

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

PANEL B

IN RE: **BYRON COLE RHODES**
 ARKANSAS BAR ID No. 79186
 CPC Docket No. 2002-122

CONSENT FINDINGS & ORDER

The formal charges of misconduct upon which this Consent Order is premised, involving respondent attorney Byron Cole Rhodes of Hot Springs, Arkansas, arose from information provided to the Committee on Professional Conduct by James Chandler of Malvern, Arkansas, in 2001.

According to Mr. Chandler, Mr. Rhodes represented Mr. and Mrs. Chandler in Malvern Municipal Court on misdemeanor charges, on which they were convicted on May 22, 2001. Fines, costs, and restitution totaling \$1,278.50 were assessed against the Chandlers. Mr. Chandler paid Mr. Rhodes \$2,000.00 on May 29, 2001, claiming \$1,278.50 was for the fines, costs and restitution, and the remaining \$721.50 was for additional legal fees to Mr. Rhodes. At the Chandlers' request, Mr. Rhodes filed their notices of appeal to circuit court on June 5, 2001. On June 7, 2001, Mr. Chandler claimed Mr. Rhodes told him the appeal bonds for the Chandlers totaled \$3,000.00, and would have to be paid or the Chandlers would go to jail. Mr. Chandler further claimed that Mr. Rhodes told him that Mr. Chandler had not paid the \$1,278.50 in fines, costs and restitution. Mr. Chandler terminated Mr. Rhodes' services on June 11, 2001, and demanded the return of the \$1,278.50 he had paid Mr. Rhodes for "fines, costs, and restitution." No funds were returned to the Chandlers.

In July 2001, Mr. Chandler hired Ken Casady to handle the appeals for he and his wife. Circuit court trials for the Chandlers in February 2002, resulted in "not guilty" verdicts for the Chandlers. Mr. Chandler then employed Mr. Casady on a 50% contingency arrangement to attempt to recover the \$1,278.50 from Mr. Rhodes. Mr. Casady stated that Mr. Rhodes requested that a court order be obtained for the purpose of Mr. Rhodes making the refund. Mr. Casady filed a motion for return of the \$1,278.50 on March 4, 2002, reciting that the \$1,278.50 was collected by Mr. Rhodes for payment of the Chandlers' municipal court fines, as shown

by the attached copy of Mr. Rhodes' office receipt to the Chandlers for the funds. Mr. Casady obtained the order for return of the funds by Mr. Rhodes, and filed it March 11, 2002. Mr. Rhodes refunded the \$1,278.50 by a check on his office account, not his IOLTA trust account, delivered to Mr. Casady. Mr. Casady deducted his one-half (\$639.50) and sent the Chandlers his check for \$639.00 on March 15, 2002.

Mr. Rhodes responded that the payment of \$2,000.00 by Mr. Chandler was part of a non-refundable retainer fee of \$3,000.00, \$1,500.00 for each of the Chandlers, for other legal services rendered and to be rendered by Mr. Rhodes to the Chandlers on their appeals. He claimed the \$2,000.00 was not for fines from the municipal court actions. Mr. Rhodes stated that at no time was the \$2,000.00 in any personal account of his, but was in his office ("Client Operating") account.

Following Respondent Attorney's receipt of the formal complaint, and after a ballot vote by Committee Panel A, the Respondent entered into discussion with the Executive Director which has resulted in an agreement to discipline by consent pursuant to Section 20.B of the Arkansas Supreme Court Procedures Regulating Professional Conduct of Attorneys at Law (2002).

A. Mr. Rhodes' conduct violated Model Rule 1.15(a), in that on May 29, 2001, he received from James Chandler \$2,000.00, of which \$1,278.50 was intended by Mr. Chandler to be applied by Mr. Rhodes to payment of outstanding fines, costs, and restitution Chandler and his wife then owed to the Malvern Municipal Court in cases in which Mr. Rhodes was representing them. Mr. Rhodes' services were terminated June 11, 2001, and he did not pay these fines, costs and restitution for the Chandlers or return their funds. When Mr. Rhodes did return the \$1,278.50 to their new attorney, Ken Casady, on or about February 20, 2002, Mr. Rhodes' check for these funds was drawn on an account at Regions Bank of Hot Springs that was not identified as a client trust account. The Affidavit of Susie Pointer, Executive Director of the Arkansas IOLTA Foundation, showed the account was not listed as an Arkansas IOLTA attorney trust account. Mr. Rhodes had not maintained these client funds in a separate client trust account as required by the Model Rules, but instead had commingled client funds with personal funds. Model Rule 1.15(a) requires, in pertinent part, that an 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.

B. Mr. Rhodes' conduct violated Model Rule 1.16(d), in that following termination representation of James and Sammie Chandler in their criminal matters on June 11, 2001, Mr. Rhodes failed to honor their request and return to them \$1,278.50 he received from them on May 29, 2001, to be used by Mr. Rhodes to pay their fines, costs, and restitution in the Malvern Municipal Court proceedings in which Mr. Rhodes had been their attorney. Model Rule 1.16(d) requires, in pertinent part, that a lawyer shall take steps to the extent reasonably practicable to protect a client's interest such as surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned.

WHEREFORE, in accordance with the consent to discipline presented by Mr. Rhodes and Executive Director, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct that Respondent Byron Cole Rhodes, Arkansas Bar No. 79186, be, and hereby is, **cautioned** for his conduct in this matter, ordered to pay restitution of \$639.00 for the benefit of James Chandler, fined \$250.00, and ordered to pay costs of \$50.00. The fine, restitution, 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.

ARKANSAS SUPREME COURT COMMITTEE
ON PROFESSIONAL CONDUCT - PANEL B

By _____
J. Michael Cogbill, Chairperson, Panel B

Date _____