

2015 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. The Committee again submitted major proposed revisions of the Procedures to the Court on December 15, 2010, which were adopted by the Court in its Per Curiam issued and effective May 26, 2011, found at 2011 Ark. 242.

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 391-513 of the 2014 Court Rules, Volume 2, of the Arkansas Code. The attorney discipline Procedures implementing these Rules are in the same Volume 2, at pages 339-386. On May 26, 2011, the Supreme Court adopted and made effective significant revisions to the Procedures, in a per curiam found at 2011 Ark. 242.

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 2015, the Committee continued to operate in the new model of four Panels authorized by the Supreme Court as of January 1, 2002, designated Panels A, B, C, and D (Reserve). Each panel is composed of seven members appointed by the Arkansas Supreme Court.

Five members 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 Court from the State at large. Panel membership in 2015 was as follows:

- Panel A: T. Benton Smith, Jr., Jonesboro, Attorney, First Congressional District
Steven Shults, Little Rock, Attorney, Second Congressional District
Jerry Pinson, Harrison, Attorney, Third Congressional District
Michael Boyd, Magnolia, Attorney, Fourth Congressional District
Danyelle Walker, Little Rock, Attorney at Large
Karolyn Jones, North Little Rock, Non-attorney at Large
Elaine Dumas, Little Rock, Non-attorney at Large
- Panel B: Michael Mullally, Jonesboro, Attorney, First Congressional District
Henry Hodges, Little Rock, Attorney, Second Congressional District
James Dunham, Russellville, Attorney, Third Congressional District
Stephen Crane, Magnolia, Attorney, Fourth Congressional District
Niki Cung, Fayetteville, Attorney, Attorney at Large
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
Michael Mayton, Little Rock, Attorney, Second Congressional District
Tonya Patrick, Fayetteville, Attorney, Third Congressional District
Joseph Hickey, El Dorado, Attorney, Fourth Congressional District
Scott Stafford, Little Rock, Attorney, At Large
Shelia Brown, Pine Bluff, Non-attorney at Large
Mark Limbird, Scranton, Non-attorney at Large
- Panel D:
(Reserve) Laura E. Partlow, West Memphis, Attorney, First Congressional District
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

The 2015 Executive Committee consisted of:

- Stephen Crane, Magnolia, Panel B, Committee Chair
Karolyn Jones, North Little Rock, Panel A, Committee Secretary
Michael Boyd, Magnolia, Panel A Chair
Niki Cung, Fayetteville, Panel B Chair
Judge Kathleen Bell, Helena, Panel C Chair

The 2016 Executive Committee will consist of:

Jerry Pinson, Harrison, Panel A, Committee Chair
Carolyn Morris, Danville, Panel B, Committee Secretary
Michael Boyd, Magnolia, Panel A Chair
Niki Cung, Fayetteville, Panel B Chair
Mike Mayton, Little Rock, 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.

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.

Panels C and D meet “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 offices at the Rebsamen Corporate Center at 2100 Riverfront Drive, Little Rock, Arkansas 72202. 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 budget of the Committee and Office for 2015-2016 is about \$950,000, totally funded by the Supreme Court by a portion of the annual license fee paid by Arkansas-licensed attorneys to the Arkansas Supreme Court. No state or taxpayer funds are directly provided to support the office and committee.

The Office of Professional Conduct is staffed by four staff attorneys, an administrative assistant, a secretary, and a paralegal. 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 Executive Director Stark Ligon, the Office staff attorneys during 2015 were Michael E. Harmon - Deputy Director, Charlene Fleetwood - Senior Staff Attorney, and Caroline Bednar - Staff Attorney.

In calendar 2015, 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 also 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 2015 calendar year, the Office opened new files on 657 grievances on attorneys alleged lawyer misconduct, down from 744 new files opened in 2014. See attached Exhibit A.

In 2015, following assigned review by staff attorneys of disciplinary complaints received in calendar year 2015 and carry-over cases from previous years, 595 files were closed, down from 732 files closed in 2014.

IV. 2015 Formal Actions Initiated

In 2015, there were 57 new formal Complaint attorney discipline cases opened for Committee on Professional Conduct panel action, up from the 51 total new formal Complaint cases opened in 2014. In 2015, 45 formal Complaint files were closed, compared to 63 closed in 2014.

V. 2015 Final Committee Actions

Final action was taken in 53 formal Complaint files involving Arkansas attorneys during Calendar Year 2015 by the Office and the Committee on Professional Conduct. There are five primary forms of action, or sanction, that the Committee on Professional Conduct may take. The lowest, a warning, is non-public. The other forms of sanction - caution, reprimand, license suspension, and initiating disbarment proceedings - are public sanctions. In Calendar 2015, twenty-five (25) attorneys received at least one public sanction, down from twenty-seven (27) in Calendar 2014.

VI. 2015 - Most Common Rule Violations

In the 2015 findings of the Committee on Professional Conduct Panels, as in most previous recent years, the most common rule violations involved Arkansas Rules 8.4(d) (not engaging in conduct prejudicial to the administration of justice), 1.3 (acting with reasonable diligence and promptness in representing a client), and 1.1 (competence). The following listing contains the Arkansas Rule alleged, the number of times the Committee found the rule to have been violated, and ranking of the nine most frequently violated Rules in 2015.

Rule	Found	Rank (# Found)
1.1	9	3
1.2(a)	4	4
1.3	20	2
1.4(a)	1	
1.4(a)(2)	2	6
1.4(a)(3)	3	5
1.4(b)	2	6
1.5(a)	1	
1.7(a)(2)	2	6
1.8(a)	1	
1.8(e)	1	
1.8(j)	1	
1.16(d)	1	
3.2	1	
3.4(a)	1	
3.4(c)	3	5
3.4(e)	1	
3.5(d)	1	
6.1	1	
8.2(a)	1	
8.4(b)	1	
8.4(c)	3	5
8.4(d)	23	1

VII. "Practice Aging" of Attorneys Disciplined (2015)

Of the 2015 final disciplinary actions by the Committee, based on number of years licensed in Arkansas, 27 attorneys were publicly sanctioned as follows. (Attorney age information is not available):

Years Licensed	# of attorneys publicly disciplined	Percentage
1-10 (2006-2015)	6	23.1%
11-20 (1996-2005)	7	26.9%
21-30 (1986-1995)	7	26.9%
31-40 (1976-1985)	2	7.7%
41+ (before 1976)	4	15.4%

(Several attorneys were publicly sanctioned more than once in 2015.)

VIII. 2015 Fines, Restitution & Costs

	Imposed in 2015	Collected in 2015
Fines:	1,500.00	3,520.00
Restitution:	1,861.26	2,461.26
Costs:	1,150.00	1,150.00
Total:	4,511.26	7,131.26

(Note: some of the collections in 2015 were assessed in cases finalized in earlier years. Costs in disbarment cases are rarely collected.)

IX. 2015 Trust Account “Overdraft” Reporting

- 38 Total reports were received in 2015 from all banks and reporters (compared to 67 in 2014). Most of these files were closed after a summary investigation and explanation by the attorney involved.
- 18 2015 files are still “open” to some extent, such as awaiting additional documentation from the attorney.
- 0 Of these 2015 files have resulted in filing a formal Complaint to date.
- 5 Number of 2014 files still open, although no client funds are believed to be unaccounted-for.

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.

X. Summaries of 2015 Public Sanctions - Appx. B

Appendix A

FIFTEEN YEAR STATISTICAL COMPARISON 2001-2015 (Unofficial - as of 12-31-15)

Category	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Files opened	873	1,028	972	892	826	804	819	859	861	888	735	794	716	744	657		
Closed by staff	691	737	825	796	868	1137	784	786	742	845	806	646	478	732	595		
Complaints filed	149	186	200	164	159	156	140	114	144	119	97	85	67	51	57		
Appellate Refers	34	45	50	40	34	39	50	33	41	18	17	40	7	14	7		
Judicial Refers	13	12	12	8	8	19	6	4	4	6	10	18	3	8	11		
Other/by Attys				24	7	16	9	15	15	7	14	38	37	28	33		
Complmts closed	135	178	185	211	181	173	182	122	128	119	106	74	78	63	45		
No Actions	12	30	15	24	18	19	13	10	11	10	7	4	4	5	2		
Warnings	45	53	54	38	33	53	41	37	46	26	20	13	8	10	17		
Cautions	14	31	28	53	41	29	34	20	28	15	24	8	10	17	10		
Reprimands	26	35	37	36	31	30	26	14	14	19	20	11	11	5	7		
Suspensions	19	14	20	9	17	12	23	12	10	10	11	9	12	4	3		
Surrenders	13	5	5	11	6	7	1	6	5	3	14	8	3	2	6		
Merge/surrender		1	14	29	5	4	0	6	18	6	9	1	1	2	3		
Disbar initiated	6	3	3	3	7	2	1	1	2	1	2	1	4	2	0		
Disbarments		0	0	3	0	2	2	2	4	3	0	0	5	2	0		
Reinstated	3	3	8	10	13	11	6	0	6	2	2	5	9	7	11		
Consents	13	35	54	71	51	64		45	50	28	29	18	7	8	13		
Refer to Ar/JLAP	N/A	2	0	0	1	3	0	0	0	0	0	0	0	0	0		
# Attys Public Sanctioned*	57	61	72	101	102	68	67	49	44	44	60	29	30	27	25		

* 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.

Appendix B - 2015 Cases

SURRENDER:

COLSON, DONALD W., Bar No. 2005166, of Saline County, Arkansas, petitioned to surrender his Arkansas law license on April 15, 2015, in lieu of disbarment proceedings a committee panel had directed in Case No. CPC 2014-041 on a complaint brought by Sharon Cornice regarding Colson's representation of her son on a criminal post-conviction matter, based on the panel's findings of violations of Arkansas Rules 1.3, 1.4(a)(3), 1.16(a)(1), 3.2, 5.5(a), and 8.4(d) and consideration of Colson's prior disciplinary record. The Arkansas Supreme Court accepted Colson's surrender by Per Curiam issued April 30, 2015 in Case No. D-15-317.

DAVIS, ANDREA L. "ANDI", Bar No. 2008056, of Hot Springs, Arkansas, offered and the Supreme Court accepted her surrender of law license on October 1, 2015, in Case No. D-15-757, on the basis of her felony conviction on a plea in Garland County Circuit Court in Case No. 26cr-14-189 on May 27, 2015, to the offense of unlawful use of a communication device. A manslaughter charged was nolle-prossed at part of her plea. Ms. Davis received a term of probation and other sanctions in the plea. Ms. Davis, who has been on interim suspension since February 5, 2014, had ten other matters pending before the Committee, which will all be closed as a result of her surrender.

HOWARD, RICHARD LEE, IV, Bar No. 96151, of McKinney, Texas, petitioned to surrender his Arkansas law license on December 11, 2014, in Case No. D-14-1069, following his plea and conviction in the United States District Court in San Antonio, Texas, of the felony offense of conspiracy to commit fraud in violation of 18 USC §1349, involving a Texas real estate matter. The Court accepted his petition on January 15, 2015, and barred him from law practice in Arkansas courts.

MAGGIO, MICHAEL A., Bar No. 90015, of Conway, Arkansas, a former circuit judge, petitioned the Supreme Court, in Case No. D-15-240 to surrender his law license as a result of his guilty plea on January 9, 2015, in United States District Court Case No. 15-cr-001 to a felony bribery offense arising from his action in significantly reducing the amount of damages awarded by a jury in a civil case over which he presided. The Court accepted his surrender on April 16, 2015.

MERRITT, FARRIS E., Bar No. 2001133, of Centerton, Benton County, Arkansas, petitioned the Supreme Court, in Case No. D-15-308 to surrender his law license as a result of his convictions on April 1, 2015, of two felony offenses, battery and aggravated assault, in Benton County Circuit Court, for which he was sentenced to a term of twelve years imprisonment. The Court accepted his surrender on April 30, 2015.

PACE, JAMES ROBIN, Bar No. 85123, of Bentonville, Arkansas. On November 21, 2014, Committee Panel A voted that disbarment proceedings be initiated by the Executive Director in

Case No. CPC 2014-015 on a complaint brought by Benton County Circuit Judge Brad Karren and the Arkansas Securities Department based on Pace's alleged fraudulent involvement in matters that were part of a civil regulatory suit brought by the Department against Pace and others, including a firm named Nick Lynn Technologies, Inc., and the panel's findings of violations of AR Rules 1.1, and 8.4(c). In lieu of filing the disbarment suit, Pace petitioned the Supreme Court to surrender his law license, as Case No. D-14-1110, acknowledging he had engaged in serious misconduct. The Court accepted his surrender on April 23, 2015.

DISBARMENT TO BE INITIATED WITH INTERIM SUSPENSION:

KEARNEY, JEFFREY H., Bar No. 91249, of Pine Bluff, Arkansas, in Committee Case No. CPC 2015-083, by Findings and Order filed August 26, 2015, based on violations of AR Rules 1.1, 8.4(c), and 8.4(d), was placed on interim suspension from the practice of law effective August 26 and directed that disbarment proceedings be initiated against Kearney for his conduct in the representation of Duane Gonder on a federal habeas petition in the matter of Duane J. Gonder vs. Ray Hobbs, 5:12-cv-186. On July 23, 2010, Gonder pled guilty and was convicted of first degree murder and other charges, and was sentenced to 552 months in the Arkansas Department of Corrections. Gonder filed a motion to have his sentence reduced and a Rule 37 Petition. Both motions were denied, Gonder appealed both, and the Arkansas Supreme Court affirmed on June 2, 2011.

In May 2011, Gonder hired Kearney to file a federal habeas petition on his behalf, signing a fee agreement for \$3,500.00. April 1, 2012, was the one year deadline for any federal habeas to be filed for Gonder. On May 24, 2012, Kearney filed a Petition for Writ of Habeas Corpus with the U.S. District Court. The State filed a response in the habeas case alleging that Gonder's habeas petition was untimely filed. On September 11, 2012, the court issued its Order granting Gonder up and including October 12, 2012, to submit a pleading to explain why the habeas petition should not be dismissed as untimely or procedurally defaulted. After obtaining an extension, on October 19, 2012, Kearney filed his pleading with the court explaining why the habeas petition should not be dismissed or procedurally defaulted, disagreeing with the State's statute of limitations calculations. Kearney admitted he filed the habeas petition twenty-three (23) days late instead of fifty-three (53) days late as calculated by the State. On November 30, 2012, the Magistrate Judge issued his proposed Findings and Recommendations, recommending dismissal of the petition for writ of habeas corpus as time barred. In the alternative, he also recommended it be dismissed as procedurally barred, and dismissed on the merits. On December 28, 2012, the District Judge agreed with the Magistrate's findings and dismissed the petition with prejudice. On January 10, 2013, Kearney filed Petitioner's Motion for Relief from Judgment Pursuant to Rule 60, Federal Rules of Civil Procedure. On January 25, 2013, Kearney filed a Motion to be Relieved as Counsel. The court granted the Rule 60 motion for reconsideration and again denied petition for habeas relief. No certificate of appealability issued.

On July 10, 2012, Panel B of the Supreme Court Committee on Professional Conduct entered its Findings and Order suspending Kearney from the practice of law for a period of two months. On July 22, 2013, Kearney submitted his Petition for Reinstatement to the Committee on

Professional Conduct, stating that he had not been engaged in the practice of law in any jurisdiction during his suspension. That statement was untrue as Kearney had been practicing before the U.S. District Court, Eastern District of Arkansas representing Gonder on his habeas petition during Kearney's period of state license suspension. The disbarment petition was filed on February 24, 2016, and is pending as Case No. D-16-174.

LYNCH, JOE THOMAS, Bar No. 88132, of Hot Springs, Arkansas, by action of Committee Panel B, on December 17, 2015, was referred for initiation of disbarment proceedings in Committee Case Nos. CPC 2015-082 (personal misdemeanor criminal conduct over about a twenty year period), on three violations of Rule 8.4(b), and CPC 2015-093 (questioned deed to a residential property Lynch allegedly procured from his mother in 2002 and did not disclose or record until the day prior to her death in 2010), on violations of Rules 1.7(a), 1.7(b), 1.8(c), 3.1, 3.3(a)(1), 8.4(a), 8.4(b), and 8.4(c). An interim suspension was imposed on December 17, 2015, for the duration of the disbarment proceeding. [Note: The Supreme Court accepted the surrender of Mr. Lynch's Arkansas law license on February 11, 2016, in Case No. D-16-43, in lieu of disbarment proceedings.]

SUSPENSION:

BURRIS, BELINDA BETH, Bar No. 2007047, of Alicia, Arkansas, by Findings & Order filed August 3, 2015, in Committee Case No. CPC 2015-034, had her Arkansas law license suspended for thirty-six (36) months for violations of AR Rule 8.4(b) (criminal conduct). Shortly after admission in 2007, Burris was charged with possession of drugs and drug paraphernalia. In 2010, Burris was charged with three drug-related offenses. Burris entered a plea of guilty to one count of possession of a controlled substance and was placed on probation for a period of thirty-six months. In 2011, Burris was charged with two drug-related charges, a DWI charge, and other traffic offenses. Burris entered a plea of guilty of possession of a controlled substance and the DWI charge. She was sentenced to a term of twenty-four months in a regional punishment facility with an additional suspended imposition of sentence for a period of sixty months. At no point in time did any prosecuting attorney or court report the matter to the Office of Professional Conduct. Burris' license to practice law was also suspended for failure to maintain CLE and for failure to pay her annual license fee. The criminal convictions were discovered by OPC in 2015.

KEARNEY, JEFFREY H., Bar No. 91249, of Pine Bluff, Arkansas, in Committee Case No. CPC 2015-066, by Findings and Order filed August 3, 2015, was suspended from the practice of appellate law before the Arkansas Appellate Courts for a period of thirty-six (36) months for violations of AR Rules 1.3 and 8.4(d) in his representation of Wendie Cox in the matter of *Wendie Cox vs. State of Arkansas*, CR 14-965. Cox was convicted in Colombia County on charges of theft for stealing five horses from Southern Arkansas University. She was sentenced to a total of sixty (60) years in ADC, and her conviction was affirmed on appeal. She then filed pro se Rule 37 Petition, which was denied on September 22, 2014. On October 14, 2014, Mr. Kearney filed a Notice of Appeal from the denial of the Rule 37 Petition. The record was lodged with the Supreme Court Clerk on November 12, 2014, making Cox's brief due on December 22, 2014. No brief was filed on December 22, 2014, and no extensions were requested. On January

13, 2015, Mr. Kearney filed Appellant's Motion to File Belated Brief, stating that he failed to file the brief in time because he had lost staff and had no staff over the holiday. On February 5, 2015, the Arkansas Supreme Court granting the Motion with a final extension date of February 9, 2015, and referred Mr. Kearney to the Office of Professional Conduct. Kearney filed his client's brief on February 9, 2015.

MILLER, PAUL FARRIS, Bar No. 2012108, of Hot Springs, Arkansas, admitted to practice in Arkansas in 2012 after being licensed Colorado for many years, on July 10, 2015, had a six month suspension, effective August 14, 2015, imposed in Colorado for violations of Rules 1.7(a)(2), 1.8(a), and 8.4(c) of the Colorado Rules of Professional Conduct for his conduct, generally conflict of interest, in a closely-held small family-owned business. Miller reported the Colorado sanction to the Arkansas Office of Professional Conduct on August 19, 2015. Pursuant to Section 14 of the Arkansas Procedures, a Complaint for Reciprocal Discipline was filed as No. CPC 2015-102. Miller filed a timely answer and the matter was submitted to a panel of the Committee on Professional Conduct, which voted to impose the identical six-month suspension of Miller's Arkansas law license, a suspension that was effective on December 17, 2015. Note: No appeal or other action challenging the Arkansas suspension has been filed as of the magazine submission date.

REPRIMAND:

CLOUETTE, JAMES P., Bar No. 74025, of Little Rock, Arkansas, in Committee Case No. CPC 2014-052, on May 15, 2015, was reprimanded and ordered to pay \$370.50 restitution on a complaint by Janice Flowers for violations of Arkansas Rules 1.1, 1.2(a), 1.3, 1.4(b), 1.16(d), and 8.4(d). In 2009, Clouette began representing James Flowers, convicted of capital murder and serving a life without parole sentence, in a post-conviction matter, where the Rule 37 petition was denied and Clouette filed a notice of appeal and timely lodged the record. Clouette then asked Mrs. Flowers for \$3,500 more to pursue the appeal, which she was unable to pay. Ms. Flowers gave him her check for \$205.50 for his use in paying for the circuit clerk's record to be used in her husband's appeal. She also gave Clouette \$165.00 in cash for his use in paying the appellate filing fee. No such fee was charged or paid to lodge the Flowers Rule 37 appeal. Clouette failed to account to Ms. Flowers for the \$165.00 or refund it to her.

Clouette then abandoned the appeal of his client Flowers, without notice to Ms. Flowers or her husband, by failing to file a brief or a response to the State's motion to dismiss. He failed to file to withdraw as attorney for Flowers in his Rule 37 appeal or to obtain permission to withdraw, leaving Flowers without counsel at a critical stage in his Rule 37 appeal. The Attorney General's office filed a motion to dismiss the Flowers appeal, and Clouette filed no response. By per curiam issued October 10, 2013, the Court granted the motion to dismiss. As a result of this dismissal, Flowers may now be procedurally barred from seeking further court relief. For her imprisoned husband's use, Ms. Flowers has requested a copy of the record or transcript Clouette obtained from the circuit clerk with her \$205.50, but he did not provide her this case file documents.

CORDES, VAUGHN-MICHAEL H., Bar No. 2004192, of Rogers, Arkansas, entered into consent to discipline approved June 22, 2015, for a reprimand and costs for his violation of Rule 3.4(c) in No. CPC 2014-050, based on a self-report of his conduct in the United States Bankruptcy Court for the Western District of Arkansas. Cordes filed twenty-three cases in bankruptcy court and filed applications to pay filing fees in installments in nineteen of those cases despite having received payment in those cases. Judge Ben Barry ordered Cordes to appear before his court and provide the original application to pay filing fees and receipts for payment made by each of the clients. Though required to maintain records for three years after the case is closed, Cordes did not provide the court with all the documentation that was requested by the court's deadline. Cordes was able to provide ten original applications but admitted that five of the applications had not been signed prior to filing. Judge Barry had Cordes appear at a show cause hearing on September 24, 2013, and found Cordes in violation of the Federal Rules of Bankruptcy Procedure, the U.S. Code, and the Arkansas Rules of Professional Conduct. Judge Barry placed Cordes on a six-month probationary period with the bankruptcy court, ordered him to pay a fine of \$750.00, and to complete the Multistate Professional Responsibility Examination.

HURST, JUSTIN B., Bar No. 2005021, of Hot Springs, Arkansas, on a complaint by Vicki DeVore, in Case No. CPC 2015-057, by Consent Findings & Order filed December 11, 2015, was reprimanded and fined \$500 for violations of Rules 1.3 and 8.4(d). Hurst represented Devore in an employment case against a private school and Ms. Devore's daughter in an assault case. A lawsuit was filed in Sevier County Circuit Court in 2008 by Hurst's father, Q. Byrum Hurst, Jr. The case was thereafter assigned to Justin Hurst. A Rule 41(b) dismissal notice was sent to counsel of record in the case. No response to the Rule 41 notice was filed by Hurst and the case was dismissed. The case was refiled in 2010 by Justin Hurst and a scheduling order was issued to counsel of record. The scheduling order stated that failure to respond to the scheduling order may result in dismissal of the case. Hurst failed to respond to the scheduling order and the case was again dismissed. This dismissal prevented the Devores from having their matter heard.

LITTLEJOHN, DAVID M., Bar No. 2008038, of Little Rock, in Committee case No. CPC 2015-015, by Findings & Order filed August 3, 2015, was reprimanded and assessed costs for violations of AR Rules 1.1, 1.2(a), 1.3, 1.4(a)(3), 3.2, 6.1, and 8.4(d) on a complaint involving his representation of Michael Mercouri on a criminal case and on appeal, in Case No. CR-14-636, until relieved by the Court and referred to the Committee on February 5, 2015. Mercouri was found guilty of aggravated robbery at a jury trial on January 9, 2014, and sentenced by the jury to 120 months in ADC. On February 5, 2014, Mercouri filed his pro se notice of appeal. On February 6, 2014, the trial court filed an Order directing Mercouri not to file pleadings as he was still represented by Littlejohn in the case. On February 26, 2014, Littlejohn filed his motion to withdraw as counsel for Mercouri, but no order was ever entered.

On March 18, 2014, from jail Mercouri wrote Judge Wright informing him of certain matters in the case, including his efforts to get Littlejohn to take certain actions, including that Littlejohn refused to file Mercouri's notice of appeal or protect his appellate rights unless

Littlejohn was paid more money. On April 1, 2014, the court reporter filed an affidavit reciting efforts by Mercouri's wife to obtain the trial transcript for use in his appeal. On May 2, 2014, Littlejohn tendered the Mercouri record to the appellate clerk, but apparently with the record missing some pleadings and the reporter's transcript. On July 22, 2014, Littlejohn filed a motion to complete the record. On August 4, 2014, Littlejohn filed his motion to withdraw, stating that Mercouri had not hired Littlejohn to represent him on any appeal. On September 4, 2014, the Supreme Court denied without prejudice both the motions to complete record and to withdraw.

On December 10, 2014, Mercouri filed his motion to appoint new representation reciting his indigency status, his difficulty in communicating with Littlejohn, and his conclusion that Littlejohn had abandoned Mercouri on his appeal. On February 5, 2015, the Supreme Court issued its per curiam order reciting the factual history of Mercouri's case and appeal effort, relieving Littlejohn as counsel, appointing new appellate counsel, and referring Littlejohn to the Committee. There is no indication in the record or the per curiam that Littlejohn ever attempted to have Mercouri declared indigent by a court for appeal purposes, thus entitling the client to the services of an appointed lawyer on his appeal.

POWELL, BRYAN L., Bar No. 2003151, of Bentonville, in Committee case No. CPC 2015-014, by Findings & Order filed September 18, 2015, was reprimanded and assessed costs for violations of AR Rules 1.1, 1.2(a), 1.3, 1.4(b), 3.4(c), and 8.4(d) on a complaint involving his paid representation of Rene Garcia on a criminal appeal, in Case No. CR-14-129, of a conviction for two counts of rape and a 600 month prison sentence. Powell timely lodged the record, but failed to file a brief after obtaining an extension. The State's motion to dismiss the appeal was denied and Powell was given a "final" extension to July 30, 2014, when Powell filed a motion for belated brief, which was granted and he was given a new briefing extension to September 18, 2014, when Powell filed another motion for belated brief, which was granted to November 7, 2014, when Powell filed another motion for belated brief, which was granted to a "final" briefing extension to January 5, 2015, with five of the twelve Court of Appeals judges being noted as voting to deny the motion. On January 28, 2015, Stark Ligon emailed Powell a copy of a letter regarding Garcia's appeal from the Court's Criminal Justice Coordinator and asked for a response. Powell received at least four extensions of brief time, to January 5, 2015, since his original brief deadline of March 17, 2014, and filed no brief. [Note: The Committee Complaint was served on Powell on February 20, 2015. The Court of Appeals removed Powell from the case on March 11, 2015, new appellate counsel was appointed, and a "no-merit" brief was filed on May 18, 2015.]

STANLEY, JAMES W., Bar No. 75124, of Little Rock, Arkansas, by Findings and Order filed August 3, 2015, in Committee Case No. CPC 2015-021, was reprimanded for violations of AR Rule 3.4(c) on a complaint filed by James Lamb, who applied for benefits from the U. S. Department of Veterans Affairs ("VA"). After denial, Lamb met with Stanley in 2011. Stanley charged Lamb a consultation fee and provided a form to appeal the VA's decision. The appeal resulted in the VA changing its decision and awarding partial benefits but denying benefits for other service-related injuries. In June 2012, Stanley wrote Lamb and provided a form

to appeal the VA's decision. Stanley stated that his fee was 20% of any past-due benefits. Lamb wrote Stanley a check for \$2,704.65 for Stanley's fee to that point. A hearing was held in May 2012 on Lamb's appeal. Stanley advised that he would be out of town on the day of the hearing and did not appear. Lamb appeared at the hearing and learned that Stanley was not approved by the VA to represent individuals before any VA board. Lamb terminated Stanley's representation. In July 2014, Stanley wrote Lamb and inquired whether Lamb had received any additional benefits following the 2012 appeal and, if so, that Lamb needed to pay Stanley his 20% fee. On October 10, 2001, Stanley was notified by the VA Office of General Counsel (OGC) that his accreditation to represent claimants before the VA had been canceled as a result of matters brought to the OGC's attention. Stanley appealed the decision of the OGC for over fourteen years through various appellate courts. In January 2014, the Board of Veterans Affairs issued a decision that termination of Stanley's accreditation was the most appropriate sanction for his conduct. Stanley has not been accredited by the VA to represent claimants before any part of the VA since 2001.

TRIMBLE, DON, Bar No. 91078, of Little Rock, Arkansas, by Findings and Order filed September 30, 2015, in Committee Case CPC 2015-022, was reprimanded and fined \$500 for violations of AR Rules 1.3 ad 8.4(d) on a complaint by David and Michelle Moore. Trimble filed suit on behalf of the Moores in a matter related to the construction of their home. Trimble obtained a nonsuit, and then refiled the case in April 2011. He did not serve each of the individual defendants within the 120 days allowed by the Rules of Civil Procedure, and then was granted an additional 120 days to serve the defendants. Service was again not obtained and Trimble was granted an additional 120 days for service. The defendants filed a motion to dismiss as they had not been served within the initial 120 days following the issuance of the summonses or within the first additional 120 days granted by the court. Trimble notified the Moores that the court would likely dismiss the lawsuit for his failure to serve the defendants. Trimble withdrew from the case and the Moores employed other counsel to represent them. The trial court dismissed the lawsuit for failure to perfect service and the Moores were procedurally barred from having their case heard.

CAUTION:

HURST, Q. BYRUM, JR., Bar No. 74082, of Hot Springs, Arkansas, on a complaint by Vicki DeVore, in Case No. CPC 2015-057, by Consent Findings & Order filed December 11, 2015, was cautioned and fined \$500 for violations of Rules 1.3 and 8.4(d). Hurst represented Devore in an employment case against a private school and Ms. Devore's daughter in an assault case. Hurst filed a lawsuit in Sevier County Circuit Court in 2008 for the DeVores. The case was thereafter assigned to his son Justin Hurst. A Rule 41(b) dismissal notice was sent to counsel of record in the case. No response to the Rule 41 notice was filed by Hurst and the case was dismissed. The case was refiled in 2010 by Justin Hurst and a scheduling order was issued to counsel of record. The scheduling order stated that failure to respond to the scheduling order may result in dismissal of the case. Hurst failed to respond to the scheduling order and the case was again dismissed. This dismissal prevented the Devores from having their matter heard.

IRWIN, JOHN ROBERT, Bar No. 95151, of Morrilton, Arkansas, in Committee Case No. CPC 2014-056, by Consent Findings and Order filed February 24, 2015, was cautioned for his conduct in the representation of Kamran Jackson in the matter of *Kamran Jackson vs. State of Arkansas*, CR 14-783, for violations of AR Rules 1.3 and 8.4(d). Irwin, a full time public defender, represented Jackson, who was convicted of felony theft of property and sentenced to forty-eight (48) months in state prison. On May 21, 2014, a Notice of Appeal was filed. The appeal record was due to be filed August 19, 2014, but was not filed. On September 11, 2014, Mr. Irwin filed a Motion to Be Relieved as Attorney for Appellant. Four days later Irwin filed a Motion for Rule on the Clerk explaining that the record was not filed on August 19, 2014, because the transcript was not tendered by the court reporter until September 8, 2014. On October 2, 2014, the Arkansas Supreme Court issued its Per Curiam granting both motions. The appeal record was lodged October 2, 2014, and the appeal proceeded with new counsel.

IRWIN, JOHN ROBERT, Bar No. 95151, of Morrilton, Arkansas, in Committee Case No. CPC 2014-058, by Consent Findings and Order filed February 24, 2015, was cautioned for his conduct in the representation of Michael E. Childers in the matter of *Michael E. Childers vs. State of Arkansas*, CR 14-761, for violations of AR Rules 1.3 and 8.4(d). Irwin, a full time public defender, represented Childers, who was convicted of felony second degree domestic battery and sentenced to sixty (60) months in state prison. On May 7, 2014, a Notice of Appeal was filed. The appeal record was due to be filed August 6, 2014, but was not filed. On September 8, 2014, Irwin filed a Motion for Rule on the Clerk, explaining that the record was not filed on August 6, 2014, because the transcript was not tendered by the court reporter until August 25, 2014. Irwin filed a Motion to Be Relieved as Attorney for Appellant. On October 9, 2014, the Arkansas Supreme Court issued its Per Curiam granting both motions. The appeal record was lodged and the appeal proceeded with new counsel.

KEARNEY, JACK R., Bar No. 77194, of Little Rock, Arkansas, in Committee Case No. CPC 2015-012, by Findings and Order filed June 22, 2015, was cautioned for violations of Arkansas Rules 1.3, 1.4(a)(3), and 8.4(d), for his conduct in the representation of Abigail Ransom in *Ransom and Harvey vs. Arkansas Dept. Of Human Services*, No. CV-14-1013. In October 2014, Kearney entered his appearance on behalf of Ms. Ransom in the termination of parental rights proceeding in circuit court to supplement the record in the lower court case. The trial court denied his request. On October 23, 2014, the court issued an order terminating Ms. Ransom's parental rights to her minor child. No timely notice of appeal was filed. On November 25, 2014, Ms. Ransom filed a pro se Motion to File Belated Appeal, alleging she was never notified by Kearney of the termination of her parental rights. The Supreme Court denied Ms. Ransom's motion without prejudice and remanded the matter back to the trial court for determination of attorney fault.

By order on December 22, 2014, the trial court found Kearney had petitioned the court to be relieved as attorney of record for Ms. Ransom, that request was denied, that Kearney was still the attorney of record for Ms. Ransom as of October 23, 2014, and that he was notified of the substitution of counsel and entry of the order terminating Ms. Ransom's parental rights by email from the court staff on October 23, 2014. Kearney admitted to receiving the email. He stated that he was entering an appearance on behalf of the mother for the limited purpose of supplementing

the record, however, the trial court found that his substitution was not predicated on the court's allowing additional testimony or information. The court was not aware that Kearney did not wish to represent Ms. Ransom until he filed a Motion to Be Relieved after close of business on November 12, 2014.

The trial court found Kearney's motion deficient in notification to Ms. Ransom as she was not listed on the certificate of service accompanying the motion, and there was nothing from Ms. Ransom indicating she agreed with the motion. The court ruled that Kearney received timely notice that he had been substituted as attorney for Ms. Ransom, that the substitution was unconditional and unequivocal, he had received timely notice of the termination of Ms. Ransom's parental rights, and he was found responsible, as attorney of record, to notify his client of the termination of her parental rights and to file a Notice of Appeal on her behalf. On January 6, 2015, Kearney filed a Motion to be Relieved as Attorney of Record on Appeal, to Determine Indigency Status of Appellant, and to Appoint Appellate Counsel for Appellant. The Supreme Court issued its Per Curiam accepting the trial court's finding that Kearney was at fault for not filing a timely Notice of Appeal and granted Ms. Ransom's Motion to File Belated Appeal. Kearney was relieved as counsel for Ms. Ransom, the Arkansas Public Defender Commission was appointed to represent her, and a copy of the Per Curiam was sent to the Committee on Professional Conduct.

MUKE, IRIS L., Bar No. 2003119, of Clarksville, Arkansas, in Case No. CPC 2015-010, by consent findings and order filed on April 20, 2015, on a complaint generated from an appellate file, was cautioned for violation of Arkansas Rules 1.3 and 8.4(d). Ms. Muke represented clients in a boundary line dispute in Johnson County Circuit Court CV-2013-29, and filed a timely notice of appeal and designation of record. The deadline for filing the record on appeal was October 27, 2014, and Ms. Muke tendered the record on October 28, 2014. Ms. Muke filed a Motion for Rule on Clerk stating she miscalculated the due date, causing her to tender the record one day late. The Arkansas Supreme Court denied the Motion for Rule on Clerk and her clients lost their opportunity for appeal of an adverse trial outcome.

PROCTOR, WILLARD, JR., Bar No. 87136, of Little Rock, Arkansas, in Committee Case No. CPC 2014-054, by Consent Findings & Order filed February 24, 2015, was cautioned for his conduct in the representation of Jimmy Lee Williams on a Rule 37 Petition, for violation of AR Rule 1.3. Williams was convicted of felony drug offenses, sentenced to prison, and in September 2011 his conviction was affirmed on appeal. In December 2011, Proctor filed a petition for relief under Rule 37. In its response, the State alleged that the Rule 37 petition had not been verified by Williams as required by Ark. R. Crim. P. 37.1(c) and 37.1(d), was not valid, and should be dismissed. Proctor filed an amended petition verified by Williams. The trial court dismissed the petition as untimely, and Proctor appealed. The State responded that the second petition, although verified, was untimely, the appeal should be dismissed, and "the circuit court lacked jurisdiction to make a discretionary determination regarding the propriety of the amended petition". On July 31, 2012, Proctor filed his Response to Motion to Dismiss, arguing that the circuit court did have jurisdiction to hear issue related to whether the procedural requirements of Rule 37 had been tolled under the relate back provisions of Arkansas Rule of Civil Procedure 15. On August 14, 2012, the Supreme Court issued its Order granting the State's Motion to Dismiss

and finding the motion for extension as moot. Williams' opportunity to present his Rule 37 petition was taken away when Mr. Proctor failed to file the petition with verification, within the required time frame.

SARVER, DAVID KEITH, Bar No. 2006051, of Memphis, Tennessee, in case CPC-2014-007, by Consent Findings & Order filed March 20, 2015, was cautioned for violation of Rule 1.8(j). Sarver, a single person, self-reported he was in a consensual sexual relationship with a firm client, also a single person, and the sexual relationship began following the commencement of a civil suit in which Sarver's then law firm represented the client. Upon disclosure of the personal relationship, Sarver withdrew from the case and the law firm. At the request of the client, the firm continued to represent the client to the conclusion of the matter.

STRATFORD, JOHN C., Bar No. 88169, of Little Rock, in Committee case No. CPC 2015-063, by Consent Findings & Order filed September 18, 2015, was cautioned for violations of AR Rules 1.1, 1.2(a), 1.3, 1.4(a)(2), 1.5(a), and 8.4(d) on a complaint involving his representation of Miguel Williams on a criminal post-conviction relief matter, after Williams received a sentence of 300 months in prison in March 2012. Trial counsel was relieved and timely provided Williams documents necessary to initiate his direct appeal pro se. On March 9, 2012, Williams' mother employed and made a partial payment of \$1,500.00 to Stratford to represent Williams, but the scope of the employment is unclear. At the time Stratford was employed, several weeks still remained for a notice of appeal to be timely filed. As described by the Memorandum and Order entered January 16, 2015, in the federal habeas case, Williams v. Hobbs, No. 13-cv-384, Stratford inexplicably never filed an appeal and time ran out on Williams' direct appeal right. This document characterized Stratford's conduct in the Williams matter as "shameful," and that Stratford mishandled the case.

Attorney Lambert prepared a pro se motion for belated appeal which Williams filed in January 2013. The filing included an affidavit executed by Williams on January 11, 2013, in which he states he never waived his right to an appeal. On June 6, 2013, the Arkansas Supreme Court denied Williams permission to file a belated direct appeal. In Williams' United States District Court Case No. 13-cv-384, on December 20, 2013, Stratford filed a petition for writ of habeas corpus that was ghost-written by attorney Lambert. On April 15, 2014, Lambert entered his appearance in the federal case, and on June 16, 2014, he filed a reply, to the State's response, in an effort to salvage Williams' effort at obtaining relief. Lambert was relieved and John Hall was appointed as counsel for Williams on August 15, 2014. An evidentiary hearing was conducted on November 12, 2014. Ms. Williams' handwritten list of payments to Stratford, totaling \$3,900, was introduced and discussed. A letter dated November 18, 2013, that Stratford delivered to Miguel Williams in the ADC was introduced and discussed. At the hearing Ms. Williams testified, in part, that at the initial meeting Stratford led the conversation and Lambert said a little; she paid Stratford \$1,500 on what she recalled was a fee of \$5,000; and that she later employed Lambert to take over the federal habeas case.

At the hearing testifying under the "rule sequestering witnesses" and before Lambert

testified, Stratford testified, in part, that Ms. Williams paid him \$1,500 at the initial meeting; no direct appeal was undertaken for Miguel because his mother could not afford the estimated \$2,500 cost for the necessary trial transcript; Stratford had never done a direct appeal or a Rule 37 proceeding or a federal habeas proceeding on his own, always referring such matters to other attorneys; Miguel was going to get a Rule 37, to be done by Lambert, and Stratford was going to give Lambert half of whatever Ms. Williams paid Stratford; he did not know why a notice of (direct) appeal was not filed; he did not know why no Rule 37 proceeding was filed; and he had no record of the Williams payment to him. Stratford also testified that his practice is limited to trial-level representation, he does not handle appeals or post-conviction matters himself, but refers such matters to other counsel.

At the hearing Lambert testified after Stratford, in part, that his practice is primarily appellate and post-conviction criminal work; he checked on the estimated cost of the trial transcript needed for a direct appeal or Rule 37 effort and was quoted about \$2,000; he attended one meeting with Ms. Williams and Stratford; he saw Ms. Williams pay Stratford \$1,500 on or about March 19, 2012; at that meeting Lambert went over the time limits involved for a Williams direct appeal, Rule 37, motion for belated appeal, and a federal habeas proceeding; Lambert had no knowledge of any agreement with Stratford for him to give Lambert half of whatever Ms. Williams paid Stratford; his notes made in advance of attending the March 2012 meeting were introduced at the hearing; Lambert ghost-wrote the federal habeas petition for Stratford to file; Lambert ghost-wrote the state motion for belated appeal for Stratford to file; Lambert was confused about the actual scope of the representation of Williams; he was never in an attorney-client representation with either Williams until much later when Ms. Williams employed him in April 2014 for a \$2,500 fee to take over the pending federal habeas case; that Stratford then paid Lambert \$1,000 from Ms. Williams' funds Stratford held; Stratford was "in way over his head" in the Williams matter; Lambert never saw the November 18, 2013, letter from Stratford to Miguel Williams until the November 2014 hearing, the letter was not accurate, and, if Lambert had seen the letter before Stratford took it to Miguel Williams, Lambert would have told Stratford the letter was not accurate.

The Memorandum and Order, and Judgment, were entered January 16, 2015, denying Williams relief, and making highly unfavorable comments and findings about Stratford's conduct on Williams' behalf. The Judgment also denied Williams a certificate of appealability to the federal court of appeals. Hall filed Williams' notice of appeal.

ZIMMERMAN, GAYLE D., Bar No. 79144, of Crossett, Arkansas, in Committee Case No. CPC 2015-090, by Findings and Order filed November 13, 2015, for violations of AR Rules 1.1, 3.5(d), 8.2(a), and 8.4(d) was cautioned for her conduct in the representation of the defendant in a civil suit filed in the Circuit Court of Ashley County. Plaintiffs sued defendant for unlawful detainer of a house defendant was renting from plaintiffs. Defendant countersued for breach of contract and recovery of rental money paid. All circuit judges in the district recused and Judge Phillip Shirron was assigned to the case. Judge Shirron contacted plaintiff's counsel by telephone on October 1, 2012, and requested copies of all of the plaintiff's pleadings that had been filed in

the case. Judge Shirron attempted to contact Ms. Zimmerman by telephone, but got a message that she was “not accepting calls at the time.” Judge Shirron then sent Ms. Zimmerman a letter advising her that he had attempted to contact her by phone, requested that she send him copies of all pleadings filed by defendant, and asked for a telephone number where she could be reached or message left during normal business hours. Judge Shirron advised her that he would not waste his time in the future making multiple attempts to contact her at a time when she may be accepting calls.

On February 19, 2013, Ms. Zimmerman, who prior to this matter, had never appeared before Judge Shirron, filed a motion to recuse the Judge. She attached copies of the opinion in *Jeffery Charles Elmore vs. State of Arkansas*, 355 Ark. 620; 144 S.W.3d 278 (2001) and an article from a web blog called *The Committee to Expose Dishonest and Incompetent Judges, Attorneys and Public Officials*. In her motion, Ms. Zimmerman, alleged that Judge Shirron’s October 1, 2012, letter to her was “unprofessional, demeaning, sarcastic, and totally unprovoked”. She also alleged that Judge Shirron had “engaged in outrageous, unprofessional conduct in the past. In the article, Judge Shirron is referred to as a “certified moron,” “ethical gnome”, “knucklehead”, “schmuck”, “dimwit”, and “big time dumb ass.” Ms. Zimmerman also alleged in her motion that her client would be unable to receive a “fair and impartial trial” given Judge Shirron’s “unprovoked animosity towards counsel and erratic conduct in the past.”

On February 6, 2013, Judge Shirron advised Ms. Zimmerman by letter of a hearing on February 27, 2013, on plaintiffs’ motion and that she had to request a hearing on any motions she had pending. After the hearing, the Order Denying Motion for Recusal of Trial Judge was filed on March 13, 2013. Several other hearings were held related to discovery, with orders being entered. On July 19, 2013, Ms. Zimmerman filed with the Arkansas Supreme Court a Petition for Permissive and Interlocutory Appeal, CV-13-633, on behalf of her client. Among issues that she wished to appeal was the refusal of Judge Shirron to recuse. Ms. Zimmerman, continued to make accusations about Judge Shirron’s motives and professionalism in presiding over the case. Some of the accusations made by Ms. Zimmerman, included a statement that Judge Shirron was “girded for war”, that Judge Shirron became unreasonably angry in the October 1 letter he sent her when he was unable to reach her by telephone, and that Judge Shirron was “angry, hostile and abusive”.

Ms. Zimmerman states in the petition that she researched cases presided over by Judge Shirron and discovered *Elmore vs. State of Arkansas*, from 2001 that was reversed and remanded because Judge Shirron’s wife was a member of the jury. Ms. Zimmerman stated that because of that criminal case, her client would not get a fair trial, even though the criminal case happened years prior to her client’s case and her client was not a party to the criminal case. She alleged that Judge Shirron struck pleadings filed by her because “the court was simply assisting in attempting to prevent [her client] Mr. Murray and his counsel from trying their case based on the facts”.

On July 19, 2013, Appellees filed a Motion to Dismiss Appellant’s Petition for Permissive and Interlocutory Appeal and on September 12, 2013, the Arkansas Supreme Court entered its Formal Order denying the Petition for Permissive and Interlocutory Appeal and finding Appellee’s Motion to Dismiss moot. On September 25, 2013, Appellant filed a second

Interlocutory Appeal, CV-13-839, making the same allegations and attempting to appeal the same orders as appealed in the July 9, 2013, petition previously filed. A few days later, Ms. Zimmerman's client filed a pro se Motion for Reconsideration of the Formal Order denying the Petition for Permissive and Interlocutory Appeal in CV-13-633. On October 7, 2013, Appellees' filed a Motion to Dismiss Interlocutory Appeal in CV-13-839. Appellees alleged in their petition, along with supporting exhibits, that appellant was attempting to appeal from the same orders which the court denied when it issued its September 12, 2013, Order. The Court denied the pro se Motion for Reconsideration. On November 30, 2013, the Court entered its Formal Order dismissing the second Interlocutory Appeal, CV-13-839. Ms. Zimmerman non-suited her counterclaim on February 3, 2014.