

Summary of SC89849, In re: Larry D. Coleman

Original disciplinary proceeding.

Attorneys: The chief disciplinary counsel's office was represented by Alan D. Pratzel and Shannon L. Briesacher of the office in Jefferson City, (573) 635-7400, and Coleman, of Raytown, (816) 737-3840, represented himself.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: The chief disciplinary counsel seeks to discipline the license of a lawyer for problems arising out of a fee agreement with a client and with his management of his client and personal accounts. In a unanimous opinion written by Judge Patricia Breckenridge, the Supreme Court of Missouri determines the lawyer violated certain rules of professional responsibility, suspends the lawyer's license, stays execution of the suspension and places the lawyer on probation for one year. The lawyer created a fee agreement with his client purporting to give him sole authority to settle claims, with or without her consent. The agreement created a conflict of interest between the interests of the lawyer and his client, but he failed to withdraw at the time. He improperly accepted a settlement agreement without his client's consent and then sought to enforce the agreement against his client in court. After a trial court refused to enforce the agreement against the client, the lawyer withdrew from representing her in three cases but then failed to respond to her request for information, much of which she needed to secure new counsel. The lawyer also failed to keep his personal funds separate from client and third-party funds. The lawyer's violations of the rules of professional responsibility constitute misconduct and were prejudicial to the administration of justice.

Facts: A woman hired attorney Larry Coleman to represent her in three separate civil cases, beginning in July 2001. One was a wrongful death action for medical malpractice in the death of her sister; the second was a wrongful termination case against her previous employer; and the third was a discrimination case against another employer, Western Missouri Mental Health Center. The fee agreement in each case required his client to pay a nonrefundable retainer, Coleman's litigation expenses and \$200 per hour for his services. In July 2006, the state, on behalf of Western Missouri, offered to settle the client's discrimination claim for \$20,000. The client instructed Coleman to reject the offer. Two months later, the client informed Coleman she no longer could pay him as previously agreed, and Coleman proposed converting their agreements to contingent fee agreements. In each case, the proposed contingent fee agreement waived any fees the client currently owed in exchange for Coleman having the right to one-third of any future recovery. Each proposed agreement also contained a clause giving Coleman "the exclusive right to determine when and for how much to settle this case. That way, I am not held hostage to an agreement I disagree with." Coleman did not explain or otherwise discuss this clause with his client before she executed the agreements.

In October 2006, the state again offered to settle the client's case against Western Missouri for \$20,000. Coleman accepted the offer without his client's consent and after she told him the offer was unacceptable. She repeatedly refused to sign the documents necessary to

effectuate the settlement and told Coleman she wished to proceed to trial. Ultimately, Coleman filed a motion in the Western Missouri case to enforce the settlement agreement against his client. In February 2007, the court ruled against Coleman and set the case on the trial docket for April 2007. Coleman subsequently sent his client a letter telling her that, if she did not contact him within a week, he would withdraw as her attorney. He later moved to withdraw as his client's attorney in the Western Missouri case, citing her failure to respond to his deadline as his reason, but he did not send her a copy of his motion. A few days later, the client requested and sent a representative to pick up her files from Coleman. On April 5, 2007, after receiving from the federal court a copy of Coleman's motion to withdraw and a directive about filing a response, the client sent Coleman a letter asking him a number of questions and directing him to respond by the next day. Also on April 5, Coleman sent the client a letter acknowledging that her files had been retrieved from his office. He did not reply to her letter, and it is unclear whether he was aware of it before he sent his letter. Ultimately, the court granted Coleman leave to withdraw in the Western Missouri case, over his client's objections, and set it for trial in the fall. The client was unable to obtain new counsel, and her case ultimately was dismissed. Also in the first half of 2007, Coleman was granted leave to withdraw as his client's counsel in her other two cases.

In July 2007, the client filed a complaint about Coleman with the chief disciplinary counsel's office, which investigated. Through investigation of an unrelated matter, the chief disciplinary counsel's office also discovered that Coleman regularly deposited checks for settlement proceeds into his IOLTA (Interest on Lawyer's Trust Account) account, paid the client's share out of the proceeds, and sometimes left his share in the IOLTA account and wrote checks on that account to pay personal obligations. In October 2008, the chief disciplinary counsel presented to a disciplinary hearing panel allegations that Coleman had violated certain rules of professional responsibility. The panel found sufficient evidence that Coleman violated only some of the rules and recommended that Coleman be reprimanded publicly. (Note: Previously, Coleman was admonished in 1990 and 1999 and reprimanded in April 2008.) The chief disciplinary counsel rejects the panel's recommendation and asks this Court to discipline Coleman's law license.

DISCIPLINE ORDERED.

Court en banc holds: (1) Coleman violated Rule 4-1.2, regarding scope of representation, by accepting a settlement agreement in the wrongful death case without his client's consent and by filing a motion in that case asking the court to enforce the agreement against his client. Rule 4-1.2(a) requires the client to control decisions such as whether to settle a case. It expressly disallows an attorney from expanding the scope of his representation so that the attorney – instead of the client – may determine whether to accept or reject a settlement offer. Coleman's agreements with his client to the contrary are invalid.

(2) Coleman violated Rule 4-1.7, regarding conflicts of interest, by entering into written agreements with his client purporting to give him the exclusive right to settle her three cases. In some circumstances, representation by an attorney despite a conflict of interest is permissible if the conflict will not have an adverse effect on the attorney's representation of the client and if the client consents after consultation. Here, however, it was not reasonable for Coleman to believe his interests would not have an adverse effect on his representation

of his client. His motivation to protect his financial interests was reflected in the statement that he gave himself exclusive settlement authority so he would not be “held hostage to an agreement I disagree with.” He further violated Rule 4-1.7 by advising counsel for Western Missouri that he would accept its settlement offer, despite his client’s explicit refusal to do so, and by taking direct, adverse action against her when he filed and proceeded on the motion to enforce the agreement. He did not withdraw from the representation when it became apparent his interest was adverse to his client’s; he withdrew only after the federal court overruled his motion to enforce the agreement against her in the Western Missouri case. His withdrawal was untimely and did not mitigate the conflict.

(3) Coleman violated Rule 4-1.15, regarding safekeeping property, by failing to keep his personal funds separate from his IOLTA account. Rule 4-1.15(c) requires a lawyer to hold the funds of clients or third parties in an account separate from any account holding the lawyer’s own funds. While there is no allegation that Coleman used client funds to pay personal bills or otherwise converted client funds for personal use, he did use the IOLTA account for personal use, which is strictly prohibited. Any funds owed to Coleman from settlement proceeds should have been transferred to a personal account before writing a personal check against those funds. At the time he wrote checks against the IOLTA account for personal obligations, there were client funds in the account. Additionally, he failed to maintain accurate records allowing him to identify to whom specific deposits belonged.

(4) Coleman violated Rule 4-1.16, regarding termination of representation, by failing to take reasonable steps to protect his client’s interest when he terminated his representation of her. He failed to notify her that he actually had filed motions to withdraw in her cases and did not provide her with information about her rights and obligations, even after she made a written request for information that would help her decide whether to object to his motion to withdraw. Most of the information she requested was vital to her ability to hire counsel to represent her in three pending cases, including Coleman’s opinion as to the status of the cases and whether he intended to file attorney liens against any proceeds she might recover in the future. Coleman is mistaken that he did not have a duty to provide this information because he had terminated their attorney-client relationship. Rather, his termination of the relationship gave rise to his duty to provide the information.

(5) Coleman violated Rule 4-8.4, regarding misconduct. By virtue of violating other rules of professional conduct, he necessarily has violated Rule 4-8.4(a), which makes it professional misconduct to violate the rules of professional conduct. He further violated Rule 4-8.4(d) by engaging in conduct that is prejudicial to the administration of justice. He wasted judicial resources by filing a motion and proceeding at a hearing in an attempt to enforce a prohibited agreement purporting to give him the sole right to settle his client’s case. He also failed to give his client information at the termination of his representation that hindered her ability to obtain new counsel to adjudicate her claims in the pending cases.

(6) There is insufficient evidence that Coleman violated Rule 4-1.5, regarding unreasonable fees. The client was able to produce receipts for more than \$38,000 in payments to Coleman, although she believes she may have paid him up to \$50,000. Coleman does not dispute this figure, and the chief disciplinary counsel does not contend that this amount of fees were unreasonable. It was ill-advised that Coleman did not maintain copies of

documentation showing his billable hours, litigation costs accrued or his client's payments when his client picked up her legal files from his office, but the rules in effect at the time did not require him to do so. There was evidence that Coleman spent significant time and effort on his client's behalf over five years on three lawsuits involving complex legal issues. He used a portion of the money his client paid for litigation expenses, including fees for two doctors, both of whom he used as consultants for her claims and one of whom he hired as an expert in her wrongful death case. Finally, the 30-percent contingent fee he agreed to accept in her cases – even if it went to trial – was not unreasonable.

(7) Coleman is suspended from the practice of law, with execution of the suspension stayed, subject to Coleman's completion of a one-year term of probation in accordance with the conditions imposed. In considering discipline, this Court relies on the ABA standards for imposing lawyer sanctions. Coleman knowingly failed to abide by his client's directive to reject the state's settlement offer not only by advising the state that the offer was accepted but also by filing a motion to enforce the agreement against his client. He also knowingly created a conflict of interest and failed to keep client and third-party funds separate from his own. His violations of the rules of professional responsibility injured his client. She was required to defend herself against his attempt to enforce the improper agreement purporting to give him authority to settle her case. The improper agreement contributed to the deterioration of her relationship with Coleman, which left her without counsel in all three cases and to the dismissal of her case against Western Missouri. Coleman previously received two admonishments and one reprimand. Coleman is ordered to comply with certain requirements during his term of probation.