

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

**PANEL A**

IN RE: **LORI A. MOSBY**

Arkansas Bar ID # 94016

CPC Docket No. 2003-008

**FINDINGS AND ORDER**

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Pamela R. Griffin of Little Rock on July 10, 2001. The information related to the representation of Ms. Griffin by Respondent in 2001-2002.

On February 6, 2003, Respondent was served with a formal complaint, supported by an affidavit from Ms. Griffin. Ms. Mosby filed a timely response and Ms. Griffin filed rebuttal to the response.

Ms. Griffin alleged she was represented by Ms. Mosby in a personal injury matter in which settlement negotiations with an insurance company were on-going in the summer of 2001. On June 26, 2001, Ms. Mosby wrote the insurance company, with copy to Ms. Griffin, making an authorized demand for \$17,000, and listing nine medical bills, totaling \$4,885.55, that would have to be paid. A settlement check for \$11,000.00 was received and Ms. Griffin met with Ms. Mosby on July 20, 2001, for the settlement. No "settlement sheet" or full accounting of the \$11,000.00 was made and provided to the client. The June 26 letter was marked up and Ms. Griffin signed it, acknowledging she would pay her own medical bills. However, Ms. Griffin understood, because Ms. Mosby circled it on the June 26 letter, that Ms. Mosby was going to pay the Bell Chiropractic bill for her out of funds to be retained from the settlement. No "net" distribution figure for Ms. Griffin's share of the settlement appears on the document. Ms. Mosby provided Ms. Griffin with a trust account check for \$5,940.00 as the client's share, and marked the check "Pay own Med. bills." The client's settlement check was short the \$1,310.00 needed for her to pay Bell Chiropractic Clinic. Later, Bell Chiropractic Clinic contacted Ms. Griffin about her unpaid bill, and she tried to contact Ms. Mosby to resolve the problem. When she got no relief, Ms. Griffin filed a complaint with the Committee. On September 11, 2001, the Office of Professional Conduct contacted Ms. Mosby by e-mail and inquired about the absence of a true settlement sheet in the matter. By reply e-mail on September 14, Ms. Mosby admitted there was no settlement sheet. At that time she apparently failed to review the file and her trust account sufficiently to discover her trust account held \$1,310.00 more than it should have, being the funds she failed to include in Ms. Griffin's check on July 20, 2001, or failed to pay to Bell Chiropractic directly. On December 9, 2002, the Office of Professional Conduct wrote Ms. Mosby, asking her to reconstruct the settlement and to provide copies of all checks written on her trust account in the Griffin matter. By letter of December 30, 2002, eighteen (18) months after the case settled and the settlement funds were disbursed, Ms. Mosby wrote the Office and stated she "noticed that \$1,310 is still, as of this date sitting in my trust account." She enclosed a copy of a trust account check for \$1,310.00 dated December 31, 2002, written to "Bell Chiropractor" for "Pamela Griffin."

Ms. Mosby responded that she did not recognize that \$1,310.00 of Ms. Griffin's settlement was still in her trust account. Although she accepted responsibility for the money in her trust account, she said she relied on a former CPA to accurately balance her accounts, which she said was not done in 2001. She also seemed to suggest that the Office of Professional Conduct may had misled her in its contacts with her seeking information about the Griffin matter, because she claimed the Office never came right out and asked her about the accuracy of the Griffin settlement and the status of the \$1,310.00. She feels the complaint against her was initiated not by Ms. Griffin, who first brought the matter to the attention of the Office, but by the Executive Director for some other reason.

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 A of the Arkansas Supreme Court Committee on Professional Conduct finds:

A. Ms. Mosby's conduct violated Model Rule 1.3, when, from July 20, 2001, until December 30, 2002, almost eighteen (18) months, she failed to review her trust account records and to recognize that she had failed to provide her client, Pamela Griffin, with \$1,310.00 due to Griffin from her settlement funds in Mosby's trust account, even after the Office of Professional Conduct asked Ms. Mosby about the accuracy of distribution of Ms. Griffin's settlement funds at least twice during this period. Model Rule 1.3 requires that a lawyer shall act with reasonable diligence and promptness in representing a client.

B. Ms. Mosby's conduct violated Model Rule 1.4(a), when she failed to reasonably and timely respond to Ms. Griffin's requests after July 20, 2001, for information about the settlement amounts and the funds for Bell Chiropractic Clinic. 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. Mosby's conduct violated Model Rule 1.5(c), in that, upon the conclusion of this contingent fee matter with Ms. Griffin on July 20, 2001, Ms. Mosby failed to provide her client with a written statement stating the outcome of the matter and showing the remittance to the client and the method of its determination, and in that the listing of medical bills she did provide to her client on July 20, 2001, as shown by the letter of June 26, 2001, to Farm Bureau Insurance Company, was not a written statement that complied with Model Rule 1.5(c), in that it failed to show, on either June 26 or July 20, 2001, to the client all relevant information the client would need to properly assess the distribution of settlement funds. The letter showed a settlement amount (\$17,000.00) that was not accurate, as later events proved. Model Rule 1.5(c) provides that 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.

D. Ms. Mosby's conduct violated Model Rule 1.15(b), in that she failed to provide her client with a full accounting of the \$11,000.00 in settlement proceeds that came to her and were to be distributed July 20, 2001; in that she failed to promptly deliver to her client \$1,310.00 from her settlement funds in Ms. Mosby's trust account, funds she and her client agreed the client would use to pay all her own medical bills, including Bell Chiropractic Clinic; and in that she failed to timely and properly reconcile her individual client accounts within her overall attorney trust account, and thereby failed to discover for almost eighteen (18) months that she was holding \$1,310.00 of funds belonging to someone else that should have been paid out. 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.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel A, that LORI A. MOSBY, Arkansas Bar ID# 94016, be, and hereby is, CAUTIONED for her conduct in this matter, and ordered to pay costs of \$50.00. The 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 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 A

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

Gwendolyn D. Hodge, Chair, Panel A

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