

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL A

IN RE: LORI A. MOSBY

ARKANSAS BAR ID #94016

CPC DOCKET NO. 2003-058

FINDINGS AND ORDER

The formal charges of misconduct upon which this Order is premised arose from information submitted by Dr. Lance Audirisch, of West Helena, Phillips County, Arkansas. The information provided by Dr. Audirisch reveals that during June 2000, he requested that a staff member of his office contact the law firm of Lori A. Mosby, an attorney practicing in Little Rock, to be certain that she was representing Terry and Brenda Owens in a personal injury matter. Mr. and Mrs. Owens were to be seen by Dr. Audirisch and he wanted to confirm that they were represented by counsel. A request was faxed to Ms. Mosby's office requesting the information on June 8, 2000. In the note that was returned to Dr. Audirisch's office, Ms. Mosby's representation was confirmed as was the fact that Ms. Mosby had referred Mr. and Mrs. Owens to Dr. Audirisch for treatment. To ensure payment for his services, Dr. Audirisch required Mr. Owens to execute a doctor's lien. The same lien was provided to Ms. Mosby and she signed it as well. Ms. Mosby wrote on her lien the following qualifying language "for bills in file only". This was not a problem because Dr. Audirisch provided information related to his treatment and billing to Ms. Mosby. It was Dr. Audirisch's understanding that Ms. Mosby used the information to obtain a settlement for Mr. Owens. During July 2002, two years after the doctor's lien was signed, a member of Ms. Mosby's staff contacted Dr. Audirisch's office to advise that the matter had settled and that Mr. Owens was responsible for paying the medical bill.

After receiving this message, Dr. Audirisch and members of his staff, made several attempts to contact Ms. Mosby. No return telephone calls were made. Finally, on October 15, 2002, Dr. Audirisch was able to speak with Ms. Mosby. He sent Ms. Mosby a fax transmission the following day with the information she requested with regard to Mr. Owens. Ms. Mosby then requested a copy of the signed lien. Before Dr. Audirisch

sent it to her, he requested that she advise him when the case was settled and for what amount. Ms. Mosby did not respond to that request. On October 24, 2002, Dr. Audirisch forwarded Ms. Mosby a copy of the lien. The lien was sent by fax. After the fax was received, Ms. Mosby's secretary called Dr. Audirisch and advised that Ms. Mosby would be in contact with him within the week. However, she did not contact Dr. Audirisch. Finally, Dr. Audirisch filed a Small Claims action against Ms. Mosby and also lodged his grievance with the Office of Professional Conduct.

In her response to the Complaint, Ms. Mosby stated that she did not believe she violated any of the Model Rules of Professional Conduct as alleged. She stated that Dr. Audirisch had failed to prove by a preponderance of the evidence that she had a copy of his bill in her file. She also stated that it was her belief that Dr. Audirisch's bill was paid from Mr. Owens' PIP coverage with his own automobile insurance policy. Ms. Mosby explained that she settled Mr. Owens' claim after not having spoken with him for a year. She advised that she paid Mr. Owens' insurance company their subrogation amount less fees. She asserted that she did not know there were any other outstanding bills until the formal disciplinary complaint. Ms. Mosby explains further that when she was being contacted by Dr. Audirisch during October 2002, she was still in mourning for her father. Ms. Mosby offered that after the holidays she contacted Dr. Audirisch's office to obtain balances on Terry Owens and others. According to Ms. Mosby and the documents she provided, she was not provided a balance on Terry Owens. Ms. Mosby ignored the fact that by that time, Dr. Audirisch had already sued her for that balance. Ms. Mosby denied that she was ever served with the small claims action and stated that she had no knowledge that one existed. Ms. Mosby requested that the Committee allow her to send her exhibits at a later date based upon her recent move of the location of her office. At no time following her response did Ms. Mosby send any additional exhibits or documents.

Upon consideration of the Formal Complaint and exhibits thereto, the Response filed herein, the Model Rules of Professional Conduct and other matters and things before it, Panel A of the Arkansas Supreme Court Committee on Professional Conduct finds:

- A. That Ms. Mosby's conduct violated Model Rule 1.15(b) because upon receiving the

settlement funds from Terry Owens' personal injury matter, she failed to promptly notify Dr. Lance Audirisch, a third person whom she knew to have an interest in the funds and she failed to promptly deliver to Dr. Audirisch the funds that he was entitled to receive. Model Rule 1.15(b) requires that upon receiving funds or other property in which a client or third person had 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 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.

B. That Ms. Mosby's conduct violated Model Rule 8.4(c) because her failure to submit the funds owing to Dr. Audirisch, a person she knew to claim an interest in the settlement funds of Terry Owens, after allowing him to believe that she would do so amounts to conduct involving dishonesty, deceit and misrepresentation. Model Rule 8.4(c) requires that a lawyer not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

C. That Ms. Mosby's conduct violated Model Rule 8.4(d) because her failure to act in accordance with her ethical obligations with regard to a third person she knew to have an interest in funds received on behalf of her client Terry Owens created the need for Dr. Audirisch, the third person, to file a lawsuit in an attempt to recover his interest in the funds. Such lawsuit would not have been necessary but for Ms. Mosby's failure. Model Rule 8.4(d) requires that a lawyer not engage in conduct that is prejudicial to the administration of justice.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, through Panel B, that LORI A. MOSBY, Arkansas Bar ID #94016 be, and hereby is, REPRIMANDED for her conduct in this matter. In addition, pursuant to Section 18A of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law, Panel A imposes costs in the amount of \$50. Further, pursuant to Section 18.B of the Procedures, Panel A imposes a fine in the amount of \$1000 for Ms. Mosby's conduct herein. Said costs and fine shall be due and payable within thirty (30) days

from the filing of this Findings and Order with the Clerk of the Arkansas Supreme Court. The cashier's check or money order in the amount of \$1050 should be made payable to the "Clerk, Arkansas Supreme Court" and delivered to the Office of Professional Conduct.

ARKANSAS SUPREME COURT COMMITTEE
ON PROFESSIONAL CONDUCT - PANEL A

By:

Gwendolyn D. Hodge, Chair, Panel A

Date:
