

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

IN RE: DONALD W. COLSON, Respondent
Arkansas Bar ID#2005166
CPC Docket No. 2010-077

FILED

FEB 18 2011

**LESLIE W. STEEN
CLERK**

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Billy Hale in an Affidavit dated September 10, 2010. The information related to the representation of Billy Hale by Respondent beginning when Mr. Hale contacted and hired Mr. Colson in July 2008.

During October 2010, Respondent was served with a formal complaint, supported by affidavit from Billy Hale. Respondent filed a response. A rebuttal was submitted by Mr. Hale. The matter then proceeded to ballot vote before Panel A of the Committee.

The information before the Committee reflected that Donald W. Colson, an attorney practicing primarily in Benton, Saline County, Arkansas, was hired by Mr. Hale to represent him in a matter wherein Mr. Hale had lost his job with the United States Postal Service. Mr. Hale paid Mr. Colson \$750 of a \$1000 retainer fee. Two (2) checks were written totaling that amount but neither was placed into an IOLTA trust account in spite of not being earned at the time of receipt. There was no written fee agreement between Mr. Colson and Mr. Hale.

Mr. Hale called Mr. Colson on various occasions seeking information about the legal issue. When he was able to speak with Mr. Colson, Mr. Hale was advised that Mr. Colson was working on the matter and that he would obtain a court date.

After months and months passed, Mr. Hale was informed by Mr. Colson's secretary that

Lori Mosby would be his attorney and that Mr. Colson would no longer be with regard to the employment issue. The following month, May 2010, Mr. Hale was informed that Ms. Mosby was not his attorney. Finally, because he could get no answers or information, Mr. Hale requested that his retainer fee be returned to him. After making the request, Mr. Colson completely ceased returning telephone calls and messages left for him by Mr. Hale.

Mr. Colson did not initiate any contact with Mr. Hale after being hired and paid to represent him with regard to his employment issue. There was never any correspondence sent to Mr. Hale. Mr. Colson received Mr. Hale's retainer fee and did not provide him any substantive and honest information thereafter.

Mr. Colson acknowledged not being in communication with Mr. Hale on a regular basis. Much of his response to the inquiry from the Office of Professional Conduct dealt with placing a certain amount of blame on his former secretary. He did acknowledge that ultimately it is his responsibility to be certain that all communication and information are thorough and complete. Mr. Colson stated that he performed research and made telephone calls but admitted he had no recorded documentation in Mr. Hale's file.

Mr. Colson offered his apology to Mr. Hale. However, the apology does not undo the delay which Mr. Colson's lack of action and effort caused.

In responding to the formal disciplinary complaint, Mr. Colson explained that he fully intended to aggressively pursue the matter for Mr. Hale but during the particular time, he was under much emotional, mental and physical stress because of physical illnesses affecting members of Mr. Colson's family. Mr. Colson assured the Committee that the stress and strain placed on him during the time period in which Mr. Hale's issues arose have subsided. He also

explained that he has regained focus on his legal career and is able to meet the duties and responsibilities placed on him as an attorney and is able to serve his clients with devoted attention. Mr. Colson admitted the Rule violations as set forth in the formal disciplinary complaint.

Upon consideration of the formal complaint and attached exhibit materials, the response to it, other matters before it, and the Arkansas Rules of Professional Conduct, Panel A of the Arkansas Supreme Court Committee on Professional Conduct finds:

1. That Mr. Colson's conduct violated Rule 1.3, when Mr. Colson did not undertake diligent and prompt efforts on behalf of Mr. Hale after being hired and paid to do so. Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

2. That Mr. Colson's conduct violated Rule 1.4(a)(3), when Mr. Colson failed to keep Billy Hale informed of the status of any actions he had taken or was taking on Mr. Hale's behalf with regard to Mr. Hale's employment issues. Rule 1.4(a)(3) requires that a lawyer keep the client reasonably informed about the status of the matter.

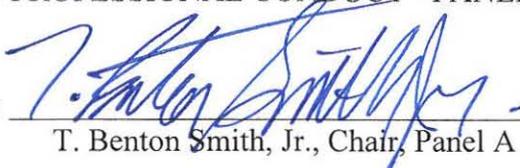
3. That Mr. Colson's conduct violated Rule 1.4(a)(4), when Mr. Colson failed to comply with requests for information left for him by Mr. Hale after being paid \$750 of a retainer fee to undertake representation of Mr. Hale. Rule 1.4(a)(4) requires that a lawyer promptly comply with reasonable requests for information.

4. That Mr. Colson's conduct violated 1.15(b)(2), because Mr. Colson failed to deposit the \$750 of the retainer fee paid to him by Mr. Hale into an IOLTA trust account until earned. Rule 1.15(b)(2) requires that a lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are

earned or expenses incurred.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel A, that DONALD W. COLSON, Arkansas Bar ID# 2005166, be, and hereby is, REPRIMANDED for his conduct in this matter. In addition, Mr. Colson is assessed the costs of this proceeding in the amount of FIFTY (\$50) DOLLARS, pursuant to Section 18.A of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law (2002). In addition, pursuant to Section 18.B. of the Procedures, Mr. Colson is ordered to pay a fine in the amount of ONE THOUSAND DOLLARS (\$1000). Finally, Mr. Colson is ordered to pay restitution for the benefit of Mr. Hale, pursuant to Section 18.C of the Procedures, in the amount of SEVEN HUNDRED FIFTY DOLLARS (\$750). The sanction imposed by the Committee was enhanced based on the Committee's consideration of Mr. Colson's prior disciplinary history. The fine, restitution, and costs assessed herein, totaling ONE THOUSAND EIGHT HUNDRED DOLLARS (\$1,800) 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: 
T. Benton Smith, Jr., Chair, Panel A

Date: January 26, 2011