

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

**PANEL A**

IN RE: John L. Kearney, Respondent  
Arkansas Bar ID # 74090  
CPC Docket No. 2005-047

**FINDINGS AND ORDER**

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Tyrone Simmons on June 2, 2004. The information related to the representation of Mr. Simmons by Respondent in January 2004.

On March 28, 2005, Respondent was served with a formal complaint, supported by an affidavit from Tyrone Simmons. Respondent filed a timely response to the complaint.

The facts giving rise to the formal complaint were that Mr. Simmons hired Mr. Kearney to retrieve money owed to Mr. Simmons by another attorney, Robert E. Irwin, and to get Mr. Simmons transferred to the Arkansas Department of Correction's Diagnostic Unit so that he could receive appropriate treatment. Subsequently Mr. Simmons discovered that Varner Super Max could treat his condition so it was unnecessary for him to get a transfer. Mr. Kearney did retrieve the money from Mr. Irwin on January 13, 2004, but he failed and refused to give the money to Mr. Simmons.

Upon being served with the formal complaint Mr. Kearney filed a response denying any rule violations and stating that he was hired by Mr. Simmons's grandmother, Sandra Winston, to get Mr. Simmons transferred from the Varner Unit to get medical treatment and also to ultimately gain his release from prison. Mr. Kearney said he advised Mr. Simmons that his fee would be \$2,500. Mr. Kearney said he retrieved the money from Mr. Irwin and he visited with Mr. Simmons and had discussions with him on several occasions and dispensed legal advice to him regarding problems Mr. Simmons encountered with prison officials. Mr. Kearney said Mr. Simmons never requested a refund of any fees but that he would be agreeable to returning to Mr. Simmons a reasonable portion of fees.

Upon consideration of the formal complaint and attached exhibit materials, the response to it, and 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 Mr. Kearney's conduct violated Model Rule 1.15(b) when he received funds on behalf of Tyrone Simmons in January 2003, and failed to account for or release said funds to Mr. Simmons. Model Rule 1.15(b) provides 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. 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.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel A, that John L. Kearney, Arkansas Bar ID# 74091, be, and hereby is, CAUTIONED for his conduct in this matter and Ordered to pay \$1,500 in Restitution and to pay \$50 in Costs. The restitution assessed herein shall be deposited into Mr. Simmons account with the Arkansas Department of Corrections and a copy of the deposit receipt submitted 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. 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: \_\_\_\_\_

