

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

IN RE: GARLAND WATLINGTON, Respondent
Arkansas Bar ID# 95223
CPC Docket No. 2009-142

FILED

SEP 21 2012

CONSENT FINDINGS AND ORDER

**LESLIE W. STEEN
CLERK**

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Traci Schmiett in a grievance submitted to the Office of Professional Conduct in April 2009, concerning her former attorney, Garland Watlington of Jonesboro, Arkansas. The information in Ms. Schmiett's grievance led to a review of Mr. Watlington's trust account and from that review came the allegations of the formal complaint with CPC Docket No. 2009-142.

On December 21, 2009, Respondent was served with a formal complaint, supported by documentation from Mr. Watlington's trust account. A response was filed. The matter proceeded to ballot vote and then a request for public hearing was made by Respondent. During the time following the request for public hearing, Mr. Watlington voluntarily provided his trust account records to the Office of Professional Conduct. Thereafter, the Respondent, through counsel, and the Executive Director negotiated a discipline by consent proposal, which was submitted to this Panel.

The information before the Panel reflected that Traci L. Schmiett was involved in a motor vehicle accident on January 9, 2005. On July 7, 2006, she signed an Attorney - Client Contract with Garland Watlington, an attorney practicing primarily in Jonesboro, for representation in that matter.

During February 2008, a settlement was reached in the personal injury matter. The total recovery in the Schmiett matter was \$15,000. The settlement was paid in two checks, one for \$10,000 and one for \$5,000. Mr. Watlington sent the Release to Ms. Schmiett in a letter dated February 28, 2008, and was signed by Ms. Schmiett on March 18, 2008. Pursuant to request made by the Office of Professional Conduct, Mr. Watlington provided what he asserted was the Settlement Closing Statement provided to Traci Schmiett.

The \$15,000 deposit of March 3, 2008, on Mr. Watlington's IOLTA Summary Statement is the deposit of the Schmiett settlement checks. Pursuant to the Settlement Sheet Mr. Watlington provided to the Office of Professional Conduct, a balance of \$9,693.39 should have remained in his account because they were funds not belonging to Mr. Watlington until paid to Ms. Schmiett or her medical providers.

After receiving the grievance form from Ms. Schmiett containing information about the settlement and that she had received no funds from it, Mr. Watlington was written and request was made for him to provide additional information pursuant to Rule 8.1(b) of the Arkansas Rules of Professional Conduct. Mr. Watlington was first written on May 14, 2009. Mr. Watlington responded via letter dated June 11, 2009. A follow up letter was sent to Mr. Watlington on June 15, 2009. Mr. Watlington responded on June 29, 2009 and provided certain trust account records. Notice was given by Mr. Watlington at this time that he interpled the remaining funds of the settlement into the registry of the Court in Baxter County Circuit Court.

Since neither Ms. Schmiett nor her medical providers had been paid any funds from the settlement received on her behalf by Mr. Watlington, a balance of \$9,693.39, should be present in the trust account from the date of deposit until the funds were interpled into the registry of

the court in Baxter County. However, this is not what the trust account records revealed. Ms. Schmiett's settlement funds were not properly safeguarded as required by the Arkansas Rules of Professional Conduct.

In responding to the formal disciplinary complaint, Mr. Watlington admitted that the exact amount of the fee and costs were not deducted from the IOLTA trust account, but explained that a \$5,000 check was written as fees and costs. Mr. Watlington explained that there was an accounting error causing insufficient funds in the trust account prior to pleading the funds into the registry of the Court. In addition, Mr. Watlington affirmatively stated that there two checks that had not cleared the bank and were reissued but he did not catch the error until after the investigation began. This information was verified by bank records provided directly from Mr. Watlington's bank. Mr. Watlington also affirmatively stated that if there is any error in this matter it is in not keeping appropriate records not in intentionally misappropriating funds.

Upon consideration of the formal complaint and attached exhibit materials, the response to it, 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. Watlington's conduct violated Rule 1.15(a), when Mr. Watlington did not hold Ms. Schmiett's personal injury funds separate from his own property, in that at some point her funds were removed from the trust account as evidenced by the balance in the trust account as of June 9, 2008, less than four (4) months after the funds had been deposited into the trust account. Rule 1.15(a)(1) requires that a lawyer hold property of a 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.

2. That Mr. Watlington's conduct violated Rule 1.15(b)(1), when Mr. Watlington did deposit Ms. Schmiett's funds into his IOLTA trust account but failed to maintain them in the account as of June 9, 2008, when the funds were no longer present in the account as reflected by the balance on that date. Rule 1.15(b)(1) requires that funds of a client be deposited and maintained in one or more separate, clearly identifiable trust accounts in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel A, that GARLAND WATLINGTON, Arkansas Bar ID# 95223, be, and hereby is, REPRIMANDED for his conduct in this matter. In addition, Mr. Watlington is assessed the costs of this proceeding in the amount of ONE HUNDRED DOLLARS (\$100), pursuant to Section 18.A of the Procedures. Mr. Watlington is also ordered to pay a fine in the amount of ONE THOUSAND DOLLARS (\$1,000) pursuant to Section 18.B of the Procedures. The fine and costs assessed herein, TOTALING ONE THOUSAND ONE HUNDRED DOLLARS (\$1,100) 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.

In addition, Panel A has extended the time of the order for Mr. Watlington to provide monthly audits of his trust account to the Office of Professional Conduct by the 15th of each month for an additional six (6) months from the period of twenty-four (24) months of Panel B. The audits are to be conducted by a Certified Professional Accountant and Mr. Watlington shall bear the costs of the CPA's audit. The monthly audits shall demonstrate with specificity the

opening balance for each month with the amount owed to each client, a complete list of activity in the account including pay out and receipt of funds for each specific client, and the ending balance each month with the amount owed in each client's specific matter. Settlement statements for each client in each case settled during the month settled and any disbursements from the total settlement shall be provided with the monthly audit information as well.

ARKANSAS SUPREME COURT COMMITTEE
ON PROFESSIONAL CONDUCT - PANEL A

By: Steven Shults
Steven Shults, Chair, Panel A

Date: 9-21-12

(13.M, Rev.5-26-11)