

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

IN RE:           Lori A. Mosby, Respondent  
                  Arkansas Bar ID#94016  
                  CPC Docket No. 2003-182

**FINDINGS AND ORDER**

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Kenneth E. Davis, dated June 17, 2003. The information related to the representation of Mr. Davis by Respondent in 2002 and 2003.

On April 26, 2004, Respondent was served with a formal complaint, supported by affidavits from Kenneth E. Davis, Essie Pledge, Levolia Franklin, and Hazel Love. A timely response was submitted by Respondent and the matter proceeded to ballot vote pursuant to the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law.

The facts before the Committee reflect that during calendar year 2002, Kenneth Davis was subpoenaed by Lori A. Mosby, an attorney practicing primarily in Little Rock, Arkansas, to be a witness in a civil proceeding wherein she was representing the plaintiff. The lawsuit in which Mr. Davis was subpoenaed was styled *Katherine Townsend and Perry Ballard v. George Maritime, et al.*, Case No. 3:00CV00341. Mr. Davis attended the trial despite the fact that there was no witness fee check enclosed and no payment for mileage. The required witness fee of \$60 has never been paid to Mr. Davis. In addition, Essie Pledge, Levolia Franklin, and Hazel Love were all also subpoenaed and did attend trial but were never paid the witness fees as required by federal court procedural rules. Ms. Mosby advised that she prepared witness fee checks for all of the above-indicated witnesses. She included an affidavit from a person she stated that she hired to serve each subpoena, who confirmed that he received the checks but that he misplaced them and further stated that some of the witnesses rejected the check when presented to them.

At or about this same time, Ms. Mosby was also representing Mr. Davis in similar litigation. Because of this representation, Mr. Davis loaned her a tape about Kroger's job description as well as a large print copy of Local 1529's Union Contract. It was believed that this information and documentation would be used as evidence in Ms. Townsend's lawsuit. The documents were not used as evidence in any fashion during the trial. Ms. Mosby was to return the documents to Mr. Davis following the trial but to date she has not done so. According to Mr. Davis, he has requested that she do so on more than one occasion, both verbally and in writing.

Mr. Davis asked Ms. Mosby to represent him in an age discrimination matter which he wished to pursue against the same defendants as set out in the Townsend lawsuit. Before agreeing to the representation, Ms. Mosby wished to review the documentation Mr. Davis had concerning the perceived discrimination. Mr. Davis entrusted Ms. Mosby with a large binder of facts and evidence. At the time, Mr. Davis provided Ms. Mosby with this information, he had already filed an EEOC claim and had received his "right-to-sue" letter. After reviewing the information submitted by Mr. Davis, Ms. Mosby wrote Mr. Davis a letter and advised that she would not be able to represent him in pursuit of his claims for age discrimination. Mr. Davis then contacted Ms. Mosby and requested that she return the binder of information to him. Ms. Mosby advised Mr. Davis that she was unable to do so because she had misplaced the binder at her home.

Mr. Davis ultimately filed another EEOC claim in Memphis, Tennessee. After receiving his "right-to-sue" letter from that filing, Ms. Mosby agreed to represent him. Mr. Davis again compiled a binder of documentation and information for Ms. Mosby's use in the representation of him. A contract for representation was signed on August 15, 2002. Mr. Davis also paid \$1000 for expenses that date. Ms. Mosby failed to keep Mr. Davis informed of how the monies for expenses were used. The following month Mr. Davis sent another payment of \$1000 to be placed in Ms. Mosby's trust account to be used for litigation expenses. According to Ms. Mosby each time Mr. Davis made a payment to her, it was deposited into her trust account. She also stated that she did provide a full accounting to him as evidenced by the documents attached to the formal disciplinary complaint.

According to Mr. Davis, he was unable to communicate with Ms. Mosby on many occasions despite attempts to do so. Ms. Mosby denied this allegation and stated that Mr. Davis was unable to provide telephone records demonstrating that he called her office continuously and that she did not respond.

In December 2002, Ms. Mosby wrote Mr. Davis and requested a total of \$6000 be paid in \$1000 monthly increments. In the letter, there is no mention of the \$2000 already paid to her. After receiving the letter, Mr. Davis contacted Ms. Mosby to schedule an appointment to see her about his legal matter. Ms. Mosby did not attend the scheduled meeting. After waiting for Ms. Mosby for approximately one (1) hour, Mr. Davis left her office. He also left a letter at the office requesting that Ms. Mosby dismiss his lawsuit without prejudice so that he would have the opportunity to seek other counsel. Mr. Davis did not hear from Ms. Mosby until he received a letter dated January 15, 2003. A Motion for Voluntary Dismissal was filed wherein Ms. Mosby set out her agreement to return any and all monies owed to Mr. Davis after she deducted her expenses. A refund was ultimately made in March 2003. Mr. Davis did not agree to all the charges set out before the refund was made. Ms. Mosby denied that there was any wrongdoing in the charges made against Mr. Davis' expense payments. She stated that as the African-American litigants were charged for their expenses in their own matters, Mr. Davis, as a white male, was going to be charged as well. Finally, Ms. Mosby did return certain other documents and the binder to Mr. Davis in May 2003 but has never resolved the other issues of materials which Mr. Davis wished to have returned to him, which had been entrusted to Ms. Mosby. Ms. Mosby asserted in her response to the complaint that Mr. Davis did obtain his file from her personnel and alleged that he left the office screaming that he was going to report that she did not return it to him. In addition, Ms. Mosby set out her belief that the binder became her property when delivered to her as agreed upon by she and Mr. Davis.

Upon consideration of the formal complaint and attached exhibit materials, the response to it, other matters before it including Ms. Mosby's prior disciplinary record, and the Arkansas Model Rules of Professional Conduct, Panel A of the Arkansas Supreme Court Committee on Professional Conduct finds:

1. That Ms. Mosby's conduct violated Model Rule 1.4(a) because during the course of her representation of Mr. Davis, she failed to keep him informed about the status of her efforts, if any, which she was undertaking on his behalf and because despite various requests for information made by Mr. Davis, she failed to respond to his inquiries about his legal matter. Model Rule 1.4(a) requires that a lawyer keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.
2. That Ms. Mosby's conduct violated Model Rule 1.15(a)(1) when she failed to deposit the \$2000 paid to her by Mr. Davis for litigation expenses in her IOLTA trust account and failed to maintain them there during the course of her representation of Mr. Davis. Model Rule 1.15(a)(1) requires that a lawyer 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, with funds of a client being 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.
3. That Ms. Mosby's conduct violated Model Rule 1.15(b) when despite requests by Mr. Davis, she failed to promptly provide an accounting of the funds delivered to her for use as litigation expenses in his legal matter and when she failed to promptly return the binders to Mr. Davis which were given to her for safekeeping and use in his trial and the trial of her other clients, Katherine Townsend and Perry Ballard. Model Rule 1.15(b) requires, in pertinent part, that a lawyer promptly deliver to a client or third person any property (in the lawyer's possession) that the client or third person is entitled to receive, and shall promptly render a full accounting regarding such property.
4. That Ms. Mosby's conduct violated Model Rule 1.16(d) when she failed to return to Mr. Davis the binders of information which he entrusted to her concerning his legal action and when she failed to return to Mr. Davis the unused portion of the funds entrusted to her for the sole purpose of litigation expense in his lawsuit, although her representation of Mr. Davis has terminated.

Model Rule 1.16(d) requires that upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned.

5. That Ms. Mosby's conduct violated Model Rule 3.4(c) because although the Federal Rules of Civil Procedure require that she include a witness fee check with any witness subpoena she has served, she failed to do so for Kenneth Davis, Essie Pledge, Levolia Franklin, and Hazel Love when she subpoenaed them to the trial of her clients, Katherine Townsend and Perry Ballard. Model Rule 3.4(c) requires that a lawyer not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists.
6. That Ms. Mosby's conduct violated Model Rule 8.4(c) because her failure to pay the witness fees owed to Kenneth Davis, Essie Pledge, Levolia Franklin and Hazel Love, despite her obligation to them to do so since they appeared as witnesses for her clients at their trial, amounts to dishonest and deceitful ongoing conduct and because her statement to the Court in her Motion for Voluntary Dismissal, that her client had been provided a copy of all papers and property to which he was entitled, was not truthful inasmuch as she did not provide him the binders of information which he supplied to her at the onset of Ms. Mosby's representation of him. 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 A, that LORI A. MOSBY, Arkansas Bar ID# 94016 , be, and hereby is, REPRIMANDED for her conduct in this matter. Further, pursuant to Section 18.A. of the Procedures, Ms. Mosby is assessed the costs of this proceeding in the amount of \$50. Ms. Mosby is ordered to pay a fine in the amount of \$500 pursuant to Section 18.B. of the Procedures. In addition, Ms. Mosby is ordered to pay restitution in the amount of \$1000 to Mr. Davis, the complainant herein. The restitution is

ordered by the Committee pursuant to Section 18.C. of the Procedures. The costs, fine and restitution 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: \_\_\_\_\_