

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

IN RE: STEVEN RICHARD SMITH
Arkansas Bar ID #91177
CPC Docket No. 2006-031

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 Bank of America in two "trust account overdraft notices" in January 2006. On April 6, 2006, Respondent was served with a formal complaint. Respondent failed to file a response to the complaint, which failure to timely respond, pursuant to Section 9.C(4) of the Procedures, constituted an admission of the factual allegations of the formal complaint and extinguished Respondent's right to a public hearing.

On or about January 18, 2006, Smith issued his trust account check #681 on Bank of America IOLTA trust account No. *****9019 for \$290.00 payable to Shackelford Plaza Building for a deposit for rent on his office space. The check was honored and paid by his bank when presented on February 3, 2006, even though honoring the check caused his trust account balance to then become -\$444.77. Writing a check directly for a personal or business expense from a trust account, without any indication he had earned said funds, was an improper use of trust account funds, and especially where such a check caused his trust account balance to go negative.

On or about January 18, 2006, he issued his trust account check #682 on Bank of America account No. *****9019 for \$150.00 payable to Frank Gibson for an office file cabinet Smith purchased from him. The check was honored and paid by Smith's bank when presented on February 2, 2006. Writing a check directly for a personal or business expense from a trust account, without any indication he had earned said funds, was an improper use of trust account funds.

On or about January 23, 2006, he issued his trust account check #684 on Bank of America account No. *****9019 for \$477.33 payable to CMS Medical Services for client Tracy Lynn. The check was honored and paid by Smith's bank when presented on February 2, 2006, even though honoring the check caused his trust account balance to then become -\$154.77. Smith exercised improper management control of his attorney trust account by issuing a check to a third party for a client obligation when the funds to pay that check were not in his trust account when the check was presented for payment by the third party, and especially where such a check caused his trust account balance to go negative.

Smith received an advance of filing fee costs of \$140.00 from his client Angela Palmer by her check #2013 on or about November 10, 2005, and failed to timely deposit the check in his trust account, resulting in later negative balances when other checks he thereafter issued were presented against insufficient funds in his trust account. He paid Palmer's filing fee from other funds not received from her. By failing to timely deposit Palmer's check and paying her filing fee from other funds, he engaged in improper trust account management.

Only client funds are to be deposited and maintained in an attorney trust account, with the exception of not more than \$500 of attorney or office funds which may be maintained there, and clearly identified as such, under Rule 1.15(b)(3), for the purpose of paying bank service charges or maintaining any required minimum account balance to waive bank charges. If any funds in a trust account are earned as fees by an attorney or are expended for client matter costs or expenses, such funds are to be promptly removed from the trust account.

Upon consideration of the formal complaint and attached exhibit materials, 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:

A. Mr. Smith's conduct violated Rule 1.15(a)(1) in that on or about January 23, 2006, he issued his trust account check #684 on Bank of America account No. *****9019 for \$477.33 payable to CMS Medical Services for client Tracy Lynn, and the check was honored and paid by Smith's bank when presented on February 2, 2006, even though honoring the check caused his trust account balance to then become -\$154.77. On or about January 18, 2006, Smith issued his trust account check #681 on Bank of America account No. *****9019 for \$290.00 payable to Shackelford Plaza Building for a deposit for rent on his office space, and the check was honored and paid by his bank when presented on February 3, 2006, even though honoring the check caused his trust account balance to then become -\$444.77. On or about January 18, 2006, Smith issued his trust account check #682 on Bank of America account No. *****9019 for \$150.00 payable to Frank Gibson for an office file cabinet Smith purchased from him, and the check was honored and paid by Smith's bank when presented on February 2, 2006. Smith received an advance of filing fee costs of \$140.00 from his client Angela Palmer by her check #2013 on or about November 10, 2005, and failed to timely deposit the check in his trust account, resulting in later negative balances when other checks he thereafter issued were presented against insufficient funds in his trust account. He paid Palmer's filing fee from other funds not received from her. By failing to timely deposit Palmer's check and paying her filing fee from other funds, Smith engaged in improper trust account management. Arkansas Rule 1.15(a)(1) requires that a lawyer shall hold property of clients or third persons, including prospective clients, that is in a lawyer's possession in connection with a representation separate from the lawyer's own property.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel A, that STEPHEN R. SMITH, Arkansas Bar ID# 91177, be, and hereby is, CAUTIONED for his conduct in this matter and assessed \$50.00 Committee costs. 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 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: _____

