

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

PANEL B

IN RE: ROBERT L. SCULL, III, Respondent
 Arkansas Bar ID#87155
 CPC Docket No. 2005-048

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 Carla H. Coleman in an Affidavit dated March 16, 2005. The information related to the representation of Ms. Coleman by Respondent beginning in 1997.

On March 18, 2005, Respondent was served with a formal complaint, supported by affidavit from Carla H. Coleman. 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 Committee reflected that on November 3, 1997, Ms. Coleman hired Robert L. Scull, III, an attorney practicing in Little Rock, Pulaski County, Arkansas, to represent her with regard to an automobile accident in which she, her daughter and grandson were injured. The agreement reached was for Mr. Scull to receive one-third of the total settlement. Ms. Coleman did not have a recollection of whether she signed a written fee agreement. On the date he was hired, Mr. Scull sent correspondence to State Farm Insurance Company. Ms. Coleman never received any additional correspondence from Mr. Scull about her claim during the course of his representation of her.

During the first contact with Mr. Scull, Ms. Coleman was advised to seek therapy and treatment from Metro Physical Therapy. All medical bills from Metro Physical Therapy were to be sent to Mr. Scull for handling.

On March 12, 1998, Ms. Coleman's portion of the claim settled. Ms. Coleman has no recollection of endorsing the settlement check nor of giving Mr. Scull the authority to do so on her behalf. At the time the matter settled, Ms. Coleman did not know the amount of the settlement. Mr. Scull met with Ms. Coleman and

provided her cash from her portion of the settlement. Ms. Coleman did not receive any documentation demonstrating the amount of settlement or the breakdown of who received what amount. Mr. Scull was to pay the Metro Physical Therapy bill from the proceeds he retained. He did not do so.

Mr. Scull did not contact Ms. Coleman about the matter. She attempted on numerous occasions to contact him to discuss the matter when Metro Physical Therapy contacted her for payment of the medical bill. Mr. Scull did not return the messages left by Ms. Coleman.

Ms. Coleman filed a complaint against Mr. Scull in Sherwood Municipal Court wherein she sought to recover the funds he retained for payment of her medical bills. Mr. Scull filed an Answer wherein he admitted that he was to pay the medical bill but had not done so. Judgment was granted in Ms. Coleman's favor in November 2000. Mr. Scull never honored the Judgment nor contacted her about the matter.

In considering the consent proposal submitted to the Panel, the minor disciplinary actions taken in the past against Mr. Scull was considered. In addition, the Panel specifically considered the fact that the conduct complained of initially occurred approximately eight (8) years ago and also specifically considered the fact that Mr. Scull is now employed in a situation where he does not handle trust account matters nor disbursement of settlement funds.

Upon consideration of the formal complaint and attached exhibit materials, the response, the consent proposal, other matters before it, and the Arkansas Model Rules of Professional Conduct, Panel B of the Arkansas Supreme Court Committee on Professional Conduct finds:

1. That Mr. Scull's conduct violated Model Rule 1.3 because he failed to conclude his representation of Ms. Coleman in a reasonable and prompt manner since he failed to use the funds which were to be maintained by him from the settlement proceeds to pay the medical providers. Model Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.
2. That Mr. Scull's conduct violated Model Rule 1.4(a) because despite repeated requests for information about the payment of her medical bills, he has failed to respond to Ms. Coleman, his

former client. Model Rule 1.4(a) requires that a lawyer keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

3. That Mr. Scull's conduct violated Model Rule 1.5(c) because although his fee agreement with Ms. Coleman was based on a contingency fee agreement, he failed to place the agreement in written form and because he failed to provide Ms. Coleman with a written statement setting forth the outcome of the matter and showing the remittance to the client and the method of determination of her share. Model Rule 1.5(c) requires, in pertinent part, that a contingent fee agreement be in writing and requires that upon conclusion of a contingent fee matter, the lawyer 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.
4. That Mr. Scull's conduct violated Model Rule 1.15(a) when he failed to maintain the monies owing to Ms. Coleman's medical provider separate from your own. Model Rule 1.15(a) requires that all lawyers hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property.
5. That Mr. Scull's conduct violated Model Rule 1.15(a)(1) when he failed to deposit the settlement check received on behalf of Ms. Coleman in a properly identifiable trust account. Model Rule 1.15(a)(1) requires that funds of a client (in a lawyer's possession in connection with representation) be deposited and maintained in one or more identifiable trust accounts in the state where the lawyer's office is situated or elsewhere with the consent of the client or third person.
6. That Mr. Scull's conduct violated Model Rule 1.15(b) because he failed to promptly deliver to the medical provider of Ms. Coleman the funds he received which were due and payable to the medical providers and because although Ms. Coleman requested a full accounting from him of the settlement proceeds, he failed to provide one. Model Rule 1.15(b) requires, in pertinent part, that upon receiving funds in which a client or third person has an interest, a lawyer shall

promptly deliver to the client or third persons any funds that the client or third person is entitled to receive and, upon request by the client, shall promptly render a full accounting regarding such property.

7. That Mr. Scull's conduct violated Model Rule 8.4(c) when he failed to remit the funds entrusted to him to the appropriate medical provider of Ms. Coleman as he agreed to do at the time of settlement during March 1998 and when he failed to comply with the Judgment he agreed to in 2000 when Ms. Coleman sued him for the failure to pay her physical therapy bill after he retained the funds to do. Model Rule 8.4(c) requires that a lawyer 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 B, that ROBERT L. SCULL, III, Arkansas Bar ID# 87155, be, and hereby is, REPRIMANDED for his conduct in this matter. Pursuant to Section 18.A. of the Procedures Regulating Professional Conduct of Attorneys at Law (Procedures), Mr. Scull is assessed the costs of this proceeding in the amount of \$50. In addition, pursuant to Section 18.B. of the Procedures, Mr. Scull is fined in the amount of \$500. Finally, pursuant to Section 18.C. of the Procedures, Mr. Scull is ordered to make restitution to Ms. Coleman in the amount of \$2,003.73. The costs assessed and the restitution and fine ordered 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 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 B

By: _____

H.T. Moore, Vice Chair, Panel B

Date: _____

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