

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

**PANEL B**

**IN RE: DARRELL F. BROWN, SR.**

Arkansas Bar ID # 72012

CPC Docket No. 2004-014

**FINDINGS AND ORDER**

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Renee Crater and Stephen Kelly, III, in 2003. The information related to the representation of Stephen Kelly, III, by Respondent Brown, who practices in Little Rock, in 2001-2003 and Respondent's contacts with Ms. Crater and her business, MCH Physical Therapy Clinic, Inc., during the same time period. On February 26, 2004, Respondent Brown was served with a formal complaint, supported by affidavits from Ms. Crater, Mr. Kelly, Bill Caldwell of Credit Control Company, (assignee of MENS Ambulance Service), David W. Edwards, attorney for St. Vincent Health Systems, materials from the file on Mr. Kelly with Archie Hearne, M.D., of Little Rock, and materials relating to Respondent's IOLTA trust account at The Capital Bank of Little Rock. Mr. Brown responded and rebuttal information was received from various affiants.

The facts demonstrate that by early December 2001, the law office of Darrell F. Brown had assumed the representation of Stephen Kelly, III, of Little Rock, related to his injury in a motor vehicle collision November 27, 2001. Mr. Kelly received treatment or services from four Little Rock providers - Dr. Archie Hearne, MEMS Ambulance Service (MEMS), MCH Physical Therapy (MCH), and St. Vincent Infirmary Medical Center. Tjuana Byrd, then an attorney in Respondent's law office, sent MCH a "letter of protection" on behalf of Mr. Kelly on December 6, 2001, stating the law firm would pay any debt owed by Kelly to MCH directly out of any settlement of his claim. Kelly was provided services by MEMS billed at \$444.50. On January 7, 2002, Ms. Byrd sent MEMS a "letter of protection" stating this debt would be paid by Respondent's law firm directly out of any settlement. Mr. Kelly and Ms. Byrd further signed and gave MEMS a Medical

Provider Lien in early February 2002 for the \$444.50. Respondent's law office sent Dr. Hearne a "letter of protection" on December 6, 2001, and again on February 20, 2002.

Respondent Brown's office settled Kelly's claim for \$9,000.00, paid on April 24, 2002, by check from Crawford & Company payable to Kelly, Brown, and MCH. Respondent's settlement and disbursement sheet to Mr. Kelly on April 30, 2002, show a total of \$2,943.72 withheld for unitemized "total medicals." Respondent represented to Mr. Kelly at settlement that Respondent's office would directly pay the four providers he owed from the withheld \$2,943.72.

MCH notified Respondent's law office several times that the Kelly account was \$970.50 and was unpaid. MCH was told on October 2, 2002, that Ms. Byrd no longer worked at Respondent's office, and its dealings thereafter were with Mr. Brown. Respondent acknowledged these contacts in writing and even sent a letter to MCH on January 24, 2003, stating his check for the \$970.50 was enclosed. No check was enclosed and none had ever been tendered to MCH, or any of the other providers, before MCH filed a grievance against Mr. Brown on March 28, 2003, with the Office of Professional Conduct.

In early November 2003, the Office of Professional Conduct, as part of its investigation into the complaint of MCH, began contacting the other three Kelly providers. At about the same time, Mr. Kelly provided new information that his wages at Wal-Mart were then being garnished to pay a judgment St. Vincent Health Systems (St. Vincent) had obtained against him.

Neither MEMS nor its assigned collection agency, Credit Control Company (CCC), had been paid by Respondent on the \$444.50 bill owed on Kelly at this time. St. Vincent remained unpaid by Respondent. As a result of contacts from MCH, CCC, and St. Vincent, Mr. Kelly contacted Respondent's office trying to find out what had happened, but he did not receive satisfactory information.

Information received from these providers after November 19, 2003, indicated Respondent Brown contacted Ms. Crater at MCH on November 20, 2003, asking about this, and other, of "our provider accounts" at MCH. He then sent MCH his trust account check No. 1971 for \$970.50 in full payment on November 25, 2003. MEMS/CCC was unpaid as of Bill Caldwell's Affidavit of November 14, 2003. His supplemental

materials indicate Respondent's office contacted him on November 25, 2003, and December 2, 2003, concerning the Kelly account, but no payment had been received as of January 22, 2004. David Edwards, the Tennessee attorney handling the claim of St. Vincent, heard from Respondent on November 25, 2003, and December 10, 2003, about the Kelly account, after he had obtained judgment against Mr. Kelly and started garnishing Kelly's wages on this unpaid account. Edwards' supplemental materials submitted on January 15, 2004, indicated he received a \$910.58 payment on Kelly's account from Respondent on January 6, 2004. Kelly's last wage statement reflecting a garnishment shows a total of \$785.56 had been withheld. Mr. Kelly received the \$619.35 "overpayment" Mr. Edwards received from Mr. Brown, leaving Mr. Kelly still short \$166.21 as a result of Mr. Brown's failure to timely pay Kelly's account at St. Vincent.

Dr. Archie Hearne's office was contacted by the Office of Professional Conduct about Kelly's \$935.00 account status in late November 2003 and an affidavit was sent to Dr. Hearne by December 16, 2003. Dr. Hearne's January 14, 2004, letter stated he had been paid in full by that date.

On April 30, 2002, Respondent's office withheld \$2,943.72 from Mr. Kelley's settlement for the specific purpose of paying the four provider bills he owed, and Respondent failed to pay any of them from April 30, 2002, until very late 2003, or failed to account for or return these funds to Mr. Kelly so he might have paid these bills himself. Respondent's November 19, 2003, payment to MCH was by a trust account check from his account at The Capital Bank. At all times after April 30, 2002, there should have been a balance of not less than \$2,943.72 in this trust account until Respondent made the payments identified herein in late 2003. A document from The Capital Bank showed Respondent's IOLTA trust account had a balance of only \$245.46 on July 8, 2002. As of July 8, 2002, these exhibits reflect that \$2,698.26 (2,943.72 - 245.46) in funds belonging to either Stephen Kelly III or the four providers in his case Respondent handled were missing from Mr. Brown's IOLTA trust account. Additional funds from some other source were paid into his IOLTA trust account by November 19, 2003, to make up the \$970.50 he paid MCH, and again by January 6, 2004, to enable him to send a \$910.58 check to Mr. Edwards for the St. Vincent account.

Mr. Brown's response admitted the medical bills had not been paid, although he thought they had been paid. He stated he did not give the business side of his office the attention it needed and he suspected employee(s) of misappropriation of funds. He claimed that after he was contacted by the Office of Professional Conduct about the Kelly matter he contacted the providers and paid the amounts owed. He stated he had now put controls in place to assure such conduct did not reoccur and had agreed for his accountant to undertake the management of his office and all his accounts.

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

A. Mr. Brown's conduct violated Model Rule 1.2(a) in that the decision of his client Stephen Kelly, III, at the settlement of his claim April 30, 2002, was that Respondent would pay his four medical or service providers directly from the \$2,943.72 Respondent withheld from his settlement. Respondent failed to abide by that decision and pay his client's four medical and service providers from that date, until some were paid in late 2003 or early 2004. Model Rule 1.2 (a) requires that a lawyer shall abide by a client's decisions concerning the objectives of representation, and shall consult with the client as to the means by which they are to be pursued.

B. Mr. Brown's conduct violated Model Rule 1.3 in that he withheld from Mr. Kelly's April 30, 2002, settlement \$2,943.72 to pay his medical and service provider bills and Respondent failed to pay these bills for about eighteen (18) months, causing one creditor to obtain a judgment against Mr. Kelly and garnish his paychecks. Model Rule 1.3 requires that a lawyer shall act with reasonable diligence and promptness in representing a client.

C. Mr. Brown's conduct violated Model Rule 1.4(a) in that he failed after April 30, 2002, to keep Mr. Kelly reasonably informed about the status of his unpaid medical and provider bills for which Respondent withheld funds from his settlement, and he failed to respond to Mr. Kelly's inquiries about the unpaid status of his medical and service provider bills. 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.

D. Mr. Brown's conduct violated Model Rule 1.15(a)(1) in that while holding undisbursed funds from Mr. Kelly's settlement, the trust account balance in Respondent's IOLTA trust account at The Capital Bank of Little Rock should not have dropped below \$2,943.72 after April 30, 2002, until these funds from Mr. Kelly's settlement were disbursed. On July 8, 2002, the balance in his IOLTA trust account at The Capital Bank of Little Rock was only \$245.46. On November 19, 2003, Respondent issued check No. 1971 on his trust account at The Capital Bank of Little Rock to MCH Physical Therapy for \$970.50 in payment of the account there of Stephen Kelly. To pay this check, funds in his trust account from some source other than the funds he received and deposited in his trust account April 30, 2002, from the settlement of Mr. Kelly's claim had to be used, since his trust account balance was only \$245.46 as of July 8, 2002, indicating a conversion of funds from another client or clients in his trust account or deposit of personal funds to cover the shortage. On or about January 6, 2004, Respondent issued and delivered to David Edwards a check, that should have been on his trust account at The Capital Bank of Little Rock, for \$910.58, intended for St. Vincent Health Systems in payment of the account there of Stephen Kelly. To pay this check, funds from some source other than the funds Respondent received and deposited in his trust account April 30, 2002, from the settlement of Mr. Kelly's claim had to be used, since his trust account balance was only \$245.46 as of July 8, 2002, indicating a conversion of funds from another client or clients in his trust account or the deposit of personal funds to cover the shortage. Model Rule 1.15(a)(1) requires that funds of a client shall 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. The lawyer or law firm may not deposit funds belonging to the lawyer or law firm in any account designated as the trust account, other than the amount necessary to cover bank charges, or comply with the minimum balance required for the waiver of bank charges.

E. Mr. Brown's conduct violated Model Rule 1.15(b) in that on April 30, 2002, he received funds in which third persons MCH, Dr. Hearne, MEMS and St. Vincent had an interest. He failed to promptly deliver those funds to the four entities, waiting until November 19, 2003, when he paid MCH, on January 6, 2004, when he paid St. Vincent, and some unknown date when he paid Dr. Archie Hearne. 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. 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. Mr. Brown's conduct violated Model Rule 8.4(c) in that from April 30, 2002, until at least November 19, 2003, he failed to pay sums totaling \$2,943.72, withheld from his client Kelly's settlement, to all his medical and service providers, as Respondent led Mr. Kelly to believe he would in the settlement sheet Respondent provided him on April 30, 2002, conduct which misrepresented what Respondent said he would do for the client and with the client's funds. On January 24, 2003, Respondent sent MCH a letter that stated his check for \$970.50 was enclosed, but no check was enclosed. No check was tendered to MCH to pay Mr. Kelly's bill until November 19, 2003, even though Respondent acknowledged the debt and agreed to pay it for Mr. Kelly. This conduct misrepresented the facts to MCH and was deceitful under the circumstances and given Respondent's "letter of protection" to MCH. On January 7, 2002, Respondent's law office gave MEMS a "letter of protection" and signed a medical provider lien, representing that Respondent would directly pay to MEMS \$444.50 for Mr. Kelly from his settlement, yet there is no evidence that Respondent paid this debt, conduct which is a misrepresentation and deceitful toward MEMS and Mr. Kelly. On December 6, 2001, and again on February 20, 2002, Respondent's law office gave Dr. Archie Hearne written assurances, through "letters of protection," representing that Respondent would directly pay to Dr. Hearne any debt for Mr. Kelly from his settlement, yet Respondent failed to pay this debt until after mid-November 2003, conduct which is a misrepresentation and deceitful toward Dr. Hearne and Mr. Kelly. 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 B, that Darrell F. Brown, Sr., Arkansas Bar ID# 72012, be, and hereby is, **cautioned** for his conduct in this matter, **assessed \$50.00 costs, fined \$1,000.00, and ordered to pay restitution of \$166.21 and \$444.50** for the benefit of Stephen Kelly, III. The fine, restitution, and costs,

all totaling \$1,660.71, assessed and 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 with thirty (30) days of the date this Findings and Order is filed of record with the Clerk of the Arkansas Supreme Court. By a separate Order entered in conjunction with this Findings and Order, Respondent is ordered to cooperate with the Executive Director in an audit to be conducted of his trust account.

ARKANSAS SUPREME COURT COMMITTEE ON  
PROFESSIONAL CONDUCT - PANEL B

By: \_\_\_\_\_

J. Michael Cogbill, Chair, Panel B

Date: \_\_\_\_\_