

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

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

Arkansas Bar ID #72012

CPC Docket No. 2004-046

**FINDINGS AND ORDER**

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Carrie White of Texarkana, Arkansas, on October 10, 2003. The information related to the representation of Ms. White by Respondent Brown, who practices in Little Rock, in 2001-2004.

On April 1, 2004, Respondent Brown was served with a formal complaint, supported by an affidavit from Carrie White and copies of documents from his IOLTA trust account at The Capital Bank of Little Rock. Respondent filed a response and rebuttal materials were filed.

The facts in this case show that Carrie White hired Darrell F. Brown, Sr. in December 2001 to represent her in a “slip-fall” personal injury matter involving Albertson’s Stores. The matter was settled on August 1, 2002, for \$37,500.00. According to his settlement sheet and accounting to Ms. White, Mr. Brown paid himself a fee of \$9,000.00 and case costs of \$250.00. He withheld \$16,153.58 for “Total Medicals,” with the notation “(Amount to be adjusted upon final payment to client).” Ms. White received \$12,096.42. Ms. White wrote Mr. Brown on April 2, 2003, expressing her concerns about the status of the matter. In early June 2003, Brown wrote White that he was doing a final accounting and would get the results to her by July 1, 2003. He included his trust account check to her for \$2,500.00, leaving a settlement funds balance in his hands of \$13,653.58. On September 22, 2003, Ms. White wrote Mr. Brown again, expressing her concerns about the status of her matter. On October 8, 2003, Mr. Brown sent her his trust account check for \$2,600.00, leaving a balance charged to him from her settlement of \$11,053.58. No further payments have been received by Ms. White. She has no evidence that Mr. Brown has paid any medical bills of hers arising from the Albertson’s incident from funds

that were withheld by Brown as part of the \$16,153.58. His trust account statements demonstrate that on at least twelve (12) occasions since the settlement, his trust account balance has dropped below the minimum amount that should be on deposit there from Ms. White's settlement funds balance alone. According to Ms. White, Mr. Brown told her he would try to negotiate discounts in her medical bills, and later told her he would hold her medical bills for eighteen (18) months, a period to end around February 1, 2004, to see if any medical liens on any of the bills would run out and thus not have to be paid.

In his response, Mr. Brown accepted full responsibility for the shortage of Ms. White's funds, claiming his illness, an incompetent and untrustworthy staff, and other problems led to unreliable accounting of the funds, and he was making efforts to rectify the situation. He denied his conduct violated Rule 8.4(c), as the conduct did not involve dishonesty, fraud, deceit or misrepresentation. No proof was received from Mr. Brown as to the status of the \$11,053.58 that remains unaccounted for by him to Ms. White.

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 1.3 in that he withheld \$16,153.58 from the settlement funds of his client, Carrie White, on August 1, 2002, to pay her medical bills, or to partially refund to her if any discounts on these bills were achieved, yet almost eighteen (18) months later he has failed to make a final settlement with her, even though he promised her he would do so by July 1, 2003, as stated in his letter to her on June 3, 2003. Model Rule 1.3 requires that a lawyer shall act with reasonable diligence and promptness in representing a client.

B. Mr. Brown's conduct violated Model Rule 1.4(a) in that in letters of April 2, 2003, September 22, 2003, and her Affidavit, Carrie White demonstrated she has repeatedly requested information about her claims and settlement funds from Respondent and did not receive adequate explanation or information. Almost twenty-two (22) months after her settlement of the Albertson's claim she has not been received complete information concerning the balance of the \$16,153.58 Mr. Brown withheld to pay her medical 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.

C. Mr. Brown's conduct violated Model Rule 1.15(a) in that from August 1, 2002, to June 5, 2003, to equal and account for the client funds he should have been holding for Carrie White from her settlement with Albertson's, he should have had a minimum balance at all times in his IOLTA trust account at The Capital Bank of Little Rock of not less than \$16,153.58. His trust account balances fell below this minimum amount on at least the following statement closing dates:

Statement Date	Balance	Trust Account "shortage"
October 31, 2002	\$9,213.78	-\$6,939.80
November 29, 2002	\$2,772.03	-\$13,381.55
December 31, 2002	\$1,797.26	-\$14,356.32
January 31, 2003	\$7,826.85	-\$8,326.73
February 28, 2003	\$12,110.15	-\$4,043.43
March 31, 2003	\$502.81	-\$15,650.77
April 30, 2003	\$2,097.11	-\$14,056.47
May 30, 2003	\$897.32	-\$15,256.26

2. After his partial payment to his client of \$2,500.00 by trust account check No. 1873 on June 5, 2003, from that date to October 15, 2003, Respondent should have been holding for Carrie White from her settlement with Albertson's a minimum balance at all times in his IOLTA trust account at The Capital Bank of Little Rock of not less than \$13,653.58. His trust account balances fell below this amount on at least the following statement closing dates:

Statement Date	Balance	Trust Account "shortage"
July 31, 2003	\$9,119.05	-\$4,534.53
August 29, 2003	\$5,334.39	-\$8,319.19

3. After his partial payment to his client of \$2,600.00 by trust account check No. 195 October 8, 2003, from that date to present, Respondent should have been holding for Carrie White from her settlement with Albertson's a minimum balance at all times in his IOLTA trust account at The Capital Bank of Little Rock of not less than \$11,053.58. His trust account balances fell below this amount on at least the following statement closing dates:

Statement Date	Balance	Trust Account "shortage"
December 31, 2003	\$6,952.62	-\$4,100.96
February 29, 2004	\$5,757.16	-\$5,296.42

Model Rule 1.15(a) requires that an lawyer shall 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. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. 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.

D. Mr. Brown's conduct violated Model Rule 1.15(b) in that he withheld \$16,153.58 from settlement funds of his client, Carrie White, on August 1, 2002, specifically to pay her medical bills, or to refund to her if any discounts on these bills were achieved. Almost twenty-two (22) months later he has failed to make a final settlement with her, even though he promised to do so by July 1, 2003, as stated in his letter to her on June 3, 2003. Mr. Brown made additional partial settlement payments to his client of \$2,500.00 (June 5, 2003) and \$2,600.00 (October 8, 2003), but has failed to account to her for the remaining \$11,053.58 he should be holding in his client trust account or should have paid over to the client, who has demanded such accounting and payment. 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.

E. Mr. Brown's conduct violated Model Rule 1.15(c) in that on various dates (as shown following) he failed to have the minimum account balance required in his trust account, either \$16,153.58, or \$13,653.58, or

\$11,053.58, to meet all claims and obligations on those funds of his client Carrie White or of third persons with unpaid claims on these funds.

1. From August 1, 2002, to June 5, 2003, to equal the client funds he should have been holding for Carrie White from her settlement with Albertson's, he should have had a minimum balance at all times in his IOLTA trust account at The Capital Bank of Little Rock of not less than \$16,153.58. His trust account balances fell below this amount on at least the following statement closing dates:

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May 30, 2003	\$897.32	-\$15,256.26

2. After his partial payment to the client of \$2,500.00 by trust account check No. 1873 on June 5, 2003, from that date to October 15, 2003, he should have been holding for Carrie White from her settlement with Albertson's a minimum balance at all times in his IOLTA trust account at The Capital Bank of Little Rock of not less than \$13,653.58. His trust account balances fell below this amount on at least the following statement closing dates:

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3. After his partial payment to the client of \$2,600.00 by trust account check No. 195 October 8, 2003, from that date to present, he should have been holding for Carrie White from her settlement

with Albertson's a minimum balance at all times in his IOLTA trust account at The Capital Bank of Little Rock of not less than \$11,053.58. His trust account balances fell below this amount on at least the following statement closing dates:

Statement Date	Balance	Trust Account "shortage"
December 31, 2003	\$6,952.62	-\$4,100.96
February 29, 2004	\$5,757.16	-\$5,296.42

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.

F. Mr. Brown's conduct violated Model Rule 8.4(c) in that by letter of June 3, 2003, he represented to the client that he would comply with her written request to make a final accounting to her by July 1, 2003, and pay to her at that time all funds due her, with interest. As of March 24, 2004, he had failed to give her a full and final accounting, and apparently had \$11,053.58 in her settlement funds still in his possession or otherwise charged to him. On numerous occasions since August 1, 2002, the balance of his IOLTA trust account, into which the settlement funds of \$37,500.00 were deposited on July 8, 2002, has fallen well below the minimum amounts (\$16,153.58, \$13,653.58, or \$11,053.58) needed to fully fund the client or third person claims on the balance of those funds, amounting to a conversion by Respondent to other purposes of funds belonging to Carrie White or those third persons with a claim on her settlement funds. The shortages of her funds in Respondent's trust account, on selected statement closing dates, ranged from a low of -\$4,043.43 (February 28, 2003 statement) to a high of -\$15,650.77 (March 31, 2003 statement). 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 the Arkansas law license of Darrell F. Brown, Sr., Arkansas Bar ID# 72012, be, and hereby is, suspended for three (3) months for his conduct in this matter, \$50.00 costs are assessed, and he is ordered to make restitution for the benefit of Carrie White in the amount of

\$11,053.58, less credit for any payments from her settlement funds to which he is entitled that are not shown in the \$11,053.58. The suspension shall become effective on the date this Findings and Order is filed of record with the Clerk of the Arkansas Supreme Court. 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. By a separate Order entered in conjunction with this 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: \_\_\_\_\_