 4.4 provides, in pertinent part, that in representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay or burden a third person.
3. Mr. Stutte's conduct, collectively and singularly, violated Model Rule 1.15(a), when on or around February 7, 2001, he received a check from State Farm Mutual Automobile Insurance Company payable to Stutte and his client in the amount of \$20,510.35, and on February 9, 2001, Stutte deposited that check into his business or operating account, which was not an identifiable trust account. Stutte then wrote his client a check from that same account for \$4,000 on February 12, 2001. On February 13, 2001, the balance in the account was \$12,135.03. At the very least Stutte should have had \$17,010.35 as a balance in that account. On February 23, 2001, Stutte disbursed another check from that account for a lien filed in the case for \$14,204.14. On February 13, 2001, Stutte converted funds from his client in the amount of at least \$4,875.32. Model Rule 1.15(a) provides, in pertinent part, 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.
4. Mr. Stutte's conduct, collectively and singularly, violated Model Rule 1.15(b), when on or around February 7, 2001, he received a check from State Farm Mutual Automobile Insurance Company payable to Stutte and his client in the amount of \$20,510.35, and on February 9, 2001, Stutte deposited that check into his business or operating account, yet failed to notify Paul that he received the funds, even though on June 1, 2000, Paul notified Stutte of his client's assignment to Paul's client. Additionally, on April 6, 2001, Stutte sent Paul a letter and enclosed a copy of the release, insisting that Paul's client come to his office to sign the release, yet Stutte had already deposited the settlement check and had disbursed the money in February 2001. Model Rule 1.15(b) requires that upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. 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.
5. Mr. Stutte's conduct, collectively and singularly, violated Model Rule 1.15(c), when on or around February 7, 2001, he received a check from State Farm Mutual Automobile Insurance Company payable to Stutte and his client in the amount of \$20,510.35, and on February 9, 2001, Stutte deposited that check into his business or operating account. Stutte did not keep the property separate until the dispute between Ms. Wilson and Mr. Wilson over part of property was resolved. Additionally, Stutte failed to notify Paul that Stutte had received the funds. Model Rule 1.15(c) provides that, when in the course of representation a lawyer is in possession of property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved.

6. Mr. Stutte's conduct, collectively and singularly, violated Model Rule 1.15(f), when the account in which he deposited the check for \$20,510.35 was not an IOLTA interest-bearing account as required by the Arkansas Model Rules of Professional Conduct and by the Procedures Regulating Professional Conduct. Yet each time Stutte renewed his law license he certified that he was complying with all provisions of Rule 1.15(f). Stutte had only one IOLTA trust account listed with the IOLTA Foundation and that is not the account into which he deposited client funds, nor was it the account from which he disbursed checks on behalf of his client in this case. Model Rule 1.15(f) provides that a lawyer shall certify, in connection with the annual renewal of the lawyer's license, that the lawyer is complying with all provisions of the rule.

7. Mr. Stutte's conduct, collectively and singularly, violated Model Rule 8.4(a), when the account in which he deposited the check for \$20,510.35 was not an IOLTA interest-bearing account as required by the Arkansas Model Rules of Professional Conduct and by the Procedures Regulating Professional Conduct. However, each time Stutte renewed his law license he certified that he was complying with all provisions of Rule 1.15(f). Stutte knew the account in which he was depositing client funds was not an IOLTA interest-bearing account. Stutte only had one IOLTA trust account listed with the IOLTA Foundation and it is not the account he used in this case to either deposit client funds or from which he disbursed checks on behalf of his client. Model Rule 8.4(a) requires that a lawyer shall not violate or attempt to violate the rules of professional conduct, knowingly assist or induce another to do so, or do so through the acts of another.

8. Mr. Stutte's conduct, collectively and singularly, violated Model Rule 8.4(c), when the account in which he deposited the check for \$20,510.35 was not an IOLTA interest-bearing account as required by the Arkansas Model Rules of Professional Conduct and by the Procedures Regulating Professional Conduct. However, each time Stutte renewed his law license he certified that he was complying with all provisions of Rule 1.15(f). Additionally, On April 6, 2001, Stutte sent Paul a letter and enclosed a copy of the release, insisting that Paul's client come to his office, yet Stutte had already deposited the settlement check and he had disbursed the money in February 2001. Stutte no longer had the settlement money, yet he led Paul and his client to believe that he did. Also, Stutte received the \$21,010.35 from State Farm on February 7, 2001, and on February 9, 2001, deposited it into a non-IOLTA account. Stutte then wrote his client a check from that same account for \$4,000 on February 12, 2001. On February 13, 2001, the balance in that same account was \$12,135.03. At the very least Stutte should have had \$17,010.35 as a balance in that account. On February 23, 2001, Stutte disbursed another check from that account for a subrogation lien filed in the case for \$14,204.14. On February 13, 2001, Stutte converted funds from his client in the amount of at least \$4,875.32. Model Rule 8.4(c) requires that a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

9. Mr. Stutte's conduct, collectively and singularly, violated Model Rule 8.4(d), when he refused to send the release to Paul, resulting in unnecessary delays in resolving the matter which was prejudicial to the administration of justice. Additionally, Stutte's failure to communicate with Paul resulted in unnecessary delays in resolving the matter. Model Rule 8.4(d) provides, in pertinent part, that it is professional misconduct for an attorney to 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 Charles L. Stutte, Arkansas Bar ID# 83174, be, and hereby is, REPRIMANDED for his conduct in this matter and fined \$1,000. Stutte is also ordered to pay \$50 costs for the proceedings herein. The fine and 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 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: \_\_\_\_\_

Gwendolyn D. Hodge, Chair, Panel A

Date: \_\_\_\_\_