

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

IN RE: JACK KEARNEY, Respondent

Arkansas Bar ID# 77194

CPC Docket No. 2002-002

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Francis Carson on behalf of Med-Tech Ambulance Service on October 2, 2001. The information related to the representation of Tommy and Joshua Parks in 2001 by Jack Kearney, an attorney practicing in Little Rock.

On January 18, 2002, Respondent was served with a formal complaint, supported by an affidavit from Francis Carson on behalf of Med-Tech. Respondent filed a timely response to the complaint. At the scheduled de novo public hearing the respondent offered a consent to discipline to Panel A of the Committee and the Office of Professional Conduct made no objections.

The facts giving rise to the formal complaint were that Mr. Kearney represented both Tommy and Joshua Parks in two separate personal injury cases. Med-Tech provided ambulance services to the Parks and subsequently filed two separate medical liens on March 9, 2001. Med-Tech sent copies of the liens to the insurance company, to the Parks and to the Circuit Courts of Conway County. Mr. Kearney obtained settlements from the insurance company for both of the Parks on May 18, 2001. The settlement statements Mr. Kearney prepared in both cases reflected that he would pay the ambulance bills of \$485 each. On September 18, 2001, Med-Tech contacted Mr. Kearney because they had not received payment on either account. Mr. Kearney did not pay the ambulance bills until October 1, 2001, almost five (5) months after settlement was reached.

In addition to Mr. Kearney not paying the bills in a timely manner, his trust account records showed a negative balance for two different periods after he deposited the insurance checks, but prior to sending payments to Med-Tech.

Mr. Kearney's response to the complaint was that it was an accounting error and the bills were overlooked. He admitted that his trust account had negative balances during that time period but said that his bank would not have rejected or dishonored the checks on the basis of there being insufficient funds. At the public hearing, Mr. Kearney acknowledged that he understood, regardless of his bank's policy with regard to overdrafts, his trust account should never have a negative balance.

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 accepted the following offer of consent:

- That Mr. Kearney's conduct violated Model Rule 1.3 when he obtained a

settlement in the Parks' case but failed to pay Med-Tech until five months after the settlement. Model Rule 1.3 provides that a lawyer shall act with reasonable diligence and promptness in representing a client.

- That Mr. Kearney's conduct violated Model Rule 1.15(a) when his trust account

reflected negative balances during the time period he should have had the money owed to Med-Tech properly safeguarded in the trust account. Model Rule 1.15(a) provides, in pertinent part, that a lawyer shall 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. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person.

- That Mr. Kearney's conduct violated Model Rule 1.15(b) when he failed to notify

Med-Tech that he had received the settlement funds. 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 Jack Kearney, Arkansas Bar ID# 77194, be, and hereby is, REPRIMANDED for his conduct in this matter and fined \$500, pursuant to Section 18B of the Procedures of the Arkansas Supreme Court Regulating the Professional Conduct of Attorneys at Law (2002). Mr. Kearney also agreed to pay costs of \$60 in this matter. The fine and 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 with thirty (30) days of the date this Findings and Order is filed of record with the Clerk of the Arkansas Supreme Court.

By: _____

Win A. Trafford, Chair, Panel A

Date: _____