BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT PANEL A

IN RE: DON TRIMBLE, Respondent Arkansas Bar ID#91078 CPC Docket No. 2010-103 FILED

JAN 26 2011

LESLIE W. STEEN

CONSENT FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Raymond Jones in June 2010. The information related to the representation of Mr. Jones by Mr. Trimble during early 2010..

On November 23, 2010, Respondent was served with a formal complaint, supported by information gathered during the investigation of Mr. Jones' grievance. A Response was filed. The Respondent and the Executive Director negotiated a discipline by consent proposal, which was submitted to this Panel.

The information before the Panel demonstrated that during January 2010, Raymond Jones, a resident of New York State, hired and paid Don Trimble, an attorney practicing primarily in Little Rock, Arkansas, to handle a legal matter for him involving possible encroachment onto Mr. Jones' property in Conway County, Arkansas. Mr. Jones sent Mr. Trimble the \$2500 requested retainer fee. The fee was received by Mr. Trimble and acknowledged on January 13, 2010. In the e-mail acknowledging receipt of the fee, Mr. Trimble also told Mr. Jones that he would send monthly status information.

Mr. Trimble did not send monthly status reports. In fact, he never contacted Mr. Jones again by the time Mr. Jones filed his grievance with the Office of Professional Conduct in June 2010. Mr. Jones attempted to call Mr. Trimble but was unsuccessful. He also tried to contact

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Mr. Trimble via e-mail but received no response. In April 2010, Mr. Jones sent a certified letter which went unclaimed in spite of two notices to Mr. Trimble by the postal service. While in Arkansas during May 2010, Mr. Jones went to Mr. Trimble's office but was unable to meet with him there as well. The grievance from Mr. Jones was filed on June 21, 2010.

In July 2010, the Office of Professional Conduct sent Mr. Trimble a letter requesting information about the Jones' matter. Mr. Trimble responded in a letter dated August 12, 2010. In the letter, Mr. Trimble explained that he returned \$2500 to Mr. Jones along with the contents of his file on August 11, 2010. In addition, Mr. Trimble offered an apology to Mr. Jones.

In the response to the Office of Professional Conduct, Mr. Trimble admitted that the \$2500 was not placed in his trust account. Continuing with his response to the investigative request made by the Office of Professional Conduct, Mr. Trimble offered as reason for not handling Mr. Jones' matter in part that he "put it off a couple of days to prepare to argue at the 8th Circuit, put it off a few days to go to St. Louis and argue orally at the 8th Circuit". A review of the records from the 8th Circuit Court of Appeals demonstrates that these two statements are not accurate. The oral argument records maintained by the 8th Circuit demonstrate that Mr. Trimble only argued one appeal orally at the 8th Circuit recently, but it was in September 2009, months before he received Mr. Jones' file and retainer check. Further, review was made of all oral arguments held from January 2010 through June 2010 and those records verify that Mr. Trimble was not an attorney involved in any cases argued orally since Mr. Jones sent the retainer and file contents to Mr. Trimble.

Although Mr. Trimble returned \$2500 to Mr. Jones and offered his apology, any action to be taken with regard to Mr. Jones' legal matter was delayed for many months because of Mr.

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Trimble's inactivity. Further, the funds were not safeguarded in Mr. Trimble's trust account until earned or expended in costs. In addition, Mr. Trimble offered inaccurate information to the Office of Professional Conduct when responding to a legally valid request for information during a disciplinary investigation.

Upon consideration of the formal complaint and attached exhibit materials, the consent proposal, 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. Trimble's conduct violated Rule 1.3, because Mr. Trimble did not act with any promptness or diligence with regard to Mr. Jones' legal matter for which he was hired and paid to perform services. Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

2. That Mr. Trimble's conduct violated Rule 1.4(a)(3) because although he advised Mr. Jones he would provide Mr. Jones with monthly status reports, Mr. Trimble supplied him with nothing, not even information that he was busy with other matters and could not attend to Mr. Jones' legal issue as he first said he would. Rule 1.4(a)(3) requires that a lawyer keep the client reasonably informed about the status of the matter.

3. That Mr. Trimble's conduct violated Rule 1.15(b)(1), because until earned by services provided by Mr. Trimble, the \$2500 retainer paid to him by Mr. Jones in January 2010, remained the funds of Mr. Jones. Mr. Trimble failed to deposit those funds of his client, Mr. Jones, into his IOLTA trust account and therefore also failed to maintain them in that account. Rule 1.15(b)(1) requires that funds of a client shall be deposited and maintained in one or more separate, clearly identifiable trust accounts in the state where the lawyer's office is situated, or

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elsewhere with the consent of the client or third person.

4. That Mr. Trimble's conduct violated Rule 1.15(b)(2) because Mr. Trimble did not deposit into his client trust account the \$2500 retainer paid to him by Mr. Jones for future services and expenses to be provided with regard to Mr. Jones' land issue in Conway County, Arkansas. Rule 1.15(b)(2) requires that a lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

5. That Mr. Trimble's conduct violated Rule 8.1(a) because in responding to an inquiry made in a disciplinary matter, Mr. Trimble in an attempt to explain his lack of action on behalf of Mr. Jones in his legal matter, falsely stated as a fact that he had been preparing for an oral argument before the 8th Circuit Court of Appeals which caused him to not be able to attend to Mr. Jones' legal matter and Mr. Trimble falsely stated as a fact that he had gone to St. Louis to argue a legal matter orally before the 8th Circuit Court of Appeals which caused delay in attending to Mr. Jones' matter. Rule 8.1(a) requires, in pertinent part, that a lawyer in connection with a disciplinary matter not knowingly make a false statement of material fact.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel A, that DON TRIMBLE, Arkansas Bar ID# 91078, be, and hereby is, REPRIMANDED for his conduct in this matter. Mr. Trimble is also assessed the costs in this matter pursuant to Section 18.A of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law in the amount of \$100. The Committee also imposes a fine in the amount of \$500 pursuant to Section 18.B of the Procedures. The fine and costs assessed herein, totaling \$600, shall be payable by cashier's

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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.

ARKANSAS SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT - PANEL A

By: TeBenton Smith, Jr., Chair, Panel A Date: 2

(13.M, Rev.1-1-02)