

New Hampshire Supreme Court  
**Professional Conduct Committee**

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*Simpson, Bruce D. advs. Attorney Discipline Office # 04-014*

**Three Month Suspension**

On March 20, 2006, the Professional Conduct Committee heard oral argument pursuant to New Hampshire Supreme Court Rule 37A(III)(d)(2)(B), and deliberated the matter of *Simpson, Bruce D. advs. Attorney Discipline Office # 04-014*. Landya B. McCafferty, Disciplinary Counsel, presented, as well as the Respondent, Bruce D. Simpson, Esquire. Members present included Margaret H. Nelson, Chair, Benette Pizzimenti, Vice Chair, Toni Gray, Vice Chair, Thomas P. Connair, Gerald A. Daley, Reporter, James R. Martin, David N. Cole, Alan J. Cronheim and David N. Page. Members Ellen L. Arnold, Richard Darling and Gretchen Rule Hamel were absent. Mr. Cronheim left the meeting prior to the discussion and was not present for the discussion or votes.

The Professional Conduct Committee, upon consideration, granted the Assented to Motion to Permit Waiver of the Hearings Committee Process. Further, the Committee approved the Stipulation of Facts, the Stipulation as to Rules Violated, and the Stipulation as to Costs as detailed below.

**FACTUAL FINDINGS**

The Professional Conduct Committee determined that the record supports the following findings of fact by clear and convincing evidence:

1. Mr. Simpson is an attorney licensed to practice law in New Hampshire. Mr. Simpson was admitted to practice on November 2, 1992. At all times material to this proceeding, Mr. Simpson operated his law office at Lower Main Street, P.O. Box 296, Dublin, New Hampshire, 03444.
2. On April 25, 2002, Mr. Simpson filed on behalf of the Estate of Kenneth R. Heywood ("Heywood Estate") an Appearance and a Petition for Estate Administration in Hillsborough County Probate Court.
3. On July 18, 2002, Mr. Simpson signed a bond with the National Grange Mutual Insurance Company in the amount of \$18,000.00, for the Heywood Estate. The bond was conditioned on Mr. Simpson's satisfactory performance of his obligations as fiduciary for the Heywood Estate.
4. On July 29, 2002, the Probate Court appointed Mr. Simpson executor of the Heywood Estate (docket #2002-806).
5. On August 1, 2002, the Probate Court issued an Order requiring that the Inventory be filed on or before October 27, 2002, and an Accounting on or before July 30, 2003.
6. In that Order, the Probate Court also included instructions requiring Mr. Simpson to file an accounting every year thereafter "on the same day until a final account is made."
7. Mr. Simpson did not file the Inventory on October 27, 2002, as required. On December 2, 2002, the Probate Court forwarded to Mr. Simpson formal notification of the default and levied a fine on him. On January 8, 2003, the Probate Court issued notice that a hearing on the default was scheduled for February 26, 2003.
8. On January 3, 2003, Mr. Simpson opened a savings account at the Bank of New Hampshire for the Heywood Estate (account #9721028713), with a deposit in the amount of \$6,364.40.
9. On or about January 7, 2003, Mr. Simpson filed an Inventory with the Probate Court. The Court ordered Mr. Simpson to file an amended Inventory to correct a problem in his original filing. The Court also ordered Mr. Simpson to pay the fine for the default, and canceled the default hearing scheduled for February 26, 2003.
10. On or about January 15, 2003, Mr. Simpson filed an Amended Inventory. The Amended Inventory indicated that the sole asset of the Heywood Estate was a savings account at the

Bank of New Hampshire containing \$7,604.76 (account #9721028713) (hereinafter "Heywood Savings Account").

11. However, as of January 15, 2003, the Heywood Savings Account had a balance of only \$6,365.53. The difference between the amount in the Heywood Savings Account that Mr. Simpson listed on the Amended Inventory (\$7,604.76) and the amount actually in the Heywood Savings Account as of January 15, 2003 (\$6,365.53) equals \$1,239.23.
12. Mr. Simpson explains the discrepancy as resulting from a payment to himself of approximately \$1,240.00 from the estate funds prior to January 3, 2003, the date Mr. Simpson opened the Heywood Savings Account. Mr. Simpson paid himself \$1,240.00 to cover his legal fees and expenses.
13. On February 24, 2003, Mr. Simpson withdrew \$6,364.40 from the Heywood Savings Account and deposited that money into his Bank of New Hampshire IOLTA account (account #00-0426987).
14. In or about late February 2003, Mr. Simpson left the United States and moved to China to take a teaching job. While Mr. Simpson originally intended to be in China for only six months, he remained there for approximately two years.
15. On April 15, 2003, the Bank of New Hampshire closed the Heywood Savings Account as it contained no funds.
16. Mr. Simpson did not thereafter file any inventories or a final accounting on behalf of the Heywood Estate. Nor did Mr. Simpson disclose to the Probate Court his February 24, 2003, transfer of funds from the Heywood Savings Account to his IOLTA trust account. Further, Mr. Simpson did not ever file any sort of financial disclosure form with the Probate Court in order to obtain approval of his fee.
17. On January 27, 2004, the Probate Court appointed Robert Taft, Esq., to serve as administrator of the Heywood Estate. Because Mr. Simpson neglected to communicate with anyone involved in the case prior to his move to China, neither Mr. Taft nor the Probate Court were aware that Mr. Simpson was safeguarding the funds from the Heywood Savings Account in his IOLTA trust account. In fact, all parties and the Probate Court believed that Mr. Simpson had defalcated with regard to the funds and left the country.

18. Following his appointment as administrator, Mr. Taft filed all the necessary paperwork to close the Heywood Estate, including the processing of a claim with the bond company for the funds that were referenced in Mr. Simpson's Amended Inventory but were no longer available in the Heywood Savings Account.
19. In or about February 2005, Mr. Simpson returned from China to live in the United States.
20. The funds from the Heywood Savings Account that Mr. Simpson transferred into his IOLTA account in February 2003 still remained in Mr. Simpson's IOLTA account. Upon his return to the United States, Mr. Simpson took no action to communicate with either Mr. Taft or the Probate Court about his return to the Country or the existence of these funds.
21. On July 11, 2005, a hearing was held in Probate Court on the question of whether Mr. Simpson defalcated with regard to the Heywood Estate funds, thereby rendering the bond company liable to reimburse the Heywood Estate for that amount. In an Order dated July 19, 2005, the Probate Court (Patten, J.) held:

Attorney Robert Taft, the Court appointed Administrator DBN for the estate, filed a petition for the Court to find and rule that the prior administrator had: 1). failed to file the required annual account as ordered by the Court; 2). defalcated by withdrawing estate funds from the estate account at Bank of N.H. in the amount of \$6,364.40 on 2/24/03 and failed to account for the same; and 3). fled this jurisdiction and failed to respond to the court's requirements.

A hearing on Attorney Taft's petition was held on 7/11/05. Evidence was presented by the Administrator DBN on the issues identified as 1) through 3) above and the Court finds that the evidence presented supports the allegations made.

As a consequence, the Court surcharges the original Administrator, Bruce D. Simpson, for the amount of his defalcations, \$6,364.40; plus the fees and expenses of the Administrator DBN incurred to date, \$587.30; plus fees of the Administrator DBN, costs and expenses to be incurred in pursuing a suit on the Administrator's bond with National Grange Mutual Insurance Company.

Further, the Court authorizes the Administrator DBN to prepare and pursue a suit on said bond, in the name of this Court, to collect the amounts surcharged against Bruce D. Simpson. Provided, however, the Administrator DBN shall file a copy of the pleadings for the suit on the bond for this Court's review

and approval, prior to filing the suit in the Court of appropriate jurisdiction.

So Ordered.

22. On July 26, 2005, the bond company wrote a check in the amount of \$6,951.70 to the Heywood Estate for the full amount of the deficiencies and losses caused by Mr. Simpson's disappearance and transfer of estate funds.
23. On November 4, 2005, Mr. Simpson reimbursed the bond company in the full amount of \$6,951.70, with a check written on his IOLTA trust account. Mr. Simpson did not notify Mr. Taft or the Probate Court of this disbursement. After that disbursement, Mr. Simpson's trust account had a balance of \$1.13.
24. On January 4, 2006, the Probate Court approved Mr. Taft's final account.

## **RULINGS OF LAW**

Having found the above-listed facts by clear and convincing evidence, the Professional Conduct Committee concludes that Bruce D. Simpson violated the following Rules of Professional Conduct by clear and convincing evidence, as stipulated by the parties:

### **Rule 1.1(a): Competence**

25. By relocating to China for two years without making necessary arrangements for alternative counsel to handle his obligations as fiduciary for the Heywood Estate, Mr. Simpson failed to act competently in representing the interests of the Heywood Estate.
26. If proven by clear and convincing evidence, Mr. Simpson's conduct in this regard would constitute a violation of N.H. R. Prof. Conduct 1.1(a).
27. By transferring the Heywood estate funds into his IOLTA account before leaving the country, Mr. Simpson failed to act competently as fiduciary for the Heywood Estate. Had the funds remained in a savings account, the funds would have continued to accrue interest for the estate.

28. Mr. Simpson's conduct in this regard constitutes clear and convincing evidence of a violation of N.H. R. Prof. Conduct 1.1(a).

**Rule 1.3: Lack of Diligence**

29. By relocating to China for two years without making necessary arrangements for alternative counsel to handle his obligations as fiduciary for the Heywood Estate, Mr. Simpson failed to act with reasonable diligence in representing the interests of the Heywood Estate.
30. Mr. Simpson's conduct in this regard constitutes clear and convincing evidence of a violation of N.H. R. Prof. Conduct 1.3.

**Rule 3.4(c): Disobey Rules of Tribunal**

31. Notwithstanding his appointment as executor of the Heywood Estate, Mr. Simpson relocated to China in February 2003 without communicating this fact to the Probate Court or making any arrangements for an attorney to handle in his absence his obligations as fiduciary for the Heywood Estate.
32. A Probate Court Order dated August 1, 2002, required Mr. Simpson to file an Accounting for the Heywood Estate "on or before July 30, 2003," and to file an accounting every year thereafter "on the same day until a final account is made."
33. By relocating to China, by disregarding his obligations to file regular accountings with the Probate Court, and by failing to disclose his transfer of estate funds into his IOLTA trust account, Mr. Simpson knowingly disobeyed the Probate Court's Order dated August 1, 2002.
34. Legal fees in all probate court matters must be approved by the probate court. See N.H. Prob. Ct. R. 88; Estate of Rolfe, 136 N.H. 294, 298-99 (1992). All disbursements made from estate funds, including attorneys fees, must be reported to the probate court in the form of an account. See N.H. Probate Court Rule 108(C)(6). On the accounting form, attorneys fees must be "shown separately and explained." Id.

35. By withdrawing legal fees from the Heywood Savings Account without filing documentation to reflect this disbursement or otherwise seeking Probate Court approval, Mr. Simpson knowingly disobeyed Probate Court Rules 88 and 108.
36. By transferring the funds out of the Heywood Savings Account and into his trust account without informing the Probate Court of this transfer, Mr. Simpson knowingly disobeyed N.H. Probate Court Rule 108.
37. Mr. Simpson's conduct as described herein constitutes clear and convincing evidence of violations of N.H. R. Prof. Conduct 3.4(c).

**Rule 8.4(a): General Rule**

38. Because there exists clear and convincing evidence that Mr. Simpson violated the above rules, there is necessarily clear and convincing evidence of a violation of N.H. R. Prof. Conduct 8.4(a).

**STIPULATION AS TO COSTS**

39. Mr. Simpson agrees to pay the expenses incurred by the Professional Conduct Committee in the investigation and prosecution of this matter.

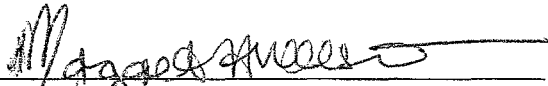
**ANALYSIS**

The Committee was concerned about Mr. Simpson's apparent neglect and utter disregard for the legal process and the requirements of his profession in safeguarding his client's funds. Especially troubling to the Committee was the length of time that elapsed, even after Mr. Simpson returned from China, during which he failed to address his fiduciary responsibilities. The Committee also took into account both the aggravating and mitigating factors presented by Disciplinary Counsel and Mr. Simpson, including Mr. Simpson's personal difficulties. Finally, the Committee considered the guidelines provided by the American Bar Association's Standards for Imposing Lawyer Sanctions, which, although not formally adopted by the Court, support the conclusion that a suspension is warranted in cases of this nature. Accordingly, the Committee decided that a three (3) month suspension was the appropriate sanction.

## CONCLUSION

For all of the above reasons, the Professional Conduct Committee orders Bruce D. Simpson suspended from the practice of law for three (3) months, effective May 1, 2007, for violating N.H. R. Prof. Conduct Rule **1.4(a), 1.3; 3.4(c) and 8.4(a)**. At the conclusion of the suspension, no further action shall be required of this Committee. Mr. Simpson shall be reinstated on August 1, 2007 without further hearing before this Committee on condition that he provide the Committee with verification that he has successfully completed the multi-state professional responsibility examination, paid the assessed expenses incurred by the Professional Conduct Committee and satisfied all other conditions of Supreme Court Rule 37(3)(14). This Order shall take effect on May 1, 2007 unless a timely appeal is filed with the New Hampshire Supreme Court.

March 26, 2007

  
Margaret H. Nelson  
Chair

### Distribution:

Landya B. McCafferty, Disciplinary Counsel  
Bruce D. Simpson, Esquire  
File