

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

IN RE: LORI A. MOSBY, Respondent
Arkansas Bar ID#94016
CPC Docket No. 2005-085

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Kenny Woods in an Affidavit dated June 2, 2005. The information related to the representation of Mr. Woods by Respondent in 2003 and 2004.

On July 8, 2005, Respondent was served with a formal complaint, supported by affidavit from Kenny Woods. Respondent filed a timely response, in the form of a Motion to Dismiss, to the complaint. The matter then proceeded to ballot vote before Panel A in accordance with the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law. ("Procedures").

The information, which was not refuted or denied by Ms. Mosby, reflected that Mr. Woods hired Lori A. Mosby, an attorney with a primary office in Little Rock, Arkansas, to represent him in a personal injury matter. Mr. Woods contacted Ms. Mosby after his first attorney decided to no longer represent him in his pending matter. Mr. Woods located Ms. Mobsy in the Yellow Pages. He selected her law firm because of the Christian symbol in her advertisement.

The original fee agreement was for Ms. Mosby to receive 40% of the total recovery she was able to secure. According to the contract, Ms. Mosby would be responsible for the costs until such time as she would receive them back when the matter was settled or recovery received.

On May 12, 2003, Ms. Mosby filed a lawsuit on Mr. Woods' behalf against Tonya A. Harvey and William D. Powell. Three (3) days later, Ms. Mosby filed an Amended Complaint. Thereafter the matter proceeded for several months with many different pleadings filed.

During April 2004, Ms. Mosby settled with one of the parties to the lawsuit. She settled with the insurance company for Tonya Harvey in the amount of \$2,000. At the time of settlement, Ms. Mosby advised Mr. Woods that the check should be at her office within a few days. Ms. Mosby never sent Mr. Woods written notice that the check had been received by her in her office. Despite the fee being contingent in nature, there was never a settlement sheet provided to Mr. Woods demonstrating where the \$2000 was paid or to whom.

In June 2004, Ms. Mosby advised Mr. Woods that she needed to change the original fee agreement with Mr. Woods. She advised Mr. Woods that she needed to hire another attorney to assist her with the matter. Based on this fact, she convinced Mr. Woods that she needed to increase her percentage of recovery from 40% to 45%.

Eventually Mr. Woods stopped asking about the settlement check with Tonya Harvey and focused on William Powell and his company since he had a jury trial scheduled for August 17 and 18, 2004. The decision at the jury trial was against him. It was a defendant's verdict. During November 2004 when Ms. Mosby and Mr. Woods were discussing an extension for appeal of the unfavorable decision rendered against him in the jury trial, Mr. Woods questioned her about the whereabouts of the \$2000 check. Ms. Mosby told Mr. Woods that she had not cashed a check with his name on it in reply to an inquiry made by Mr. Woods. On September 24, 2004, after Ms. Mosby filed the Notice of Appeal, she wrote to Beth Kremers, the Court Reporter, and advised Ms. Kremers that she, Ms. Mosby, would be responsible for all costs associated with the appeal. Almost a month later, Ms. Mosby sent Mr. Woods a letter advising him that he needed to send \$2,200 to the Court Reporter for the cost of the transcript. Ms. Mosby sent the same letter to Mr. Woods the following day at a different address.

Mr. Woods ultimately contacted AIG Claims, the insurance company for Tonya Harvey, on December 1, 2004. Mr. Woods was informed that the check had issued in April 2004 and was sent directly to the Mosby Law Firm. Mr. Woods then requested and received a copy of the check. The check was endorsed with Mr. Woods' name on it. Mr. Woods advised that he did not authorize Ms. Mosby or anyone else to sign his name to the check.

When Mr. Woods called Ms. Mosby to check on the status of the appeal, he was informed that the request for extension of time to pursue the appeal had been denied and that he would not be afforded the opportunity of an appeal of the adverse decision. After that conversation, Mr. Woods received a letter from Ms. Mosby, dated December 6, 2004. In the letter, Ms. Mosby informed Mr. Woods of the denial of the extension request. She also indicated in the letter that Mr. Woods had given her permission to endorse the check. Ms. Mosby also indicated that she used the \$2000 toward the thousands of dollars she had spent on Mr. Woods' legal matter.

The problem with the appeal was the inability to pay for the transcript after the Notice of Appeal was filed by Ms. Mosby. According to Mr. Woods, originally, the fee contract had Ms. Mosby paying the costs and then recovering them after settlement or judgment. Ms. Mosby prepared a document for Mr. Woods to sign which required that he pay for 50% of the costs. This document was prepared and presented to Mr. Woods after the initial contract had been signed.

On December 10, 2004, Ms. Mosby filed a Petition for Writ of Mandamus against Judge Barry Sims. In the Petition for Writ of Mandamus, Ms. Mosby included the Affidavit Mr. Woods signed on November 9, 2004. It was this Affidavit wherein it is set out that there was a new contingent fee agreed upon between Mr. Woods and Ms. Mosby. The Supreme Court of Arkansas denied the Petition for Writ of Mandamus on January 13, 2005.

Ms. Mosby sent another letter to Mr. Woods, dated December 16, 2004, wherein she stated that she was not going to lend him any money. Mr. Woods denied that he asked to borrow money from her. In a subsequent letter, Ms. Mosby again stated that Mr. Woods was threatening her because she had not let him borrow money. On the date she sent the subsequent letter, Mr. Woods signed a document prepared by Ms. Mosby wherein he terminated her legal services.

In responding to the formal disciplinary complaint, Ms. Mosby did not address the specific allegations or facts set forth. Instead she stated that the matter must be dismissed because Mr. Woods could not have made the complaint because he is mentally retarded. Ms. Mosby asserted that she had not been provided due process.

Upon consideration of the formal complaint and attached exhibit materials, the response to it, other matters before it, 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 1.2(a) because although her client, Mr. Woods, wanted to appeal the decision of the Pulaski County Circuit Court in the matter wherein Ms. Mosby represented him, she failed to take all necessary steps to ensure that an appeal was pursued on his behalf. Instead of paying the costs which Ms. Mosby asserted she would be responsible for, she filed a Motion for Extension of Time which was denied due to her failure to abide by the Arkansas Rules of Appellate Procedure - Civil. Model Rule 1.2(a) requires, in pertinent part, that a lawyer abide by a client's decisions concerning the objectives of representation, subject to paragraphs (c), (d) and (e), and consult with the client as to the means by which they are to be pursued.
2. That Ms. Mosby's conduct violated Model Rule 1.3 when she failed to timely pay the cost for preparation of the transcript in Mr. Woods' legal matter, although she had advised Ms. Kremers, the Court Reporter that she would be responsible for such payment. The failure to timely pay the costs led to the denial of a Motion for Extension of Time to File Mr. Wood's record on appeal and ultimately caused him not to have an opportunity for an appeal. Model Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.
3. That Ms. Mosby's conduct violated Model Rule 1.4(c) when she did not promptly notify Mr. Woods in writing of the actual receipt of the check from AIG Insurance Company which she received and deposited in April 2004, although the check was made payable to her and Mr. Woods. Model Rule 1.4(c) requires that a lawyer promptly notify a client in writing of the actual or constructive receipt by the attorney of a check or other payment received from an insurance company, an opposing party, or from any other source which constitutes the payment of a settlement, judgment, or other monies to which the client is entitled.
4. That Ms. Mosby's conduct violated Model Rule 1.5(c), because after she settled the portion of Mr. Woods' claims which were against Ms. Harvey, she failed to provide him with a written statement demonstrating the outcome of the matter. Model Rule 1.5(c) requires, in pertinent part, that upon conclusion of a contingent fee matter, the lawyer 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.
5. That Ms. Mosby's conduct violated Model Rule 1.15(a), when she failed to keep the funds which might have been owing to Kenny Woods from the AIG settlement funds separate from her own funds and have failed to maintain them in her trust account although the funds were not determined to be solely yours. 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.
6. That Ms. Mosby's conduct violated Model Rule 1.15(b) because upon receiving the settlement funds from Kenny Woods' personal injury matter against Tonya Harvey, she failed to promptly notify Kenny Woods, a party whom she knew to have an interest in the funds and because upon receiving the settlement funds from Kenny Woods' personal injury matter against Tonya Harvey, she failed to promptly deliver to Kenny Woods, a person whom she knew to have an interest in the funds, the funds that he was entitled to receive based upon the fee agreement she had with him at the time of your receipt of the funds. 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.
7. That Ms. Mosby's conduct violated Model Rule 1.15(c), when she failed to keep separate the funds in which she and Kenny Woods both claimed an interest until the dispute could be settled. Instead she, unilaterally, decided she was entitled to keep the entire \$2000 for the "thousands of dollars" she had expended on the matter. 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.
8. That Ms. Mosby's conduct violated Model Rule 8.4(c), because her endorsement of Kenny Woods' name on the settlement check from AIG without his permission amounts to conduct involving dishonesty, deceit and misrepresentation; because she was dishonest with Beth Kremers when she advised in correspondence to her that she, Ms. Mosby, would be responsible for all costs related to preparation of the transcript in Mr. Woods' appellate matter; because she engaged in conduct involving deceit and dishonesty when she convinced Mr. Woods that he had to sign a different fee agreement late in her representation of him; because her conduct was deceitful and dishonest when she changed her agreement with Mr. Woods and advised him that he had to pay the costs for his appeal record, which was contrary to her initial agreement with him and contrary to statements made earlier to the Court Reporter in the Circuit Court matter; and, because she made false statements in correspondence to Mr. Woods when she set out that he had asked to borrow money from her although he had not done so, he merely wanted Ms. Mosby to pay the costs of his appeal record which she had averred she would do. 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# 96014, be, and hereby is, SUSPENDED FOR A PERIOD OF TWELVE (12) MONTHS for her conduct in this matter. The suspension shall become effective on the date this Findings and Order is filed of record with the Clerk of the Arkansas Supreme Court. 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: _____