

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

**PANEL A**

**IN RE:           BYRON COLE RHODES**  
ARKANSAS BAR ID No. 79186  
CPC Docket No. 2004-061

**CONSENT FINDINGS & ORDER**

The formal charges of misconduct upon which this Consent Order is premised, involving respondent attorney Byron Cole Rhodes of Hot Springs, Arkansas, arose from information provided to the Committee on Professional Conduct by Jeffrey J. Carson, D.C., of Hot Springs, Arkansas, in 2003.

Amy Gray and Randa Childress were injured in a motor vehicle collision in Ms. Gray's vehicle on February 13, 2002. Mr. Rhodes became their attorney for the matter. They were treated by Hot Springs chiropractor Jeffrey J. Carson through March 20, 2002, when he submitted his initial billings for Gray (\$1,458.00) and Childress (\$1,478.00) directly to Ms. Gray's insurance carrier, Progressive Insurance. On March 4, 2002, each patient had signed an Authorization and Assignment form directing Progressive and Rhodes by name to pay Dr. Carson directly for his billed services. On March 21, 2002, Rhodes called Debbie Chandler at Progressive and directed her to send the PIP (medpay) checks paying Dr. Carson's statements directly to Rhodes, which she did on March 27, 2002.

When Dr. Carson learned the checks had been sent to Mr. Rhodes, he made repeated and unsuccessful attempts to get Rhodes to pay the funds over to him. Mr. Rhodes told Dr. Carson he would not be paid until Rhodes' clients' claims were settled or until they authorized Rhodes to release the funds to Dr. Carson. Dr. Carson filed medical liens on both patients with Progressive on April 5, 2002, and thereafter Progressive made future checks payable to Dr. Carson on these patients. He received the balances from Progressive's PIP of \$1,170.00 on Gray and \$1,176.00 on Childress in this manner. Unable to obtain the initial Progressive payments from Rhodes, Dr. Carson sued both women in Hot Springs District Court on these debts in June 2002. Their cases were set for default hearings for July 17, 2002. On July 11, 2002, Rhodes filed Chapter 7

(liquidation) bankruptcy cases for each client, and thereafter obtained discharges for each, defeating Dr. Carson's efforts to collect these debts from them directly. Rhodes charged their bankruptcy filing fees of \$200 each and their legal fees to him of \$784.38 each for their bankruptcies to the funds he held that came originally from Progressive, thereby using up \$1,968.76 of the \$2,936.00 they collectively owed Dr. Carson for his treating services to them. Mr. Rhodes received settlements from State Farm Insurance of \$4,600 for Ms. Gray and \$4,700 for Ms. Childress.

Following Respondent Attorney's receipt of the formal complaint, the Respondent entered discussion with the Executive Director which has resulted in an agreement to discipline by consent pursuant to Section 20.B of the Arkansas Supreme Court Procedures Regulating Professional Conduct of Attorneys at Law (2002).

A. Mr. Rhodes' conduct violated Model Rule 1.15(c) in that, aware that he held PIP (medpa payments from Progressive Insurance of \$1,458.00 for Amy Gray and \$1,478.00 for Randa Childress and that Jeffrey J. Carson, D.C., their treating chiropractor had a claim to these proceeds, Rhodes failed to maintain these funds in his trust account until the dispute between Dr. Carson and Rhodes as to entitlement to these funds could be resolved. Instead, after he refused to pay Dr. Carson and Carson filed suit against each of Rhodes clients on this issue, Rhodes unilaterally resolved the matter by filing bankruptcy for each of Gray and Childress, paying a filing fee of \$200.00 for each client and a legal fee of \$784.38 for each to himself and then disbursing the balance of the disputed funds to each client. Model Rule 1.15(c) provides that, when in the course of representation a lawyer is in possession of property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved.

WHEREFORE, in accordance with the consent to discipline presented by Mr. Rhodes and Executive Director, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct that Respondent Byron Cole Rhodes, Arkansas Bar No. 79186, be, and hereby is, **cautioned** for his

conduct in this matter, ordered to pay restitution of \$2,346.00 for the benefit of Dr. Jeffrey J. Carson, fined \$500.00, and ordered to pay costs of \$50.00. The fine, restitution, and costs assessed herein shall be payable by cashier's check or money order payable to the "Clerk, Arkansas Supreme Court" delivered to the Office of Professional Conduct with 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 \_\_\_\_\_

Gwendolyn D. Hodge, Chairperson, Panel A

Date \_\_\_\_\_