

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL B

IN RE: VANDELL BLAND, SR., Respondent
 Arkansas Bar ID#92062
 CPC Docket No. 2005-049

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 Charles Robinson on July 22, 2004. The information related to the representation of Mr. Robinson by Respondent in 2004.

On March 23, 2005, Respondent was served with a formal complaint, supported by affidavit from Thomas M. Hayde and Melissa A. Tipps, Senior Claims Representative, Farmers Insurance Group. 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 during 2004, Vandell Bland, Sr., an attorney practicing in Forrest City, Arkansas, represented Charles Robinson in a personal injury matter. Mr. Robinson was treated for injuries by Dr. Thomas Hayde of the Traylor Chiropractic Clinic.

Mr. Robinson and Mr. Bland both signed a Medical Lien in favor of Traylor Chiropractic Clinics. The Medical Lien was signed on February 11, 2004, and received in the office of Dr. Hayde on February 19, 2004. Dr. Hayde treated Mr. Robinson through March 5, 2004.

During June 2004, Dr. Hayde learned that Mr. Robinson's personal injury claims had been settled by Mr. Bland the previous month. Dr. Hayde wrote Mr. Robinson and advised him that he would look to him for full payment of the bill in the amount of \$4,873. Dr. Hayde also contacted Farmers Insurance Group about the matter because the insurance company was also aware of his lien. Melissa Tipps contacted Dr. Hayde and provided him a copy of a letter she had received from Mr. Bland. In the letter, Mr. Bland advised Ms. Tipps and Farmers that he would honor all liens associated with the claims. Despite that assurance, Mr. Bland did not

do so.

In response to the letter that Mr. Robinson received from Dr. Hayde, he brought information to Dr. Hayde which he believed demonstrated that Mr. Bland owed the funds. The documents demonstrated that when the matter was settled and the release signed, Mr. Bland provided Mr. Robinson with copies of three checks demonstrating what he was allegedly paying out of the settlement funds. Dr. Hayde never received the check with number 1403 in the amount of \$3,000, nor had he ever agreed to accept \$3,000 as payment for his bill related to Mr. Robinson's treatment. Mr. Bland had allowed Mr. Robinson to believe that negotiation had taken place when this was not true.

Mr. Bland left messages for Dr. Hayde over the course of a few weeks in early 2005, asking for a meeting. On Wednesday February 23, 2005, Dr. Hayde went to Mr. Bland's office and they discussed Mr. Robinson's case. At that meeting, Mr. Bland provided Dr. Hayde with a check for payment of Mr. Robinson's account. The check was delivered to a member of Dr. Hayde's office staff who learned that on that date there were not enough funds in the account to cover the check when received. The check was deposited later and as of March 2, 2005, there was no word on the check being returned for insufficient funds.

The Office of Professional Conduct obtained the records related to Mr. Bland's trust account for this period of time involving Mr. Robinson. It was learned through those records that Mr. Bland cashed his check for attorney's fee in the Robinson matter prior to the time that the settlement check was deposited into his account. As such, Mr. Bland took his fee on the Robinson matter from funds being held for another client.

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. Bland's conduct violated Model Rule 1.15(a) because beginning August 25, 2004, the balance in his trust account was below the minimum balance which should have been present due to the funds owing to Traylor Chiropractic Clinic in the Charles Robinson matter and because beginning August 25, 2004, the balance in his trust account was below the minimum

balance that he advised Mr. Robinson had been withheld to pay Traylor Chiropractic Clinic. The balance as of that date confirms the fact that Mr. Bland did not maintain the funds owed to Traylor Chiropractic Clinic nor did he maintain the amount of funds he withheld for payment to Traylor Chiropractic Clinic. Model Rule 1.15(a) requires that all lawyers hold property of a client or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property.

2. That Mr. Bland's conduct violated Model Rule 1.15(b) because upon receiving the settlement funds from Charles Robinson's personal injury matter in which Mr. Bland represented him, Mr. Bland failed to promptly notify Traylor Chiropractic Clinic, a third party whom he knew to have an interest in the funds, and failed to promptly deliver to Traylor Chiropractic Clinic the funds which were due and owing to the clinic. Model Rule 1.15(b) requires that upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person, and, 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.
3. That Mr. Bland's conduct violated Model Rule 1.15(c) when he failed to maintain the full amount owed to Traylor Chiropractic Clinics from the settlement received on Mr. Robinson's behalf until such time as the dispute over the amount owed was settled. Model Rule 1.15(c) requires that when in the course of representation a lawyer is in possession of property in which both the lawyer and another person claim an interest, the property shall be kept separate by the lawyer until there is an accounting and severance of their interest. If a dispute arises concerning the respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved.

4. That Mr. Bland's conduct violated Model Rule 8.4(c) when he prepared a settlement agreement letter which indicated that Mr. Robinson would only owe \$450 to Baptist Memorial Hospital after Mr. Bland paid \$3,000 to Traylor, and after Mr. Bland received his fees and Mr. Robinson received his portion of the settlement funds; when he used someone else's funds to pay his fee of \$1,500 from the Robinson settlement as demonstrated by the fact that his attorney fee check cleared his IOLTA trust account on May 6, 2004 and the Robinson settlement amount was not deposited until May 21, 2004; and, when he allowed Mr. Robinson to believe that he was sending Traylor Chiropractic Clinic check number 1403 for payment of the Robinson account. 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 VANDELL BLAND, SR., Arkansas Bar ID# 92062, be, and hereby is, REPRIMANDED for his conduct in this matter.

Further, pursuant to Section 18.A. of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law (2002), Mr. Bland is assessed the costs of this proceeding in the amount of \$50. In addition, pursuant to Section 18.B. of the Procedures, Mr. Bland is ordered to pay a fine in the amount of \$1,000. The costs assessed 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)