

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

PANEL A

IN RE: MALCOLM ANGELA SIMMONS

ARKANSAS BAR ID #91243

CPC DOCKET No. 2002-083

FINDINGS AND ORDER

The formal charges of misconduct is based on a complaint received from Cecelia Renee Crater. Ms Crater is a physical therapist for MCH Physical Therapy Clinic in Little Rock. In 2000, Ms. Crater treated Thurston Lamb for injuries he sustained in a motor vehicle accident. The treatments started on August 21, 2000 and ended on October 25, 2000. Mr. Lamb was represented by Malcolm A. Simmons, Attorney at Law, Little Rock, Arkansas.

Mr. Lamb signed a release of medical information and agreed to a lien on any settlement proceeds he would receive from legal claims against the tortfeasor. A copy of the release and lien were provided to Mr. Lamb's attorney, who signed the release and lien on September 8, 2000. The signed release was returned to Ms. Crater's office. A copy of the signed lien was also provided to Farmer's Insurance Company as it was the insurance carrier for Mr. Lamb. Ms. Crater never received any information concerning the outcome of any legal action, settlement or recovery.

In August 2001, Ms. Crater contacted Farmer's Insurance Company concerning the status of any claims relating to Mr. Lamb and the accident. Ms. Crater was informed that Mr. Lamb settled his claims in November 2000 and that a check was sent to Malcolm A. Simmons, Attorney at Law. The check was made payable to Thurston B. Lamb, Malcolm A. Simmons, and MCH Physical Therapy.

Ms. Crater placed a call to Malcolm Simmons following the information she obtained from Farmer's Insurance. Mr. Simmons admitted that he had received the settlement proceeds but that he had not disbursed any of the funds as his client had not authorized disbursement of the funds. Ms. Crater stated that the check listed her business as a payee and asked how he was able to cash the check without her signature or approval. Mr. Simmons admitted that he did not have authority to deposit the check into his trust account without authority from Ms. Crater. Mr. Simmons stated that he was sure his secretary just put "For Deposit Only" on the check and deposited it into his account.

Ms. Crater called Mr. Simmons again on September 19, 2001. Mr. Simmons stated that Mr. Lamb had not authorized him to disburse funds. Ms. Crater informed Mr. Simmons that she was going to initiate collection efforts on his client's account. Mr. Simmons told her that was fine with him.

In January 2002, Ms. Crater filed suit against Thurston Lamb in Pulaski County Municipal Court. Mr. Simmons represented Mr. Lamb. Along with an answer filed on Mr. Lamb's behalf was a cashier's check in the amount of \$2,036.25 which was the amount of the claim. A consent judgment was entered and the case was closed on February 7, 2002.

Upon consideration of the formal complaint, the response herein, and the Arkansas Model Rules of Professional Conduct, the Committee on Professional Conduct finds:

1. That Mr. Simmons' conduct violated Model Rule 1.15(b) when he failed to notify Cecelia Renee Crater of MCH Physical Therapy that he was in receipt of settlement proceeds in a matter in which involving his client, Thurston Lamb; and when he failed to promptly deliver to Cecelia Renee Crater of MCH Physical Therapy funds to which she was entitled to receive under the lien Mr. Simmons signed on September 8, 2000. 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.
2. That Mr. Simmons' conduct violated Model Rule 8.4(c) when he deposited a check into his trust account which was made payable to "Thurston B. Lamb & Phyllis Lamb, Individually & As Husband & Wife & Their Atty, Malcolm A. Simmons & MCH Physical Therapy" without authority to do so from MCH Physical Therapy. Model Rule 8.4(c) stated that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct that MALCOLM A. SIMMONS, Arkansas Bar ID No.91243, be, and hereby is, SUSPENDED for a period of three (3) months for his conduct in this matter, that he be fined the amount of two hundred and fifty (\$250) dollars, and that he be assessed costs in the amount of fifty (\$50) dollars. The suspension shall become effective as of the date of the filing of this Order with the Clerk of the Arkansas Supreme Court. The fine and costs are due within thirty (30) days of the filing of this Order with the Clerk of the Arkansas Supreme Court.

ARKANSAS SUPREME COURT COMMITTEE

ON PROFESSIONAL CONDUCT

By: _____

Win A. Trafford

Chairman, Panel A

Date: _____