

2009 Annual Report

Arkansas Supreme Court

*Committee on Professional Conduct
&
Office of Professional Conduct*

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I. Introduction

Authority: Pursuant to the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law (“Procedures”), the Committee on Professional Conduct (“Committee”) is granted the authority to investigate all complaints alleging violation of the Arkansas Model Rules of Professional Conduct and impose any sanctions permitted and deemed appropriate. During 2002, major revisions to the Procedures adopted by Per Curiam Order of the Arkansas Supreme Court on July 9, 2001, effective on January 1, 2002, were implemented.

History: Amendment 28 to the Arkansas Constitution was adopted by the voters in 1938. The amendment placed with the Arkansas Supreme Court the authority to regulate the practice of law in Arkansas and to regulate, and thereby discipline, attorneys. In 1939 the Bar Rules Committee, an entity of the Arkansas Bar Association and the forerunner of the present Committee on Professional Conduct, was established. In 1940 the Canons for Professional Conduct of Lawyers was approved. The Arkansas version of the American Bar Association’s Model Code of Professional Responsibility was first adopted by the Arkansas Supreme Court in 1970. A revised version of the Code became effective July 1, 1976. The Arkansas version of the American Bar Association’s Model Rules of Professional Conduct was adopted by the Arkansas Supreme Court and became effective January 1, 1986. Various revisions have been made to the Arkansas version of the Model Rules since 1986. Comprehensive revisions became effective May 1, 2005, as the Arkansas Rules of Professional Conduct, now found at pages 339-459 of the 2009 Court Rules, Volume 2, of the Arkansas Code. The Procedures implementing these Rules are in Volume 2, at pages 297-337.

Mission: The purpose of lawyer discipline and disability proceedings is to maintain appropriate standards of professional conduct in order to protect the public and the administration of justice from lawyers who have demonstrated by their conduct that they are unable or are likely to be unable to properly discharge their professional duties. Standard 1.1 of the ABA’s 1979 Standards for Lawyer Discipline and Disability Proceedings.

II. Structure

1. COMMITTEE ON PROFESSIONAL CONDUCT

For the year 2009, the Committee continued to operate in the new model of three Panels established by the January 1, 2002, revisions to the Procedures. Late in 2008, the Supreme Court authorized and selected members for four full panels effective January 1, 2009, hereafter known as Panels A, B, C, and D (Reserve). Each panel is composed of seven members appointed by the Arkansas Supreme Court. Five are lawyers, with one lawyer appointed from each Congressional

District and one from the State at large. The remaining two positions are filled by persons who are not lawyers and are selected by the Arkansas Supreme Court from the State at large. Panel membership in 2009 was as follows:

Panel A: Gwendolyn Hodge, Little Rock, Attorney at Large
Win Trafford, Pine Bluff, Attorney, Fourth Congressional District
T. Benton Smith, Jr., Jonesboro, Attorney, First Congressional District
Steve Shults, Little Rock, Attorney & Panel Chair, Second Congressional District
Jerry Pinson, Harrison, Attorney, Third Congressional District
Helen Herr, Little Rock, Non-attorney at Large
Elaine Dumas, Little Rock, Non-attorney at Large

Panel B: Henry Hodges, Little Rock, Attorney, Second Congressional District
J. Michael Cogbill, Fort Smith, Attorney, Third Congressional District
Barry Deacon, Paragould, Attorney, First Congressional District
Valerie L. Kelly, Jacksonville & Panel Chair, Attorney at Large
Stephen Crane, Magnolia, Attorney, Fourth Congressional District
Sylvia S. Orton, Little Rock, Non-attorney at Large
Carolyn Morris, Danville, Non-attorney at Large

Panel C: Honorable Kathleen Bell, Helena, Attorney, First Congressional District
Kenneth R. Mourton, Fayetteville, Attorney, Third Congressional District
Searcy Harrell, Jr., Camden, Attorney & Panel Chair, Fourth Congressional District
Scott Stafford, Little Rock, Attorney, At Large
Robert D. Trammell, Little Rock, Attorney, Second Congressional District
Beverly Morrow, Pine Bluff, Non-attorney at Large
Rita M. Harvey, Little Rock, Non-attorney at Large

Panel D: Laura E. Partlow, West Memphis, Attorney, First Congressional District
(Reserve) Joe A. Polk, Little Rock, Attorney, Second Congressional District
William P. Watkins, III, Rogers, Attorney, Third Congressional District
James A. Ross, Jr., Monticello, Attorney, Fourth Congressional District
E. Kent Hirsch, Springdale, Attorney at Large
Sue Winter, Little Rock, Non-attorney at large
Ronnie Williams, Menifee, Non-attorney at large

2009 Executive Committee:

Henry Hodges, Attorney, Committee Chair
Helen Herr, Little Rock, Committee Secretary
Steven Shults, Little Rock, Panel A Chair
Valerie Kelly, Jacksonville, Panel B Chair
Searcy Harrell, Jr., Camden, Panel C Chair

Panel C primarily serves: (1) as the review panel for dismissals of complaints by the staff, (2) as a third hearing panel as needed, and (3) individual Panel C members are used as substitute panel members when a member of Panel A or B is not available or has disqualified in any case on a ballot vote or a hearing. Panel D members are substitutes as needed for members of the other three panels who may not be available or who recuse in a case.

2009 COMMITTEE MEETING CALENDAR:

Panel A meets on the third Friday of the months of January, March, May, July, September, and November.

Panel B meets on the third Friday of the months of February, April, June, August, October, and the second Friday of December.

Panel C meets “on call” for special settings of hearings..

2. OFFICE OF PROFESSIONAL CONDUCT

The Committee employs an attorney Executive Director and staff who function as the Office of Professional Conduct, which is housed in the Justice Building located on the Arkansas State Capitol grounds in Little Rock. The Office of Professional Conduct receives all complaints involving attorneys licensed to practice law in the State of Arkansas, investigates the complaints, provides assistance in the preparation of formal complaints, and processes formal complaints for submission to the Committee. The Executive Director for the Committee is Stark Ligon. The budget of the Committee and Office for 2009-2010 is over \$700,000, totally funded by a portion of the annual license fee paid by Arkansas-licensed attorneys to the Arkansas Supreme Court.

The Office of Professional Conduct is staffed by four staff attorneys, an administrative assistant, a secretary, and an investigator. The staff attorneys perform all duties and possess such authority of the Executive Director as the Executive Director may delegate, except for the final determination of sufficiency of formal complaints. In addition to Ligon, the Office staff attorneys during 2009 were Nancie M. Givens - Deputy Director, Michael E. Harmon - Senior Staff Attorney, and Charlene A. Fleetwood - Staff Attorney.

In calendar 2009, as in previous years, the staff presented a number of “continuing legal education” programs or speeches on law-related topics across the state.

The Arkansas Supreme Court has not authorized the Office of Professional Conduct to give advice or legal opinions, formal or informal, on legal or ethical issues to anyone. The Office does provide information, where it is available and can be done without being advice or legal opinion.

The Office of Professional Conduct provides staff support for the Supreme Court's Unauthorized Practice of Law Committee and the Client Security Fund Committee.

III. Administration

The Office of Professional Conduct receives telephone calls, letters, e-mails and faxes from individuals across the country requesting information on how to initiate complaints against attorneys licensed to practice law in the State of Arkansas. During the 2009 calendar year, the Office opened new files on 861 grievances on attorneys alleged lawyer misconduct, up from 859 new files opened in 2008.

In 2009, following assigned review by staff attorneys of disciplinary complaints received in calendar year 2009 and carry-over cases from previous years, 742 files were closed, down from 786 files closed in 2008.

IV. Formal Actions Initiated

In 2009, there were 144 new formal attorney discipline cases opened for the Committee on Professional Conduct for panel action, up from 114 total new formal cases opened in 2008.

V. Final Committee Actions

Final action was taken in 128 different formal Complaint files involving Arkansas attorneys during Calendar Year 2009 by panels of the Committee on Professional Conduct. Of these 128 cases, one (1) was a 2002 case, six (6) were 2006 cases, forty-four (44) were 2007 cases, and seventy-two (72) were 2008 cases. There are six primary forms of action, or sanction, that the Committee on Professional Conduct may take. A warning is non-public. The other forms of sanction are public.

NINE YEAR STATISTICAL COMPARISON 2001-2009 (Unofficial)

| Category | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 |
|------------------------------|------|-------|------|------|------|------|------|------|------|
| New files opened | 873 | 1,028 | 972 | 892 | 826 | 804 | 819 | 859 | 861 |
| Closed by staff | 691 | 737 | 825 | 796 | 868 | 1137 | 784 | 786 | 742 |
| Complaints filed | 149 | 186 | 200 | 164 | 159 | 156 | 140 | 114 | 144 |
| Sup. Ct Referrals | 34 | 45 | 50 | 40 | 34 | 39 | 50 | 33 | 41 |
| Judicial Complaints | 13 | 12 | 12 | 8 | 8 | 19 | 6 | 4 | 4 |
| Other | | | | 24 | 7 | 16 | 9 | 15 | 15 |
| Complaints closed | 135 | 178 | 185 | 211 | 181 | 173 | 182 | 122 | 128 |
| No Actions | 12 | 30 | 15 | 24 | 18 | 19 | 13 | 10 | 11 |
| Warnings | 45 | 53 | 54 | 38 | 33 | 53 | 41 | 37 | 46 |
| Cautions | 14 | 31 | 28 | 53 | 41 | 29 | 34 | 20 | 28 |
| Reprimands | 26 | 35 | 37 | 36 | 31 | 30 | 26 | 14 | 14 |
| Suspensions | 19 | 14 | 20 | 9 | 17 | 12 | 23 | 12 | 10 |
| Surrenders | 13 | 5 | 5 | 11 | 6 | 7 | 1 | 6 | 5 |
| Merged - surrender | | 1 | 14 | 29 | 5 | 4 | 0 | 6 | 18 |
| Disbarments initiated | 6 | 3 | 3 | 3 | 7 | 2 | 1 | 1 | 2 |
| Disbarments ordered | | 0 | 0 | 3 | 0 | 2 | 2 | 2 | 4 |
| Reinstated | 3 | 3 | 8 | 10 | 13 | 11 | 6 | 0 | 6 |
| Consents | 13 | 35 | 54 | 71 | 51 | 64 | | 45 | 50 |
| ArLAP Referrals | N/A | 2 | 0 | 0 | 1 | 3 | 0 | 0 | 0 |
| # Attys Publicly Sanctioned* | 57 | 61 | 72 | 101 | 102 | 68 | 67 | 49 | 44 |

* includes several attorneys with multiple separate sanctions

N/R - not recorded. Some of this information is available from a manual review of old files, but limited staff time and other priorities has not allowed it to be compiled yet.

VI. 2009 - Most Common Rule Violations

In the 2009 findings of the Committee on Professional Conduct Panels, as in most previous recent years, the most common rule violations involved Arkansas Model Rules 1.3 and 8.4(d). Model Rule 1.3 states that a lawyer shall act with reasonable diligence and promptness in representing a client. Model Rule 8.4(d) states that a lawyer shall not engage in conduct that is prejudicial to the administration of justice. The following listing contains the Arkansas Model Rule alleged, the number of times the Committee found the rule to have been violated, and ranking of the ten most frequently violated Rules.

| Arkansas Rule # | # Alleged | # Found | Rank (# Found) |
|-----------------|-----------|---------|----------------|
| 1.1 | 25 | 18 | 3 |
| 1.2(a) | 25 | 10 | 8 |
| 1.2(d) | 2 | 1 | |
| 1.3 | 72 | 50 | 2 |
| 1.4(a)(1) | 5 | 4 | |
| 1.4(a)(2) | 2 | 1 | |
| 1.4(a)(3) | 16 | 11 | 5 |
| 1.4(a)(4) | 16 | 11 | 6 |
| 1.4(b) | 5 | 4 | |
| 1.4(c) | 1 | 1 | |
| 1.5(a) | 7 | 0 | |
| 1.5(b) | 1 | 1 | |
| 1.5(c) | 4 | 4 | |
| 1.6(a) | 1 | 0 | |
| 1.7(a) | 2 | 2 | |
| 1.7(b) | 3 | 3 | |
| 1.8(a) | 1 | 0 | |
| 1.8(e) | 2 | 2 | |
| 1.8(h) | 1 | 1 | |
| 1.9(a) | 1 | 0 | |
| 1.9(b) | 1 | 0 | |
| 1.9(c) | 1 | 0 | |
| 1.12 | 1 | 0 | |
| 1.15(a) | 5 | 4 | |
| 1.15(b) | 2 | 2 | |
| 1.15(b)(1) | 1 | 1 | |
| 1.15(b)(2) | 1 | 1 | |
| 1.16(d) | 9 | 7 | 9 |
| 3.1 | 7 | 2 | |
| 3.2 | 6 | 4 | |
| 3.3(a)(1) | 4 | 1 | |

| | | | |
|--------|----|----|----|
| 3.4(b) | 1 | 1 | |
| 3.4(c) | 29 | 16 | 4 |
| 4.1(a) | 2 | 1 | |
| 4.1(b) | 1 | 0 | |
| 4.3 | 0 | 0 | |
| 4.4(a) | 1 | 2 | |
| 5.5(a) | 8 | 7 | 10 |
| 8.1(b) | 4 | 2 | |
| 8.4(b) | 6 | 5 | |
| 8.4(c) | 19 | 10 | 7 |
| 8.4(d) | 90 | 53 | 1 |

VII. "Practice Aging" of Attorneys Disciplined (2009)

Of the 2009 final disciplinary actions by the Committee, based on number of years licensed in Arkansas, attorneys were publicly sanctioned as follows:

| Years licensed | # of attorneys publicly disciplined | Percentage |
|----------------|-------------------------------------|------------|
| 1-10 | 6 | 10% |
| 11-20 | 15 | 25% |
| 21-30 | 14 | 23% |
| 31-40 | 25 | 42% |
| 40+ | 0 | 0% |

(Several attorneys were publicly sanctioned more than once in 2009.)

VIII. 2009 FINES, RESTITUTION & COSTS ASSESSED

| | Imposed in 2009 | Collected in 2009 |
|----------------|-----------------|-------------------|
| 1. Fines | \$17,800.00 | \$15,096.00 |
| 2. Restitution | \$37,706.30 | \$29,170.00 |
| 3. Costs | \$4,675.00 | \$6,609.14 |
| Total | \$60,181.30 | \$44,875.14 |

(Note: some of the collections in 2009 were assessed in cases finalized in earlier years.)

IX. 2009 Trust Account “Overdraft” Reporting

- 50 Total reports received in 2009 from all banks and reporters (compared to 45 in 2008). All 50 files were closed after a summary investigation and explanation by the attorney involved.
- 0 Number of these reports that led to formal Complaint.

The overwhelming majority of overdraft reports were due to some for of “attorney/firm error” such as bookkeeping math mistakes, failure to make timely deposits of settlement funds, release of settlement checks to clients and third parties before settlement funds were available in the trust account, depositing checks into the wrong account, failure to account for IOLTA interest withdrawals or bank service fees, client fee and expense checks bouncing, etc. Some admitted bank errors are reported.

APPENDIX A - 2009 ATTORNEY DISCIPLINE SUMMARIES

DISBARMENT:

ZIMMERY CRUTCHER, JR., No. 74029, of Little Rock. On April 30, 2009, in Case No. 05-1412, the Arkansas Supreme Court entered an Order disbaring Mr. Crutcher from the practice of law in Arkansas, for violations of Rule 1.5(c), 1.15(a), 1.15(b), and 8.4(c) of the Model Rules of Professional Conduct, based on Findings of Fact, Conclusions of Law, and a recommendation of disbarment filed by the Honorable John Cole, Special Judge, on March 3, 2009. Mr. Crutcher filed notice that he was not objecting to the Findings of Fact and Conclusions of Law. Dalnita Morrison hired Mr. Crutcher in a personal injury claim, which he settled within two weeks. He did not provide Ms. Morrison with a written settlement sheet. Mr. Crutcher informed her that he would pay her medical bills totaling \$1823.21. He did not do so, and he did not promptly inform the medical providers when he received funds in which they had an interest. He improperly removed the funds from his IOLTA trust account in a series of checks made payable to himself which he cashed over the course of a few weeks. In spite of the personal withdrawals, Mr. Crutcher informed Ms. Morrison on many occasions that he had paid the medical bills or that he would do so, but he did not.

HORACE A. WALKER, No. 82169, of Little Rock, was disbarred by Supreme Court Per Curiam issued April 23, 2009, in Case No. 08-71, on a complaint by Theodis and Elsie Dodson, originally filed as Committee case No. CPC 2007-095, involving Walker's conversion of about \$3,800 in client settlement funds. Mr. Walker also improperly deposited personal funds into his trust account and improperly paid personal and office bills directly from his trust account. After trial, Mr. Walker failed to file his required appellant's brief to the Court and the recommendation of disbarment by the Special Judge, Honorable Jack Lessenberry, was accepted. Rules found to have been violated were 1.4(a), 1.5(c), 1.15(a), 1.15(b), 8.1(b), 8.4(b), and 8.4(c).

WOODSON D. WALKER, Bar No. 76135, of Little Rock, was disbarred by Order of the Arkansas Supreme Court in Case No. 06-1493 issued March 12, 2009. The Court found Walker did not challenge the special judge's factual findings that, among other rule violations, Walker had converted client funds, failed to maintain his trust account records, and continued to practice law after his law license had been suspended in April 2003, each of which violations constituted "serious misconduct." The primary charges arose from complaints lodged by former clients Andre Stephens and Jarvis Rodgers and from an audit of Walker's trust account.

DISBARMENT INITIATED:

TIMOTHY MARK HALL Bar No. 96043, formerly of Huntsville, Arkansas, had disbarment proceedings commenced against him on March 16, 2009, with the filing of a Petition for Disbarment in Arkansas Supreme Court Case No. 09-261, based on Committee actions in CPC 2008-070, where Kenneth Pianalto of Springdale alleged that Hall converted to his use \$3,500 due to his client from a sheriff's bond refund, and in CPC 2008-071, where Berryville District

Court Judge Kent Crow alleged that Hall converted to other use \$667.50 paid to Hall to pay court fees and costs for a Hall client, Ms. Holder, in the Berryville District Court. a hearing was conducted on February 18, 2010, on Petitioner's Motion for Default Judgment and Order of Disbarment, as Mr. Hall has been served but failed to respond. Mr. Hall also failed to appear at the hearing.

SURRENDER:

STEVEN EUGENE CAULEY, No. 94012, of Little Rock, surrendered his law license on May 28, 2009, in lieu of disbarment proceedings being brought, as a result of his admission that about \$9,300,000 in settlement funds entrusted to him was not available, and that he was entering a guilty plea in June in federal court in New York to at least one felony offense arising from his mishandling of these funds. He admitted violating Rules 8.4(b) and 8.4(c).

DON C. COOKSEY, Bar No. 74199, of Texarkana, Texas, petitioned for, and on November 5, 2009, the Supreme Court accepted the surrender of his Arkansas law license, in Case No. 09-1122, in lieu of his facing disbarment proceedings for serious misconduct involving client funds. Mr. Cooksey is also licensed in Texas.

JOHN DAVID HARRIS, Bar No. 89151, of Little Rock, petitioned for, and on September 17, 2009, the Supreme Court accepted, the surrender of his law license in lieu of disbarment proceedings after his adjudication of guilt and conviction of felony offenses in federal court on July 31, 2009.

DONALD E. WARREN, SR., Bar No. 99007, of Pine Bluff, on March 18, 2009, as case No. 09-281, filed a Petition to Surrender Law license as a result of the agreed terms of his plea to a misdemeanor criminal charge in Jefferson County Circuit Court on March 4, 2009. His Petition was accepted by the Court by Per Curiam delivered April 2, 2009, barring him from the practice of law in Arkansas. In the plea agreement, Mr. Warren entered a guilty plea to the misdemeanor charge of "abuse of office" and the State nolle prossed two other counts. The office abused was a judicial office while Mr. Warren was sitting as a special circuit judge.

JOHN DAVID WIDENER, Bar No. 85169, of Little Rock, formerly of Hot Springs and Arkadelphia, filed a Petition to Surrender License as case No. 09-179, rather than face probable disbarment proceedings based on a felony conviction. The Supreme Court accepted his surrender by Per Curiam issued March 5, 2009, and barred him from the practice of law in Arkansas.

MICHAEL KELLY WOOLDRIDGE, Bar No. 95051, of Little Rock, petitioned for, and on December 17, 2009, the Supreme Court accepted the surrender of his law license, in Case No. 09-1314, in lieu of probable disbarment proceedings after his adjudication of guilt and conviction in federal court in October 2009 in USDC (ED-AR) Case No. 08-cr-137 of a felony offense involving his employer's funds, and his admission that he had engaged in serious misconduct violating Arkansas Rules 8.4(b) and 8.4(c).

SUSPENSION:

BRUCE J. BENNETT, Bar No. 92140, of Bentonville, Arkansas, had his law license suspended for six (6) months for violation of Rules 1.1, 1.2(a), 1.3, 1.4(a)(1), 1.4(a)(3), 1.4(a)(4), 1.5(c) and 8.4(d) in No. CPC 2009-058. He was also reprimanded and fined in the amount of \$500 for failing to file a response to the formal complaint based on information provided by Derroll Kirby. Mr. Kirby hired Mr. Bennett to represent him in pending civil litigation. Mr. Bennett agreed to do so a contingent fee basis but did not place the agreement in writing as Rule 1.5 requires. There were discovery issues to be addressed immediately, but Mr. Bennett filed incomplete responses for Complainant. Motions to Compel were filed, Mr. Bennett did not respond, and did not communicate with his client either. According to Mr. Kirby, communication was minimal. Mr. Bennett did not comply with the Orders to Compel, failed to respond to a Motion to Dismiss, and allowed an Order to be filed dismissing Mr. Kirby's claim. Mr. Bennett told Mr. Kirby that he did not know the matter was dismissed. He advised he would look into it and take care of it, but he did not do so.

BRUCE J. BENNETT, Bar No. 92140, of Bentonville, Arkansas, has his law license suspended for three (3) months for violations of Rules 1.3, 3.4(c) and 8.4(d). He was also reprimanded and fined \$500 for his failure to respond to the Formal Complaint in No. CPC 2009-072 by Committee Findings and Order filed October 2, 2009, on a referral from the Arkansas Supreme Court. Mr. Bennett obtained two extensions of time to file his client's brief, but his third extension request was denied. The Arkansas Supreme Court directed Mr. Bennett to appear before it on a "show cause," he entered a guilty plea, was found to be in contempt for failing to timely file his client's brief, and was referred the matter to the Office of Professional Conduct.

KATHLEEN L. CALDWELL, No. 82187, of Memphis, TN, in CPC 2009-051, was reciprocally suspended for a period of six (6) months beginning on May 22, 2009. The Tennessee Order showed Ms. Caldwell was actively suspended in that State for six (6) months beginning March 24, 2009. Pursuant to Section 14 of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law, a like sanction was imposed in this State by the vote of the Committee on Professional Conduct.

ALICE WARD GREENE, No. 95196, of Little Rock, was suspended for thirty-six (36) months, fined \$2,500.00 and ordered to pay \$1,150.00 in restitution, for violations of Rules 1.3, 1.4(a)(3), 1.4(a)(4), 1.4(b), 3.4(c), 8.4(c) and 8.4(d). For her failure to respond to the Formal Complaint she was also cautioned and fined \$500.00 by Order filed May 12, 2009, on a Complaint filed by Shayne Horton in CPC 2008-023. Ms. Greene was hired to represent Horton in a child custody proceeding. Ms. Greene appeared with Horton at two hearings while her Arkansas license was suspended. She never notified her client, opposing counsel, or the presiding Judge that her law license was suspended. She abandoned her client following the Order entered in May 2007. Ms. Greene also accepted fees for representation of Mr. Horton's sister at a time when Greene's law license was suspended.

ALICE WARD GREENE, Bar No. 95197, of North Little Rock, Arkansas, was suspended for forty-eight (48) months and was ordered to pay \$750.00 restitution, for violations of Rules 1.2(a), 1.3, 1.4(a)(3), 1.4(a)(4), 1.16(d), 8.4(d). She was also reprimanded and fined \$1,000.00 for her failure to respond to the Formal Complaint, all by Committee Findings & Order filed August 21, 2009, on a Complaint filed by William T. Jackson in Case No. 2009-037. Mrs. Greene was hired by Mr. Jackson to pursue a guardianship matter for his mother. Mr. Jackson paid Mrs. Greene the fees as and when requested. Mrs. Greene first filed for guardianship in 2003. She allowed that Petition to be dismissed for failure to take action. She then re-opened the guardianship proceeding in 2006. Mrs. Greene did obtain a temporary order of guardianship for Mr. Jackson, however, she failed to follow through and obtain a permanent Order of Guardianship. Mrs. Greene moved out of her office and failed to tell Mr. Jackson. He was given no notice. Mrs. Greene abandoned her client. Mr. Jackson called her on numerous occasions but was never able to make contact with Mrs. Greene.

F. DAVID REES, Bar No. 79238, of Jonesboro, Arkansas, had his law license suspended for six (6) weeks [forty-two days] by Committee Findings & Order filed February 23, 2009, after a hearing, on a Judicial Complaint involving Johnny Ford in Case No. CPC 2006-156, for violations of Rules 1.2(d) and 8.4(c). Notice of Appeal on this case was filed by the Office of Professional Conduct on March 16, 2009, and Notice of Cross-Appeal was then filed by Respondent. In March 1999, Ford was injured in a two vehicle collision, where the at-fault vehicle was owned by Mr. Jones of Jonesboro and driven by his minor son. With liability not a disputed issue, Jones's insurance carrier early offered the \$100,000 policy limit to settle. Jones's personal attorney offered Rees an additional \$25,000 from Jones and implied that Jones would pay even more. In April 1999, Rees filed suit for Ford against Jones and his son. In a telephone conversation Ford taped in November 1999, Rees told Ford that Rees did not want others to know that Rees had more than \$100,000 available in the Ford settlement. Ford eventually terminated the Rees representation and retained another attorney who negotiated a \$200,000 settlement in 2003, which included additional contributions totaling \$75,000 from Mr. and Mrs. Jones. Rees testified at a post-settlement hearing in late 2003 that a settlement sheet he created for Ford in April 1999 showing a \$100,000 settlement was only to show Ford how a settlement worked, but the evidence showed that the purpose of preparing the settlement sheet was to show Ford's medical creditors, who had approximately \$117,000 in liens, that only \$100,000 was available for the settlement. The trial judge in Ford's civil case denied Rees's claim of a statutory attorney's lien for his fee against the Ford settlement proceeds but left open the possibility of a fee claim based on *quantum meruit*. Shortly thereafter, Rees and Ford dismissed the case without Rees filing any further claim for a fee. (Affirmed on appeal by the Executive Director on May 13, 2010, in No. 09-555.)

F. DAVID REES, Bar No. 79238, of Jonesboro, Arkansas, had his law license suspended for thirty (30) days by Committee Findings & Order filed February 23, 2009, after a hearing, on a Judicial Complaint involving Teahna Mooney in Case No. 2007-021, for violations of Rules 1.4(b), 1.7(a), 1.7(b), 1.8(e), 1.8(h), and 8.4(d). Notice of Appeal on this case was filed by the Office of Professional Conduct on March 16, 2009. In April 2003, Teahna Mooney was involved

in a collision while she was a passenger in a commercial van owned by Sonrise Shuttle and driven by Emerson George, when the van rear-ended a tractor truck-trailer. On August 26, 2003, Mooney, who was unemployed and without assets, signed a contingency fee contract with Rees. On the same day, Rees arranged for her to receive financial assistance prohibited by Model Rule 1.8(e) [2002], in the form of an apartment in Jonesboro rented to her by Rees's brother Robert through the brother's business and a bank loan. She signed an apartment lease for one year with the brother for a total of \$9,866.67. David Rees confirmed to his brother that he would protect his brother's rental lien out of Mooney's recovery. Robert Rees submitted a final bill in October 2005 for \$21,316.67 to Mooney's then attorney Woodruff, who paid \$15,000 to settle the claim. When David Rees signed Mooney as a new client, he arranged for and personally guaranteed a bank loan of \$7,500 for her personal use. When the loan was renewed or refinanced in August 2004, Rees again personally guaranteed her new loan and Rees paid the accrued interest. When she obtained a recovery in November 2005, the bank loan was finally paid off in the amount of \$8,327.45.

In late December 2003 an incident occurred between Mooney and Rees at his law office that she characterized as unwanted sexual harassment or activity by him toward her. Rees acknowledged to one of his employees that something of an improper nature occurred involving Mooney. A Release prepared by or for Rees was signed by Mooney in the office of another Jonesboro attorney, selected by Rees, on September 20, 2004. This Release covered both the alleged sexual harassment and any legal malpractice claim Mooney might have against Rees. Mooney, without counsel in the release matter, signed this Release under duress, according to her and her handwritten notation on the Release. Mooney was given a \$1,000.00 check. She was not satisfied with the deal, so stated, and did not then negotiate the \$1,000. A new form of a Release, limited to only the sexual harassment allegation, was drafted providing for a total payment of \$4,000.00 to Mooney. The new form did not give Rees or his law firm the blanket release from any liability for any of her possible claims for legal or professional malpractice or negligence that was in the first Release. Woodruff presented Mooney a \$3,000 Rees law firm check and the new Release on November 1, 2004, Mooney signed the modified Release and received the second check. Both checks cleared the bank on November 15, 2004. Materials Woodruff supplied the Office of Professional Conduct also include an Affidavit and Release presented to Mooney on September 20, 2004, but refused by her, stating, in part, "upon my Christian word... in no way has he [Rees] engaged in sexual banner (sic), improper touching, improper behavior and neither have I." A 2007 e-mail from Woodruff confirmed this document was drafted in the Rees office. Mooney stated she continued with Rees as her attorney after the December 2003 incident because she thought she had to have his legal skills to win her case.

In late January 2004, Rees also entered into a temporary representation agreement with Emerson George, the at-fault driver in Mooney's claim, regarding an injury to George's wife in a possible medical malpractice situation. Rees sued George on March 26, 2004 as the lead defendant in Mooney's case, at the same time that Rees also represented George. Neither Mooney nor George were informed by Rees as to this dual representation, and neither consented to or waived Rees's conflict. Mrs. George died on April 12, 2004. On April 26, 2004, Rees wrote the defense attorney (Wyatt) and acknowledged the conflict situation he was then in with regard to George, and stated that Rees would need to make sure George did not come into the Rees

office during the pendency of the Mooney claim. The Rees temporary agreement with did not expire until about April 30, 2004, but it was July 20, 2004, before Rees finally wrote George informing him that Rees did not feel George had a viable medical malpractice claim in his late wife's matter and that the Rees office would not be able to represent George.

By August 2004, Rees was asking opposing counsel (Wyatt) about Rees deposing George in Mooney's lawsuit, which was set for jury trial on November 8, 2004. On September 7, 2004, Rees wrote Wyatt and provided an Affidavit containing Rees's version of the events surrounding his concurrent George-Mooney representations. On that date, without fully informing Mooney of the likely legal consequences, Rees also filed a motion and order for voluntary non-suit with prejudice as to only defendant Emerson George in the *Mooney v. Sunrise* case. In the meantime, Emerson George had consulted with another attorney to represent George regarding any issues George had with Rees as a result of the apparent conflict of interest Rees had between Mooney and George. Rees also then selected and substituted Arlon Woodruff for Rees as Mooney's attorney in her lawsuit.

On September 21, 2004, Sunrise filed a motion to dismiss the *Mooney* suit as to Sunrise, claiming that, with the Rees non-suit with prejudice order as to its driver, George, Sunrise was entitled to be dismissed from the lawsuit under Arkansas law based on the theory of *respondet superior*. Judge Fogleman denied the Sunrise motion on November 1, 2004, and granted Woodruff's motion for Mooney to set aside the Rees's order of dismissal with prejudice as to George. As a result, George was brought back into the *Mooney* suit as a defendant. Judge Fogleman referred the matter of Rees's Emerson George conflict to the Committee by letter on March 3, 2005. As a result of these actions, Mooney lost her November 2004 trial date and her case was not tried until September 2005. (Affirmed on appeal by the Executive Director on May 13, 2010, in No. 09-556, but sanction modified to twelve months suspension with credit for one month served.)

F. DAVID REES, Bar No. 79238, of Jonesboro, Arkansas, had his law license suspended for thirty (30) days by Committee Findings & Order filed February 23, 2009, after a hearing, on a Complaint filed by Tom Papachristou in Case No. 2007-031, for violations of Rules 1.7(a) and 1.7(b) (both Rules dealing with "conflicts"). Notice of Appeal on this case was filed by the Office of Professional Conduct on March 16, 2009. In early 2004, Tom Papachristou ("Tom") and Kim Crockett ("Kim"), both residents of Crittenden County, Arkansas, had been long-time companions and had a minor son between them. Tom was engaged in international sales activities. Kim functioned as the long-time office manager for these businesses. In early 2004 there was an ongoing federal criminal investigation of Tom, and possibly of Kim, for activities including alleged illegal transfer of registration or serial plates on certain aircraft used in their business. Another attorney, Rubens, was representing Kim. In March 2004, the FBI seeking an interview with Kim. On March 10, 2004, Kim, with her attorney, agreed to provide the FBI with information and signed a federal "Proffer Agreement," in effect making her a cooperating witness, with some degree of immunity, in an effort to help her avoid possible prosecution in the criminal matter under investigation involving Tom.

In May 2004, Tom retained Rees to represent him in the federal criminal investigation, paying Rees \$125,000 and giving him another check for \$100,000 to hold as additional fee on the

federal criminal matter, if he was actually charged. Tom made additional fee payments to the Rees Law Firm for matters other than the federal criminal matter. Thereafter Kim terminated Rubens' services and she also became Rees's client, as did businesses in which Tom and Kim were involved. Communications among Rees, Rubens, Assistant United States Attorney Joe Volpe, and others resulting in Rees writing Volpe and the other attorneys a letter dated June 2, 2004, stating that Rees now represented both Tom and Kim in the pending federal criminal investigation, and that Rubens was out as Kim's attorney in the matter. Rubens wrote Rees, through another attorney, outlining the conflict of interest Rubens saw Rees had created by assuming dual representation of both Tom and Kim in the same federal criminal matter, and the risk this new dual representation posed to Kim's probable "immunity" under her Proffer Agreement. A suit filed for Kim in June 2004, against Rubens for damages allegedly arising out of his previous representation of her, confirmed that an "immunity agreement" for Kim's benefit had been entered into in the ongoing federal criminal investigation involving Tom.

As a result of an incident with Rees at Kim's residence in early October 2004, while Tom was away, they jointly wrote Rees terminating his services in all their legal matters. After a demand from their new attorney, Rees turned over all their files to Ford, returned the undeposited \$100,000 check from Tom, and stated no further refund of fee was due to Tom. In late 2004, Rees claimed he had worked hard to "shut down" Tom's federal criminal matter. However, Tom was charged by Information with a felony in June 2006, and was sentenced on a guilty plea in March 2007. Volpe's 2005 deposition makes it clear that Volpe was unaware of the investigation of Tom ever being "shut down," whether by reason of Rees's involvement or for any other reason. In January 2005, Tom sued Rees for the repayment of \$125,000 in advanced fees. Arlon Woodruff represented Rees in this suit. John Wesley Hall, Jr., a veteran Little Rock criminal defense attorney, was deposed in mid-2005 as Tom's expert witness on criminal cases. Hall testified that Rees should not have represented Kim and Tom at the same time in the same federal criminal investigation. The Rees office file on Tom's federal criminal matter from May-October 2004, and turned over to Ford, contained a total of fifteen (15) sheets of paper (including eight sheets which were letters generated by other attorneys). The suit was settled in May 2007 by Tom being paid \$140,000. (Affirmed on appeal by the Executive Director on May 13, 2010, in No. 09-559.)

Note: The three Rees suspensions were specifically ordered to be served consecutively, for a total suspension of 102 days from February 23, 2009.

SUSPENSION - STAYED

WILLIAM M. HOWARD, Bar No. 87087, of Pine Bluff, Arkansas, had his law license suspended for four (4) months, for violations of Rules 1.1, 1.3, 3.4(c), 8.4(d). Imposition of the suspension is stayed for one year subject to conditions of supervised probation, by Committee Findings & Order filed September 29, 2009, on a Per Curiam Order Complaint in Case No. 2009-061. Mr. Howard represented Marcus Young in an appeal of the denial of a Rule 37 Petition. In December 2008, Mr. Howard filed a Motion for Rule on the Clerk, stating he believed the time for filing a notice of appeal was tolled when he filed a motion for

reconsideration following the Rule 37 denial. On January 15, 2009, the Arkansas Supreme Court issued a *Per Curiam* Order stating the Motion for Rule on the Clerk would be treated as a Motion for Belated Appeal. Rule 2(e) of the Arkansas Rules of Appellate Procedure—Criminal provides that "...no motion for belated appeal shall be entertained by the Supreme Court unless application has been made to the Supreme Court within eighteen (18) months of the date of entry of judgment or entry of the order denying post-conviction relief from which the appeal is taken." The Court noted that the order denying Mr. Young's Petition for Rule 37 Relief was entered on April 3, 2007. Mr. Howard filed a Motion for Rule on the Clerk on December 19, 2008, exceeding the eighteen (18) month rule in Rule 2(e). The Motion for Rule on the Clerk, treated as a Motion for Belated Appeal, was denied and the matter was referred to the Committee. After a hearing on September 18, 2009, Committee Panel A suspended Mr. Howard's license for four months, but withheld imposition, or stayed, the suspension, taking into account his prior disciplinary history on appeal issues.

REINSTATEMENT:

FRANK DAVID REES, Bar No. 79238, of Jonesboro, was reinstated on June 17, 2010, from his suspensions that started February 23, 2009, in CPC 2006-156, 2007-021, and 2007-031.

CAROLE DIANE SEXTON, Bar No. 92053, of Fort Smith, was reinstated on September 21, 2009, to active status from disability inactive status in Case No. CPC 2006-173.

REPRIMAND:

JAMES SCOTT ADAMS, Bar No. 81001, of Morrilton, was Reprimanded and fined \$2,500 by Committee Findings & Order filed October 27, 2009, in No. CPC 2009-083, on a Complaint that resulted from information developed from various grievances filed against him, for violations of Rules 3.4(c), 5.5(a), and 8.4(d). Mr. Adams failed to timely pay his annual Arkansas law license renewal fee for 2006, 2007, 2008, and had not paid in 2009 when this Complaint was filed. As a result, in each of those years his Arkansas law license was automatically administratively suspended on March 2 until he paid his license fee. The information about practice within periods of license suspension came to OPC from various sources, including grievances from clients and court documents. In the matters involving five clients. Adams was contacted informally by OPC. Knowing that OPC was investigating him, he failed to timely pay his license fees for 2006, 2007 and 2008, and failed to pay in 2009 until August 5, 2009, after he was served with this Complaint. During these time periods of license suspension, Mr. Adams filed in Conway County Circuit Court alone a total of thirty (30) cases, and practiced law in three federal civil court cases in the Eastern District of Arkansas.

ALVIN D. CLAY, Bar No. 96075, formerly of Little Rock, Arkansas, was Reprimanded and ordered to pay \$1,063 restitution to MCH Physical Therapy Clinic in No. CPC 2008-085 on a complaint by Renee Crater for violations of Rules 1.15(a)(5) and 1.15(b). Ms. Crater, the principal of MCH Physical Therapy Clinic in Little Rock, treated Sonya Whitaker for injuries

received in an accident in May 2003. Alvin Clay was Ms. Whitaker's attorney, and had agreed in writing to adequately protect the claim of MCH in any settlement or recovery. Ms. Whitaker had a \$2,088 MCH account balance. After settlement, Ms. Whitaker paid MCH \$1,000 cash and was to pay the balance at \$25 per month, but she made only one \$25 payment, leaving a \$1,063 balance was still owed on the account. On October 30, 2006, an MCH employee contacted Safeco Insurance and was informed the Sonya Whitaker matter had been closed since May 22, 2006, when two checks were sent to Ms. Whitaker and Mr. Clay. The first check sent to Ms. Whitaker and Mr. Clay, issued August 2, 2005, included MCH's total charges of \$2,088. Information at the hearing showed that on August 2, 2005, Safeco paid Ms. Whitaker's medical bills, totaling \$4,190.60. The check was made payable to Alvin Clay and Sonya Whitaker and was endorsed by both. The check was written solely for the medical bills and was written from Ms. Whitaker's Personal Injury Protection (PIP) coverage of her insurance policy. On August 9, 2005, Safeco made its final settlement payment of \$3,500, from her uninsured motorist coverage, to cover Whitaker's general damages. The settlement check was made payable to Alvin Clay, attorney, and Sonya Whitaker, single person. Mr. Clay presented Panel A with a copy of a cashier's check dated August 19, 2005, payable to his client, Sonya Whitaker, in the amount of \$5,127.32. Mr. Clay also presented a undated and unsigned Settlement Sheet showing a gross settlement of \$7,690.60, the total of the PIP payment check and the general damages check. Mr. Clay's fee was to be one-third of the gross recovery, or \$2,563.28, but he produced no fee contract. Mr. Clay agreed that Ms. Whitaker's check included the total of the medical bills of \$4,190.60. This meant she received \$936.72 of her general damages settlement. There was no notice to MCH, as required by Rule 1.15(a)(5) from Mr. Clay that the settlement proceeds were received, nor was payment sent by Mr. Clay to MCH as he agreed to do. Mr. Clay admitted these facts, stating it was an oversight that he did not write the check to MCH. He stated that he cautioned his client to pay the medical bills.

DON C. COOKSEY, Bar No. 74199, of Texarkana, Texas, was reprimanded and ordered to pay \$500 in restitution by Committee Findings and Order filed January 7, 2009, on a Complaint filed by Jerry Minyard in Case No. 2008-099, for violations of Rules 3.4(c), 5.5(a), and 8.4(d). Cooksey was paid \$1,500 to represent Minyard in a divorce. On March 2, 2008, Cooksey's Arkansas law license was administratively suspended for failure to pay his 2008 bar license fee by March 1. On March 12, 2008, Cooksey met with opposing counsel and the two agreed on a proposed decree. Cooksey signed the decree on behalf of his client and delivered the proposed decree to the court for signature. On March 13, 2008, the trial court entered the final decree of divorce. Cooksey's Arkansas law license was reinstated on May 30, 2008, when he paid his bar license fee and penalty.

DON C. COOKSEY, Bar No. 74199, of Texarkana, Texas, was reprimanded and ordered to pay \$750 in restitution by Committee Findings and Order filed March 17, 2009, on a Complaint filed by Thomas Brown in Case No. 2008-100, for violations of Rules 1.1, 3.1, 3.4(c), 5.5(a), and 8.4(d). Cooksey failed to respond to the Formal Complaint and a separate reprimand sanction was entered. In 2008, Cooksey represented Brown in an effort to get a 2004 probation expunged. The prosecuting attorney informed Cooksey that he would not agree to the early release from

probation as Brown had not served half of his probationary period. Brown requested a fee refund from Cooksey, who refused. Brown filed suit in Bowie County, Texas, court for the \$750 and obtained a default judgment against Cooksey. Cooksey's Arkansas law license was administratively suspended from March 2 to May 30, 2008, for failure to pay his annual license fee.

DAVID L. DUNAGIN, No. 84040, of Fort Smith, was reprimanded by Committee Consent Order filed April 22, 2009, in CPC 2009-008, for admitted violations of Rules 1.3 and 8.4(d). The Supreme Court referred Mr. Dunagin to the Committee after granting his Motion for Rule on the Clerk (which was treated as Motion for Belated Brief) in the matter of *Kenneth Brewton v. State of Arkansas*, CR08-1042. Mr. Dunagin did not file a brief for Brewton nor did he seek an extension of time to do so. Mr. Dunagin did not respond to the State's Motion to Dismiss. He filed a Motion for Rule on the Clerk on January 7, 2009, accepting full responsibility for not filing a brief. The Court granted the Motion, allowed for filing a late brief, and referred Mr. Dunagin to the Committee.

JEFFREY KEARNEY, Bar No. 91249, of Pine Bluff, Arkansas, was reprimanded and fined \$1,000.00, for violations of Rules 1.1, 1.3, 3.4(c), and 8.4(d). He was also reprimanded for his failure to respond to the Formal Complaint, all by Committee Findings & Order filed July 7, 2009, in Case No. 2009-021. The Arkansas Supreme Court granted appellee's Motion to Dismiss Appeal in the matter of *Toth v. Arkansas Department of Human Services*, 09-97. Mr. Kearney represented the Appellants in an attempt to appeal an Order Denying Motion to Intervene in a parental rights termination matter. Mr. Kearney filed a Notice of Appeal from the Order but it was not within 21 days as required by Supreme Court Rule. Mr. Kearney did not have his clients sign that Notice as required by Rule 6-9. Mr. Kearney did not file a response to the Motion to Dismiss Appeal.

BOBBY K. KEETER, Bar No. 77076, of Mena, Arkansas, was Reprimanded and fined \$2,000 for violations of Rules 1.2(a), 1.3, 1.4(a)(1), 1.4(a)(3), 8.4(c) and 8.4(d), by a Findings and Order filed on December 29, 2009, in No. CPC 2009-097, on a complaint by Betty Collingsworth, who hired Mr. Keeter in September 2005 to represent her in pursuing claims against Wal Mart. She also hired him to recover funds from a concrete company that did unacceptable work at her home. Mr. Keeter filed the Wal-Mart suit for Ms. Collingsworth, but then failed to respond to discovery requests. In May 2007, Mr. Keeter non-suited the lawsuit without prejudice, but without informing Ms. Collingsworth. He did not re-file the matter within the year after obtaining the Order of Dismissal. Mr. Keeter continued to be dishonest with Ms. Collingsworth about the Wal Mart matter as if it were still pending, even in conversations in April 2009. He failed to pursue any claim for her in the concrete work matter.

JOHN A. LEWRIGHT, Bar No. 2002054, of Cassville, Missouri, was reprimanded and fined \$1,000 for violations of Rules 1.3, 3.4(c), 5.5(a), 8.1(b), and 8.4(d). He was also cautioned for his failure to respond to the Formal Complaint, all by Committee Findings & Order filed August 4, 2009, in Case No. 2009-050. Mr. Lewright is a Missouri lawyer also licensed in Arkansas. He

represented Timmy Davis in the case of United States v. Timmy Davis, United States Court of Appeals for the Eighth Circuit, Case No. 07-2687, on appeal from the United States District Court for the Western District of Arkansas. Lewright twice disregarded an Order to Show Cause directing him to file a brief or face dismissal of the appeal. He was removed from the case and the Court of Appeals referred the matter to the Missouri Chief Disciplinary Counsel, with a notation that Mr. Lewright was not admitted to the Bar of the Court of Appeals for the Eighth Circuit. In December 2008, the Missouri Supreme Court accepted a joint stipulation of facts and recommended discipline, and Lewright was reprimanded and assessed a \$750 fee. Missouri then referred the matter to Arkansas. Mr. Lewright had also not paid his annual Arkansas license fee. Mr. Lewright was served with a formal complaint and failed to timely response, which, pursuant to Section 9.C(4) of the Procedures, constituted an admission of the factual allegations of the formal complaint and extinguished his right to a public hearing.

ROBERT F. MOREHEAD, Bar No. 70050, of Pine Bluff, was Reprimanded, ordered to pay \$375 restitution, and fined \$450 by Committee Consent Findings & Order filed November 20, 2009, on a Complaint filed by Gary and Norene Gerler in No. CPC 2009-063, for violations of Rules 1.1, 1.3, 1.4(a)(3), 1.4(a)(4), 1.4(b), and 3.2. Mr. Morehead was employed in November 2007 by Norene Gerler of Pine Bluff to file for an “uncontested” divorce for her from Gary Gerler. In January 2008, she paid Mr. Morehead \$515, being his \$375 fee and the \$140 case filing fee. He told her that the uncontested, no-property, and no-children divorce could be completed in about forty-five days. He filed her Complaint on January 16, 2008, and took no further action. On December 29, 2008, the Court dismissed the case without prejudice for failure to obtain service on Mr. Gerler.

A grievance was filed with the Office of Professional Conduct (OPC) on January 5, 2009. OPC wrote Mr. Morehead asking for a status report on the Gerler case. On February 3, 2009, Mr. Morehead responded to OPC, writing that the Gerler case “fell through the cracks,” that he personally paid the refiling fee and was prepared to refund her fees to Ms. Gerler. On February 12, 2009, Mr. Morehead filed a new divorce complaint for Ms. Gerler and sent necessary waiver documents to Mr. Gerler in Missouri.

Ms. Gerler and Mr. Morehead went to court on March 24, 2009, for the “final” hearing and problems ensued there which are stated in the transcript. A final decree was approved and filed later that same day after a second hearing. On April 10, 2009, Mr. Morehead finally mailed Mr. Gerler a copy of the decree. Ms. Gerler did not receive her copy of the final decree until May 4, 2009, after she had earlier gone to the Morehead office asking for a copy after she was notified that Mr. Gerler had received his copy.

ROBERT F. MOREHEAD, Bar No. 70050, of Pine Bluff, Arkansas, after a hearing on February 20, 2009, was reprimanded, ordered to pay \$4,000.00 in restitution, and placed on supervised probation for twenty-four (24) months with certain practice oversight conditions by Committee Findings & Order filed March 2, 2009, on a Complaint filed by Bernice Marks in Case No. 2008-037, for violations of Rules 1.2(a), 1.3, 1.4(c), 1.15(a)(1), 1.15(b)(1), 5.5(a), and 8.4(d). Morehead represented Bernard Marks at trial and on appeal in 2006 of a sentenced to life without parole for capital murder. Bernard’s mother gave Morehead a \$4,000 check, marked as

being a \$900 deposit on the record and \$3,100 for fees on appeal work. Morehead had no attorney trust account at the time into which he could deposit these advanced client and expense funds. Morehead later admitted that he later used the \$4,000 for his personal and office matters. Morehead paid the \$900 transcript deposit to the court reporter in a cashier's check. He obtained an order extending time to file the record to the full seven months permitted by rule. The reporter delivered the Marks trial transcript to the circuit clerk. Morehead then obtained an Order granting Bernard indigency/pauper status for the appeal and a free, state-paid transcript. The reporter refunded Morehead the full \$900 transcript deposit. The reporter was paid the full transcript cost by the State of Arkansas, pursuant to the "indigency" order. The \$900 refund was neither deposited into any Morehead trust account nor refunded to the Marks.

In late August 2006, Morehead tendered the Marks record but it was declined due to non-compliance with Rule 5 on his extension of time order. The record was returned to him by the Clerk's office on November 27, 2006; he was advised to file a Motion for Rule on the Clerk; but he filed no such motion. In early 2008, Marks learned from the court that he had no appeal filed. His parents then hired and paid new counsel to attempt a belated appeal. Morehead was contacted by the Office of Professional Conduct about the Marks matter in April 2008. On April 16, 2008, Morehead filed a Motion for Rule on the Clerk. The Motion was granted, Morehead was later relieved as Marks' counsel, and new counsel pursued the appeal which was affirmed by the Court on December 19, 2008.

Morehead failed to pay his 2008 Arkansas law license fee, due by March 1, 2008, and his law license was suspended when he filed the Motion in the Marks matter in April 2008. At the hearing, Morehead asserted that medical and health problems he had encountered in 2007-2008 had at times temporarily limited his ability to handle his legal business. He stipulated that he had not had an attorney trust account from at least January 2006, until he opened a new one on February 18, 2009. The Marks received his \$4,000 restitution check shortly after his hearing.

F. DAVID REES, Bar No. 79238, of Jonesboro, Arkansas, was reprimanded and fined \$2,500.00 by Committee Findings & Order filed March 11, 2009, on a Complaint filed by Connie Dixon in Case No. 2008-082, for violations of Rules 1.2(a), 1.7(b), and 8.4(c). In October 2004, David Rees signed Connie Dixon as a new client for a Vioxx injury claim. He called her back to his office later that same day and then used coercive tactics, including intimidating her, until she had sex with him, to which she states she did not willingly consent. Rees then began using his position as her attorney to attempt to coerce Dixon into meeting him at various locations under the guise of discussing her case and to sign papers. He would then turn the conversation to personal matters. He had sex with her at least one more time.

In early February 2005, for her protection, Dixon started taping their telephone conversations and the messages Rees left on her home telephone answering machine. The transcript show Rees offered to reduce his fee percentage in her case substantially if she would accompany him and, impliedly, have sex with him at various locations, including an overnight stay at the Memphis Peabody Hotel. Rees told her of his great success as a plaintiff's attorney; how few lawyers could handle her suit to a successful conclusion as he could; and how good her

Vioxx claim was. Rees continuously told Dixon that her Vioxx suit was about to be filed, but none ever was filed for her by Rees or his law firm. On February 21, 2005, the Rees Law Firm sent Ms. Dixon a “status” letter on her Vioxx claim and a new contract for legal representation that reduced her contingent fee from the previous 33.3% down to 25% of any recovery. She never signed this new contract.

In April 2005, Dixon filed suit against Rees seeking damages for his wrongful sexual conduct with her after he became her attorney. In the September 2007 trial of *Smith v. Rees*, Dixon testified that her sex with Rees was not consensual. In a 2007 deposition and in the *Smith v. Rees* trial, Rees acknowledged having sex with Dixon while she was his client. Dixon’s case was resolved in April 2008, and dismissed with prejudice in a confidential settlement. Thereafter, Ms. Dixon filed her grievance with the Committee in June 2008. The sexual conduct alleged in this case occurred prior to the May 1, 2005, effective date of Arkansas Rule 1.8(j) which now directly prohibits an attorney from having sexual relations with a client unless a consensual sexual relationship existed between them at the time when the client-lawyer relationship commenced. The former Arkansas Model Rules of Professional Conduct applied in this matter. Rees accepted the ballot vote decision of the Committee, thus there was no public hearing or further proceeding.

WILLIAM S. ROBINSON, No. 76108, of North Little Rock, was reprimanded, fined \$3,000.00 and ordered to pay \$800.00 restitution, for violation of Rules 1.3, 1.4(a)(3), 1.4(a)(4), 1.5(c), 1.16(d) and 8.4(d), on a complaint by Kimberlee Basha in CPC 2009-025. For failure to respond to the Complaint, he was also cautioned and fined \$250.00. Ms. Basha is a representative of Servicing Solutions LLC, which hired Mr. Robinson for various civil collection matters in Arkansas. During the course of his representation Mr. Robinson’s conduct was not diligent, and he did not stay in communication with Ms. Basha or any other representatives of the client. Ms. Basha requested return of unused advanced payment of costs and executed substitution of counsel documents. Although Mr. Robinson and others in his office advised that the costs and documents were being placed in the mail, he had returned nothing to the client at the time of the Complaint. His conduct led to an unnecessary delay in the pursuit of the collection matters by new counsel.

MORRIS W. THOMPSON, No. 80145, of Little Rock, was reprimanded and fined \$1,000 for violations of Rules 1.3 and 8.4(d) by Order filed May 6, 2009, in CPC 2008-098. Mr. Thompson filed suit for a client in District Court, and later had the case transferred to Circuit Court, where he filed an amended complaint adding an additional defendant. The newly added defendant filed a Motion to Dismiss alleging that there was lack of jurisdiction, insufficiency of process, and insufficiency of service of process. Mr. Thompson failed to respond and an Order to Dismiss Without Prejudice was entered, stating that the dismissal applied to all defendants in the case. The trial court denied Thompson’s Motion to Modify Order, and he appealed. The Clerk refused to file the record as Thompson’s Motion to Modify Order was not filed within sixty (60) days of the Order he moved to modify. He filed a Motion for Rule on the Clerk stating ARCP Rule 60(c)(3) permits, “after the expiration of ninety (90) days of the filing of said judgment with the clerk of the court, to vacate or modify such judgment or order...for misprisions of clerk.” The

Supreme Court held that Rule 60(c)(3) applied to misprisions of the circuit clerk, not by the circuit court; that Rule 60(c)(3) did not apply; and the Clerk was correct in refusing to accept the record, killing the appeal. A petition for rehearing was denied.

DONALD E. WARREN, SR., Bar No. 99007, of Pine Bluff, Arkansas, was reprimanded and fined \$500.00 by Committee Consent Findings and Order filed January 16, 2009, on a Per Curiam Order Complaint in Case No. 2008-104, for violations of Rules 1.3 and 8.4(d). Warren failed to tender the appellate record for his client Harris. Harris filed a *pro se* Motion for Belated Appeal. On October 2, 2008, the Arkansas Supreme Court issued a *Per Curiam* Opinion treating the Motion for Belated Appeal as a Motion for Rule on the Clerk and granted it. Warren was to ordered to file a petition for *writ of certiorari* within thirty days to call up the entire record or that portion of the record necessary for the appeal to proceed and Warren was referred to the Committee.

CAUTION:

JIMMY RAY BAXTER, Bar No. 78012, of Benton, Arkansas, was cautioned and ordered to pay \$670.00 in restitution by Committee Consent Findings & Order filed August 21, 2009, on a Complaint filed by Judy Reed in Case No. 2009-059, for violations of Rules 1.3, 1.4(a)(3), 1.4(a)(4), 1.16(d), and 3.4(c). Mr. Baxter was hired by Ms. Reed to help resolve a dispute Ms. Reed was having with a relative as to real property left to Ms. Reed in her deceased aunt's will and also to probate the aunt's will. Ms. Reed paid Mr. Baxter \$670.00 for his representation. After Ms. Reed paid Mr. Baxter, she had very little contact with him. Ms. Reed sent several emails to Mr. Baxter in an attempt to get a status update on her case. After her attempts to contact Mr. Baxter went unanswered, Ms. Reed made several requests to Mr. Baxter to return the will. Mr. Baxter failed to file the probate action and he also did not return the will to Ms. Reed.

GARFIELD W. BLOODMAN, Bar No. 97053, formerly of Little Rock, Arkansas, now of the Virgin Islands, was Cautioned by Findings and Order filed October 21, 2009, in No. CPC 2009-049, for violations of Rules 3.2 and 8.4(d). The Arkansas Supreme Court dismissed an appeal taken by Mr. Bloodman for his clients, Edward and Linda W. Grays, filed as No. 08-1348. The dismissal was based on opposing counsel's Motion to Dismiss, filed after no record was filed, to which motion Mr. Bloodman did not respond. He allowed the matter to be dismissed without any information from him. He later stated in response to the Complaint that his clients did not pay him to pursue the appeal, that he closed his law office in Arkansas, moved out of state, and did not receive mailings to him from OPC.

JOEL DAVID BOYD, No. 90019, of Little Rock, was cautioned by Committee Order filed April 6, 2009, on a Complaint filed by Gwen Young in CPC 2008-018, for violations of Rules 4.1(a), 4.4(a) and 8.4(c) Ms. Young received a telephone call from an employee of the law firm where Mr. Boyd works, was told of a debt, and asked to verify her Social Security number. She refused to do so and requested information be sent in writing. Instead of being sent information

about the debt, she was sent a letter by Mr. Boyd which included a proposed Consent Judgment. At a public hearing on the matter, Mr. Boyd testified that it was a mistake that the Consent Judgment had been sent to Ms. Young. A firm employee testified she used her own judgment when she sent the Consent Judgment to Ms. Young. A firm partner testified that this action was against office policy and procedure. The form letter advised Ms. Young that if the original, signed consent judgment was not returned by the Court date, the matter would not be taken off the docket. At the time the letter was sent to Ms. Young no hearing date was set. The consent judgment also contained language that Complainant had knowledge of the lawsuit which was not true. This Gwen Young was not the Gwen Young who incurred this debt.

GERALD A. COLEMAN, No. 82034, of West Memphis, was cautioned by Committee Order filed June 1, 2009, in CPC 2009-012, for violation of Rules 1.1, 3.4(c), and 8.4(d) The Supreme Court referred Mr. Coleman to the Committee in *Lee v. State*, CR08-160, because the Court had to order re-briefing twice in the appeal of the denial of Mr. Lee's Rule 37 Petition. The Court held that Mr. Coleman did not comply with Rule 4-2(a) of the Arkansas Supreme Court Rules, by failing to properly abstract, include pleadings, and to place a specific Order in the addendum. After filing a first re-brief, Mr. Coleman was again ordered to re-brief because the substituted brief was still not in compliance with the Court's Rule. In response to the Complaint, Mr. Coleman explained that since his co-counsel did not wish to undertake the appeal, he agreed to do the appeal work. While doing the appeal, Mr. Coleman was contacted by an out of state attorney representing Mr. Lee in his federal habeas proceeding. Mr. Coleman filed a brief with the understanding that this attorney would file to be substituted as counsel and ask to file an amended and substituted brief. She did not do so. Mr. Coleman explained that when the Court ordered re-briefing the second time, he recognized that some of the abstract, through his error, had been mislabeled as to what it contained.

DONALD W. COLSON, No. 2005166, of Benton, was cautioned and fined \$500.00 by Committee Consent Order filed May 19, 2009, on a Complaint filed by Randall Wright in CPC 2009-020, for violations of Rules 1.2(a), 1.3, 1.4(a)(3) and 1.4(a)(4). Mr. Wright hired and paid Mr. Colson to contact his home builder about a problem with the floors in their home. Mr. Colson personally inspected the floors, advised Wright that he would write an immediate letter to the home builder, requested payment of \$500, and was paid. Thereafter, he was provided paperwork from Mr. Wright. Mr. Colson took no action to either handle the matter or to contact Mr. Wright, who called Mr. Colson on numerous occasions, sent e-mails and letters, but received no response from him.

NATALIE J. DICKSON, Bar No. 2003122, formerly of Jonesboro, Arkansas, was Cautioned in a Consent Findings and Order filed October 19, 2009, in No. CPC 2009-084, for violations of Rules 1.4(a)(1), 1.5(b), 1.16(d) and 8.1(b) on a complaint by Earvin Langston, who hired Ms. Dickson to help him to obtain additional funds from his insurance company for personal loss and debris removal after a fire at his home. Mr. Langston paid \$3,500 for the representation. Mr. Langston believed and understood that Ms. Dickson would be filing a lawsuit on his behalf, but she did not do so. She she advised him to accept the \$3345.03 already tendered to him by the

insurance company before he hired her. Mr. Langston also had great difficulty communicating with Ms. Dickson. She sent no letters to him and did not return telephone calls. The rate or basis of the fee and the scope of the representation was never explained to Mr. Langston. Ms. Dickson closed her private practice and did not advise Mr. Langston. He learned only after going to her office and finding it closed. There was no notice, no refund of unearned fees, and no return of property or papers. By the time Ms. Dickson returned the settlement checks to Mr. Langston, they were stale and had to be reissued. Ms. Dickson was contacted by the Office of Professional Conduct on more than one occasion, the last in January 2009. In spite of e-mails saying she was sending response to the inquiry, she did not do so.

FRANCES M. FINLEY, Bar No. 87059, of Little Rock, Arkansas was Cautioned by Consent Findings and Order filed on December 11, 2009, in No. CPC 2009-120. Ms. Finley admitted violation of Rules 1.1, 1.2(a), 1.3, and 8.4(d). She was required to file a Motion for Rule on the Clerk in the civil matter of *Sisler v. Bramlett, et al*, 09-781, after she failed to file the record on appeal within ninety (90) days of the filing of the Notice of Appeal. Ms. Finley explained she had medical emergency on the day the record was due to be filed, but also admitted she thought she had one more day to file the record. The Court found no unavoidable casualty for the failure to file the record in a timely manner and denied her motion, ending the appeal. Ms. Finley's client is now without opportunity to have appellate review of the lower court's decision.

PAUL HICKEY, Bar No. 75079, of Little Rock, Arkansas, was Cautioned by Consent Findings and Order in No. CPC 2009-095, filed November 20, 2009, for violations of Rules 1.3, 1.4(a)(4), 1.15(a)(1) and 1.15(b)(2), on a complaint by Richard Nance, who hired Mr. Hickey to represent him in seeking recovery of funds made in an investment / loan to Bobby D. Jones and / or MI ARK Eco-Recovery Systems. Mr. Hickey was paid a retainer of \$2,500 in May 2008, to be worked against by Mr. Hickey. In the following months, Mr. Hickey did not communicate with either Mr. Nance or his Michigan counsel. Finally in March 2009, Mr. Hickey refunded the entire retainer fee. The retainer fee was not placed in the trust account, even though it was not earned at the time of receipt.

MICHAEL S. HODSON, Bar No. 97208, of Fayetteville, Arkansas, was cautioned by Committee Findings & Order filed February 27, 2009 on a Per Curiam Order Complaint, for violations of Rules 1.1, 1.3, and 8.4(d). For his failure to respond to the Committee Complaint, he was additionally cautioned and fined \$250.00 in Case No. 2008-090. Hodson tendered his client's appellate record one day late. His motion for rule on clerk was granted on September 25, 2008, and he was referred to the Committee.

LAWRENCE W. HONEYCUTT, Bar No. 78074, of Hot Springs, Arkansas was Cautioned in a Consent Findings and Order filed in No. CPC 2009-109 on November 20, 2009, for violations of Rules 1.1, 1.3, and 8.4(d). Mr. Honeycutt tendered a record on appeal on behalf of his clients in the matter of *Worley v. Patin*, No. 09-860, on July 28, 2009, one day late. Mr. Honeycutt filed a Motion for Rule on the Clerk admitting the record was filed late, due to a clerical calendaring error through his own negligence. The Court denied the Motion, killing his clients' appeal.

JUSTIN B. HURST, No. 2005021, of Hot Springs, was cautioned and fined \$500 for violations of Rules 1.3 and 8.4(d), by Committee Order filed April 29, 2009, in CPC 2009-001, on a referral by the Supreme Court. Mr. Hurst represented Mr. Gossett in a criminal appeal, and filed a motion for enlargement of time to lodge the record, but the order granting the motion was not filed until after the time for filing the record had expired. The Clerk refused to file the record and informed Mr. Hurst that a Motion for Rule on the Clerk needed to be filed. The Clerk returned the transcript to Mr. Hurst when no motion was filed. Later, Hurst filed a Motion for Rule, but failed to provide the court with the record. The Clerk returned the Motion as there was no record tendered to the Clerk. The Clerk informed Mr. Hurst that he needed to return both the record and the motion should he wish to proceed with the appeal. Hurst then filed a Motion for Rule on the Clerk along with the record. The Supreme Court granted the Motion and referred the matter to the Committee.

JUSTIN B. HURST, No. 2005021, of Hot Springs, was cautioned and fined \$500 by Committee Order filed April 29, 2009, for violations of Rules 1.3 and 8.4(d), in CPC 2009-002. Mr. Hurst represented Mr. Rasmussen in a criminal appeal. Rule 5(a) of the Rules of Appellate Procedure—Civil requires that the appeal record be filed with the Supreme Court Clerk within 90 days from the filing of the first notice of appeal, unless the time is extended by proper order of the circuit court. Hurst filed a motion to extend the time for filing the record, but no order was filed with the circuit clerk. Hurst tendered the record to the Supreme Court Clerk, who refused to file the record as it was untimely. Hurst filed a Motion for Rule on the Clerk which contained incorrect language, Hurst was told to submit a corrected motion, which he did. The Supreme Court granted the Motion and referred the matter to the Committee.

Q. BYRUM HURST, JR., No. 74082, of Hot Springs, was cautioned and ordered to pay \$25,000 restitution by Committee Order filed May 8, 2009, in CPC 2007-132, on a complaint by Barbara Primm, for an admitted violation of Rule 1.16(d). Mr. Williams, was charged with eight (8) counts of rape in Bradley County. Ms. Primm, his sister and attorney-in-fact, employed Mr. Gibson to represent him on those charges, which Gibson did through trial and appeal. Williams was later charged with rape in Garland County. Ms. Primm went to Hot Springs to meet with Mr. Hurst about representation there. Mr. Hurst agreed to assist Mr. Gibson in the Garland County matter, but agreed that Mr. Gibson would be the lead counsel. Mr. Hurst stated that he had a good working relationship with the judges, sheriff, prosecutor, and law enforcement personnel in Hot Springs and Garland County. Mr. Hurst told her there would be a tremendous amount of work including court appearances, consultations with Mr. Williams, and telephone updates with the family. According to Ms. Primm, Mr. Hurst agreed to represent Williams for \$25,000, and that he would “draw” against this fee. Primm paid Hurst the \$25,000 without having a written agreement.

At a September 2006 bond reduction hearing, which was denied, Mr. Hurst was present but did not speak on David’s behalf. The next day, Mr. Hurst told Ms. Primm he would file a motion to get Mr. Williams out of jail and prepare an appeal to the Arkansas Supreme Court on

the denial of the Motion to Reduce Bond, but he did neither. Mr. Gibson, whose fee was substantially less than Hurst's, filed a Petition for Certiorari with the Arkansas Supreme Court.

Ms. Primm stated that she had numerous telephone calls with Mr. Hurst and his office staff and requested Mr. Hurst to provide a contract for his representation of David Williams. Ms. Primm stated that Mr. Hurst did not return the telephone calls. Ms. Primm received a letter from Mr. Hurst dated September 28, 2006, stating the \$25,000 paid was a "flat fee." This differed from the conversation Ms. Primm had with Mr. Hurst in August. Mr. Hurst also stated in his letter that "[i]f this letter reflects our agreement please execute your signature on the line marked "AGREED AND ACCEPTED" and return to me" Ms. Primm did not sign and return the document, as it was not what she agreed to verbally and it was six weeks after the discussion when she received the contract.

At hearings in Garland County in October and November 2006, Hurst and Gibson were both present and Gibson usually acted as lead counsel. Following the hearing on November 4, 2006, Ms. Primm sent a letter to Mr. Hurst asking him to refund the balance of the \$25,000, and provide an accounting for money he retained. Ms. Primm also asked that he forward all records and documents to her. Mr. Hurst received the letter and called to talk about it. He spoke to Ms. Primm's husband, Allen, who confirmed that it was what his wife and brother-in-law wanted. Several calls were placed thereafter to Mr. Hurst and messages were left for him to call. On December 27, 2006, Ms. Primm wrote Mr. Hurst again, reiterating that she had called numerous times to speak to him and reaffirmed that she was requesting Williams' files be sent to her and that he refund the remainder of the fees paid.

In a January 2007 hearing in Garland County Circuit Court Gibson and Hurst appeared. Ms. Primm stated that she met with both attorneys after the hearing where she discussed Mr. Hurst's release from representation. According to Ms. Primm, Mr. Hurst stated that Williams "needed" him. While Mr. Hurst apologized for being uninvolved, unresponsive and unaccessible, Ms. Primm stated that she did not tell him in any way that she would reconsider releasing him from the representation. In April 2007, Ms. Primm wrote Mr. Hurst another letter stating she had asked for a refund on two previous occasions and that he had not returned anything. Mr. Williams confirmed in a letter in April 2007 that he had discussed the situation concerning Mr. Hurst with his sister and they were in agreement.

Mr. Hurst responded to the requests with a letter in late April 2007, stating he was surprised to have received the Primm letter. Mr. Hurst ended the letter by stating that "If you desire, you can obtain other counsel and I will formally withdraw. I will have to ask the permission of the Court.... I think this would be very detrimental to your brother as I could not think of any attorneys that could assist any better than myself, or my firm."

On April 30, 2007, Mr. Hurst responded to Williams' letter of April 18, stating "[i]f it is your desire for me and my firm to withdraw from representing you we will, of course, be willing to do so. We will apply to the Court to withdraw." In August 2007, Ms. Primm met with Mr. Hurst in Hot Springs. According to Ms. Primm, she again asked that Mr. Hurst withdraw from the case and refund the unearned portion of the \$25,000 she had paid to him, and Hurst agreed to do so.

On September 14, 2007, Mr. Hurst filed a Motion to Withdraw. The day before he filed this motion, he filed three other substantive motions in the Williams case. Ms. Primm did not

receive a fee refund or any records she requested from Hurst. Mr. Hurst denied that he violated the rules alleged in the Complaint. He confirmed that he met with Ms. Primm to discuss representation of her brother, David Williams, but stated that he informed her that he set flat fees in criminal cases which must be paid in advance and that his fee was non-negotiable, and that she then paid him.

Prior to the start of his public hearing in April 2009, Mr. Hurst proposed a plea to the Panel where Hurst would admit to a violation of Rule 1.16(d), accept a Caution, and pay \$25,000 restitution to Ms. Primm. The Panel unanimously accepted the proposed plea.

BOBBY K. KEETER, Bar No. 77076, of Mena, Arkansas, was cautioned by Committee Findings & Order filed September 4, 2009, on a Complaint filed by Elvira Lettiere in Case No. 2009-047, for violations of Rules 1.3, 1.4(a)(3), and 1.4(a)(4). Ms. Lettiere hired Mr. Keeter in 2004 to represent her in pursuing claims against Wal-Mart. Ms. Lettiere claimed that Mr. Keeter did not maintain contact with the opposing party in the early stages of attempting settlement. Mr. Keeter filed suit for Ms. Lettiere, but then failed to respond to discovery requests. Mr. Keeter obtained an Order to Dismiss the lawsuit without prejudice (non-suit) without informing Ms. Lettiere. She learned of this fact after filing her grievance with the Office of Professional Conduct. Mr. Keeter did not re-file the matter within the year after obtaining the Order of Dismissal, and Ms. Lettiere's ability to pursue her legal claim is now lost.

ROBERT H. LAMBERT, Bar No. 2004081, formerly of Fayetteville and now of Norman, Oklahoma, was cautioned, fined \$250.00 and ordered to pay \$2,500.00 in restitution by Committee Findings & Order filed January 13, 2009, on a Complaint filed by Wesley House in Case No. 2008-042, for violations of Rules 1.3, 1.4(a)(2), 1.4(a)(4), 1.16(d), 3.4(c), and 8.4(d). Lambert, a solo, represented House in a paternity/custody action filed in April 2007. Lambert later joined a firm. In August 2007, House learned from the firm that Lambert was no longer with the firm and that another firm attorney would be handling the matter. After House was unable to contact the new attorney, he retained another attorney to represent him. Lambert failed to act with reasonable diligence and promptness; abandoned House without any notice of his whereabouts or intentions; failed to return House's calls; upon his constructive termination of House as a client failed to take reasonable action to protect House's legal interests; and failed to pay his 2008 Arkansas annual license fee from by March 2 until June 11, 2008.

CHERYL K. MAPLES, Bar No. 87109, of North Little Rock, Arkansas, was cautioned by Committee Findings & Order filed August 4, 2009, on a complaint filed by Barbara Field in Case No. 2009-028, for violations of Rules 1.1, 1.3, 3.4(c), 5.5(a), and 8.4(d). Ms. Maples filed a lawsuit in California and signed the Complaint as counsel for John Does 1-4. She is not licensed to practice law in California. Ms. Maples placed another attorney's name on the pleading as being licensed in California. She had not spoken with the California licensed attorney in the six months before filing the complaint. He was no longer actively licensed in California when she filed her suit, but was on inactive status and ineligible to sign pleadings in California. A Motion to Strike was filed, to which Ms. Maples did not respond to in any fashion. Her lawsuit was dismissed. Ms. Maples filed an Affidavit with the State Bar of California admitting all of the

conduct was her fault and not that of the other attorney.

WILLIAM H. MCKIMM, Bar No. 78110, of Mount Ida, Arkansas, was cautioned by Committee Consent Findings & Order filed September 4, 2009, on a Complaint filed by Betty Pass Simmons in Case No. 2009-075, for violations of Rules 1.3, 1.4(a)(4), and 8.4(d). Mr. McKimm was hired in September 2006 to represent Ms. Simmons in two Social Security matters, and a contract was signed between them. When he would return calls, Mr. McKimm informed Ms. Simmons that he had filed her appeal on the Social Security matters. Mr. McKimm did not follow up on whether Social Security received any notice of appeal nor did he take any more action to seek remedies or relief for Ms. Simmons. She contacted the Social Security office and learned that she had no appeal filed. Nothing had been received by Social Security on her behalf from Mr. McKimm. Mr. McKimm caused Ms. Simmons to lose a certain amount of funds she will not be able to recoup, since she will have to begin the process again. Mr. McKimm acknowledged that he may owe Ms. Simmons some restitution and advised he would work with her new counsel in determining what that amount may be.

GENE E. MCKISSIC, No. 76075, of Pine Bluff, was cautioned for violations of Rules 3.4(c) and 8.4(d) by Consent Order filed May 15, 2009, in CPC 2008-068, where his client Huskey's civil appeal was dismissed when he failed to timely file an order extending the time to file the appeal record.

GENE E. MCKISSIC, Bar No. 76075, of Pine Bluff, was Cautioned and fined \$500 by the Findings and Order filed November 19, 2009, in No. CPC 2009-043, for violations of Rules 1.3 and 8.4(d). In a criminal appeal for his client Mr. Stewart, Mr. McKissic tendered the record to the Clerk four days late. His Motion for Rule on the Clerk was granted, the appeal went forward, and the Court referred the matter to the Committee on Professional Conduct.

DANA A. REECE, Bar No. 87142, of Little Rock, Arkansas, was cautioned and fined \$250.00 by Committee Consent Findings and Order filed February 23, 2009, on a Per Curiam Order Complaint in Case No. 2008-106, for violation of Rule 1.3. Reece represented Doss in an appeal from a denial of a writ of habeas corpus petition after his conviction for rape. Reece filed the notice of appeal with the circuit clerk in Hot Springs (Garland County) instead of with the clerk in Hot Spring County (Malvern). Reece later tendered the appeal record to the Supreme Court Clerk with a Motion for Belated Appeal, which the Supreme Court granted.

DANA A. REECE, Bar No. 87142, of Little Rock, was Cautioned, fined \$500, and ordered to pay \$698.30 restitution to cover the transcript cost and filing fee in a Consent Findings and Order filed December 11, 2009, in No. CPC 2009-082, on information developed from the Supreme Court file in a civil appeal, No. 09-328, for violations of Rules 1.3 and 8.4(d). After she obtained an extension of time to file the record, the Clerk notified Ms. Reece that the extension order did not comply with Rule 5 of the Rules of Appellate Procedure. Ms. Reece tendered a Motion for Rule on the Clerk, but it was not accepted for filing as Ms. Reece had not paid her 2009 annual

law license fee by the March 1 deadline. Upon payment of her license fee on March 31, 2009, the motion was filed. On April 23, 2009, the Arkansas Supreme Court denied the Motion for Rule on the Clerk, ending her client's appeal.

FRANK DAVID REES, Bar No. 79238, of Jonesboro, Arkansas, was cautioned and fined \$1,000.00, by Committee Findings & Order filed February 23, 2009, on a Complaint filed by Kyle Brandon in Case No. 2007-113, for three violations of Rules 1.8(e), giving prohibited financial assistance to a client. Notice of appeal on this case was filed on March 16, 2009, by the Office of Professional Conduct. While representing Brandon in a personal injury case from late 2003 to early 2006, Rees's firm made three advances or loans of funds to Brandon totaling \$1,600 in 2004-2005 for his personal use and needs, even though such advances or loans to clients are prohibited by Rule 1.8(e). (Affirmed on appeal by the Executive Director on May 13, 2010, in No. 09-560.)

WILLIAM S. ROBINSON, Bar No. 76108, of North Little Rock, Arkansas, was cautioned and fined \$500.00 by Committee Findings & Order filed February 6, 2009, on a Complaint Before the Committee in Case No. 2008-072, for violations of Rules 3.2, 3.4(c), 4.4, and 8.4(d). After the second dismissal of his client's case, for failure to comply with discovery requests and Orders to Compel, Robinson failed to perfect the appeal, failed to respond to a motion to dismiss appeal, and the appeal was dismissed. Robinson admitted fault in not following up when he did not receive any notification from the Clerk's office that the record was ready.

JOHN W. SETTLE, No. 77123, of Fort Smith, was cautioned by Consent Order filed April 22, 2009, on a Per Curiam Order Complaint in CPC 2009-004, for violation of Rule 1.3. Mr. Settle represented Mr. Jarrett in a criminal appeal from Sebastian County,. The appeal record was untimely tendered to the Supreme Court Clerk, who directed that a motion for rule on the clerk be filed, which Mr. Settle did. The Court granted the Motion, the appeal was lodged, and the Court referred the matter to the Committee on Professional Conduct.

JOHN W. SETTLE, No. 77123, of Fort Smith, was cautioned by Committee Consent Order filed April 30, 2009, on a complaint by Cheryl Davis, Lois Niblett and Larry Niblett, in CPC 2008-084, for violating Rule 1.1. After his conviction was affirmed on state appeal, Mr. Niblett filed a *pro se* Rule 37, which was dismissed by the Arkansas Supreme Court as untimely in June 2007. Niblett then sought to file a federal habeas petition. Pursuant to 28 U.S.C. § 2244, a state prisoner's petition for federal habeas review is governed by a one-year statute of limitation period that commences on the latest of four triggering dates. The triggering date in this matter was the date on which the judgment became final "by the conclusion of direct review or the expiration of the time for seeking such review." Although Niblett filed a *pro se* Rule 37 petition, the Arkansas Supreme Court ultimately determined that the petition was untimely filed; therefore, it was not a properly filed application for State post-conviction review that would toll the one-year limitation to file the habeas petition. Because no tolling period was applicable, the

statute of limitation began to run ninety days after the conclusion of the state court proceedings. Here, because the Supreme Court's final decision was issued on October 12, 2006, the one-year statute of limitations of § 2244(d)(1)(A) started ninety-days later, or on January 12, 2007, for Niblett to file his federal petition. Settle was hired and paid in October 2007. According to the Nibletts, thereafter they never received anything from Mr. Settle except a promise to file the petition. In April 2008, Ms. Niblett terminated Mr. Settle and demanded a refund. Ms. Davis attempted to contact Mr. Settle by phone on May 6, 2008. The call was forwarded to a Fort Smith law firm. Mr. Settle did not return the call. In May 2008, Ms. Davis spoke with Settle and was informed that all of his Niblett papers had been destroyed by a rain storm. Settle refunded Ms. Niblett \$1,200. In June 2008, Mr. Settle refunded the remaining \$3,8000 due Ms. Niblett.

R. SCOTT WADDELL Bar No. 91239, of Jonesboro, was Cautioned in a Consent Findings and Order filed December 11, 2009, in No. CPC 2009-086, for violations of Rules 1.3, 1.4(a)(1), 1.4(a)(3), 1.16(d), and 8.4(d). Kent Longley retained Mr. Waddell to represent him in a lawsuit to be filed against a wrecker service. Mr. Waddell filed the lawsuit but then failed to take action. He failed to respond to pleadings filed by the opposing party and also failed to appear for a hearing in the matter, with no notice to his client or the court. Mr. Waddell failed to communicate with Mr. Longley and did not respond to requests for information. After Mr. Longley secured other counsel, Mr. Waddell agreed to settle the issue by installment payments to Longley, but Waddell delayed in having that finalized. He finally agreed to a consent judgment that would not be filed if he makes his payments.

B. DALE WEST, Bar No. 89192, of Monticello, Arkansas, was cautioned by Committee Consent Findings & Order filed August 21, 2009, on a Per Curiam Order Complaint in Case No. 2009-078, for violations of Rules 1.1, 3.4(c), and 8.4(d). On June 25, 2009, the Arkansas Supreme Court granted Mr. West's Motion for Rule on the Clerk in the matter of Antonio Daniels v. State of Arkansas, CR09-370. Mr. West failed to make certain the requirements of Rule 4 of the Rules of Appellate Procedure - Criminal were met in the Order Extending Time to File the Record on appeal. The Order also did not contain a due date for the record to be filed. When an Order which was compliant was finally completed, the date given by the Circuit Judge was one month earlier than the date on which Mr. West had tendered the record. The Court did not refer Mr. West to the Committee, but the conduct is the same cases where attorneys have been referred. This matter took two remands to Circuit Court to obtain a compliant order.

UNAUTHORIZED PRACTICE OF LAW (UPL) INJUNCTION:

KEITH LAMONT BRYANT, SR., d/b/a Keith Bryant, Personal Injury Consultant, of Little Rock, Arkansas was issued an Injunction Order filed September 18, 2009, in Pulaski Circuit Court Case No. CV 2009-5366, to cease the unauthorized practice of law. Mr. Bryant engaged in the unauthorized practice of law in violation of Ark. Code Anno. §16-22-501. Mr. Bryant is not licensed as an attorney in the State of Arkansas. On February 15, 2008, Mr. Bryant

entered into a contract with a Mr. Rogers, to assist Rogers in the recovery of losses in a personal injury claim, with Bryant to receive fifteen percent (15%) of any recovery. According to the contract, should Mr. Roger obtain the services of a licensed attorney, Mr. Bryant was to keep a lien against any recovery for his reasonable charges. Any settlement check was to be disbursed from Mr. Bryant's business account, at which time he would his fifteen percent (15%) and then pay Mr. Rogers eighty-five percent (85%). Mr. Bryant had previously been found by the Committee on the Unauthorized Practice of Law to have engaged in the unauthorized practice of law in another complaint to the Committee.