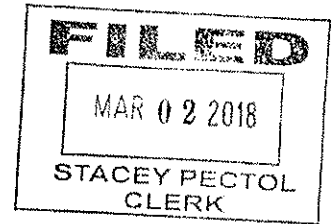


BEFORE THE ARKANSAS SUPREME COURT  
COMMITTEE ON PROFESSIONAL CONDUCT  
PANEL B



IN RE: **THERESA L. CALDWELL**  
Arkansas Bar ID # 91163  
CPC Docket No. 2016-058 (Hamilton)

**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 David Hamilton of New Blaine, Arkansas in August 2007. The information is related to the representation of Hamilton and various of his business entities in 2005-2007 by Respondent Theresa L. Caldwell, an attorney practicing primarily in Pulaski County, Arkansas. On April 15, 2016, a formal Complaint with affidavits from Mr. Hamilton 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 18-19, 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 Hamilton in August 2007, during

the Arkansas civil litigation between Caldwell and Hamilton. Ms. Caldwell was contacted informally by the Office of Professional Conduct (OPC) about the matter on August 20, 2007, and she responded informally by email shortly thereafter. The Arkansas litigation between them was concluded by an appeal that ended in December 2010 and action to remove a cloud on title to a farm in early 2015.

4. At the hearing, David Hamilton, Little Rock attorneys Sharon Streett and Jason Stuart, and Theresa Caldwell testified and exhibits were introduced into evidence. From the hearing record, testimony was adduced as to the following:

5. In the mid-1990s, David Hamilton (Hamilton), then a law student, worked in Little Rock as a law clerk in the law practice of Sharon Streett, in which Caldwell was affiliated. Hamilton did not finish law school.

6. In the late 1990s, Hamilton pursued a business opportunity in the supply of small animals and related supplies to companies like PetsMart and PetCo which were beginning on-line business, and needed supplies, hubs, warehouses, and trucking services. Hamilton formed MidSouth Distributors of Arkansas, LLC (hereafter "MSS"), in October 2002 as his business entity for this effort. Also in late 2002, Hamilton had HAMCO Realty, LLC formed as the entity to hold any real estate he acquired for his business ventures.

7. By 2004, Hamilton's pet supply business around the country was growing so fast that he was living well in Little Rock and also purchased a small 1975 model corporate jet so he could more efficiently oversee his businesses and customers.

8. In 2005, Hamilton almost had MSS sold for in excess of \$14,000,000. Then a USDA quarantine issue arose over an infected animal. He disclosed the quarantine to the potential MSS

buyer and that stopped the purchase. MSS's business prospects were dramatically and negatively impacted. MSS lost the PetsMart and PetCo accounts and significant revenue and basically became insolvent.

9. What will here be called the "Teeter group" wanted to pick up where Hamilton had dropped out of the pet supply business and approached him to help them. The Teeter group discussed either restarting MSS or using some other corporate entity such as Pet Express or CT Pets. The Teeter group was not able to make a success of the new business.

10. In late 2003, as an investment Hamilton purchased a 458 acre farm in Lonoke County south of Scott, Arkansas, and near the Pulaski-Lonoke County line, from the Sims Trust, planning to improve the land with a waste treatment facility. He financed \$481,600 of the \$689,000 purchase price with a mortgage to AgHeritage Farm Credit ("AGH"), and the Sims Trust financed the some of the balance with a second mortgage.

11. In early 2004, after an MSS employee was arrested and jailed, Hamilton became aware of the critical lack of jail space in Lonoke County, the State of Arkansas, and nationally. He began investigating private correctional institution opportunities and realized his farm near Little Rock was ideally located for such a facility. By early 2005, as a result of his desire to focus on developing a new private prison entity, to be called Central Arkansas Detention Center ("CARDK"), Hamilton decided to try to sell MSS, signing a sales agreement with Muradian Business Opportunities ("Muradian"), a business broker.

12. During late 2005-April 2007, Caldwell became involved in representation of Hamilton, his wife, and their various business entities in a series of lawsuits in Pulaski and Lonoke Counties. Many of the lawsuits involved debts from the collapse of MSS.

13. In August 2005, Hamilton and Caldwell made an oral agreement for Caldwell to become general counsel for the new prison project (CARD C), with her \$125,000 per year compensation package contingent on the new prison project obtaining construction financing.

14. On September 21, 2005, Caldwell wrote Hamilton an “opinion” letter regarding a PetsMart/MSS/Bank of England matter involving about \$300,000 in checks, evidencing their attorney-client relationship.

15. On September 27, 2005, Caldwell filed to incorporate Central Arkansas Detention Center, LLC (“CARD C”) for Hamilton. This new LLC was to be the management company for the new private prison venture.

16. On September 28, 2005, Caldwell filed to incorporate DFH/PJH Enterprises, LLC (“DFH/PJH”) for Hamilton, using the initials of Hamilton and his wife. This new LLC was to hold title to the 458 acre farm until the new prison venture was financed and operational, and the farm would then be transferred to a newer LLC which would be owned by Hamilton and the major investor(s).

17. Hamilton planned to deed his 458 acre farm in Lonoke County to the new DFH/PJH Enterprises. On March 1, 2006, Little Rock attorney Jason Stuart, then also advising Hamilton, emailed Caldwell a template form to use for a limited warranty deed where the grantee (buyer) was an LLC, and the transfer would be subject to an existing mortgage. It was Hamilton’s understanding from Stuart that Caldwell asked Stuart for such a deed form, as she was not sure what form of legal language to use for the proposed farm land transfer.

18. Hamilton’s business plan was that the new prison project entity would obtain the Lonoke County farm land from DFH/PJH, build a prison there, and then operate the prison under

a management agreement with CARDC, LLC. The payments from the new prison entity would enable the Hamiltons/DFH/PJH to repay the original purchase loan debts and mortgages on the land.

19. Caldwell was to start on the CARDC payroll on October 1, 2005. That start date was later moved to February 1, 2006, due to Hamilton's inability to obtaining financing for the CARDC project.

20. Around January 1, 2006, Caldwell informed Hamilton she had started winding down her law practice. CARDC was not able to start Caldwell on its payroll on February 1, 2006, due to CARDC not yet being funded and Hamilton's financial issues.

21. According to the Matt Teeter intervention pleadings filed October 22, 2007, and the later separate Teeter civil suit against Hamilton filed February 1, 2008, Teeter obtained a bank loan for \$100,000, secured by a mortgage on Hamilton's Little Rock residence, and the proceeds were directly funded into a CARDC checking account. The alleged purpose of these funds was to purchase Teeter a 10% ownership interest in the CARDC venture startup.

22. Hamilton stated that Matt Teeter, with whom Hamilton had worked on the Mid South pet business sale and later on a separate 2005-2006 start-up, Pet Express, learned of the private prison venture and approached Hamilton in early 2006, about getting a piece of that new venture. They discussed the financial situation of the CARDC start-up, the need for funding, and the existence of a second mortgage to Sims Trust which needed to be paid off. Around March 7, 2006, Teeter borrowed the \$100,000 from Centennial Bank of Little Rock. In effect, Hamilton enabled Teeter to borrow this money for Teeter and Hamilton to partner in Pet Express/CT Pets, agreeing Teeter would later also have a small equity position in the CARDC project. Teeter

informed Hamilton that he was selling out his interest in a cell phone business to his partners, so when the time came Teeter would be in a financial position to help Hamilton with the second mortgage to Sims Trust on the farm. On April 5, 2006, Caldwell is listed as having filed to incorporate CT Pets, LLC, for which Teeter is listed as the registered agent.

23. According to the Teeter intervention pleadings filed in October 2007, and the later separate Teeter civil suit against Hamilton, on or about May 19, 2006, Teeter caused two cashier's checks totaling \$167,458 to be delivered to Caldwell for Hamilton and CARDC, to be used to pay off the Sims Trust mortgage on the 458 acres. Caldwell deposited the Teeter funds to pay off Sims into her client trust account. On or about May 25, 2006, using the funds Caldwell received from Teeter, she obtained a bank cashier's check for \$146,109.39 to Sims and delivered it as full payment of the Sims' mortgage, which was released on or about May 30, 2006.

24. The balance of \$21,348.61 was not returned to Teeter, but was used by either Caldwell or Hamilton or both for other purposes. Hamilton claims Caldwell used some of these funds for her personal purposes. Caldwell claims Hamilton approved her using \$3,000 to pay her law office rent.

25. In her April 24, 2008, deposition, Caldwell stated she was doing work for Teeter, and maybe also Hamilton, on an out-of-state business transaction, maybe in New York, and stated Hamilton was paying Caldwell to do the work for Teeter, whom she called her client.

26. On May 26, 2006, the Sims lawsuit, No. CV-2006-202, against Hamilton and his wife and AGH was dismissed after Hamilton paid Sims in full on its second note on the 458 acre tract.

27. On August 30, 2006, the deed from Hamilton and wife to DFH/PJH Enterprises for the 458 acre farm was actually recorded in Lonoke County. The deed shows to have been signed

by them on September 28, 2005. It shows to have been witnessed by Kyle and Heath Harmon, both with Fayetteville addresses and both sons of Theresa Caldwell, and acknowledged before a Washington County notary purportedly on September 28, 2005. In her April 2008 deposition and at this hearing, Caldwell admitted she had the deed signed by her two sons as witnesses and notarized after she received the LLC deed from Stuart in March 2006, with the deed being back-dated to September 28, 2005, the date she was supposed to have gotten it executed and recorded.

28. Hamilton was unable to close a sale on the 458 acre property on October 31, 2006. As a result, he was not able to pay Caldwell for her claimed services and expenses or put her on the CARDC payroll as general counsel.

29. On November 3, 2006, Caldwell wrote Hamilton an "opinion" letter regarding a CARDC prison matter, evidencing their continuing attorney-client relationship.

30. On November 30, 2006, AGH filed a foreclosure complaint, as Lonoke County Circuit Court case No. CV-2006-558, against Hamilton and wife on the 458 acre farm. The case docket shows this suit was dismissed without prejudice on December 3, 2010, which occurred when AGH was paid in full.

31. In March 2007, a private investor was negotiating to pay \$6,000,000 for a 25% interest in the CARDC prison project. Communications between Caldwell and Hamilton about the investor and Caldwell's efforts to insert herself into the negotiations are set out in detail in Hamilton's Affidavit in the Complaint.

32. On March 6, 2007, Hamilton, for CARDC, approved a letter to Caldwell prepared and signed, using Hamilton's electronic signature, confirming she is owed \$140,000 from CARDC, with CARDC financing anticipated to fund around March 16, 2007.

33. On March 7, 2007, Caldwell wrote Hamilton a letter regarding CARDC prison issues, evidencing their continuing attorney-client relationship.

34. Caldwell knew all about the Hamilton's personal and business finances through her legal representation of Hamilton, his wife, and their companies.

35. Caldwell had a small, rented law office at 5208 Kavanagh in the "Heights" area of northwestern Little Rock, consisting of a reception area, one office, and a library or conference room, with a rent of about \$2,000 per month. Caldwell insisted CARDC should have a corporate office, that it could be in her law office space, and CARDC should pay her rent for the space. In its early formative stages, Hamilton could see no use for paying for a fixed office for CARDC, which had no income, believing he could operate CARDC with a cell phone and laptop and from his large home in west Little Rock.

36. On April 3, 2007, Hamilton met with Caldwell at her office to try to resolve their issues. Caldwell insisted he sign a promissory note to her for \$1,000,000 or sign over to Caldwell one-half of his new "prison" business venture (CARDC), which was being discussed in terms of being valued then in the \$9-10,000,000 overall range. Hamilton declined.

37. Hamilton later learned Caldwell taped their meeting on April 3, 2007. After Caldwell produced the audio tape, OPC obtained a copy from Jason Stuart and had it transcribed by a court reporter into 145 pages. The tape transcript covers an initial telephone conference between Hamilton and Caldwell on one end and investor representatives on the other, discussing details of the prison project contracts and financing. The transcript then covers a conversation between only Caldwell and Hamilton discussing their financial issues.

38. On April 4, 2007, Caldwell emailed Hamilton and threatened to withdraw as counsel



for him and his businesses in a number of pending matters and lawsuits if he did not come to her office and meet with her about their differences at 4:30 pm that same day. She followed up with emails each of the next two days.

39. Hamilton turned to Jason Stuart for legal advice. On April 12, 2007, Stuart formed Private Detention Investments, LLC for Hamilton's father William Hamilton, to be used as a business entity to protect the Hamiltons and allow William Hamilton, a retired Arkansas sheriff, to attempt to pursue the private prison project if he wished to do so.

40. On or about April 13, 2007, Hamilton met with Caldwell at her office and they were joined by mutual attorney friends Julian and Sharon Streett for what was to be an informal resolution effort between Caldwell and Hamilton. Caldwell again secretly taped the meeting and later provided Jason Stuart a copy of the audio recording, which he delivered to Stark Ligon in 2008, who had it transcribed by a court reporter.

41. David Hamilton's version of what took place at the April 13, 2007, meeting and the following day is set out in detail in his Affidavit and his hearing testimony. Sharon Streett's recollection of the April 13, 2007, meeting is set out in her Affidavit and hearing testimony. Julian Streett passed away in 2013.

42. In this later tape-transcription process, Hamilton first learned Caldwell had taped telephone conferences with his business contacts.

43. On April 16, 2007, Caldwell again emailed Hamilton stating she was about to withdraw from six (6), or more, of his pending cases and other actions she would take or not take that could have serious adverse consequences for his interests, given the timing.

44. On April 16, 2007, Caldwell wrote Judge Whiteaker advising him she was

withdrawing as Hamilton's counsel in a Bank of England case that had been successfully mediated just two weeks earlier and she would not appear to sign off on the settlement agreement the next day. The "conflict" she mentions was Hamilton's unwillingness to give in to her demands that he pay her one million dollars for her alleged legal work or give her a 50% equity interest in his farm property and private prison project that were appraised at over nine million dollars "as is" by one appraiser and much more as a "going concern" by another appraiser, both appraisals done in 2006 and then-known to Caldwell.

45. Within days, Orders were filed allowing Caldwell to withdraw from a number of Hamilton-related cases. On April 27, 2007, Caldwell resigned as registered agent for three Hamilton entities.

46. On May 7, 2007, Caldwell filed a materialman's and laborer's lien, signed by her on April 23, 2007, against the CARDC prison project and the 458 acre property in Lonoke County to secure her claim for materials and services totaling \$250,559.76.

47. On May 31, 2007, using Paul Schmidt as his attorney, Hamilton put Mid South Distributors of Arkansas, LLC (MSS) into a Chapter 7 "no asset" bankruptcy proceeding, No. 07-bk-12908. The case was closed on January 26, 2009, with a docket notation that there was no non-exempt property available for distribution.

48. On August 7, 2007, attorney Steve Niswanger filed for Caldwell a cross-claim against David Hamilton and DFH/PJH Enterprises in the pending AgHeritage foreclosure lawsuit in Lonoke County Circuit Court, seeking \$4,857,699.76 for her alleged 50% promised interest in CARDC. Caldwell/Niswanger apparently arrived at \$4,857,699 by including (a) \$4,500,000 as her claimed half of what she stated was the \$9,000,000 appraised value of the 458 acre CARDC

prison project site, (b) a net of \$250,559.76 for her services to the CARDC prison Project, including an unitemized \$165,922.00 for "CARDC services," as listed in her Ex. A, and (c) an unitemized \$107,140.00 for 535.7 hours of her legal services to Hamilton, his family, and his business LLCs. Caldwell also alleged in her pleading that her (former) client Hamilton engaged in fraud in his dealings with others.

49. Attached to Caldwell's Cross-claim as Exhibit A were four pages, numbered 11, 19, 23 and 35, of what was later identified by her as a rough transcript prepared by Caldwell, with help maybe from one of her sons, of the secret tape she made of the April 3, 2007, conversation between Hamilton and Caldwell. A reading of the full OPC transcript pages 35-145 will reveal material omissions from the selected information contained in the Caldwell four pages, as to the credibility of her allegations made in Caldwell's Cross-claim of August 2007. Caldwell refused to ever provide her full transcript to OPC for review, including at the hearing.

50. In April 2008, Caldwell admitted under oath during her deposition by Jason Stuart that there was no document existing that promised her 50% of Hamilton's company. She further admitted Hamilton had not promised verbally to give her 50% of his company.

51. On August 20, 2007, Stark Ligon wrote a letter to Caldwell and Hamilton discussing the Caldwell cross-claim and asking for waivers of confidentiality from each of them as to a meeting or meetings in April 2007 in which attorney Sharon Streett was involved in some capacity. Hamilton promptly provided such a waiver. Caldwell never provided a waiver.

52. On August 27, 2007, Hamilton filed his individual pro se Answer to the Caldwell cross-claim. On September 4, 2007, Jason Stuart filed the answer to Caldwell's cross-claim against DFH/PJH Enterprises and a counterclaim against Caldwell for legal malpractice, slander

of title, and for an accounting and audit of her claimed time and expenses.

53. On September 12, 2007, Caldwell emailed Ligon with her response and position on his request for her waiver of confidentiality as to Sharon Streett, which response was provided to Hamilton and his attorney Jason Stuart for information.

54. On October 12, 2007, the DFH/JPH motion to dismiss claims of Caldwell was filed, along with the DFH/JPH motion for partial judgment on the pleadings to the Caldwell lien claim. On the same day, a joint motion for expedited hearing was filed by AgHeritage, DFH/PJH, and Hamilton, seeking to get Caldwell's lien presented and decided. On October 24, 2007, Caldwell filed her response to the Hamilton and DFH/PJH motions.

55. On October 22, 2007, Matthew Teeter moved to intervene in the AGH foreclosure suit, claiming an interest in the 458 acre farm and seeking to recover funds he had provided to Hamilton to use in paying off the Sims second note on the farm and for other purposes. To his Motion and proposed Complaint Teeter attached no documents of any nature, much less documents that might show a basis for a contract, mortgage, security interest or other type of claim to the CARDC prison project and the land in Lonoke County, Arkansas, owned by DFH/PJH, LLC where the prison was planned to be constructed if funded. Portions of Teeter's pleadings read as if he had access to information about Hamilton's financial matters that could only be known to Hamilton and his former counsel Caldwell. On November 5, 2007, DFH/PJH filed its response to the Teeter intervention motion.

56. On November 20, 2007, Judge Whiteaker conducted a hearing on the Caldwell claims and announced he was finding her materialman's and laborer's lien invalid. On November 21, 2007, having just had her May 2007 materialmen's and laborer's lien declared invalid by the

trial court, Niswanger, for Caldwell, filed a lis pendens, alleging she had a constructive trust for an equitable one-half interest in the CARDC project property.

57. On November 27, 2007, attorney Stuart wrote Judge Whiteaker with copies of four proposed Orders and his explanation of the posture of the case. Stuart specifically mentioned the new Caldwell lis pendens filed November 21, 2007. On November 28, 2007, Mr. Niswanger wrote Judge Whiteaker with his version of the status of the case and the pending motions. Niswanger's letter is silent as to the new Caldwell lis pendens Niswanger caused to be filed on November 21, 2007.

58. On December 5, 2007, an order was issued dismissing the Caldwell lien and denying Hamilton's motion for attorney's fees. Also entered on December 5, 2007, was a revised order staying proceedings pending mediation.

59. On December 10, 2007, Stuart notified Ligon by email on the action of the court on December 5, 2007, with Stuart's opinion stating that the tactics of Caldwell and her counsel were "nothing short of blackmail and extortion."

60. On December 21, 2007, plaintiff AGH obtained and filed an Order dismissing its foreclosure complaint, stating AGH had been paid in full. This occurred because Hamilton's mother obtained financing and paid AGH in full, in exchange for her receiving title to the Lonoke County farm.

61. On January 4, 2008, Caldwell filed a notice of appeal and cross-appeal from the December 5, 2007, order dismissing her lien.

62. By letter of February 15, 2008, Niswanger provided Stuart materials that mainly included Caldwell's alleged time records for her representation of the Hamiltons and their

businesses from September 25, 2005 through August 6, 2007, showing 593.16 hours at \$200 per hour, totaling \$118,632.00. Caldwell stated it represented her reconstruction of work she had done. Hamilton testified he had not been presented with such a billing prior to this date or asked for a billing.

63. On February 27, 2008, Ligon subpoenaed from Stuart the audio tapes of conversations involving Caldwell and Hamilton, tapes that Caldwell had recently released to Stuart.

64. In February and March 2008, orders imposing monetary sanctions were issued against both sides for discovery violations.

65. On March 20, 2008, emails between Caldwell and Ligon, discuss any transcriptions Caldwell has of her "Hamilton" tapes and OPC's efforts to again obtain such transcripts.

66. On April 3, 2008, Niswanger filed his Caldwell v. DFH/PJH appeal, as No. CA08-416. This appeal apparently died without a decision in May 2008.

67. On April 24, 2008, Caldwell was deposed by Stuart. She was not represented at the deposition by any counsel. In the deposition Caldwell stated:

- a. She was weak in the area of business entity formation.
- b. She started handling David Hamilton's cases in December 2005-January 2006.
- c. In her discussions with David Hamilton about her salary of \$125,000 per year, it was always going to be CARDC that paid her, not Hamilton personally.
- d. At Hamilton's request, she did legal work for Matt Teeter for which Hamilton was to pay her.
- e. She was acting as legal counsel for CARDC.
- f. She had no written fee agreement with DFH/PJH, LLC for any of its legal work.

g. She and her two sons were involved in back-dating the Limited Warranty Deed that is purported to have been executed on September 28, 2005, but was not recorded until August 2006.

h. Her billing statement to Hamilton dated February 15, 2008, was not kept contemporaneously but recreated from her review of documents and her best estimate of her time.

i. The “drop-dead” deadline for the prison project to get funded was October 31, 2006, and if funding did not occur, Hamilton was to sell the land and pay her the money she was due, plus an additional \$50,000 to work on his cases, and build her law practice back up. When that (prison project funding) did not occur on October 31, 2006, Hamilton and she became 50/50 partners in CARDC, but there was no written agreement on this.

j. She and her son created a transcript of the conversation between David Hamilton and Caldwell that she taped, a few pages of which are attached to her August 2007 Cross-claim, but she will not turn over the rest of her transcription, claiming it is her attorney work product.

k. Stuart questioned Caldwell about the taped April 3, 2007, conversation she had with Hamilton, and she appeared to verify the recording.

l. They discuss the March 6, 2007, letter on CARDC letterhead from Hamilton to Caldwell, in which Hamilton agrees Caldwell is due \$140,000 and how she will receive funds. Caldwell states she used information provided by Hamilton, created the letter, affixed an electronic Hamilton signature she had, and provided the letter to her office landlord about her rent, on which she stated she was then about \$20,000 in arrears.

m. Stuart questioned Caldwell about her claim in her Cross-claim in August 2007 for services of \$250,559.76 and 535.7 billed hours, versus her February 15, 2008, billing, where

she listed 593.16 hours, and asked her for an explanation of the difference of about 60 hours.

Caldwell admitted she needed to take the lost income of \$150,000 she had in her claim out and would do so by amended pleading.

n. Caldwell admitted she arrived at her \$4,500,000 claim, based on a constructive trust theory, for her claimed one-half interest in the prison project land based on a \$9,000,000 appraisal of that land.

o. She contributed her “intellectual property” to the prison project, such as drafting documents, that went into supporting her claim to be entitled to \$4,500,000.

p. That if, as Caldwell alleged in her Cross-claim, the deed conveying the 458 acres from the Hamiltons to DFH/PJH, LLC, showing execution on September 28, 2005, and recording on August 30, 2006, was a fraudulent transfer, then Caldwell played a major role in the fraudulent act by preparing the deed, securing witnesses (her two sons), securing the notary, and apparently even recording the deed.

q. As to ownership of the CARDC prison project in 2006 or early 2007, she thought Matt Teeter was to get ten percent and Caldwell was entitled to fifty percent, leaving David Hamilton with forty percent.

r. When questioned about her possibly “advancing” money to a client, CARDC, Caldwell denied CARDC was a client of hers, stating she was an employee of CARDC, while Caldwell was claiming in August 2007 that she was owed \$165,922 for “CARDC Project services” in her Cross-claim against Hamilton.

68. On April 30, 2008, Caldwell mailed Stuart several documents she had agreed at her deposition the previous week to thereafter provide, including Hamilton’s federal tax returns for



two years and his financial statements.

69. The DFH/PJH appeal of the December 5, 2007, order denying it attorney's fees and costs, Case No. 08-482, died on May 8, 2008.

70. On June 16, 2008, with Steve Niswanger again as her counsel, Caldwell filed an appeal as No. CA-08-712, from an order entered March 3, 2008, which nullified her November 2007 lis pendens. In July 2008, the motion of Niswanger and his associate attorney to withdraw as her counsel was granted and Caldwell became pro se in this appeal. This appeal was dismissed by order on July 29, 2009, for failure of Caldwell to pursue the appeal.

71. On August 11, 2008, Niswanger sent out announcements that Caldwell had become associated as "Of Counsel" to the Niswanger Law Firm.

72. In late 2007, Hamilton's mother secured bank financing and purchased the 458 acre Lonoke County farm for about \$565,000. His father co-signed the note. The plan was that his mother would resell the farm when economic conditions improved. This was done for Hamilton's benefit, as he was unemployed and looking for work by 2008. His mother rented the farm out, but most years she was required to put some personal funds into the deal to make the necessary debt payments.

73. In January 2015, after Jason Stuart was paid \$15,000 by Hamilton to get the final Caldwell lis pendens removed, Hamilton's mother was able to sell the farm for \$3,500 per acre, or about \$1,600,000, so she, and David Hamilton, finally came out reasonably situated on this matter.

74. Caldwell has never prevailed in any court on her claims to an interest in Hamilton's businesses.

75. To her Cross-claim filed on August 7, 2007, Caldwell attached a one sheet summary (“the 4-16-07 billing”) of her “Materials/Services Furnished 2/1/2006 - 4/16/2007” to Hamilton and his entities. Her billing then totaled \$258,509.76 before credit for \$7,950.00 was applied. This billing, covering about 14.5 months, appears to include the following items, figured on 15 months, and to show Caldwell was charging Hamilton for almost all of her law practice-related expenses and overhead and an average of almost \$12,000 per month for her services:

- a. Office rent of about \$2,200 per month,
- b. Clerical services of about \$1,636 per month,
- c. Phone, cell, cable/internet, and answering services of about \$506 per month,
- d. Office supplies, cleaning services, insurance, and equipment and furnishings of about \$585 per month,
- e. CARDC project services of about \$11,061 per month, which at her \$200 per hour rate would be about 55 hours per month, and
- f. Marketing and business services of about \$800 per month.

76. On February 15, 2008, Caldwell’s counsel sent Hamilton’s counsel a 25 page statement for Caldwell’s professional services to Hamilton covering September 25, 2005 - August 6, 2007, for 593.16 hours at \$200 per hour totaling \$118,632.00. Caldwell’s statement of 4-16-07 for CARDC Project Services, presumably legal services, is for \$165,922.00. Assuming one of these amounts is accurate, then the other is a misrepresentation of the extent and value of her services to the client.

77. In her billing statement for the period April 16-20, 2007, and after she unsuccessfully demanded \$1,000,000 from him, Caldwell billed Hamilton for a total of about 17 hours and

\$3,400 for preparing cookie-cutter motions to withdraw from his cases, orders of withdrawal, and handling of same to get out of Hamilton-related cases, a decision she made after Hamilton failed to agree to her terms on their personal business arrangement, conduct that is an excessive and unreasonable billing under the circumstances.

78. Because Caldwell refused to provide the Office of Professional Conduct with a copy of her self-prepared transcript of the April 3, 2007, taped conversation between Hamilton and her so OPC could verify its accuracy against an audio recording of that conversation supplied by Stuart to OPC, OPC paid a court reporter \$1,135.75 to produce accurate transcriptions of the April 2007 tapes.

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

a. She was never paid anything for any of her services to Hamilton and his businesses.

b. When Hamilton's efforts to secure funding for the CARDC project did not materialize, she became involved in shopping the project to lenders she knew and promoting the project in a variety of ways.

c. She variously described or held herself out to others as an employee of CARDC, as general counsel of CARDC, as Executive Vice President of CARDC, and as a partner with Hamilton in the venture.

d. With urging and an ultimatum from her husband, she strongly considered getting out the CARDC matter by late 2006, but stayed with it, hoping and praying for its funding.

e. Both she and Hamilton respected the Streets.

f. After the April 13, 2007, meeting she never again spoke to David Hamilton or

communicated directly with him.

g. Regarding the deed on the 458 acre farm from the Hamiltons to DFH/PJH LLC, she thought she took it to the Hamiltons to sign, she then overnighted it to Fayetteville to there be witnessed by her sons and notarized, it was returned to her, and she thought she then gave it to David Hamilton, who must have recorded it on August 30, 2006, the clerk's recording date on it.

h. The deed was possibly "back-dated" because of some concern for an "after-acquired property" issue.

i. She was not an "investor" in the CARDC project.

80. At the hearing and/or earlier through the transcript of the meeting on April 13, 2007 (Complaint Ex. 15), and her affidavit of April 12, 2016, (Complaint Ex. C), among other matters, Sharon Streett testified that:

a. The transcript, prepared for OPC and a case exhibit, of the April 13, 2007, meeting she and her husband attended with Caldwell and David Hamilton appeared to be accurate.

b. She informed Caldwell at that meeting that Caldwell had offered no written proof she had been promised stock or any form of ownership interest by Hamilton in his CARDC private prison venture, and Hamilton was denying he ever offered Caldwell any ownership..

c. At the meeting, Caldwell stated she had worked for Hamilton/CARDC in hopes of getting paid when the project was funded - a contingent-on-funding arrangement, and Caldwell does not have an interest in the company/the project.

81. At the hearing and/or through his Affidavit dated March 29, 2016 (Complaint Ex. B), and his Rebuttal Affidavit dated September 21, 2016 (Complaint binder pages 978-979), among

other matters, Jason Stuart testified that:

a. His experience with Caldwell in and after 2006 and her deposition he took in April 2008 indicated she had almost no knowledge of and experience in corporate formation and governance law and matters, and legal protections available.

b. Although David Hamilton owed him a substantial sum in unpaid legal fees, he did not abandon his client, as he believed Caldwell had done, when Stuart stated that Caldwell turned on Hamilton, especially with her August 2007 Cross-claim.

c. Based on his information, Hamilton had dealt responsibly with his creditors, except two who took large default judgements - Muradian and Matt Teeter - surrendering any collateral or assets Hamilton had to try to satisfy his creditors, and that Stuart had negotiated settlements with several creditors.

d. He had assisted Hamilton in preparing his grievance filed against Caldwell at OPC, and if Hamilton had not filed it, Stuart would have filed.

e. In 2007, Caldwell tried to use her position as counsel for Mr. Hamilton, his wife, and their business entities, and their confidential financial information to which she gained access in that fiduciary relationship, to extort from David Hamilton either an exorbitant \$1,000,000 fee or a one-half interest in his private prison business venture, an interest Caldwell valued at about \$4,500,000.

82. At the hearing, and/or in his Affidavit dated March 25, 2016 (Complaint Ex. A), and in his Rebuttal Affidavit dated October 7, 2016 (Complaint binder pages 981-983), among other matters, Hamilton testified that:

a. He affirmed after the fact the March 6, 2007, letter Caldwell prepared and signed

his name to, that CARDC owed her \$140,000 for her services to the project.

b. His parents had been generous in their support of him after his substantial business financial losses in the mid-2000s. His mother took a chance in borrowing funds in December 2007, buying the farm out of the foreclosure suit, being able to hold on to it through the ensuing recession and until the Caldwell lis pendens could be removed, and then in making a good profit on it when she sold it in early 2015.

c. He had been able to pay Stuart a significant sum in legal fees for his work as of 2007, and Caldwell knew of these payments, even when she was not getting paid by Hamilton. Hamilton still owes Stuart a lot of money for unpaid fees.

83. 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.

84. 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 Caldwell violated Rule 1.1 in that

Caldwell failed to perform legal services for DFH/PJH, LLC using the degree of legal competence ordinarily used by business attorneys in the area market, as she did not possess or use the requisite knowledge, skill and experience to handle this client's business matters and real estate transactions, especially with regard to transfer and receipt of certain real property it owned in Lonoke County, Arkansas, being the 458 acre tract that was to become the site of CARDC project. 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 Caldwell violated Rule 1.2 in that Caldwell exceeded the scope of her legal representation of Hamilton and DFH/PJH, LLC by directly contacting potential investors in the CARDC project and directing them to take action that was contrary to instructions given her by Hamilton. Arkansas Rule 1.2 (a) requires that a lawyer shall abide by a client's decisions concerning the objectives of representation, subject to paragraphs (c) and (d), and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter.... **By a unanimous vote, Panel A found this charge was not proven.**

C. The Complaint alleged that the conduct of Theresa Caldwell violated Rule 1.4(a)(1) in that Caldwell failed to inform her client DFH/PJH, LLC of certain decisions and circumstances for which the informed consent of her client was necessary, including the concurrent representation by Caldwell of members of DFH/PJH, LLC and sister business entities. Arkansas

Rule 1.4(a)(1) requires that a lawyer shall promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules. **By a unanimous vote, Panel A found this charge was not proven.**

D. The Complaint alleged that the conduct of Theresa Caldwell violated Rule 1.4(a)(4), in that Caldwell failed to promptly and reasonably comply with requests from David Hamilton and DFH/PJH, LLC for an itemized accounting of her time spent on their legal matters and the amounts owed by them to Caldwell for her DFH/PJH specific work. Caldwell's legal work for the Hamilton and the Hamilton entities ended in April 2007 and no appropriate and comprehensive billing was made available to them until February 15, 2008. Arkansas Rule 1.4(a)(4) requires that a lawyer shall promptly comply with reasonable requests for information. **By a unanimous vote, Panel A found this charge was not proven.**

E. The Complaint alleged that the conduct of Theresa Caldwell violated Rule 1.5(a) in two instances: First, if Caldwell's demand in April 2007 for a payment of \$1,000,000 from David Hamilton was in the nature of a fee request for her work, for which she later billed either \$107,140 in August 2007 or \$118,632 in February 2008 then Caldwell's fee request was unreasonable and excessive under the circumstances.

Second, if Caldwell's demand in April 2007 for a 50% interest in David Hamilton's CARDC project, which Caldwell valued at \$4,500,000, was in the nature of a fee request for her work, for which she later billed either \$107,140 in August 2007 or \$118,632 in February 2008 then Caldwell's fee request was unreasonable and excessive under the circumstances.

Arkansas Rule 1.5(a) requires that a lawyer's fee shall be reasonable. A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses.



The factors to be considered in determining the reasonableness of a fee include the following: (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or by the circumstances; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and (8) whether the fee is fixed or contingent. **By a unanimous vote, Panel A found each of the two counts of this charge was not proven.**

F. The Complaint alleged that the conduct of Theresa Caldwell violated Rule 1.5(b) in that Caldwell failed to communicate the basis or rate of her legal fees for which DFH/PJH, LLC and David Hamilton would be responsible, either in writing or orally, until she submitted large billings in August 2007 (\$107,140) and February 2008 (\$118,632) which appear to have been reconstructed rather than contemporaneous billings. Arkansas Rule 1.5(b) requires that the scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client. **By a unanimous vote, Panel A found this charge was not proven.**

G. The Complaint alleged that the conduct of Theresa Caldwell violated Rule 1.5(c) in that

if Caldwell claims to have had some form of a contingency fee agreement with David Hamilton and/or his DFH/PJH, LLC for her legal services, she failed to obtain the required written agreement with her client for such a fee arrangement. Arkansas Rule 1.5(c) requires that a fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination. **By a 5-2 vote, Panel A found this charge was proven. Boyd, Jones, Martin, Smith, and Walker voted proven. Patrick and Saffa voted not proven.**

H. The Complaint alleged that the conduct of Theresa Caldwell violated Rule 1.6(a) in two instances: First, without her client's authorization or consent, Caldwell publicly disclosed attorney-client protected information related to her legal representation of DFH/PJH, LLC and its trade and business secrets in her Cross-claim filed August 8, 2007.

Second, without her client's authorization or consent, Caldwell disclosed attorney-client protected information related to her legal representation of David Hamilton and of DFH/PJH, LLC and its trade and business secrets to third persons, including Matt Teeter.

Arkansas Rule 1.6(a) requires that a lawyer shall not reveal information relating to representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

**By a unanimous vote, Panel A found each of the two counts of this charge was not proven.**

I. The Complaint alleged that the conduct of Theresa Caldwell violated Rule 1.7(a) in five instances: First, Caldwell failed to inform her client DFH/PJH, LLC of a concurrent conflict of interest resulting from her concurrent legal representation of DFH/PJH, LLC and its members and sister entities.

Second, Caldwell failed to inform her client DFH/PJH, LLC of a concurrent conflict of interest resulting from her concurrent legal representation of DFH/PJH, LLC and its members and sister entities, and especially as it related to her effort to obtain \$1,000,000 from her client David Hamilton or to obtain a one-half interest which Caldwell valued at about \$5,000,000 from Hamilton's new prison project in Central Arkansas Detention Center, LLC ("CARDC, LLC") which Caldwell formed for Hamilton in September 2005.

Third, Caldwell failed to obtain the written informed consent of each of her affected clients, including DFH/PJH, LLC, David Hamilton, Pritam Hamilton, and CARDC, LLC, of a concurrent conflict of interest resulting from her concurrent legal representation of each of these clients.

Fourth, in August 2007, Caldwell filed a cross-claim against David Hamilton seeking \$4,857,699.76 for her alleged one-half interest in the CARDC prison project, which, if her claim had any merit, making her representation of DFH/PJH, LLC in 2005-2007 improperly materially

limited by Caldwell's own personal interest in the business transactions of DFH/PJH, LLC.

Fifth, in August 2007, Caldwell filed a cross-claim against David Hamilton seeking \$4,857,699.76 for her alleged one-half interest in the CARDC prison project, which, if her claim had any merit, is admitting she entered into a business transaction with her client DFH/PJH, LLC, or knowingly acquired an ownership, possessory, security or other pecuniary interest adverse to David Hamilton in his property on terms that were unfair to her client David Hamilton, unreasonable to him, and were not fully disclosed and transmitted to him in writing and Hamilton was not advised by Caldwell in writing of the desirability of him seeking and being given a reasonable opportunity to seek independent legal advice in the transaction, nor did her client DFH/PJH, LLC give informed consent in a writing signed by its authorized member, to the essential terms of the transaction and Caldwell's role in the transaction, including Caldwell identifying whose interests she was representing in the transaction.

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. **By a unanimous vote, Panel A found this each of the five counts of this charge was not proven.**

J. The Complaint alleged that the conduct of Theresa Caldwell, violated Rule 1.8(a) in that in seeking a one-half interest, which she valued at \$4,500,000, in the CARDC prison project in April 2007 in exchange for what can only be called her "overall effort" on behalf of the start-up

project, Caldwell attempted to, or maybe did, enter into a business transaction with either or some or all of her clients DFH/PJH, LLC, CARDC, LLC, and David Hamilton to knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client when (a) the transaction and terms on which the lawyer acquires the interest were not fair and reasonable to the client and not fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client; (b) the client was not advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in the transaction; and (c) the client did not give informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction. Arkansas Rule 1.8(a) requires that a lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless: (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client; (2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in the transaction; and (3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction. **By a unanimous vote, Panel A found this charge was proven.**

K. The Complaint alleged that the conduct of Theresa Caldwell violated Rule 1.8(b) in that Caldwell used confidential personal and business information she only obtained as counsel for David Hamilton and for DFH/PJH, LLC, to the disadvantage of these clients, without the

consent of the clients, as shown in her August 2007 Cross-claim. Arkansas Rule 1.8(b) requires that a lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, in a writing signed by the client, except as permitted or required by these Rules. **By a unanimous vote, Panel A found this charge was not proven.**

L. The Complaint alleged that the conduct of Theresa Caldwell violated Rule 1.8(I) in that in early April 2007, Caldwell was making a demand of her client David Hamilton that he transfer to her a one-half interest, which Caldwell valued at about \$5,000,000, in Hamilton's start-up private prison project known as CARDC and the land owned by Hamilton's DFH/PJH, LLC, on which it was to be built if funded, also a client of Caldwell and then currently in litigation and defended by Caldwell. Caldwell had no contingency fee agreement or contract with either Hamilton or DFH/PJH, LLC that applied to this litigation matter, nor did Caldwell have a valid lien granted by law to secure her lawyer's fee or her expenses on such client property or cause of action. Arkansas Rule 1.8(I) requires that a lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may: (1) acquire a lien granted by law to secure the lawyer's fee or expenses; and (2) contract with a client for a reasonable contingent fee in a civil case. **By a unanimous vote, Panel A found this charge was not proven.**

M. The Complaint alleged that the conduct of Theresa Caldwell violated Rule 3.1 in that in her Cross-claim filed August 8, 2007, Caldwell asserted a claim to a one-half ownership interest, which she valued at \$4,500,000, in the new start-up private prison project known as

CARDC, based her alleged services, legal and apparently other, to the project owners David Hamilton/DFH/PJH, LLC, a claim by Caldwell for which there was no non-frivolous or good-faith basis in law or fact, as she later admitted in her conversation on April 13, 2007, to the Streetts, and in her deposition in April 2008. Arkansas Rule 3.1 requires that a lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established. **By a unanimous vote, Panel A found this charge was not proven.**

N-R. The Complaint alleged that the conduct of Theresa Caldwell violated Rule 3.3(a) in five instances: (N) First, that Caldwell made a knowing false statement of fact to a tribunal on August 8, 2007, when she caused to be filed her Cross-claim against David Hamilton and his DFH/PJH, LLC in Case No. CV-2006-558 in the Circuit Court of Lonoke County, Arkansas, when she claimed David Hamilton promised her stock in his newly-formed company (“the Project” or CARDC) that was to construct a private detention facility on the real property that was the subject of the underlying foreclosure lawsuit, knowing at the time of such filing, and since her meeting on April 13, 2007, with Hamilton and the Streetts that she had no such oral agreement and Hamilton had made her no such promise of stock, which she confirmed at her deposition on April 24, 2008. **By a unanimous vote, Panel A found this charge was not proven.**

(O) Second, Caldwell made a knowing false statement of fact to a tribunal on August 8, 2007, when she caused to be filed her Cross-claim against David Hamilton and his DFH/PJH,

LLC in Case No. CV-2006-558 in the Circuit Court of Lonoke County, Arkansas, that she was a stockholder in the CARDC private detention facility entity, when she knew she was not, and that Hamilton had breached some alleged fiduciary duty owed to her as a stockholder. **By a 5-2 vote, Panel A found this charge was proven. Boyd, Jones, Martin, Smith, and Walker voted proven. Patrick and Saffa voted not proven.**

(P) Third, Caldwell made a knowing false statement of fact to a tribunal on August 8, 2007, when she caused to be filed her Cross-claim against David Hamilton and his DFH/PJH, LLC in Case No. CV-2006-558 in the Circuit Court of Lonoke County, Arkansas, that David Hamilton refused to meet with Caldwell on April 13, 2007, to discuss their differences, when in indisputable fact Caldwell, Hamilton, Sharon Streett, and Julian Streett met at Caldwell's office on April 13, 2007, and thoroughly discussed the differences between Caldwell and Hamilton, as shown by the transcript of Caldwell's own secret taping of that meeting. **By a 6-1 vote, Panel A found this charge was proven. Boyd, Jones, Martin, Smith, Saffa, and Walker voted proven. Patrick voted not proven.**

(Q) Fourth, Caldwell made a knowing false statement of fact to a tribunal on August 8, 2007, when she caused to be filed her Cross-claim against David Hamilton and his DFH/PJH, LLC in Case No. CV-2006-558 in the Circuit Court of Lonoke County, Arkansas, that Caldwell was entitled to a one-half ownership of the CARDC entity, which she claimed to be worth about \$4,500,000 in August 2007, based on her having provided legal services and expenses or in-kind value worth, by her pleading, either about \$250,599 or about \$357,699 to Hamilton, his family, and the Project, a start-up venture that was never funded. **By a unanimous vote, Panel A found this charge was not proven.**



(R) Fifth, Caldwell made a knowing false statement of fact to a tribunal on August 8, 2007, when she caused to be filed her Cross-claim against David Hamilton and his DFH/PJH, LLC in Case No. CV-2006-558 in the Circuit Court of Lonoke County, Arkansas, when Caldwell attempted to support her claims in her Cross-claim, by attaching as her Ex. A only pages 11, 19, 23 and 35 of her self-made transcript of at least 35 pages apparently of the April 3, 2007, meeting between Caldwell and Hamilton, the remaining pages of which self-made transcript she has refused to disclose even to OPC when directly asked for same, and apparently has never provided to anyone other than possibly her counsel. **By a unanimous vote, Panel A found this charge was not proven.**

Arkansas Rule 3.3(a) requires that a lawyer shall not knowingly: (1) 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; (2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or (3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

S. The Complaint alleged that the conduct of Theresa Caldwell violated Rule 8.4(c) in five instances: First, at their meeting on April 3, 2007, without a legitimate basis for doing so, Caldwell attempted to coerce and extort from her client Hamilton payment or promise of a payment of either \$1,000,000 or transfer of a one-half ownership interest in his new prison project

entity (CARDC), valued then by her at about \$4,500,000-5,000,000, in exchange for or payment of her claim for alleged legal and other services and in-kind expenses to the new project totaling at most \$250,559 by Caldwell's documentation.

Second, in her cross-claim filed August 7, 2007, against Hamilton and his DFH/PJH, LLC, Caldwell attached an Ex. A asserting a claim of \$107,140.00 for 535.7 hours of her services. By letter of February 15, 2008, her counsel Niswanger provided Hamilton's counsel Stuart with time records and a billing from Caldwell covering September 25, 2005 through August 6, 2007, for 593.16 hours at \$200 per hour totaling \$118,632.00. As Caldwell ceased to be counsel for Hamilton and DFH/PJH, LLC in April 2007 and withdrew from all their cases, she would have no legitimate basis for any billings after April 2007, and thus has made a claim for about 57 hours and \$11,490 in services that is false, a misrepresentation, dishonest, and not legitimate.

Third, on May 7, 2007, in an effort to obtain leverage on her former client, Caldwell filed an invalid mechanic's and materialmen's lien against the 458 acre DFH/PJH, LLC real property, alleging she was owed \$250,559. Her lien was set aside and dismissed by the trial court on December 5, 2007, which found the lien was invalid. This decision was never overturned in any appeal.

Fourth, on November 21, 2007, in an effort to obtain leverage on her former client, Caldwell filed an invalid lis pendens against the DFH/PJH, LLC real property, alleging she was entitled to a constructive trust on the 458 acres to protect her entitlement to conveyance of one-half of the property to Caldwell, not just to a one-half interest in the property (or about \$5,000,000) as she demanded from Hamilton on April 3, 2007. This lis pendens, with either an

August 2006 or November 2007 filing date, was apparently nullified by the trial court on March 3, 2008, a decision that was never overturned in any appeal.

Fifth, in her Cross-claim against Hamilton filed in August 2007, in support of her claims and allegations there that she was entitled to certain substantial financial considerations from Hamilton or his business entities, Caldwell attached Exhibit A, consisting of four selected pages of a transcript of at least thirty-five (35) pages of a secretly taped conversation on April 3, 2007, between Caldwell and Hamilton on the subject of Caldwell's financial demands of Hamilton. Caldwell's select four pages of a much longer conversation do not give a true and representative account of the conversation, and could easily lead to a false conclusion as to what was actually said by the participants. Caldwell's selective use of less than 10% of what it appears to be her transcript was conduct by her involving dishonesty, fraud, deceit or misrepresentation.

**By a unanimous vote, Panel A found this each of the five counts in this charge was not proven.**

Arkansas Rule 8.4(c) provides that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

T. The Complaint alleged that the conduct of Theresa Caldwell violated Rule 8.4(d) in that by filing her lis pendens against the DJH/PJH, LLC land on November 21, 2007, the day after the hearing at which the trial court announced it was finding her materialman's and laborer's lien filed May 7, 2007, against the same property for the same claim was invalid, and pursuing the new claim under the guise of the lis pendens until that too was declared invalid by the trial court in March 2008 and later finally dismissed in October 2010, Caldwell engaged in conduct that was

prejudicial to the administration of justice by wasting court resources and time on a claim already once disposed of and as to which she failed to pursue her direct appeal, No. CA-08-712, which was dismissed July 29, 2009. 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 a unanimous vote, Panel A found this 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 Arkansas Rules 1.5(c), 1.8(a), and 3.3(a), and she hereby is, **REPRIMANDED** for her conduct in this matter and assessed and order to pay costs totaling \$2,110.55. 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