

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

PANEL B

IN RE: **MARCIA M. BRINTON**

Arkansas Bar ID #83030

CPC Docket No. 2004-173

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 Paula Hedden and her attorney Joseph Paul Smith in April 2004. The information related to the representation of Paula Hedden by Respondent Marcia M. Brinton, an attorney practicing primarily in Fayetteville, Washington County, Arkansas, in 1996-2003 in a personal injury matter and matters arising from that representation. In December 2004 Respondent was served with a formal complaint, supported by affidavits from Paula and Jake Hedden and other documentation.

Paula Hedden was seriously injured in a car crash on May 8, 1994. Marcia Brinton was hired on a contingent fee basis to represent the interests of Paula and Jake Hedden arising from the incident, and she filed suit for them in Benton County Circuit Court on May 15, 1996, as No. C-96-0371. The matter was settled by Dairyland Insurance on or about February 5, 1997, for a total payment of \$100,000.00. The back side of the settlement check does not reflect that it was deposited into a trust account. Brinton gave Jake Hedden a check for \$10,000 for his consortium claim. Brinton claims she paid medical and other bills for the Heddens and took her 40% fee (\$40,000) from the settlement proceeds. Brinton advised the Office of Professional Conduct that her office file in the Hedden matter had been destroyed some time previously and she has been unable to obtain copies of her trust account records for the period and transactions in question because her former bank is no longer in business and the records cannot be located. No one has been able to produce a written fee agreement or an accounting of the settlement funds from the Hedden matter entrusted to Brinton.

Mrs. Hedden had a medical malpractice claim which Ms. Brinton initially handled. Later, when she was unable to handle the matter, this claim was transferred to David Matthews of Rogers, who concluded the matter with a settlement. Brinton took no fee from this settlement.

Paula and Jake Hedden claim they received no funds from Brinton from the \$100,000 settlement other than the \$10,000 Brinton gave Jake Hedden. In written response August 31, 2004, to an inquiry from the Office of Professional Conduct, after the Heddens filed their complaint on April 14, 2004, Brinton stated she paid bills for the Heddens from the \$100,000 as follows, an effort by Brinton to reconstruct an accounting:

Brinton legal fee	40,000
Brinton costs	5,000+
Jake Hedden	10,000
Diversified Credit (lien)	4,000 est
Farmers Ins	5,000 est
Dr. Piechal	7,000+
NAS (bill collector)	750 est
Hedden car note (Zurborg)	2,000 est
Rehab Center	3,000 est
Springdale Hospital	3,500
Dr. Back et al	2,000
Richard Miller, Atty	small \$
Sports Clinic	???
Circulatory specialist opinions	???
Others paid ???	???
Total of estimates	\$82,250

Paula Hedden claims Brinton failed to pay from her settlement funds supposed to be withheld for that purpose Hedden's obligations to Dr. Osowski of Rogers Chiropractic Clinic (est \$1,560), Ozark Capital Corp (\$4,169.85), and American Medical Rentals (\$2,137.16), totaling about \$7,866. The unpaid account to Rogers Chiropractic Clinic ("Rogers") resulted in Mrs. Hedden being sued in Rogers Municipal Court, No. CV-99-757, by attorney William Clark of Springdale. Brinton entered into a consent judgment arrangement with Mr. Clark in October 1999, by which he agreed to not file the judgment and attempt to collect on it so long as payments of \$25 per month were made for two years and the balance paid with a final balloon payment due November 1, 2001. Brinton thereafter made payments totaling \$800 from personal funds by her law office checks to Mr. Clark on this agreement through November 12, 2002, when Clark filed the judgment. Paula Hedden claims she did not sign her signature on the consent judgment order. In February 2003 the Heddens were served with a writ of execution on this judgment, of which they had no knowledge. Brinton's failure to make timely payments on her private agreement with Mr. Clark on this debt caused him to file the judgment and attempt execution on the Heddens.

On November 8, 2000, Ozark Capital Corp took a default judgment against Paula Hedden in Benton Circuit No. CV-2000-461-1 on the unpaid bill of \$2,695.32 which Mrs. Hedden had understood Ms. Brinton would pay from her 1997 settlement proceeds.

On July 28, 2003, David Matthews wrote Brinton on behalf of the Heddens, requesting for them an accounting from Brinton of the \$100,000 in settlement funds. Brinton declined to give an accounting then. On August 7, 2003, Mr. Matthews wrote Brinton about the status of the Rogers Chiropractic debt. On August 11, 2003, Brinton sent Matthews her office account check for \$1,500.00. He then paid off the \$880 balance owed on the Rogers debt to Clark and tendered the \$620 balance to the Heddens.

On September 18, 2003, and on March 5, 2004, attorney Paul Smith wrote Brinton on behalf of the Heddens asking for an accounting of the \$100,000 and an explanation of the matter. He received no response from Brinton. In the summer of 2004, the Office of Professional Conduct wrote, asking Brinton for an explanation of these matters. Her response was sent in a letter of August 31, 2004.

In response, Ms. Brinton has acknowledged her responsibility in the Hedden matter, that she disposed of her file while still within five years of her continued representation of Ms. Hedden, and that she has been unable to obtain copies of her trust account records to substantiate her disbursements from the Hedden settlement funds. She recalled that she paid Ms. Hedden's large medical bills until the settlement funds she held were exhausted. She explained her entry into the consent judgment regarding the Rogers Chiropractic Clinic as what she thought best at the time due to the great stress she perceived the Heddens as being under at the time. She stated her health began to rapidly deteriorate in July 2001 due to a series of heart attacks, and that she has been fighting serious, and even life-threatening, multiple health problems since. In February 2003 she became a cardiac death survivor. In September 2003 she closed her private law practice due to her health, and since then has only practiced in two part-time public sector positions, with the local prosecutor's office and the City of Farmington handling cases in District Court. Even though she has no reason or proof to believe she owes Ms. Hedden anywhere near \$28,500.00, she authorized her attorney in this matter to negotiate a "fair" settlement with the Heddens as to proposed restitution in this matter. She borrowed the funds on a second mortgage on her residence.

Following Respondent Attorney's receipt of the formal complaint, the attorney entered into 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). Upon consideration of the formal complaint and attached exhibits, admissions made by the respondent attorney, the terms of the written consent, the approval of Panel B of the Committee on Professional Conduct, and the Arkansas Model Rules of Professional Conduct, the Committee on Professional Conduct finds:

A. Ms. Brinton's conduct violated Model Rule 1.1, in that she failed to accurately account for all her client's medical and other bills to be paid from her 1997 settlement funds, thereby causing Ms. Hedden to suffer two judgments years later when these bills were not paid by Brinton from Hedden's settlement funds withheld by Brinton for that purpose. Model Rule 1.1 requires that a lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and

preparation reasonably necessary for the representation.

B. Ms. Brinton's conduct violated Model Rule 1.4(a), in that she failed to inform her client Paula Hedden that Brinton had failed to pay at least two of Hedden's bills (Rogers Chiropractic Clinic and Ozark Capital Corp.) from her settlement funds withheld by Brinton for that purpose. Model Rule 1.4(a) requires that a lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

C. Ms. Brinton's conduct violated Model Rule 1.5(c), in that she failed to provide Paula Hedden a copy of the written contingent fee agreement required in all contingent fee matters. Upon the conclusion of the traffic collision incident matter, Brinton failed to provide the client with a written statement stating the outcome of the matter and showing the remittance to the client and the method of its determination from the settlement proceeds Brinton received. Model Rule 1.5(c) provides that a fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination, an accounting.

D. Ms. Brinton's conduct violated Model Rule 1.15(a)(3) in that she destroyed or disposed of her trust account records for the relevant period of her representation of Paula Hedden, although Brinton's representation could not have terminated until she paid Hedden's obligations to third persons from settlement funds Brinton withheld for that purpose. Ms. Brinton did not pay Rogers Chiropractic Clinic, for one, in full until August 11, 2003, when she sent payment for that purpose to David Matthews for the benefit of Paula Hedden, her client. Model Rule 1.15(a)(3) requires, in pertinent part, that complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

E. Ms. Brinton's conduct violated Model Rule 1.15(b)(3), in that she failed to provide Paula Hedden or her authorized representatives with an accounting of the \$100,000 in 1997 settlement proceeds entrusted to Brinton, despite repeated requests for an accounting. From Ms. Hedden's 1997 settlement funds, Ms. Brinton withheld for that purpose with the client's consent, she failed to pay the client's obligation to Dr. Alan Osowski of Rogers Chiropractic Clinic (est \$1,560), resulting in the client being sued on this obligation in 1999. Brinton acknowledged her failure to promptly pay this obligation by making an agreement, that was not known to her client, in October 1999 with the creditor's counsel, to pay the debt herself from Brinton's personal funds over time. From Ms. Hedden's 1997 settlement funds Ms. Brinton withheld for that purpose with the client's consent, she failed to promptly pay the client's obligation to Ozark Capital Corp (\$4,169.85), resulting in the client being sued on this obligation in 2000. From Ms. Hedden's 1997 settlement funds Brinton withheld for that purpose with the client's consent, she failed to promptly pay the client's obligation to American Medical Rentals (\$2,137.16). Model Rule 1.15(b) requires, in pertinent part, that except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

F. Ms. Brinton's conduct violated Model Rule 8.4(c), in that she entered into an arrangement in 1999, unrecorded in public records and kept secret from her client Paula Hedden, for Brinton to agree to a consent judgment against her client Hedden and for Brinton to pay Hedden's judgment obligation to Dr. Osowski and Rogers Chiropractic Clinic of about \$1,560 from Brinton's personal funds. Ms. Brinton failed to make timely and promised payments on the Rogers Chiropractic Clinic debt arrangement she had negotiated to cover up the fact that Brinton no longer had Hedden settlement funds to pay this obligation. Brinton's actions resulted finally in entry of the 1999 judgment against Paula Hedden in late 2002, and issuance of a writ of execution on the client's property in February 2003. Ms. Brinton failed to pay the client's obligation to Ozark Capital Corp. from settlement funds withheld by Brinton in February 1997 for that purpose, resulting in the client being sued and judgment for \$2,695.32 being taken against Ms. Hedden on the obligation in November 2000. Ms. Brinton cannot account to Paula Hedden for funds from Hedden's 1997 settlement entrusted by her to Brinton to pay

Hedden's bills or her net share, if any, of these funds. Model Rule 8.4(c) requires that a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel A, that **MARCIA M. BRINTON**, Arkansas Bar ID# 83030, be **REPRIMANDED** for her conduct in this matter. She is ordered to pay restitution in the sum of \$28,500.00 for the benefit of Paula Hedden. She is ordered to pay Committee costs of \$50.00. The 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 B

By: _____

Harry Truman Moore, Chair, Panel B

Date: _____