

SUPREME COURT OF LOUISIANA

NO. 2019-B-0908

IN RE: MARK G. SIMMONS

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

The instant disciplinary proceeding arises from a motion filed by the Office of Disciplinary Counsel (“ODC”) against respondent, Mark G. Simmons. The motion seeks to revoke respondent’s probation and make the previously-deferred portion of his suspension executory based on allegations that respondent failed to comply with the conditions of probation imposed in *In re: Simmons*, 17-1043 (La. 10/16/17), 226 So. 3d 1102 (“*Simmons I*”).

**UNDERLYING FACTS AND PROCEDURAL HISTORY**

The record in *Simmons I* demonstrated that respondent mismanaged his client trust account, neglected a legal matter, failed to communicate with a client, and failed to cooperate with the ODC in two investigations. For this misconduct, the court suspended respondent from the practice of law for one year and one day, with all but sixty days deferred, followed by a two-year period of supervised probation with the following conditions: (1) respondent shall successfully complete Trust Accounting School; (2) respondent shall successfully complete Ethics School; and

(3) respondent shall provide the ODC with quarterly audits of his client trust account.<sup>1</sup> The court's order stated in pertinent part as follows:

The probationary period shall commence from the date respondent, the ODC, and the probation monitor execute a formal probation plan. **Any failure of respondent to comply with the conditions of probation, or any misconduct during the probationary period, may be grounds for making the deferred portion of the suspension executory, or imposing additional discipline, as appropriate.** [Emphasis added.]

On April 9, 2018, respondent executed a formal probation agreement with the ODC. Among other conditions, respondent agreed to the following:

On a quarterly basis (periods ending June 30<sup>th</sup>, September 30<sup>th</sup>, December 31<sup>st</sup>, and March 31<sup>st</sup>) [and] at his expense, submit his client trust account to audits by an ODC-approved certified public accountant (CPA) and instruct and authorize the CPA to provide ODC with written audit reports, supporting documentation, and completed ODC Trust Audit Program forms within thirty days after the end of each quarter.

On April 29, 2019, the ODC filed the instant motion to revoke respondent's probation and make the deferred portion of the suspension executory, alleging that respondent failed to comply with the conditions of his probation in *Simmons I*. Although respondent completed Ethics School on February 2, 2018 and Trust Accounting School on February 22, 2018, the ODC alleged that respondent failed to submit quarterly audits of his client trust account, as required by his probation agreement.

After a hearing, at which respondent failed to appear, the disciplinary board concluded that respondent failed to comply with the terms and conditions of his probation by failing to provide the ODC with the name of a CPA for approval and by failing to provide any quarterly audits of his client trust account as required by

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<sup>1</sup> Justice Hughes dissented and would have deferred the entirety of the suspension. Justice Crichton dissented and would have imposed a harsher sanction.

the court's order in *Simmons I* and the probation agreement. Accordingly, the board recommended that the motion to revoke probation be granted and that the previously-deferred portion of the one year and one day suspension be made executory.

### **DISCUSSION**

A review of the record reveals that respondent has not complied with the requirement of his April 9, 2018 probation agreement that he submit to the ODC quarterly audits of his client trust account prepared by an ODC-approved CPA. To protect the public, it is necessary to revoke respondent's probation and impose the previously-deferred portion of the suspension.

Accordingly, we will accept the disciplinary board's recommendation and grant the motion to revoke respondent's probation, making the previously-deferred portion of the one year and one day suspension imposed in *Simmons I* immediately executory.

### **DECREE**

For the reasons assigned, respondent's probation is revoked and the previously-deferred portion of the one year and one day suspension imposed in *In re: Simmons*, 17-1043 (La. 10/16/17), 226 So. 3d 1102, is hereby made immediately executory. All costs and expenses in the matter are assessed against respondent, Mark G. Simmons, Louisiana Bar Roll number 19995, in accordance with Supreme Court Rule XIX, § 10.1, with legal interest to commence thirty days from the date of finality of this court's judgment until paid.