

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL A

IN RE: Lori A. Mosby, Respondent
 Arkansas Bar ID#94016
 CPC Docket No. 2005-044

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Rickey L. McCraw, in an Affidavit dated March 9, 2005. The information related to conduct occurring related to the representation of Mr. McCraw by Respondent in 2001 through 2003.

During April 2005, Respondent was served with a formal complaint, supported by affidavits from her former client, Rickey L. McCraw and Suzanne Olita, Executive Vice President, Technical Advisory Service for Attorneys (TASA). The Complaint was also supported by Monthly Summary Statements from Ms. Mosby's IOLTA Trust Account, for the period of time from March 2003 through January 2005. 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 on March 2, 2001, Rickey L. McCraw hired Lori A. Mosby, an attorney practicing primarily in Little Rock, Arkansas, to represent him in a personal injury matter. Ms. Mosby and Mr. McCraw signed a fee contract at the time of hire. Mr. McCraw finalized the settlement of his legal matter on April 7, 2003. Ms. Mosby completed and provided Mr. McCraw a settlement sheet on that date.

According to the handwritten notations made by Ms. Mosby on the final settlement sheet which was presented to Mr. McCraw, Ms. Mosby was to pay all expenses associated with the litigation with the sole exception that she would not pay Mr. McCraw's medical bills. The expenses were to be paid from the \$49,540 Ms. Mosby retained from the \$125,000 settlement of claims. Ms. Mosby placed this information on the settlement sheet herself. Prior to the signing of the settlement sheet prepared by Ms. Mosby, Mr. McCraw and his wife signed a letter reflecting the terms under which they were agreeing to the settle the litigation. Ms.

Mosby also signed the letter. The letter agreement set out the agreement Mr. and Mrs. McCraw had with Ms. Mosby. This letter agreement also reflects that from the funds Ms. Mosby was retaining, she was to pay all other expenditures related to Mr. McCraw's legal matter with the exception of the medical bills.

One of the expenses associated with Mr. McCraw's legal matter was owed to TASA Group. The expenses owed to TASA were for the expert Ms. Mosby hired to assist with the legal matter. Mr. McCraw learned later that Ms. Mosby did not pay the expenses associated with the TASA Group and his legal matter despite having advised him that she was retaining funds to pay all the expenses.

On January 7, 2004, Diane Mitchell of TASA sent Mr. McCraw information demonstrating that the company had not received the balance owed to them in the amount of \$7,805.86 from Ms. Mosby. Mr. McCraw was upset with this information because he had been led to believe by Ms. Mosby's own statements that she was going to pay all the expenses associated with his legal matter.

Additional information was obtained through TASA Group concerning the expenses owed to them related to Rickey McCraw's legal matter. According to the information presented by TASA, Ms. Mosby contacted them in December 2002, about obtaining the services of an expert witness in a matter involving Rickey McCraw. TASA advised Ms. Mosby in a Memorandum of Confirmation what the charges would be for services. During March 17, 2003, Ms. Mosby sent a letter to TASA wherein she stated that she would only pay what was previously agreed to between her and the expert witness since the matter did not proceed to trial. As of March 17, 2003, Ms. Mosby clearly was aware of expenses owed to TASA in the Rickey McCraw matter which was settled in April 2003.

On March 26, 2003, a statement was sent directly to Ms. Mosby demonstrating the amounts owed to TASA after giving Ms. Mosby credit for the \$3,000 which was paid directly to the expert witness. At the time of the billing statement, the expenses to TASA totaled \$7,500.04. This billing statement was also presented to Ms. Mosby prior to the signed agreement with her client, Rickey McCraw wherein she advised Mr. McCraw all expenses from his legal proceeding would be paid by her from the funds which she retained from the settlement funds.

Two (2) days after Ms. Mosby signed the settlement agreement with her client concerning the settlement of his legal matters and also the agreement with her client concerning expenses, another billing statement was sent to Ms. Mosby by TASA. This statement was in the amount of \$7,805.86. A reply to the billing statement was sent by Ms. Mosby on April 10, 2003. Ms. Mosby again set out that she was not in agreement with the charges as set forth and believed that her payment of \$3,000 was for payment in full for the services rendered. In reply thereto, an agent for TASA explained that the \$3,000 was an initial deposit. It was also explained to Ms. Mosby that if there were budgetary concerns or concerns about the amount of time the expert was putting into Mr. McCraw's claims, Ms. Mosby should have advised someone before the services were completed or provided.

On May 6, 2003, a certified letter was sent to Ms. Mosby requesting payment. In response, Ms. Mosby requested that she be provided with specificity what she was being charged for in the invoice of Renfroe Engineering, Inc. There was a reply sent with the specifics of the charges. Thereafter, Ms. Mosby responded and stated that she was moving her offices and when she move was complete she would contact TASA so that the matter could be resolved.

At some point after a billing statement dated January 6, 2004, Ms. Mosby offered to settle the matter with TASA for payment of \$3,500. The settlement offer was declined. Another offer was made by Ms. Mosby in the amount of \$4,500. This offer was also declined by TASA. As of the date of Ms. Olita's Affidavit, February 25, 2005, no funds had been delivered to TASA by Ms. Mosby relative to the Rickey McCraw legal matter.

In responding to the formal disciplinary complaint, Ms. Mosby denied that she ever entered into an express or implied contract to obtain the services of TASA. She denied that the Committee had jurisdiction to rule on these matters. Ms. Mosby stated that actions to recover money spent on fees should be pursued in a civil court of law and not the Office of Professional Conduct. Ms. Mosby denied that any of the allegations demonstrate that she did anything in the case to violate any of the Rules of Conduct. Having been considered by Panel A of the Committee on Professional Conduct, Ms. Mosby's Motion to Dismiss is denied. The matter

is reviewed as to violations of the Model Rules of Professional Conduct as Ms. Mosby was given notice of in the formal disciplinary complaint.

Upon consideration of the formal complaint and attached exhibit materials, the Affidavit from Ms. Mosby and the brief in Support of the Motion to Dismiss, 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 1.15(a) when she failed to keep the funds owing to TASA from Ms. McCraw's settlement funds separate from her own funds and failed to maintain them in her trust account; when on May 18, 2004, the balance in her IOLTA trust account was \$6,969.62, which is less than the \$7,805.86, owed to TASA in the McCraw matter; when from June 21, 2004, through June 29, 2004, and, from August 16, 2004, through September 2, 2004, the balance in her trust account was below the minimum balance which should have been present due to the funds owing to TASA in the McCraw matter; when on September 21, 2004, the balance in her IOLTA trust account was \$7,586.79, which is less than the \$7,805.86, owed to TASA in the McCraw matter; and, when from December 22, 2004, through December 31, 2004, the balance in her trust account was below the minimum balance which should have been present due to the funds owing to TASA in the McCraw matter. These balances confirm the fact that the funds owed to TASA in the McCraw matter were not maintained by Ms. Mosby. Model Rule 1.15(a) requires that all lawyers 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.

2. That Ms. Mosby's conduct violated Model Rule 1.15(b) because upon receiving the settlement funds from Rickey McCraw's personal injury matter in which she represented him in Pulaski County Circuit Court, she failed to promptly notify TASA, a third party whom she knew to have an interest in the funds, and failed to promptly deliver to TASA the funds TASA was entitled to receive in the McCraw matter. 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, 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 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.

3. That Ms. Mosby's conduct violated Model Rule 1.15(c) when she failed to keep separate the funds in which she and TASA both claimed an interest until the dispute could be settled; when on May 18, 2004, the balance in her trust account was \$6,969.62, which is less than the \$7,805.86, owed to TASA in the McCraw matter; when from June 21, 2004, through June 29, 2004, and from August 16, 2004 through September 2, 2004, the balance in her trust account was below the minimum balance which should have been present due to the funds owing to TASA in the McCraw matter; when on September 21, 2004, the balance in her IOLTA trust account was \$7,586.79, which is less than the \$7,805.86, owed to TASA in the McCraw matter; and, when from December 22, 2004, through December 31, 2004, the balance in her trust account was below the minimum balance which should have been present due to the funds owing to TASA in the McCraw matter. The balances confirm the fact that the funds of TASA were not maintained in Ms. Mosby's trust account until the dispute between she and TASA was resolved. Model Rule 1.15(c) requires that when in the course of representation a lawyer is in possession of property in which both the lawyer and another person claim an interest, the property shall be kept separate by the lawyer until there is an accounting and severance of their interest. If a dispute arises concerning the respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved.

4. That Ms. Mosby's conduct violated Model Rule 8.4(c) when she was dishonest with Mr. McCraw when she advised him in two separate documents which she signed that she would pay all expenses, other than medical bills, incurred in his legal matter from the portion she retained of his settlement funds. 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. 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: _____

Bart F. Virden, Chair, Panel A

Date: _____