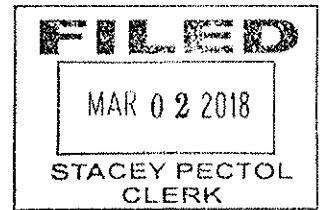


BEFORE THE ARKANSAS SUPREME COURT
COMMITTEE ON PROFESSIONAL CONDUCT
PANEL A



IN RE: **THERESA L. CALDWELL**
Arkansas Bar ID # 91163
CPC Docket No. 2015-002 (Casas-Cordero)

HEARING FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based were developed from information provided to the Committee by Mafalda Casas-Cordero, formerly of Mountain Home, Arkansas and now of California in April 2010. The information related to the representation by Respondent Theresa L. Caldwell, an attorney practicing primarily in Pulaski County, Arkansas, of Ms. Casas-Cordero, her former husband, and their daughter, in a special educational proceeding in late 2009 in Baxter County and then in early 2010 representing the former husband, Anthony Mira, in civil litigation in Baxter County involving custody and visitation with their daughter. On January 27, 2015, a formal Complaint with affidavits from Ms. Casas-Cordero and others and exhibits was filed and then served on Caldwell. Ms. Caldwell filed a response to the complaint, rebuttal affidavits were filed, the case went to ballot vote before Panel B, and Ms. Caldwell then exercised her right to a de novo public hearing, which was conducted before Panel A on January 17-18, 2018, in Little Rock. Patricia Hendrix of Little Rock was the hearing court reporter.

1. The hearing panel consisted of regular Panel A members Benton Smith (the hearing chair), Michael Boyd, Danyelle Walker, Mark Martin, and Karolyn Jones, and substitutes Tonya Patrick and Carlton Saffa from Panel C, who sat in place of Panel A members Tanya Owen and Lisa Ballard, who were not available.

2. The Office of Professional Conduct was represented by Stark Ligon. Ms. Caldwell was present and represented by Jeff Rosenzweig.

3. The initial grievance in this matter was received from Ms. Casas-Cordero in April 2010, during the Arkansas custody litigation. Ms. Caldwell was contacted informally by the Office of Professional Conduct (OPC) about the potential conflict and she responded by email on July 25, 2010. The Arkansas litigation was concluded by an appeal that ended with an opinion issued September 5, 2012.

4. The subsequent California phase of the custody litigation between Mira and Casas-Cordero and related litigation by Casas-Cordero and the State of California licensing agency against psychologist Dr. Jennifer Tansey finally concluded on January 23, 2015. The OPC Complaint was then filed on January 28, 2015.

5. At the hearing, Mafalda Casas-Cordero, Debbie Atkinson of the Mountain Home School District staff and the former and long-time Director of Special Education Programs, and Theresa Caldwell testified and exhibits were introduced into evidence. From the hearing record, testimony was adduced as to the following:

6. In December 1994, Antonia Mira (Antonia) was born to Anthony Mira (Anthony) and Mafalda Casas-Cordero (Mafalda), both U.S. citizens. In 1999, Mr. Mira and Ms. Casas-Cordero were divorced in California, and the divorced parents were given joint custody of Antonia. In about 2002, Antonia was diagnosed with special learning disabilities.

7. In early January 2005, Mafalda removed Antonia from the United States to Chile, Mafalda's native country, where they remained until October 2008. The parents disagree over whether Mafalda had court permission or the right to remove Antonia from the United States.

8. In the California divorce case, Anthony obtained sole legal and physical custody of Antonia in April 2005, with Mafalda having no rights of visitation.

9. The custody dispute was then litigated in the courts in Chile under the Hague Convention rule all the way to the Supreme Court of Chile. In November 2005, Mafalda was not found to have improperly removed the daughter from the United States and was not required to return Antonia to the United States.

10. In 2008, Anthony purchased land near Mountain Home, Arkansas, had a residence built there as his retirement home, and then moved to Arkansas.

11. Mafalda determined that Antonia had health and educational needs that could be better addressed if she lived in the United States, contacted Anthony, and made arrangements for Antonia and Mafalda to move to Arkansas in October 2008 and live with Anthony. Antonia was enrolled in a Mountain Home school in November 2008. The Mountain Home School District (MHSD) established an initial Individual Educational Program (IEP) for Antonia on or about November 18, 2008.

12. Thereafter, the parents believed and claimed MHSD failed to provide the services their daughter needed and was entitled to under school law. Staff of MHSD and the parents had numerous meetings regarding Antonia's educational programming through August 2009.

13. On August 18, 2009, Anthony and Mafalda met in Little Rock with attorney Theresa Caldwell for the purpose of retaining Caldwell to pursue a claim for Antonia against the MHSD under the Individuals with Disabilities Education Improvement Act (IDEA), seeking services the District was allegedly not providing to Antonia. On August 21, 2009, Caldwell filed the parents' Due Process Complaint with the Arkansas Department of

Education, as case No. H-10-04, naming both Anthony and Mafalda as plaintiffs and her clients. On September 19, 2009, Ms. Caldwell filed her pre-hearing disclosure document, again naming both parents as her clients. Ms. Atkinson served as the MHSD representative in the Due Process matter and in the IEPs for Antonia..

14. On September 28, 2009, the day the Due Process hearing was to commence, a Settlement Agreement was executed by both Anthony and Mafalda as “Parties” and by Caldwell, as “Attorney for Parents.” Between the date she was employed and the settlement, Ms. Caldwell repeatedly sent e-mail messages about the matter and the case to both Anthony and Mafalda, showing generally equal involvement by both parents in the legal matter. The lead staff person for MHSD testified at the hearing that MHSD staff understood the Due Process case was being pursued by the parents as a team.

15. With the Settlement Agreement dated September 28, 2009, in place for Anthony and Mafalda in Antonia’s case with the MHSD, Caldwell then participated in a process that resulted in a new and more extensive IEP for Antonia dated October 14, 2009. Caldwell did not make it clear to Mafalda that Caldwell’s representation in Antonia’s school matter had ended. Mafalda understood that if the school district did not honor the Settlement Agreement and thereafter failed to provide the required services to Antonia, then Caldwell would come back in for the parents to seek enforcement of the Agreement through a new Due Process complaint.

16. On October 29, 2009, after the Settlement Agreement and the new IEP, Caldwell was emailing Anthony and Mafalda about follow-up issues they were having with MHSD wanting to test Antonia and Mafalda’s discussion of this with Danny Reed of the State

Education Department, indicating Caldwell continued to function as attorney for Anthony and Mafalda on matters related to the education rights and best interests of Antonia.

17. In an e-mail response on July 25, 2010, to Stark Ligon of OPC, Ms. Caldwell denied she ever represented Mafalda as a client in the MHSD Due Process case.

18. In late January 2010, a domestic dispute arose and Anthony had Mafalda removed from the Mira family residence. On January 27, 2010, Anthony, using Mountain Home attorney Ted Sanders (Sanders) as his counsel, filed suit against Mafalda, in Baxter County Circuit No. 2010-44-4, and, relying on a 2005 California order, Anthony requested a restraining order to keep Mafalda from contacting their daughter or him.

19. On February 16, 2010, attorney Jodi Carney (Carney) filed a response for Mafalda, requesting visitation and that the Arkansas temporary restraining order entered against Mafalda on January 28, 2010, be set aside.

20. At the March 2, 2010, hearing, Antonia, age fifteen at the time, testifying for the only time in any Arkansas case, stated, *inter alia*, that with a month to two months of counseling she would be in a position to again resume a relationship with her mother. Anthony testified then, *inter alia*, that he thought Antonia just needed a little breathing room from her mother. Anthony and Antonia never appeared in person in any court proceeding in Arkansas after March 2, 2010.

21. After the March 2 hearing, on March 12, 2010, Judge Webb faxed his decision letter to counsel for Mafalda and Anthony announcing neither parent should remove Antonia from Baxter County, supervised visitation for Mafalda would start no later than April 1, 2010, unsupervised weekly visitation would start by May 1, 2010, so long as Antonia was

comfortable with it, and Anthony's lawyer, Sanders, was to prepare the order, which was approved and filed March 18, 2010. The Order provided that neither parent was to remove Antonia from Arkansas without certain permission or approval.

22. On or about March 17, 2010, Anthony discharged his attorney Sanders in the Baxter County case and employed Caldwell to be his new attorney. On the same day, Caldwell filed her entry of appearance as new counsel for Anthony. Sanders was allowed to withdraw.

23. On March 18, 2010, using Mark Cooper (Cooper) as her counsel, Mafalda filed a new and separate custody action against Anthony as Baxter County Circuit No. DR-2010-135, seeking full custody of Antonia. Anthony was personally served with summons and the new petition for custody on March 19, 2010. March 19, 2010, was also Antonia's last day in school in the MHSD.

24. On or about March 20, 2010, with no notice to Mafalda, and no Arkansas court approval or permission, Anthony took Antonia to the Los Angeles area. Anthony described this action at times as a planned "spring break" trip, but he apparently did not return with Antonia to Arkansas for several years, and then only after she graduated from high school in California.

25. On March 22, 2010, Carney wrote Caldwell, suggesting Caldwell had a conflict of interest in representing Anthony against Mafalda in any custody case involving Antonia, where the fitness of each parent would surely become an issue, after Caldwell had represented both parties in a suit involving substantially the same subject matter, the care and education of their daughter Antonia, only a few months before. Caldwell did not respond in writing to

Carney, nor did Caldwell withdraw as counsel for Anthony.

26. On March 25, 2010, the court's assistant wrote Caldwell and Carney that an emergency hearing in DR-2010-44 would stay on the court's docket for March 30, 2010, and would not be continued. The hearing did not take place. On March 26, 2010, the court entered its order to show cause to Anthony as to why he should not be found in contempt of previous court orders and directed him to appear on March 30, 2010. Anthony did not appear.

27. By letter of March 31, 2010, Caldwell informed the court that she had spoken by telephone that date with Anthony, and he informed her that Antonia and he were in Los Angeles, California, and that Antonia was suicidal and threatening to run away at the thought of being returned to Arkansas and having supervised visitation with her mother.

28. In late March 2010, Anthony listed his Mountain Home residence for sale. In April 2010, Anthony withdrew Antonia from the MHSD, had her school records sent to a school in California, and he enrolled Antonia in high school in San Pedro, CA, on or about April 20, 2010.

29. From late March into July 2010, Anthony, through Caldwell, filed pleadings seeking to dismiss/non-suit Anthony's case, DR-2010-44, arguing that he was unconditionally entitled to do so, and that if he dismissed his case, then any orders issued in the case were voided.

30. Mafalda made continuing efforts to locate Antonia and learn of her circumstances from March 20 into December 2010.

31. On April 7, 2010, Caldwell filed a motion to dismiss for Anthony in DR-2010-135, challenging the jurisdiction of the Arkansas court on custody of Antonia because of the

existing 2005 California custody order in favor of Anthony. The Caldwell motion carefully did not recite or allege that there was any legal action then pending or active in California on the issue of Antonia's custody.

32. By April 13, 2010, Anthony had selected a southern California psychologist, Dr. Jennifer Tansey (Dr. Tansey), to provide some form of professional mental health services for Antonia. Dr. Tansey saw Antonia that date and rendered a written report, a copy of which was provided to Anthony. The Tansey report made its way to Caldwell. As is evident from the contents of this first Tansey report and her February 2012 deposition in a case Mafalda brought against Dr. Tansey in California, Tansey made no effort to contact Mafalda or receive information from her, or to verify information Dr. Tansey received only from Antonia or Anthony before issuing the scathing statements and opinions Dr. Tansey made about Mafalda in her reports.

33. Dr. Tansey provided written reports dated April 13, 2010 (signed), October 4, 2010 (signed), and December 10, 2010 (unsigned), of her contacts with Antonia. Copies of all three Tansey reports provided to Caldwell, who used the reports about Antonia's status and condition in the Arkansas custody case, No. DR-2010-135, as proof of Antonia's current and dire, even alleged suicidal, mental state as to the possibility of any contact with her mother and to delay proceedings in Arkansas, even after Judge Webb directed that Antonia be returned to Arkansas to testify in proceedings set in the Fall months of 2010.

34. In a telephone conference on May 26, 2010, Judge Webb directly asked Caldwell if there was any pending legal action in California related to custody of Antonia, Caldwell responded that she needed to check on that. She apparently put off checking and reporting to

the Arkansas court on a crucial issue for over four months until Caldwell filed pleadings on October 7, 2010, giving notice the old divorce/custody case in California had been very recently reopened by Anthony.

35. At a hearing on June 22, 2010, Caldwell argued that the California court needed to hear the custody issues, and the California court had jurisdiction. Caldwell did not inform the Arkansas court if there had been any effort by her client Anthony, by now back in California since about March 20, 2010, to reopen any old case or file any new custody case in California. Caldwell appeared to argue that Mafalda must first go to California and file suit there seeking custody, and only if the California court declined to accept the matter could the Arkansas court exercise jurisdiction and deal with the custody claims. Cooper rebutted Caldwell's assertions about jurisdiction.

36. In transcripts and statements thereafter, Judge Webb appeared to express concerns about the statements of fact, law, or procedure on jurisdiction by Caldwell, as shown by (a) his Order dated August 30, 2010, finding Arkansas was the state of residence for Anthony and Antonia as of March 2010; (b) the transcript of hearing on October 5, 2010, where the court expected Anthony and the California psychologist to be present per court order, but was met by Caldwell's production of the October 4, 2010, second Tansey letter; (c) the Arkansas court letter setting a hearing November 23, 2010, and stating the testimony of the minor child and her psychologist would be heard; (d) the transcript of a November 16, 2010, conference call, with the court stating it understood Anthony, Antonia, and the California psychologist would be present to testify at the November 23, 2010, hearing but with Ms. Caldwell being non-committal on that subject; (e) the Order of November 22, 2010, stating the Arkansas court

may have jurisdiction to modify custody but Arkansas might be an inconvenient forum; (f) the transcript of the December 16, 2010, conference call between the Arkansas and California judges, where the California judge acknowledged Arkansas had jurisdiction and the discussion was about inconvenient forum, because Anthony was refusing to return himself and Antonia to Arkansas for the court proceeding there; and (g) the January 27, 2011, Order in which Judge Webb again expressed the history of being unable to address the merits of the custody case due to the failure of Anthony, Antonia, and the California psychologist to appear in the Arkansas court.

37. On August 30, 2010, the Court filed its Order in DR-2010-44-4 [actually in DR-2010-135], reciting that Mr. Mira took the daughter and moved to California on or about March 20, 2010, continues to live there, has chosen to sell his Mountain Home residence, with no intention of returning to Arkansas, according to a sworn declaration from Mafalda. The Court stated that if parental kidnaping has occurred in the context of these facts, it is the Respondent [Anthony in DR-2010-135] who had taken the child and fled to California to avoid the jurisdiction of the Arkansas Courts where his former spouse and child reside.

38. On September 8, 2010, the Court entered its Order Nunc Pro Tunc, reciting certain facts and history in the matter from early 2010 to the date of the Order. In particular, Judge Webb found that Anthony was served on March 19, 2010, with summons and Ms. Casas-Cordero's Petition for Change of Child Custody, and Anthony departed Arkansas with the child the next day for California, which he then claimed to be the residence for both. Mr. Mira and the child were ordered to appear in the Arkansas court on October 5, 2010.

39. In mid-2010, the Baxter County Sheriff's Office issued a "Wanted" advisory for

Anthony for his alleged felony interference with child visitation. Anthony was not returned to Arkansas on any Arkansas warrant.

40. In a Response filed for Anthony on or about September 14, 2010, Caldwell invoked the jurisdiction of the California court in the custody matter, but there was at that time no California case active or open regarding the custody of Antonia. From late March 2010, no legal action was taken by or for Anthony in California, by means of filing a new case or reopening an old case in California, until about October 5, 2010, when his lawyer reopened the former Mira divorce case.

41. After telephonic consultation with the California court, on December 16, 2010, even though the California court concurred with the Arkansas court's determination that Arkansas had jurisdiction to determine custody in this matter, the Arkansas court decided to decline to exercise that jurisdiction, finding the California court is a more convenient and appropriate forum. The parties were directed to pursue the child custody matter in California.

42. The reopened Mira vs. Casas-Cordero divorce case in California, No. ND033670, continued from early 2011 with proceedings until a few months before Antonia became emancipated in December 2012 upon attaining her eighteenth birth date.

43. During the California cases in 2011-2012, the party-stipulated and court-appointed reunification therapist, psychologist Dr. Leslie Drozd, met with Antonia, Anthony, and Mafalda and rendered her report in April 2012. In her report, Dr. Drozd addressed some of the Tansey report issues. Dr. Drozd reported that Anthony basically told her he was going to "run out the clock" on the case there, as Antonia would turn eighteen in a few months in December 2012 and there would be nothing any court could do thereafter.

44. On December 13, 2010, Mafalda filed a consumer complaint with the California Board of Psychology against Dr. Tansey, basically alleging professional negligence by Tansey in her conduct in providing three reports that were used in the Arkansas case in 2010. On August 13, 2012, the California Board of Psychology filed a formal Accusation against Dr. Tansey, based on Mafalda's December 2010 complaint, charging Dr. Tansey with gross negligence in submitting her three letters to the custodial parent expressing her opinions against a non-custodial parent, letters which the custodial parent (Anthony Mira) then provided to Ms. Caldwell, who used them in the Arkansas custody case.

45. The professional complaint against Dr. Tansey was resolved by the Board Decision and Order effective January 23, 2015, by which Dr. Tansey's license was revoked. The revocation was stayed for three years on several conditions, which included a practice monitor.

46. On December 9, 2011, Mafalda filed a *pro se* civil suit against Dr. Tansey in California, seeking money damages for Tansey's conduct in making false statements about Mafalda in Tansey's written reports on her work with Antonia. Dr. Tansey was deposed in California on February 17, 2012, in the Mira custody case. In mid-July 2012, Mafalda's civil case against Dr. Tansey was settled, with Dr. Tansey agreeing to cease all care and treatment of Antonia and to have no contact thereafter with Antonia, Anthony, or Mafalda.

47. On February 28, 2011, Mafalda filed a notice of appeal from the Arkansas court's order of January 27, 2011, declining to take jurisdiction of the Antonia custody case. Little Rock attorney Richard Worsham represented Mafalda in the appeal. Caldwell represented Anthony in the appeal. On September 5, 2012, about three months before Antonia's

eighteenth birthday, the Arkansas Court of Appeals issued its opinion affirming the trial court.

48. The Arkansas appellate opinion stated that (a) the Chilean court found Mafalda absconded with Antonia to Chile, but the child herself said [in the 2005 Chilean proceedings] she did not love appellee [Anthony], was afraid of him, and wanted to stay in Chile; (b) in 2008 appellant [Mafalda] returned to the United States with the child, established a household with appellee in Baxter County, Arkansas, where the parties and child resided together until January 2010, and there appears to be no dispute that all three resided in Arkansas from October 2008, until about March 20, 2010; and (c) Appellee, who had maintained a residence and paid taxes in California while residing in Arkansas, subsequently took the child to California where concurrent custody proceedings were instituted in Los Angeles, stating a parent who maintains a functional residence available for his use at all times in a state remains a resident of that state. Yet, in his later November 2011 deposition, Anthony stated he had no place of residence, property, apartment, or a home in California after he moved to Arkansas in 2008. The opinion further prominently mentioned Dr. Tansey's written reports. The opinion stated the Arkansas court clearly had jurisdiction over this child custody dispute, based on actual residency in Arkansas for over one year, but the real issue then became one of the more "convenient forum" for the custody dispute to be heard.

49. Ms. Caldwell, by inference or omission, allowed the Arkansas court to believe, from at least June - October 2010 that there was a pending and active custody case in California involving Antonia, when none was active or reopened until about October 5, 2010, a crucial time period when the Arkansas court was actively seeking the return of Antonia and Anthony. And was directing the testimony in the Arkansas case of Antonia, Anthony, and Dr.

Tansey.

50. After mid-March 2010 when Anthony suddenly removed Antonia from Arkansas, until December 2017, Mafalda had only three very brief encounters with her daughter, two in California and one in Arkansas after Anthony and Antonia relocated back to Arkansas in or after 2014.

51. At the hearing, among other matters, Caldwell testified that:

(a) she had long ago destroyed or given away her file on the Due Process case and the custody case, but she did maintain her extensive emails from that period. Caldwell acknowledged OPC did put her on notice of the existence of Mafalda's grievance by July 25, 2010, and never informed her the file had been closed, and

(b) Anthony contacted her in mid-March 2010, expressed his dissatisfaction with Sanders as his lawyer in the civil case in Baxter County, and asked Caldwell to become his attorney in the case, replacing Sanders.

(c) After the Mira Due Process case, when she was dealing with divorced parents of a child, she had both parents to sign her representation agreements.

52. At the hearing, among other matters, Atkinson testified that:

(a) She was the Director of Special Education for the MHSD for sixteen years before transferring to another position last year,

(b) The Mira Due Process was the first one against MHSD and the MHSD was "green" in this area of the law,

(c) Anthony and Mafalda appeared to be equally involved in their daughter's education and the Due Process, and she and MHSD always considered both parents as

“parties” in the Due Process case,

(d) She thought the MHSD had a good case in Mira and could prevail at a full hearing,

(e) MHSD made an economic decision to settle the Mira Due Process, and

(f) MHSD did a good job for Antonia while she was student there, and subsequent records show her transfer to California in middle of the 2010 Spring term indicate Antonia did not continue to receive services and benefits she was receiving and would receive if she had remained in MHSD.

53. At the hearing, among other matters, Mafalda testified that:

(a) From the initial contact and first meeting, she was involved in almost every contact the parents had with Caldwell about Antonia’s school situation in the MHSD,

(b) She considered herself as much a Caldwell client as did Anthony, and especially based on her designation as a client in the many pleadings prepared and filed by Caldwell in the Due Process case,

(c) After the Due Process settlement. Caldwell continued to represent the family, in both the new IEP approved October 14, 2010, and in later communications about interpretation and enforcement of the IEP terms, and Caldwell did not inform the parents, to Mafalda’s knowledge, that Caldwell was no longer their attorney in the Antonia-MHSD school matter, and

(d) In 2010, Mafalda made attempts to contact Dr. Tansey to provide her with Mafalda’s information and documentation about Antonia and the family history, but Mafalda was rebuffed by Tansey.

54. In compliance with Section 11.D of the Procedures, after the hearing OPC prepared a proposed order, including findings, and provided it to Respondent's counsel, who has had the opportunity to offer objections and alternatives to the proposed order language, and which, if offered, have been considered and decided upon by the hearing chair.

55. Either party shall have the right to appeal this final Order to the Arkansas Supreme Court by filing a notice of appeal with the clerk at the Office of Professional Conduct within thirty (30) calendar days after the filing of this Panel final written order, as provided in Section 12 of the Procedures governing appeals and cross-appeals.

Upon consideration of the formal complaint and attached exhibit materials, the response to it, evidence produced at the hearing, and other matters before it, and the Arkansas Rules of Professional Conduct, Panel A of the Arkansas Supreme Court Committee on Professional Conduct finds:

A. The Complaint alleged that the conduct of Theresa L. Caldwell violated Rule 1.1 in that Caldwell failed to adequately investigate the qualifications and actual California state licensure requirements and restrictions on licensees such as Dr. Jennifer Tansey before presenting Dr. Tansey's April, October and December 2010, written reports to the Arkansas court in support of her client Anthony's position as to Antonia's mental health status and substantial risk of harm from contact with Antonia's mother Mafalda, reports on which the Arkansas court relied in not finding Anthony in contempt of the court's orders to return Antonia and Anthony to Arkansas for court appearances in 2010. With her agreement, Dr. Tansey's license was revoked in a state board disciplinary proceeding that concluded in January 2015, on the very basis of Mafalda's initial consumer complaint filed against Dr.

Tansey and arising out of Dr. Tansey's conduct in the Antonia custody matter. In 2015 Caldwell's website makes much of her then 20 years of representing parents, and their children with disabilities, in due process hearings against school districts, along with her prior experience as a secondary school teacher. Caldwell's manner of use of the Tansey reports in the Arkansas case fell below the standard of skill and legal knowledge required of an attorney. Arkansas Rule 1.1 requires that a lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. **By a unanimous vote, Panel A found this charge was not proven.**

B. The Complaint alleged that the conduct of Theresa L. Caldwell violated Rule 1.7(a) in that Caldwell represented both Anthony and Mafalda in the IEP/IDEA proceeding in 2009, and continued to represent them thereafter in that matter, or conducted or held herself out to Mafalda and Anthony in such a manner that Mafalda reasonably believed Caldwell continued to represent both parents after the September 28, 2009, Settlement Agreement they both executed, Caldwell then failed to comply with the requirements of AR Rule 1.7(a), where a conflict existed between her two current clients from mid-March 2010 forward in the custody case, as was pointed out to Caldwell in the Carney "conflict" letter of March 22, 2010, because there is no evidence Caldwell ever obtained any written informed consent to and waiver of her conflict from Mafalda in a situation where clearly Caldwell's representation of Anthony was directly adverse to Mafalda. Arkansas Rule 1.7(a) requires that, except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if: (1) the representation

of one client will be directly adverse to another client; or (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer, (b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if: (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client; (2) the representation is not prohibited by law; (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and (4) each affected client gives informed consent, confirmed in writing. **By a unanimous vote, Panel A found this charge was not proven.**

C.1. The Complaint alleged that the conduct of Theresa L. Caldwell violated Rule 1.9(a) in that after representing both Anthony Mira and Mafalda Casas-Cordero in 2009 in an IEP/IDEA lawsuit against the Mountain Home School District for the benefit of their daughter Antonia Mira, which case settled in September 2009, Ms. Caldwell then represented Anthony in his new suit filed January 27, 2010, No. DR-2010-44-4, against Mafalda, in which the subject matter was Mafalda's access to and visitation with their daughter Antonia. Ms. Caldwell represented Anthony Mira in his new lawsuit in a substantially related matter, the best interests of Antonia, in which Anthony's interests were materially adverse to the interests of Caldwell's former client Mafalda, who did not give informed consent, confirmed in writing, for her former attorney, Caldwell, to now represent Anthony against Mafalda in his lawsuit involving Antonia. Arkansas Rule 1.9(a) requires that a lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a

substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing. **By a unanimous vote, Panel A found this charge was proven.**

C.2. The Complaint alleged that the conduct of Theresa L. Caldwell violated Rule 1.9(a) in that, in the alternative to Charge B (violation of AR Rule 1.7(a)), she represented both Anthony Mira and Mafalda Casas-Cordero in 2009 in an IEP/IDEA lawsuit for the benefit of their daughter Antonia Mira, which settled in September 2009, and then took over the defense of Anthony in mid-March 2010, in a new lawsuit concerning custody of Antonia, No. DR-2010-135-4, filed March 18, 2010, by Mafalda, in which Anthony's interests were materially adverse to the interests of Caldwell's former client, Mafalda, who did not give informed consent, confirmed in writing, for her former attorney, Caldwell, to then represent Anthony against Mafalda in her lawsuit involving Antonia. Arkansas Rule 1.9(a) requires that a lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing. **By a unanimous vote, Panel A found this charge was proven.**

D. The Complaint alleged that the conduct of Theresa L. Caldwell violated Rule 3.3(a) in that in the transcript of a phone conference of counsel and the judge on May 26, 2010, the court directly asked Ms. Caldwell if there was something pending in California that was in a court out there. Caldwell replied that she thought there was, but she would need to check on

that, while opposing counsel Carney stated there was not. The available evidence indicates Caldwell's client Anthony did not actually go back into court in California with any filing related to custody of Antonia until about October 5, 2010, based on an affidavit executed on October 4, 2010, by Anthony. The transcript of proceedings of October 5, 2010, reveals that the Arkansas judge apparently had no information as of that date that anything was being filed that same date in California to reopen the old Mira divorce case there as Anthony's court vehicle to get jurisdiction of the custody case from Arkansas to California. From May 26, 2010, until after October 5, 2010, Caldwell failed to correct a false statement of material fact made to the Arkansas trial judge on concerning the true status of any court action pending in California on custody of Antonia that could compete with the Arkansas case for jurisdiction of the custody issue, a crucial time frame within which the Arkansas court was attempting to deal with the custody issue and when Arkansas court jurisdiction was clearly proper. Arkansas Rule 3.3(a)(1) requires that a lawyer shall not knowingly make a false statement of fact or law to a tribunal; or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer. **By a 4-3 vote, Panel A found this charge was proven. Martin, Patrick, Smith, and Walker voted proven. Boyd, Jones, and Saffa voted not proven.**

E. The Complaint alleged that the conduct of Theresa L. Caldwell violated Rule 3.4(c) in two instances: First, Ms. Caldwell failed to produce her client's minor daughter, Antonia Mira, in court in Arkansas for a hearing and for Antonia's testimony on October 5, 2010, as lawfully ordered by the Court on August 30, 2010 and on September 8, 2010, in its Order Nunc Pro Tunc. Second, Ms. Caldwell failed to produce any of her client Anthony, his minor daughter Antonia, or the California psychologist Dr. Tansey in court in Arkansas for a hearing

and for their testimony on November 23, 2010, as ordered and directed by the Court at a proceeding on October 5, 2010, confirmed by the court's letter to counsel of October 20, 2010, and discussed and apparently agreed to by all involved in a telephone conference on November 16, 2010. Arkansas Rule 3.4(c) requires that a lawyer shall not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists. **By a unanimous vote, Panel A found this charge was not proven.**

F. The Complaint alleged that the conduct of Theresa L. Caldwell violated Rule 8.4(c) in two instances: First, in the transcript of a phone conference of counsel and the judge on May 26, 2010, the court directly asked Ms. Caldwell if there was something pending in California that was in front of a court out there. Caldwell replied that she thought there was, but she would need to check on that, while opposing counsel Carney stated there was none. The available evidence indicates nothing was filed in California which related to custody of Antonia until about October 5, 2010. From May 26, 2010, until after October 5, 2010, Caldwell failed to correct a false statement of material fact made to the Arkansas trial judge on May 26, 2010, concerning the true status of any court action pending in California on custody of Antonia.

Second, at the March 2, 2010, hearing in DR-2010-44, where Caldwell was not counsel for Anthony Mira, Anthony testified that short term supervised visitation by Mafalda with Antonia in the near future would be appropriate; Antonia testified that supervised visitation with her mother would be acceptable after she had one or two months counseling; Mafalda testified (with assistance from an interpreter) that she had instructed her Arkansas counsel to

file a petition in Arkansas to address the custody issues involving Antonia and seek to modify the California order; the Arkansas court responded with a letter decision on March 12, 2010, finding that counsel (Sanders and Carney) had previously cooperated in an effort to restart Mafalda's visitation with Antonia; that no later than April 1, 2010, the court expected supervised visitation to resume; and that no later than May 1, 2010, the court anticipated that regular weekly unsupervised visitation would resume so long as Antonia was comfortable with that. Anthony's counsel Sanders was directed to draft the Order and did, with the apparent authority of his client Anthony to do so, which Order the Court signed and faxed to counsel on March 16 and had entered on March 18, 2010. By the afternoon of March 17, 2010, Anthony had fired Sanders, and employed Caldwell as his new counsel. On March 24, 2010, without the benefit of the transcript of the March 2, 2010, hearing, Caldwell filed a Motion to Correct Order or Alternatively, Motion for New Trial, arguing the March 18 Order conflicted with the court's handwritten notations in the docket sheet from the hearing on March 2, 2010. Despite not being present at the March 2 hearing or having the hearing transcript and not knowing the statements and agreements that had been assented to by Anthony and Antonia in open court, Caldwell sought to withdraw her client Anthony's courtroom assent to resumption of some form of visitation between Antonia and Mafalda in the near future after March 2, 2010. Arkansas Rule 8.4(c) provides that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation. **By unanimous votes on each, Panel A found each of the two counts of the Rule 8.4(c) charges was not proven.**

G. The Complaint alleged that the conduct of Theresa L. Caldwell violated Rule 8.4(d)

in four instances: First, Caldwell denied the Arkansas court access to a witness it requested, directed, and ordered to be present, defeating the agreed and conceded jurisdiction of the Arkansas court and forcing Casas-Cordero to go to California to attempt to litigate a custody case that should and could have been litigated in the jurisdiction of the Arkansas court.

Second, by her repeated use of the three Dr. Tansey reports in 2010 about the dire mental status of Antonia and the very negative reports on Casas-Cordero, whom Tansey never met and communicated with, or verified the accuracy of, Caldwell improperly and repeatedly interfered with the ability of the Arkansas court to make decisions based on accurate information about Antonia and Mafalda, and caused the Arkansas court to decline its agreed jurisdiction on the basis of California being the more convenient forum for hearing the merits to the custody case and the availability there of key witnesses.

Third, at the March 2, 2010, hearing in DR-2010-44, prior to Caldwell's entry of appearance in the case for Anthony, Antonia, Anthony and Mafalda testified about modification of the California order. Anthony testified that short term supervised visitation by Mafalda with Antonia in the near future would be appropriate; Antonia testified that supervised visitation with her mother would be acceptable after she had one or two months counseling; and Mafalda testified (with assistance from an interpreter) that she had instructed her Arkansas counsel to file a petition in Arkansas to address the custody issues involving Antonia and seek to modify the California order. The Arkansas court responded with a letter decision on March 12, 2010, finding that counsel (Sanders and Carney) had previously cooperated in an effort to restart Mafalda's visitation with Antonia; that no later than April 1, 2010, the court expected supervised visitation to resume; and that no later than May 1, 2010,

the court anticipated that regular weekly unsupervised visitation would resume so long as Antonia was comfortable with that. Anthony's counsel Sanders was directed to draft the Order and did, with the apparent authority of his client Anthony to do so. The Order was signed by the Court signed on March 16 and entered on March 18, 2010. By the afternoon of March 17, 2010, Anthony had fired Sanders and employed Caldwell as his new counsel. Without the benefit of the transcript of the March 2, 2010, hearing, Caldwell filed a Motion to Correct Order or Alternatively, Motion for New Trial, arguing the March 18 Order conflicted with the court's handwritten notations in the docket sheet from the hearing on March 2, 2010. Despite not being present at the March 2 hearing, not having the hearing transcript, and not knowing the statements and agreements that had been assented to by Anthony and Antonia in open court, Caldwell sought to withdraw her client Anthony's courtroom assent to resumption of some form of visitation between Antonia and Mafalda in the near future.

Fourth, Caldwell's failure to adequately investigate the qualifications and actual California state licensure status of Dr. Jennifer Tansey before presenting Dr. Tansey's three 2010 written reports to the Arkansas court in support of her client's position as to Antonia's mental health status and substantial risk of harm from contact with Antonia's mother Mafalda, resulted in the Arkansas court not finding Anthony in contempt of the court's orders to return Antonia and Anthony to Arkansas for court appearances in 2010. Dr. Tansey's license was revoked in a state board disciplinary proceeding that concluded in January 2015, on the very basis of Mafalda's initial consumer complaint and arising out of Dr. Tansey's conduct in the Antonia custody matter. With her experience, in 2010 Caldwell should have known the limits to which certain types of mental health professionals are permitted by their state laws to go to

in providing opinions in certain types of court proceedings, and how attorneys may properly use such opinions in court proceedings, and she failed to do so in DR-2010-135 in 2010. Arkansas Rule 8.4(d) provides that it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice. **By unanimous votes on each, Panel A found each of the four counts of the Rule 8.4(d) charge was not proven.**

WHEREFORE, it is the **unanimous decision and order** of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel A, that Respondent Theresa L. Caldwell, Arkansas Bar ID# 91163, violated Rules 1.9(a) and 3.3(a), and she hereby is **CAUTIONED** for her conduct in this matter and assessed and order to pay costs totaling \$2,110.63. This sanction was based, in part, on the Respondent attorney's lack of any prior disciplinary record. The costs assessed herein shall be payable by cashier's check or money order payable to the "Clerk, Arkansas Supreme Court" delivered to the Office of Professional Conduct with thirty (30) days of the date this Findings and Order is filed of record with the Clerk of the Arkansas Supreme Court.

ARKANSAS SUPREME COURT COMMITTEE
ON PROFESSIONAL CONDUCT - PANEL A

By: 

T. Benton Smith, Jr., Chair, Panel A

Date: 3/2/18

SV
Prepared by Stark Ligon, ABN 75077