

# ***2010 Annual Report***

***Arkansas Supreme Court***

***Committee on Professional Conduct  
&  
Office of Professional Conduct***

Justice Building, Room 110  
625 Marshall Street  
Little Rock, AR 72201-1022

(501) 376-0313  
1-800-506-6631  
(501) 376-3438 Fax

Arkansas Judiciary Homepage  
<http://courts.arkansas.gov>

Arkansas Attorney Discipline Homepage  
[http://courts.arkansas.gov/professional\\_conduct](http://courts.arkansas.gov/professional_conduct)

# I. Introduction

**Authority:** Pursuant to the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law (“Procedures”), the Committee on Professional Conduct (“Committee”) is granted the authority to investigate all complaints alleging violation of the Arkansas Model Rules of Professional Conduct and impose any sanctions permitted and deemed appropriate. During 2002, major revisions to the Procedures adopted by Per Curiam Order of the Arkansas Supreme Court on July 9, 2001, effective on January 1, 2002, were implemented. The Committee submitted major proposed revisions of the Procedures to the Court on December 15, 2010, which were adopted by the Court in its Per Curiam issued May 26, 2011, found at 2011 Ark. 242.

**History:** Amendment 28 to the Arkansas Constitution was adopted by the voters in 1938. The amendment placed with the Arkansas Supreme Court the authority to regulate the practice of law in Arkansas and to regulate, and thereby discipline, attorneys. In 1939 the Bar Rules Committee, an entity of the Arkansas Bar Association and the forerunner of the present Committee on Professional Conduct, was established. In 1940 the Canons for Professional Conduct of Lawyers was approved. The Arkansas version of the American Bar Association’s Model Code of Professional Responsibility was first adopted by the Arkansas Supreme Court in 1970. A revised version of the Code became effective July 1, 1976. The Arkansas version of the American Bar Association’s Model Rules of Professional Conduct was adopted by the Arkansas Supreme Court and became effective January 1, 1986. Various revisions have been made to the Arkansas version of the Model Rules since 1986. Comprehensive revisions became effective May 1, 2005, as the Arkansas Rules of Professional Conduct, now found at pages 353-475 of the 2011 Court Rules, Volume 2, of the Arkansas Code. The Procedures implementing these Rules are in the same Volume 2, at pages 307-351.

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

## II. Structure

### 1. COMMITTEE ON PROFESSIONAL CONDUCT

For the year 2010, the Committee continued to operate in the new model of three Panels established by the January 1, 2002, revisions to the Procedures. Late in 2008, the Supreme Court authorized and selected members for four full panels effective January 1, 2009, hereafter known as Panels A, B, C, and D (Reserve). Each panel is composed of seven members appointed by the

Arkansas Supreme Court. Five are lawyers, with one lawyer appointed from each Congressional District and one from the State at large. The remaining two positions are filled by persons who are not lawyers and are selected by the Arkansas Supreme Court from the State at large. Panel membership in 2010 was as follows:

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

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

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

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

2010 Executive Committee:

Jerry Pinson, Attorney, Committee Chair  
Valerie Kelly, Jacksonville, Committee Secretary  
Benton Smith, Little Rock, Panel A Chair  
Stephen Crane, Magnolia, Panel B Chair  
Searcy Harrell, Jr., Camden, Panel C Chair

The Executive Committee for 2011 consists of:

Valerie Kelly, Jacksonville, Committee Chair  
Elaine Dumas, Little Rock, Committee Secretary  
Benton Smith, Little Rock, Panel A Chair  
James Dunham, Russellville, Panel B Chair  
Searcy Harrell, Jr., Camden, Panel C Chair

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

The Committee was saddened by the untimely death in September 2010 of Gwen Hodge, long-time and faithful Panel A member.

**2010 COMMITTEE MEETING CALENDAR:**

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

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

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

**2. OFFICE OF PROFESSIONAL CONDUCT**

The Committee employs an attorney Executive Director and staff who function as the Office of Professional Conduct, which is housed in the Justice Building located on the Arkansas State Capitol grounds in Little Rock. The Office of Professional Conduct receives all complaints involving attorneys licensed to practice law in the State of Arkansas, investigates the complaints, provides assistance in the preparation of formal complaints, and processes formal complaints for submission to the Committee. The budget of the Committee and Office for 2010-2011 was about \$790,000, totally funded by a portion of the annual license fee paid by Arkansas-licensed attorneys to the Arkansas Supreme Court.

The Office of Professional Conduct is staffed by four staff attorneys, an administrative assistant, a secretary, and an investigator. The staff attorneys perform all duties and possess such authority of the Executive Director as the Executive Director may delegate, except for the final determination of sufficiency of formal complaints. In addition to Executive Director Stark Ligon, the Office staff attorneys during 2010 were Nancie M. Givens - Deputy Director, Michael E. Harmon - Senior Staff Attorney, and Charlene A. Fleetwood - Staff Attorney.

In calendar 2010, as in previous years, the staff presented a number of “continuing legal education” programs or speeches on law-related topics across the state.

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

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

### **III. Administration**

The Office of Professional Conduct receives telephone calls, letters, e-mails and faxes from individuals across the country requesting information on how to initiate complaints against attorneys licensed to practice law in the State of Arkansas. During the 2010 calendar year, the Office opened new files on 888 grievances on attorneys alleged lawyer misconduct, up from 861 new files opened in 2009.

In 2010, following assigned review by staff attorneys of disciplinary complaints received in calendar year 2010 and carry-over cases from previous years, 845 files were closed, up from 742 files closed in 2009.

### **IV. Formal Actions Initiated- see Exhibit A**

In 2010, there were 119 new formal attorney discipline cases opened for the Committee on Professional Conduct for panel action, down from the 144 total new formal cases opened in 2009.

## V. Final Committee Actions

Final action was taken in 119 different formal Complaint files involving Arkansas attorneys during Calendar Year 2010 by panels of the Committee on Professional Conduct. There are five primary forms of action, or sanction, that the Committee on Professional Conduct may take. The lowest, a warning, is non-public. The other forms of sanction - caution, reprimand, license suspension, and initiating disbarment proceedings - are public sanctions.

## VI. 2010 - Most Common Rule Violations

In the 2010 findings of the Committee on Professional Conduct Panels, as in most previous recent years, the most common rule violations involved Arkansas Rules 8.4(d) (not engaging in conduct prejudicial to the administration of justice), 1.3 (acting with reasonable diligence and promptness in representing a client), and 1.4(a)(3) (keeping the client reasonably informed about the status of the client's matter). The following listing contains the Arkansas Model Rule alleged, the number of times the Committee found the rule to have been violated, and ranking of the ten most frequently violated Rules.

### Rule Violations Alleged and Found in 2010:

Rule	#Alleged	#Found	Rank (# Found)
1.1	15	10	5
1.2(a)	11	5	9
1.3	44	31	2
1.4(a)(1)	2	2	
1.4(a)(2)	2	2	
1.4(a)(3)	17	14	3
1.4(a)(4)	12	6	7
1.4(b)	5	3	
1.4(c)	1	0	
1.5(a)	4	2	
1.5(b)	2	1	
1.5(c)	4	3	
1.7(a)	3	1	
1.8(j)	1	1	
1.9(a)	1	0	
1.15(a)(1)	5	4	
1.15(a)(2)	3	3	
1.15(a)(3)	1	1	
1.15(a)(5)	1	1	
1.15(b)	4	3	
1.16(a)(1)	1	1	

1.16(a)(2)	2	1	
1.16(d)	12	7	6
1.18(a)	1	0	
1.18(b)	1	0	
3.1	3	3	
3.2	2	2	
3.3(a)	7	2	
3.4(b)	2	2	
3.4(c)	18	13	4
3.4(d)	5	3	
3.5(d)	1	0	
4.1(a)	1	0	
4.1(b)	1	0	
4.4(a)	3	2	
5.5(a)	6	5	10
7.1(a)	1	0	
7.2(e)	1	0	
8.1	5	3	
8.4(b)	3	1	
8.4(c)	17	5	8
8.4(d)	43	32	1
8.4(e)	1	0	

## VII. “Practice Aging” of Attorneys Disciplined (2010)

Of the 2010 final disciplinary actions by the Committee, based on number of years licensed in Arkansas, attorneys were publicly sanctioned as follows:

Years licensed	# of attorneys publicly disciplined	Percentage
1-10	5	11%
11-20	22	48%
21-30	7	15%
31-40	10	22%
40+	2	4%

(Several attorneys were publicly sanctioned more than once in 2010.)

## **VIII. 2010 Fines, Restitution & Costs**

	Imposed in 2010	Collected in 2010
Fines:	11,900.00	11,150.00
Restitution:	62,530.00	67,921.66
Costs:	6,229.28	5,212.30
Total:	80,659.28	84,283.96

(Note: some of the collections in 2010 were assessed in cases finalized in earlier years.)

## **IX. 2010 Trust Account “Overdraft” Reporting**

- 47 Total reports received in 2010 from all banks and reporters (compared to 50 in 2009). Forty-six of these files were closed after a summary investigation and explanation by the attorney involved.
- 1 One of these reports was merged into the disbarment of an attorney on other grounds.

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

## **X. Summaries of 2010 Public Sanctions**

**Please see attached Exhibit B.**

**Exhibit A**

**TEN YEAR STATISTICAL COMPARISON 2001-2010 (Unofficial)**

Category	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
New files opened	873	1,028	972	892	826	804	819	859	861	888
Closed by staff	691	737	825	796	868	1137	784	786	742	845
Complaints filed	149	186	200	164	159	156	140	114	144	119
Sup. Ct Referrals	34	45	50	40	34	39	50	33	41	18
Judge Referrals	13	12	12	8	8	19	6	4	4	6
Other				24	7	16	9	15	15	7
Complaints closed	135	178	185	211	181	173	182	122	128	119
No Actions	12	30	15	24	18	19	13	10	11	10
Warnings	45	53	54	38	33	53	41	37	46	26
Cautions	14	31	28	53	41	29	34	20	28	15
Reprimands	26	35	37	36	31	30	26	14	14	19
Suspensions	19	14	20	9	17	12	23	12	10	10
Surrenders	13	5	5	11	6	7	1	6	5	3
Merged - surrender		1	14	29	5	4	0	6	18	6
Disbar initiated	6	3	3	3	7	2	1	1	2	1
Disbarments		0	0	3	0	2	2	2	4	3
Reinstated	3	3	8	10	13	11	6	0	6	2
Consents	13	35	54	71	51	64		45	50	28
ArJLAP Referrals	N/A	2	0	0	1	3	0	0	0	0
# Attys Publicly Sanctioned*	57	61	72	101	102	68	67	49	44	44

\* includes several attorneys with multiple separate sanctions

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

## Exhibit B

### 2010 ATTORNEY DISCIPLINE SUMMARIES

#### DISBARMENTS:

**TIMOTHY MARK HALL, Bar No. 96043, of Huntsville**, was disbarred in the State of Arkansas by Supreme Court Per Curiam issued May 27, 2010, in Case No. 09-261, based on his conduct in Committee cases CPC No. 2008-070 (Pianalto case) and CPC No. 2008-071 (Judge Crow- Holder case). Mr. Hall failed to respond to the Petition for Disbarment, failed to appear at his hearing, and failed to file a brief or appeal from the findings and recommendation of disbarment by the special master for the Court. The summary of the cases and conduct before the Committee and later the Court is contained in Vol. 44, No. 2.

**OSCAR AMOS STILLEY, Bar #91096**, of Fort Smith, was disbarred in the State of Arkansas by the Arkansas Supreme Court in its Opinion and Order of Disbarment issued November 4, 2010, in Case No. 08-73, cited as 2010 Ark. 418. The disbarment proceeding rose out of complaints filed by Judge James Marschewski (CPC 2006-067) and Judge Stephen Tabor (CPC 2007-062) and other matters. The Court adopted the 119 pages of findings of fact and conclusions of law filed April 22, 2009, by the special trial judge (an on-line appendix to the Court's Opinion) and also the recommendation of disbarment as the appropriate sanction. The trial judge found all thirty-two counts of Rule violations pleaded were proven, twenty of the counts were "serious" misconduct, and evidence of ten aggravating factors. The trial judge recommended disbarment "because of Stilley's unwillingness or inability to acknowledge that his conduct has not met ethical standards; his failure to disclose his violations when required; and his continued pattern of failing to abide by Court Rules and ethical guidelines." The Court concluded by stating, "Further, given the number of violations, the length of time over which Stilley has incurred such violations, and Stilley's repeated unwillingness to accept the finality of court decisions, we agree that his actions constitute serious misconduct and that disbarment is the appropriate sanction." (Note: Mr. Stilley's subsequent 2009 Oklahoma federal criminal case, felony conviction, and fifteen year sentence, now on appeal, were not part of this case.)

**F. SCOTT STRAUB, Bar No. 98019, of Jonesboro**, was disbarred in the State of Arkansas by Supreme Court Per Curiam issued June 17, 2010, in Case No. 09-404. In early 2009, Mr. Straub was permanently disbarred in the State of Louisiana. Pursuant to Section 14.A. of the Arkansas Procedures, in April 2009, in CPC No. 2009-039, Panel B of the Committee voted to request the Arkansas Supreme Court enter an Order reciprocally disbaring Mr. Straub in Arkansas. After the Arkansas Petition to Reciprocally Disbar was filed, Mr. Straub filed a motion for stay pending his appeal of his Louisiana disbarment, stating he was making all possible efforts to pursue an appeal in Louisiana. After a year, when Mr. Straub filed nothing further in Louisiana, the Arkansas Committee filed a Motion to Lift the Stay. On June 21, 2010, after Mr. Straub did not respond to the Motion, the Arkansas Supreme Court granted the Motion, lifted the stay, and disbarred Mr. Straub in Arkansas.

## **SURRENDER OF LICENSE IN LIEU OF DISCIPLINE:**

**JAMES SCOTT ADAMS, Bar #81001, of Morrilton**, in Supreme Court Case No. 10-633, petitioned to surrender his Arkansas law license to avoid further disciplinary proceedings in six complaints before the Committee. The Supreme Court accepted his surrender in its Per Curiam Order filed August 2, 2010, noting that its action was in lieu of potential disbarment proceedings.

**MARQUIS E. JONES, Bar #74089, of Little Rock**, in Supreme Court Case No. 10-807, petitioned to surrender his Arkansas law license to avoid further disciplinary proceedings in several complaints before the Committee. The Supreme Court accepted his surrender in its Per Curiam Order filed September 16, 2010, noting that its action was in lieu of Mr. Jones facing disciplinary proceedings for serious misconduct, including a matter involving client funds. In Case No. CPC 2009-093, Panel A on July 19, 2010, had voted to initiate disbarment proceedings against Mr. Jones on a complaint from Elizabeth Shaneyfelt of Manila, Arkansas, and had placed Mr. Jones on interim suspension pending the resolution of that proceeding.

**JOHN M. ROBINSON, JR., Bar #81137, of Fort Smith**, in Supreme Court Case No. 10-947, petitioned to surrender his Arkansas law license to avoid further disciplinary proceedings in several complaints. The Supreme Court accepted his surrender in its Per Curiam Order filed September 30, 2010, noting that its action was in lieu of potential sanctions or suspension. The Complaint before the Committee arose from the action of United States Bankruptcy Judge Ben Barry on March 31, 2010, suspending Mr. Robinson from practice before that court for multiple violations, and upon five other complaints before the Committee.

## **SUSPENSION OF LICENSE:**

**CLAUDENE ARRINGTON, Bar #2002033, of Hope**, on July 21, 2010, had her Arkansas law license suspended for six (6) months in Case No. CPC 2010-035, on a reciprocal action from Texas, where an order of license suspension in the State of Texas against Ms. Arrington, who is also licensed in Texas with Bar #24031824, issued on April 26, 2010, sanctioning her by agreement with a suspension of sixty (60) months, with six (6) months to be active suspension, beginning on June 1, 2010, and fifty-four (54) months to be probated suspension beginning December 1, 2010, for a violation of Texas Rule 4.02(a) (lawyer communicating with a person represented by counsel).

**BRUCE J. BENNETT, Bar No. 92140, of Bentonville**, had his Arkansas law license suspended on March 19, 2010, for nine (9) months in CPC 2009-065 on a complaint by Dennis and Valory Vinciguerra for admitted violations of Rules 1.3, 1.4(a)(1), 1.4(a)(3), and 8.4(d), by a consent proposal approved by Committee Panel B and the Arkansas Supreme Court. Mr. Bennett was hired to represent the Vinciguerras in a lawsuit filed against them,

within a week of their being served. He failed to file a timely Answer but the matter was not dismissed then. Mr. Bennett failed to file responses to any motions filed by the opposing counsel. Mr. Bennett did not communicate with the Vinciguerras about their legal matter or respond to requests for information. He provided false information to the Vinciguerras about what actions he was taking on their behalf. He basically presented no defense and did not assert any claims on their behalf against co-defendants or parties not made a party to the lawsuit, but who were ultimately responsible for the loss to the trust. As a result, a default judgment for \$617,529 was entered against the Vinciguerras. Their personal property was executed on and sold at auction.

**ANN C. DONOVAN, Bar No. 78043, of Fayetteville**, had her Arkansas law license suspended on June 23, 2010, for six (6) months by Consent Findings and Order filed in CPC 2008-083, for violations of Rules 1.3, 1.4(a)(3), 1.15(a)(2), and 1.15(a)(3), on a complaint by Marilyn Pearson, who hired Ms. Donovan to represent her in a civil matter involving her home mortgage. Ms. Donovan was able to stop the sale of Ms. Pearson's home. However, her conduct after the Agreed Order was entered in the civil matter was not diligent or prompt. Ms. Donovan failed to properly communicate with Ms. Pearson even though the representation continued until all aspects of the Agreed Order were complied with by Ms. Pearson and Donovan. Ms. Donovan did not diligently represent Ms. Pearson in the conclusion of the matter involving her home; when she did not comply with the Order of April 24, 2008, in a timely manner; when she did not advise Ms. Pearson in a timely manner that Donovan had lost the money orders which Ms. Pearson had entrusted to Ms. Donovan as payments on the home, so that Ms. Pearson could take steps to secure replacement checks in time for compliance with the Order of April 2008; when she did not provide Ms. Pearson with a copy of the Order of April 24, 2008, until during June 2008; and when she failed to timely deliver to HomeEq Service's counsel the funds delivered to her by the Clerk of the Court on April 24, 2008. Ms. Donovan failed to provide Ms. Pearson with a copy of the filed Consent Order immediately upon entry of the same and she failed to inform Ms. Pearson that she had lost money orders entrusted to her by Ms. Pearson, until Ms. Pearson learned that the Order of April 24, 2008, had not been timely complied with by Ms. Donovan. The Order was entered in April 2008 and Ms. Donovan did not deliver the funds until July 2008, long after the deadline for doing so.

**RICKEY H. HICKS, Bar No. 89235**, of Little Rock, Arkansas, had his Arkansas law suspended for one (1) month by Committee Findings & Order filed February 2, 2010, in CPC 2009-096 on a complaint by Ned Johnson for violations of Rules 1.2(a), 1.3, 1.4(a)(3), 1.4(a)(4), 1.5(b), 1.5(c), 1.15(a)(1), 1.15(b)(2), and 1.16(d). Mr. Hicks was also fined \$1,000 and ordered to pay \$5,000 restitution to Mr. Johnson. Ned Johnson hired Mr. Hicks to represent him in a land development dispute matter, and paid a \$6,000 retainer fee, which was not placed in an IOLTA trust account. The remaining portion of the fee was contingent in nature, and the contract Mr. Hicks prepared did not comply with all the requirements of the Rule dealing with contingent fees because it did not explain how the contingency fee was to be calculated. Mr. Hicks was not diligent in his representation of Mr. Johnson, he failed to

take prompt action, and he failed to keep Mr. Johnson advised of the status of his legal matter and the efforts, if any, that Mr. Hicks had taken for him. Mr. Hicks did not respond to requests for information, he attempted to place the blame on Mr. Johnson for not calling him on his cell phone, while the Rules require Mr. Hicks to keep the client informed. After Mr. Hicks' services were terminated, Mr. Johnson requested a refund of the advance payment of fees. At the time of the filing of the formal disciplinary complaint, Mr. Hicks had stated he would return the unused portion of the fees but had not done so.

**NEWTON DONALD JENKINS, JR., Bar No. 94231**, of Van Buren, had his Arkansas law suspended for three (3) months on February 5, 2010, after the Supreme Court's mandate issued in No. 09-710, cited as 2010 Ark. 24, which affirmed on appeal the Committee Findings & Order filed March 31, 2009, in CPC 2008-049 on a referral by United States District Judge Jimm L. Hendren, for violations of Rules 1.3, 3.1, 3.2, 3.3(a)(1), 3.4(b), 8.4(c), and 8.4(d). For failing to file a response to the Complaint, Jenkins was also separately reprimanded and fined \$500.

Mr. Jenkins represented Mr. Freeman in a federal civil case against Bekaert Corporation. The Complaint had attached to it the Bekaert Disability Plan handbook which states "Weekly Income Benefits terminate at retirement." It was later admitted that Freeman retired before his complaint was filed. Bekaert's attorney wrote Jenkins stating Freeman had retired from Bekaert on November 13, 2005, he was ineligible for the Plan benefits, and asked Jenkins to dismiss the Freeman suit then. Bekaert's Answer on November 7, 2007, put Jenkins on the same notice. Because the matter was an ERISA claim, Judge Hendren directed the parties to file a stipulated administrative record, followed by briefs. The record is normally obtained by defense counsel from the administrative decision-maker, and submitted to plaintiff's counsel for review.

Eventually both plaintiff and defendants filed separate stipulated records. The cover sheet to Jenkins' record asserted that the parties "hereby submit this joint stipulated record comprised of the attached exhibits which are true and correct copies of the documents encompassing the record in this case," and contained the electronic signatures of both Jenkins and Bekaert's attorney. Bekaert's record stated that Mr. Jenkins had not "responded to communications initiated by Defendants Counsel for over six weeks regarding Plaintiff's position concerning the submission of the Stipulated Record." Freeman's record and Bekaert's record did not contain all the same documents. Bekaert's Motion To Strike Plaintiff's Stipulated Record alleged: (1) that plaintiff submitted documents in his record which defendant had neither seen nor stipulated to; (2) that plaintiff omitted documents from his record which were included in Bekaert's record; (3) Jenkins had signed defense counsel's name to Jenkins' record without permission to do so; and (4) that Jenkins had failed to serve a copy of his record on Bekaert's counsel. Instead of responding to the Motion, Jenkins moved to dismiss the case without prejudice. Judge Hendren conducted a telephone conference with counsel on Bekaert's allegations, which the Judge stated he considered so serious that it was quite surprising that Jenkins had not responded to them. Judge Hendren

directed Jenkins to file a written response to the Motion To Strike. In his filed response, Jenkins stated, among other matters, that his "lack of attention to detail was caused solely by the belief that this matter was no longer viable once a copy of the Plan Document was available for counsel to review." Judge Hendren stated he found this statement to be highly questionable. Jenkins attached a copy of the Plan Document to the Complaint, so he clearly had it available for review from the outset. While Jenkins might not have known when he filed the Complaint that Mr. Freeman had retired and was no longer eligible for disability benefits, he was so informed by letter from Bekaert's counsel in October 2007.

While Jenkins stated he had trouble getting in touch with his client, the Judge stated he had difficulty crediting Jenkins' diligence in trying to do so, given that he did not meet with Freeman until January 25, 2008, three months later. At that time, Freeman acknowledged that he had voluntarily retired from Bekaert before the suit was filed. Rather than dismiss the case promptly, however, Jenkins left Freeman to ponder the matter, advising that if Freeman did not agree to dismiss, Jenkins would withdraw as counsel. The Motion To Dismiss was not filed until March 6, 2008, almost six weeks later. The issue on appeal of the Committee's decision was the sufficiency of service of the Complaint on Mr. Jenkins. The green card receipt for certified mail was signed for by an employee of his law office, and neither box for "addressee" and "agent" was marked. The Supreme Court held the OPC complied with Section 9 of the disciplinary Procedures by sending the mail in the correct manner, and OPC was not required to produce a green card signed personally by the Respondent to obtain good service.

**STEPHEN L. LEWIS, Bar No. 2003112**, formerly of IZARD County and now of Little Rock, had his Arkansas law license suspended by Committee Findings & Order filed on February 23, 2010, for six (6) months in CPC 2009-118, on a complaint by Jeremy Smith for violations of Rules 1.1, 1.2(a), 1.3, 1.4(a)(3), 1.4(b), 8.1(b), 8.4(c), and 8.4(d). He was also order to pay \$5,600 restitution to Smith. Smith had a verbal agreement with Dockins that if Dockins damaged Smith's motorcycle during a test drive in June 2003, Dockins would be financially responsible for the damages. Dockins wrecked the motorcycle, causing a total loss estimated by the investigating trooper at about \$7,500, the price Smith had just paid for the motorcycle.

Smith's first attorney sent the file to Lewis. In November 2004, Smith gave Lewis a check for \$100.00 for "fees," which Smith understood to be for the case filing fee. The check was cashed on January 5, 2005. For about two years thereafter, whenever Smith was able contact Lewis, he was informed Lewis was working on the matter. Lewis never initiated contact with Smith. Thereafter, Smith was unable to contact Lewis. In the Spring of 2007, Smith contacted Lewis and was told Lewis was trying to get Smith a court date. Lewis told Smith to be at the IZARD County Courthouse on April 11, 2007. Smith drove two hours to court, was met by Smith, and told there would be no court that day. About six months later, Smith found Lewis's office telephone was disconnected and Lewis was not to be found.

Lewis did not respond to Smith's letters. Smith contacted the clerks for the IZARD County District Court and Circuit Court and was informed no lawsuit had ever been filed for him against Dockins over the damaged motorcycle. The statute of limitations has expired for Smith to file any suit in either District Court or Circuit Court on his loss. Having no collision insurance on the motorcycle, Smith was required to pay off the \$7,500 loan. He did eventually sell the motorcycle for salvage for \$2,000.

Lewis's Arkansas law license was suspended by the Committee on May 14, 2007, in No. CPC 2006-159. Lewis has not applied for reinstatement. Smith filed a grievance against Lewis on October 18, 2007. From then until August 2009, OPC tried to locate and contact Lewis by letter and e-mail. Contact was made with a third person, and Lewis came to OPC on August 25, 2009. Smith has since confirmed the return of the papers and pictures he gave Lewis, but Smith has not received the promised refund of the \$100 he paid Lewis in November 2004.

**CHARLES T. MULVEY, Bar #92172**, formerly of Fort Smith and now in the Dallas, Texas area, in Committee Case No. CPC 2009-103, by Findings & Order filed December 28, 2010, had his Arkansas law license suspended, effective that date, for twelve (12) months, after a hearing on a complaint arising from the outcome of a civil suit filed against Mulvey by attorney Craig Cook of Ozark, Arkansas. The hearing panel found Mr. Mulvey's conduct violated Arkansas Rule 8.4(c) on each of seven Counts.

In late 2007, Mr. Cook sued Mr. Mulvey regarding the dissolution of Mulvey's association with Cook's law firm, an association that began in mid-2006 and concluded in October 2007. The original complaint by Cook sought an injunction against Mulvey and an accounting of legal fees from various cases. Judge Mays' letter opinion stated both Cook and Mulvey left other law firms and entered into an agreement whereby Mulvey, as an independent contractor attorney, would handle all social security and workers' compensation claims within Cook's new law firm. The agreement, which was not signed, set out that Mulvey would begin work on June 8, 2006. Both Cook and Mulvey agreed that Mulvey left the law firm in early October 2007. In the proceeding before Judge Mays, an Agreed Order was read into the record and then filed with the Clerk on January 17, 2008, by which Cook and Mulvey agreed to a division of the firm's files on pending social security and workers' compensation claims. The Order also reflected how all fees would be split regarding those files. The files were listed in Exhibits to the Agreed Order.

Based on information which Mr. Cook began to receive shortly after the Agreed Order was filed of record, he caused a motion for contempt to be filed. Cook asserted that former employees of Mulvey had reported to Cook that Mulvey was not accurately and honestly dividing the attorney's fees with Cook. At hearings on April 14 and August 4, 2008, Judge Mays heard the testimony of Mulvey, two former Mulvey employees, and an ex-employee and ex-girlfriend of Mulvey. After the hearing, Mulvey filed a Petition for Contempt Citation and Sanctions against Cook, who filed an Amended Complaint for Contempt and a Second

Amended Complaint for Contempt for Fraud and/ or deception in June 2008.

In her letter opinion dated December 1, 2008, Judge Mays specifically set out that she did not find Mr. Mulvey credible. She found that most of the witnesses who worked for Mulvey or with him had credibility problems. Judge Mays explained that Mulvey's attempt to blame another employee, who had nothing to gain since Mulvey was the person who retained the funds, rendered Mulvey's testimony even more untrustworthy. Judge Mays also made note of the fact that many checks at issue were deposited into Mulvey's personal account, not his business account, providing more evidence that he was attempting to hide fees from Mr. Cook. Some of the checks were deposited into Mulvey's personal account before he left Cook's law firm.

On two claims made by Mr. Cook, Cook alleged that Mr. Mulvey made copies of two of the fee checks Mulvey actually received, and the check copies were then altered by a "cut and paste" process to show lesser amounts than the true amounts of the checks. Mulvey then mailed to Cook less money than Cook was due, based on the altered amounts shown on the check copies. After subpoenas were issued for Mulvey's known business and personal checking accounts, the deposit documentation of these two checks, for the Henneck and Price cases, could not be located. Without stating the name of any specific person she found to have altered the check copies that Mulvey provided to Cook, Judge Mays found the alterations occurred and that Cook had proved by clear and convincing evidence that Mulvey had defrauded Cook regarding the payment of owed attorney's fees. She awarded Cook judgment for \$8,623.50 against Mulvey.

On the Henneck case the actual attorney's fee awarded and paid was \$1,811.50. The copy of the Social Security check presented to Mr. Cook by Mr. Mulvey by cover letter dated December 20, 2007, was for \$673.30, represented by Mulvey to be Cook's 50% of the actual fee received. The altered check copy presented to Cook showed \$1,138.20 less than the actual amount of the attorney's fee award by Social Security to Mulvey. On the Price case, the actual award was \$5,223.00. The copy of the check for attorney's fees that Mulvey presented to Cook in December 2007, was \$2,762.00. The underpayment to Cook on Price was \$1,230.50, one-half of the \$2,461.00 difference between the actual fee award of \$5,223.00 to Mulvey less the \$2,762.00 Mulvey reported to Cook.

The trial judge made findings regarding fees involving seven other clients, but the hearing panel did not find and vote Rule violations related to those findings and counts of the Complaint. There were four other claims made by Mr. Cook which were not found to be substantiated by Judge Mays. With regard to the various Motions for Contempt filed in the matter, Judge Mays made no order containing a contempt finding.

After entry of the Court's Order, and after the time had expired for filing a Notice of Appeal, Mr. Cook began contacting Mr. Mulvey's counsel about Mulvey's compliance, or lack thereof, to the requirements of Judge Mays' Order. Mulvey continued to ignore his

court-ordered obligations. Cook then filed a Complaint for Contempt on July 29, 2009. Cook alleged that in May 2009 Mulvey sent him a check for \$5,551.24 that was returned by Mulvey's bank unpaid, for insufficient funds.

In his Response to the formal disciplinary Complaint, Mr. Mulvey stated that neither he nor Mr. Cook could trust each other and that the break-up of their agreement was less than amicable. He asserted that Cook received all money to which Cook was entitled, other than one payment, and that Mulvey was the one cheated out of much. He also stated that the situation was not based on fact. Mulvey blamed the situation on ex-employees, his ex-wife, his stepdaughter, and an ex-girlfriend. Mulvey denied all the allegations made in the formal Complaint with regard to violations of Rule 8.4(c), with the exception of a few he admitted in part and denied in part. He asserted that all of his testimony to Judge Mays was true, complete, and correct. Mulvey stated that he had a good faith belief in many instances that Cook was not entitled to any of the fees in certain client matters.

At the hearing, Cook stated that the \$5,551.24 check in May 2009 from Mulvey to Cook and dishonored for insufficient funds by Mulvey's bank has never been made good by Mulvey. Mr. Mulvey testified that he altered no checks and knew nothing about any such alterations, he owed Cook a fee on one case that was not originally paid, and that he had an idea who at Mulvey's law office may have made the two altered check copies in late December 2007 and why she did it. He stated he had never found any evidence that he had actually received the original Henneck and Price fee checks. He stated he had not sought criminal prosecution of any person for alleged theft of funds from his law office. He stated he had not attempted, since Cook sued him in late 2007, to obtain copies of the Henneck and Price fee checks from the Social Security Administration. He testified he had lived in Texas since the Fall of 2009. On January 27, 2011, Mr. Mulvey filed his Notice of Appeal to the Arkansas Supreme Court.

**FRANK DAVID REES, Bar No. 79238, of Jonesboro**, on June 28, 2010, had his law license suspended for one year, with credit for one month already served, by the Supreme Court of Arkansas, in an Opinion issued May 13, 2010, in No. 09-556, on an appeal by the Executive Director from the Committee's action in February 2009 in CPC No. 2007-021, (Teahna Mooney-Emerson George case), where he was assessed a one month suspension. The summary of the case and conduct before the Committee and later the Court is contained in Volume 44, No. 2.

**MALCOLM A. SIMMONS, Bar No. 91243, of Little Rock**, had his law license suspended on March 2, 2008, for six (6) months by Committee Consent Findings & Order filed April 26, 2010, in CPC No. 2008-096, on a complaint by District Court Judge Randall Morley of North Little Rock, for violations of Rules 3.4(c), 5.5(a), and 8.4(c), for Simmons failure to pay his 2008 attorney license fee and for failure to comply with CLE requirements, which led to his law license being administratively suspended. Mr. Simmons had not cured these two deficiencies as of May 28, 2008, when he appeared in North Little Rock District Court as

attorney for Donnie McCuien. Judge Morley inquired of Mr. Simmons whether his license to practice law was suspended. Mr. Simmons stated that his license had been suspended but was reinstated, which was not true.

**RICHARD H. YOUNG, Bar #94149, of Russellville**, by Committee Findings & Order filed July 16, 2010, in Case No. CPC 2008-086, had his Arkansas law license suspended for twenty-four (24) months on a complaint by Peggy Prose of Russellville for violation of Rules 1.1, 1.3, 1.4(a)(3), 1.4(b), 1.5(c), and 8.4(d), where he failed to properly prosecute Ms. Prose's auto injury claim within the statute of limitations. The Panel found the sanction should be enhanced based on Mr. Young's disciplinary history. In October 2004, Ms. Prose was a passenger in a vehicle and suffered a shoulder injury when that vehicle was "rear-ended" in Little Rock. She employed attorney Young to represent her in the matter. She has no copy of any written fee agreement with Mr. Young. She had surgery on her shoulder, now has a disability in her arm, and had medical bills of over \$25,000 which were paid by her insurance company. On October 26, 2007, Mr. Young filed suit for her in this matter, and he had a Summons issued. Young only attempted service on the at-fault driver by mail and never got her served. On May 2, 2008, an Order was filed dismissing Prose's lawsuit for failure to obtain service. Ms. Prose did not learn of this dismissal from Mr. Young. Thereafter Prose went to another Russellville attorney for assistance in this matter. He has been unable to revive her lawsuit and claim.

#### **REINSTATEMENT FROM SUSPENSION:**

**RICKEY HICKS, Bar No. 89235**, of Little Rock, has his license to practice law in Arkansas reinstated in CPC Docket No. 2010-019 on March 16, 2010, following a suspension imposed and effective on February 2, 2010.

**N. DONALD JENKINS, JR. , Bar No. 94231 of Van Buren**, upon petition to the Committee, had his law licensed reinstated to good standing effective May 12, 2010, after his three month suspension in CPC 2008-049, affirmed February 5, 2010, in No. 09-710 (2010 Ark. 24) See Volume 45, No. 2 for a summary of the Committee case and conduct that led to the suspension.

#### **REPRIMAND:**

**CINDY M. BAKER, Bar No. 2000022**, of Berryville, was Reprimanded by Committee Findings & Order filed March 5, 2010, after a public hearing in CPC 2009-041 on a referral from Carroll County Circuit Judge Kent Crow for violations of Rules 3.3(a)(1), 8.4(b), and 8.4(d). Ms. Baker had an argument at the Eighth Circuit Court of Appeals in St. Louis on January 15, 2008. She had cases scheduled in Berryville District Court on January 16, 2008. On January 15, 2008, Ms. Baker called Judge Kent Crow, then the Berryville District Court Judge, and asked for a continuance as she was delayed in St. Louis. Judge Crow granted the

request. On the morning of January 16, 2008, Ms. Baker was issued a traffic citation outside of Huntsville, Arkansas. Some of Ms. Baker's clients were not advised of the continuance in their case and appeared in Berryville District Court on January 16, 2008. Judge Crow contacted the Eighth Circuit Court of Appeals to confirm whether Ms. Baker was, in fact, in St. Louis the day before. The Eighth Circuit Court of Appeals Clerk confirmed that Ms. Baker's case was the first case called at 9:00 a.m. and Ms. Baker was finished with arguments before the court by 10:00 a.m. Judge Crow issued a Show Cause Order to Ms. Baker directing her to answer why she should not be held in contempt based on her statements to his Court. At a hearing on the contempt matter, Ms. Baker entered a guilty plea to a reduced charge of criminal contempt. Ms. Baker offered that she was asked by an Eighth Circuit Court official to remain in St. Louis following her argument to that Court. It was later discovered that the court official had mistaken Ms. Baker for another person and, following the clarification, was allowed to proceed back to her home in Arkansas. Ms. Baker stated that she had another matter scheduled in Washington County Circuit Court on January 16 and was en route to Fayetteville when she was stopped and issued the traffic citation.

**CINDY M. BAKER, Bar No. 2000022, of Berryville**, was reprimanded and fined \$1,000 in CPC No. 2009-110 by Committee Findings & Order filed April 27, 2010, in a complaint involving her appeal in No. CR 09-249, Donald Thompson v. State, for violations of Rules 1.3, 1.4(a)(4), 3.3(a)(1), 3.4(c), and 8.4(d). Baker filed the notice of appeal fourteen days late, stating her client was in lock-down at the county jail and was not allowed to contact anyone, including his attorney. Upon release from lock-down, Mr. Thompson notified Ms. Baker of his wish to appeal. The Supreme Court remanded the matter to the trial court for an evidentiary hearing. The trial court found that statements in Ms. Baker's were untrue and that Mr. Thompson had directed his mother to inform Ms. Baker of his desire to appeal. The Supreme Court granted the Motion for Belated Appeal and referred the matter to the Office of Professional Conduct.

**CINDY M. BAKER, Bar No. 2000022, of Berryville**, was reprimanded in CPC No. 2010-001 by Committee Findings & Order filed June 15, 2010, in a referral from the Supreme Court involving her appeal in No. CR 09-249, Donald Thompson v. State, for violations of Rules 1.3, 3.4(c), and 8.4(d). On June 4, 2009, a briefing schedule was issued requiring a brief to be filed on her client's behalf by July 14, 2009. Ms. Baker obtained an extension to September 9, 2009. No brief was filed. The State filed a Motion to Dismiss; no response was filed by Ms. Baker; and Supreme Court granted the Motion to Dismiss. Ms. Baker responded to the Complaint that her client asked her not to proceed as he had been released from prison by the time the brief was due and he ran the risk of serving more time in prison if successful on appeal. No affidavit from the client was provided.

**JIMMY RAY BAXTER, Bar #78012, of Benton**, by Committee Consent Findings & Order filed July 20, 2010, in Case No. CPC 2009-143, was reprimanded on a complaint by Flora White for his violation of Rules 1.3, 1.4(a)(3), and 1.15(a)(2). Prior to this resolution, Mr. Baxter made restitution of \$6,450 to Ms. White. Ms. White was sued by family members

over a dispute regarding the probate of her late father's will. In April 2005 she hired Mr. Baxter and paid him a total of \$6,000 in legal fees and \$450 for a handwriting expert to represent her in the matter. There was no written contract between Ms White and Mr. Baxter. To assist Mr. Baxter with her defense, Ms. White gave him the originals of her father's Will , the probate documents, the documents related to the sale of the father's home, bank financial records, and a signed agreement between Ms. White and her other siblings for a change of deed to some lake front property.

Mr. Baxter advised Ms. White that these documents would be supplied to a handwriting expert to verify the deceased father's signature. A handwriting expert was never used in the matter. Mr. Baxter and opposing counsel then suggested that the parties try mediation to resolve the matter. No mediation ever took place. After a few years, a final hearing was set in the matter for February 23, 2009. Mr. Baxter failed to appear at that hearing. On February 24, 2009, the day after the scheduled hearing, Ms. White sent Mr. Baxter a letter terminating his representation of her and requesting return of her file. After several telephone calls and a certified letter from Ms. White, Mr. Baxter forwarded her file to her new attorney, however, none of the original documentation she provided to Mr. Baxter was included in the file. Mr. Baxter acknowledges that Ms. White entrusted documents to him, but that they were at some time extracted from his file and lost.

**GARFIELD BLOODMAN, Bar #97053, formerly of Little Rock**, now of the U.S. Virgin Islands, by Committee Findings & Order filed July 12, 2010, in Case No. CPC 2010-018 was reprimanded and ordered to pay \$2,500 restitution to his former client, Gerald Barber, for violation of Rules 1.3, 1.4(a)(1), 1.4(a)(3), 1.4(a)(4), and 1.16(d). In September 2007, Mr. Barber hired Mr. Bloodman to represent him in a criminal matter in Jefferson County. Mr. Bloodman initially filed various pleadings on behalf of Mr. Barber, but he then failed to communicate with Mr. Barber for several years. Mr. Bloodman failed to inform Mr. Barber when Mr. Bloodman relocated out of State in July 2008. Mr. Bloodman did not communicate a reduced charge to Mr. Barber. Mr. Bloodman terminated his representation of Mr. Barber before the legal matter was concluded but failed to give Mr. Barber notice, failed to surrender papers and / or property from the file to which Barber was entitled, and failed to refund the unearned portion of the advanced fee payment of \$4,000 for the representation.

**CLARENCE W. CASH, Bar No. 73017, of North Little Rock**, was reprimanded by Consent Findings and Order filed in June 22, 2010, in CPC No. 2009-144, for violation of Rules 1.3 and 8.4(d), on a complaint filed by his client Allen Sealy. Sealy hired Cash to file a bankruptcy proceeding to avoid a scheduled foreclosure sale on Sealy's home. Mr. Sealy completed credit counseling, provided Mr. Cash proof, and completed all the paperwork for the bankruptcy to be filed. Mr. Cash did not file the bankruptcy and Mr. Sealy's home was sold at foreclosure sale. Mr. Cash admitted fault in not timely filing the bankruptcy to stop the sale. Mr. Cash attempted to have the loan reinstated but the bank refused his application to do so.

**DONALD COLSON, Bar No. 2005166, of Benton**, was Reprimanded, ordered to pay \$1,050 restitution, and fined \$300 by Committee Consent Findings and Order filed May 27, 2010, in CPC No. 2010-025, on a complaint by Lauri Williams, for violations of Rules 1.3, 1.4(a)(3), 1.4(a)(4), 1.5(c), 1.16(d), 8.1(b), and 8.4(c). Williams hired Mr. Colson in June 2009 to pursue a federal lawsuit on her behalf in an EEOC matter, and she paid him funds that included costs expected in the matter. Mr. Colson quit communicating with Ms. Williams, failed to respond to messages, did not provide status reports to her, and failed to file her lawsuit. Colson failed to return Ms. Williams' file to her and then failed to provide a refund of unearned costs and fees to her upon request after she terminated his representation. Mr. Colson was written by the Office of Professional Conduct on two separate occasions but failed to respond.

**JANIE M. EVINS, Bar No. 92068, of Hot Springs**, was reprimanded, order to pay \$140 restitution, and fined \$500 by Committee Findings & Order filed June 24, 2010, in CPC No. 2010-023, on a complaint by Tina Fisher, for violation of Rules 1.15(a)(1), 1.15(a)(2), 8.1(a) and 8.4(c). For failing to file a timely response to the disciplinary complaint, Ms. Evins had a separate reprimand sanction imposed. Ms. Fisher hired Evins in a divorce action, paid Ms. Evins, and then decided to not pursue the matter, so the costs advanced were never expended. Ms. Evins explained all the contact with and services performed even though Ms. Fisher never actually pursued the divorce. During the course of the investigation, issues were raised concerning Ms. Evins' trust account. Ms. Evins provided false information about the trust account and about her failure to maintain the costs in the trust account after receipt from the client. The funds were never placed in the trust account nor did the account balance stay above what was required if the funds had been so deposited.

**GREGORY FERGUSON, Bar No. 80043, of Little Rock**, was reprimanded in by Committee Findings & Order filed June 24, 2010, in CPC No. 2009-129, for violations of Rules 1.1, 1.2(a), 1.3, 1.5(c), 1.16(d), and 8.4(d), on a complaint by Don and Elizabeth Dickey, who were injured in an automobile accident. Ferguson, a neighbor of the Dickeys, offered to represent them on a 25% contingency fee. Ferguson failed to properly and timely serve the defendant in the lawsuit he filed, and the Dickeys lost their opportunity to seek damages. Ferguson failed to return the Dickeys' file to them upon request after his representation was concluded.

**RICKEY H. HICKS, Bar No. 89235, of Little Rock**, was reprimanded and fined \$500 in CPC No. 2009-137, by Committee Findings & order filed March 31, 2010, on a referral from the Supreme Court in No. CR 09-1182, Clemons v. State, for violation of Rule 1.3 of the Arkansas Rules of Professional Conduct. Mr. Hicks filed the record on appeal one day past the date set in the Order Extending Time to File the Record on Appeal. He filed a Motion for Rule on the Clerk, admitted fault, the Supreme Court granted the Motion letting the appeal continue, and referred Hicks to the Committee.

**RICKEY H. HICKS, Bar No. 89235**, of Little Rock, was Reprimanded by Committee Findings & Order filed January 12, 2010, in CPC 2009-101 on a complaint by Pernella Brandon for violations of Rules 1.3 and 8.4(d). Ms. Brandon and her siblings hired Mr. Hicks to review a matter and file a lawsuit against medical providers whom they believed caused their mother's death. Mr. Hicks filed a probate matter and then did not take diligent action to pursue the medical malpractice claim on behalf of the siblings. All action set out in the file and verified by Mr. Hicks' file demonstrate delay and lack of diligence. Mr. Hicks did not request medical records for six months after he had the signed Authorization. He did not seek an expert opinion for months. When he did receive the medical opinion, the statute of limitation was about to expire. Mr. Hicks did not inform his clients he was not going to file a lawsuit until the day before the statute was to expire. Mr. Hicks took no action to try to settle the matter even though he advised Ms. Brandon and her siblings that he was doing so.

**JOSEPH D. HUGHES, Bar #97021, of Paragould**, by Committee Consent Findings & Order filed July 16, 2010, in Case No. CPC 2009-140 was reprimanded and fined \$1,000 for violation of Rules 1.3, 3.4(c), and 5.5(a) in a matter referred by the Supreme Court dealing with a criminal appeal for James Montgomery in No. CR 09-1259. Mr. Hughes tendered the record on appeal to the Supreme Court Clerk seventeen days late. In his Motion for Rule on the Clerk, he accepted responsibility for his late filing of the record, the Motion was granted allowing the appeal to proceed, and the Court referred the matter to the Committee. During 2007-2009, Mr. Hughes failed to pay his law license renewal fee on time, March 1 annually, in each of those three years, and failed to pay it at all for 2008 until May 2009. As a result, for part or all of those years he was practicing law on a license that was in suspended status. The Committee found that his disciplinary record was material factor in assessing the sanction.

**NEWTON DONALD JENKINS, JR., Bar #94231, of Van Buren**, by Committee Findings & Order filed September 15, 2010, was reprimanded and fined \$1,000 in Case No. CPC 2010-030, for violation of Rules 1.1, 1.3, 1.4(b), 3.4(c), and 8.4(d) on a complaint arising out of the facts in a bankruptcy matter he handled involving Mr. and Mrs. Beliles, Case No. 08-bk-73231, that came to the attention of the Office of Professional Conduct. In arriving at these sanctions, the Panel stated it considered his disciplinary record as a factor. In August 2008, Mr. Jenkins, an experienced debtor's attorney, filed a Chapter 7 Petition for debtors Beliles in the Western District of Arkansas. The Trustee filed an objection to the extent of the statutory exemptions claimed by the Beliles in their Schedule C. In November 2008, the Court sustained the objection and directed debtors to amend their claimed exemptions to comply with appropriate bankruptcy law. The next day, on November 13, 2008, an Order was generated and filed granting the Beliles their discharges under Chapter 7. The case was not "closed."

In April 2009, the Trustee wrote Jenkins, as debtors' counsel, requesting that an amended exemption schedule be filed or he would have to move to set aside the discharge and to dismiss the case. Jenkins did not respond to the letter. On July 20, 2009, the Trustee filed a motion to set aside and deny the Beliles discharge. Jenkins filed a response on July 23, 2009, attaching a copy of an amended Schedule C as to the exemptions. On August 11, 2009, the

Court heard the Trustee's Motion to Set Aside Discharge, Mr. Jenkins failed to appear and represent his clients, and the motion was granted. The next day, the court entered its Order granting the Trustee's motion and setting aside the Beliles discharges.

On August 21, 2009, the U. S. Trustee filed her Motion to Disgorge Attorney's Fees, seeking to have the court require Jenkins to refund to his clients all legal fees they had paid him in their bankruptcy case because they received inadequate representation and ultimately no benefit from Jenkins' representation. Jenkins filed a response to the motion to disgorge. This motion was stayed pending his appeal. Jenkins appealed to the United States District Court from the order setting aside the Beliles discharges, as Case No. 09-cv-02115. On December 21, 2009, the District Court entered its Order finding that Jenkins filed his notice of appeal too late and dismissed the Beliles appeal.

On February 22, 2010, back in the bankruptcy court, the Beliles substituted a new attorney in their case, who filed a Motion to Dismiss their case, which was granted by Order issued March 18, 2010. The U. S. Trustee obtained an Order withdrawing its Motion to Disgorge Attorney's Fees, attaching proof from the Jenkins Law Firm, PLLC, that \$1,000 has been paid to the Beliles' as a full legal fee refund. As of April 21, 2010, when the Committee Complaint was filed, the Beliles had not filed or refiled any bankruptcy case, and had no legal protection offered by a discharge of debts under a bankruptcy order.

**JEFFREY KEARNEY, Bar #91249**, of Pine Bluff, AR, was reprimanded, fined \$1,000.00, and ordered to pay restitution of \$250.00 by Committee Findings and Order filed November 17, 2010, in Committee No. CPC 2010-039, on a complaint filed by Helen Parker, for violations of Rules 1.3, 1.4(a)(3), 1.4(a)(4), 1.16(a)(1), 1.16(d), 3.4(c), 3.4(d), 5.5(a), and 8.4(d). Helen Parker, her daughter, and granddaughter, all residents of Mississippi, were involved in an automobile accident in Mississippi. The vehicle was "totaled out" in the accident and Mrs. Parker and her passengers all sustained bodily injuries. Mrs. Parker made a claim on her insurance policy, which was denied, She contacted Kearney Law Offices and hired them in 2006 to represent her and her family in a civil action against her carrier, Safeway.

On several occasions after hiring the firm, Mrs. Parker attempted to call and get information on her case with no success. On February 24, 2009, a few weeks shy of the statute of limitations running, Mr. Kearney filed a civil action in the Circuit Court of Bolivar County, Mississippi, on behalf of Mrs. Parker, her daughter, and her granddaughter. Mr. Kearney filed in Mississippi State Court without being granted pro hac vice status and continued to represent Mrs. Parker despite not getting such status approval. Safeway removed the case to Federal District Court in Mississippi, and filed its Motions for Dismissal of Claims of all three Parker plaintiffs. Mr. Kearney failed to file responses to Safeway's motions. The judge ordered Mr. Kearney to retain local counsel and have counsel enter an appearance. Mr. Kearney was to file his motion to appear pro hac vice no later than August 21, 2009. Thereafter, no other action was taken by Mr. Kearney in the Parker case. There is

no record in the docket of Mr. Kearney making an application to the District Court for pro hac vice admission as ordered by the court.

On October 15, 2009, Safeway served Mr. Kearney with Interrogatories and Requests for Production of Documents. Mr. Kearney failed to respond and Safeway filed a Motion to Compel. The Court issued an Order to Show Cause on March 9, 2010, due to Mr. Kearney's failure to obtain local counsel in the case, his failure to file a motion for pro hac vice admission, and his failure to respond to any of Safeway's motions and discovery. Mr. Kearney was directed to show cause why the case should not be dismissed for failure to take any action or for failure to follow the Local Rules and Orders of the court. Mr. Kearney failed to respond to the Order to Show Cause or to file the appropriate motion with the Court removing himself from the case.

**JEFFREY KEARNEY, No. 91249, of Pine Bluff**, was reprimanded and fined \$1,000 by Committee Findings & Order filed April 30, 2010, in CPC No. 2010-006, on a complaint by Michael Myhand and Mary Ann Keller for violations of Rules 1.1, 1.4(a)(3), 3.4(c), 3.4(d), and 8.4(d). For failing to respond to the Complaint, Kearney was sanctioned with a separate reprimand. The Kearney Firm was employed in December 2006 and filed a Motion to Set Aside Order Admitting Will to Probate and Appointment of Personal Representative. The motion to contest the will was not verified as required by Ark. Code Anno. §28-1-109. The attorney for the executor of the Will filed an Answer and a Motion for Rule 11 Sanctions. At a hearing in April 2007, Kearney, citing the need for more time for discovery, requested a continuance, to which opposing counsel objected, arguing the personal representative was ready to proceed with the hearing and that Kearney had ample time for discovery starting in January when Kearney first filed his Motion. The court denied the continuance and required Kearney to go forward with the hearing. Kearney then dismissed the Motion, requesting that it be without prejudice, telling the Court that they planned to refile their motion for hearing. The Court granted the motion to dismiss the matter, but did not make a ruling as to whether it was dismissed with or without prejudice.

On May 1, 2007, Kearney filed an Amended Verified Motion to Set Aside Order Admitting Will to Probate and Appointment of Personal Representative. On July 31, 2007, opposing counsel submitted Interrogatories and Requests for Production of Documents to Kearney's client by mailing them to Kearney. The clients were never told of the discovery requests and did not respond. Opposing counsel filed a Motion to Compel, which the Court granted. Kearney never notified his clients of the discovery request, motion, or order compelling response to the discovery request. In September 2007, the Court ruled, agreeing with opposing counsel that Kearney's Amended Motion was not filed within the statutorily required time frame, and that Kearney's earlier dismissal of his Motion was with prejudice.

**JEFFREY KEARNEY, Bar #91249**, of Pine Bluff, AR, was reprimanded, fined \$1,000.00, and ordered to pay restitution of \$250.00 by Committee Findings and Order filed November 17, 2010, in Committee No. CPC 2010-039, on a complaint filed by Helen Parker, for

violations of Rules 1.3, 1.4(a)(3), 1.4(a)(4), 1.16(a)(1), 1.16(d), 3.4(c), 3.4(d), 5.5(a), and 8.4(d). Helen Parker, her daughter, and granddaughter, all residents of Mississippi, were involved in an automobile accident in Mississippi. The vehicle was “totaled out” in the accident and Mrs. Parker and her passengers all sustained bodily injuries. Mrs. Parker made a claim on her insurance policy, which was denied, She contacted Kearney Law Offices and hired them in 2006 to represent her and her family in a civil action against her carrier, Safeway.

On several occasions after hiring the firm, Mrs. Parker attempted to call and get information on her case with no success. On February 24, 2009, a few weeks shy of the statute of limitations running, Mr. Kearney filed a civil action in the Circuit Court of Bolivar County, Mississippi, on behalf of Mrs. Parker, her daughter, and her granddaughter. Mr. Kearney filed in Mississippi State Court without being granted pro hac vice status and continued to represent Mrs. Parker despite not getting such status approval. Safeway removed the case to Federal District Court in Mississippi, and filed its Motions for Dismissal of Claims of all three Parker plaintiffs. Mr. Kearney failed to file responses to Safeway’s motions. The judge ordered Mr. Kearney to retain local counsel and have counsel enter an appearance. Mr. Kearney was to file his motion to appear pro hac vice no later than August 21, 2009. Thereafter, no other action was taken by Mr. Kearney in the Parker case. There is no record in the docket of Mr. Kearney making an application to the District Court for pro hac vice admission as ordered by the court.

On October 15, 2009, Safeway served Mr. Kearney with Interrogatories and Requests for Production of Documents. Mr. Kearney failed to respond and Safeway filed a Motion to Compel. The Court issued an Order to Show Cause on March 9, 2010, due to Mr. Kearney’s failure to obtain local counsel in the case, his failure to file a motion for pro hac vice admission, and his failure to respond to any of Safeway’s motions and discovery. Mr. Kearney was directed to show cause why the case should not be dismissed for failure to take any action or for failure to follow the Local Rules and Orders of the court. Mr. Kearney failed to respond to the Order to Show Cause or to file the appropriate motion with the Court removing himself from the case.

**BOBBY K. KEETER, Bar #77076**, of Mena, Arkansas, by Findings & Order filed October 12, 2010, was Reprimanded and ordered to pay a fine in the amount of \$2,500 in Committee No. CPC 2010-059 for violation of Rules 3.2, 3.4(c), 3.4(d), 4.4, and 8.4(d) of the Arkansas Rules of Professional Conduct on a complaint filed by Meda and Tony Ballard. The Ballards filed a lawsuit in 2005, against George Page, who was represented by Keeter, over issues arising from the 2003 construction of their new house. The Ballard’s counsel (they had three) attempted to get Keeter to participate in the discovery process. Mr. Keeter did not respond to discovery, to letters, or other communication. Mr. Keeter also failed to respond to Motions filed with the Court and failed to comply with Orders directing him to act. Mr. Keeter caused much delay, resulting in the Ballards not have their day in Court until June 2010, when a jury awarded them \$75,000 against Keeter’s client.

**BRANDY MELISSA MCSHANE, Bar #95042**, of Springfield, MO, was reprimanded in Case No. CPC 2009-052, by Findings & Order filed October 1, 2010, and also fined \$250 for failing to file a response, on a referral from the Missouri Supreme Court from a sanction there in 2008, for violations of Rules 1.3, 1.4(a)(3), 3.4(c), 8.1(b). The Missouri disciplinary proceedings related to representation of (1) Belenda Cook in a guardianship matter in Missouri; (2) Tim and Sandy Freiburger in an estate planning matter; and (3) Gabriel Ondetti in an estate planning matter. Ms. McShane entered into an agreement with the Missouri Disciplinary Board wherein she was suspended from the practice of law for a period of six months with the suspension being stayed and was placed on probation for a period of one year and fined \$1,000. Missouri Disciplinary Counsel referred Ms. McShane's conduct to the Arkansas Office of Professional Conduct. It was then discovered that Ms. McShane had not paid her Arkansas license fees for the years 2005, 2006, 2007, 2008, and 2009. Ms. McShane was served with a formal complaint on July 24, 2009, but failed to file a response. Pursuant to Section 9.C(4), the allegations in the formal complaint were deemed admitted. Ms. McShane was reprimanded and assessed \$50 costs for her conduct. For her failure to respond to the formal complaint, a separate caution sanction was imposed and she was fined \$250.00.

**F. DAVID REES, Bar No. 79238**, of Jonesboro, was Reprimanded by Committee Consent Findings & Order filed March 19, 2010, in CPC 2009-077, on a complaint by Jerry and Donnie James for violations of Rules 1.2(a), 1.5(a), and 1.16(d), and also ordered to pay \$35,000 restitution to Jerry James within ninety days. Donnie James of Jonesboro was sentenced to fifty (50) years in state prison in August 1998 from Craighead Circuit Court on his pleas to multiple serious felonies (including two aggravated robberies). Donnie's parole eligibility date is August 5, 2033. In late March 2004, his father, Jerry James, hired David Rees and paid him a \$50,000 fee in full that date to represent Donnie in an application for executive clemency, a pardon from the Governor, or a time-cut in his sentence. Jerry James received assertions from David Rees that led him to believe Rees' reputation as an attorney and his personal connections with state officials could advance Donnie's cause and lead to a successful outcome.

Rees turned the matter over to attorney Ryan, first licensed in April 2003 and a new associate at the Rees firm. At the time neither Rees or Ryan had ever handled an executive clemency matter for an inmate. Ryan did most of what work was done for Donnie until she left the firm in April 2005. Ms. Ryan learned early on that Donnie had to serve a minimum of seven (7) years time before he could apply for clemency. She calculated he would not be eligible to apply until about February 2005. Ryan visited Donnie twice at the Brickeys Unit near Marianna - in May and late December 2004, the only firm member who ever met with Donnie. In early 2005, on Donnie's behalf, Ryan employed an investigator for assistance in an effort to get Donnie transferred to a unit closer to Jonesboro. The effort was not successful.

After Ryan left, Mr. Rees assumed responsibility for the file. Available documentation indicates he did little work on the matter, and usually then only in response to demands or complaints from Jerry or Donnie James that nothing was being done. In February 2006, Rees

wrote Donnie, asking Donnie to fill out the application forms and send them to Rees to be typed, which Donnie did soon thereafter.

By mid-April 2006, Donnie and his father had obtained from friends and relatives all of the letters of support for Donnie that Rees would eventually include in the Executive Clemency Application. After Donnie wrote Rees a strong letter in mid-September 2006, Rees had firm member Jason Lewallen get the packet pulled together and put in final form for submission, and sent Donnie the final Application packet to sign. Lewallen charged Rees \$400 for his work on the matter. The packet was filed by Rees on October 10, 2006. Without providing a hearing for Donnie and his attorney, in February 2007 the Post Prison Transfer Board voted 5-0 against favorably recommending Donnie's case to the Governor. In January 2008, Governor Beebe wrote Donnie denying his application. Donnie did not hear from Rees regarding executive clemency after the Application was filed in October 2006.

In 2008, Jerry James, through new counsel, made demand on Rees for return of the unearned portion of the \$50,000 fee he paid. No accounting for the use of the \$50,000.00 or any refund has been made. Affidavits of six Arkansas attorneys who all have had executive clemency experience representing Arkansas inmates stated that \$50,000 was clearly an excessive and unreasonable legal fee for a matter like this under any similar fact scenario. As part of this fee, Rees claimed he did extra work on other matters for Jerry James.

**CHARLES R. SUPHAN, Bar #94003**, formerly of Maumelle and now of Morrilton, in Committee No. CPC 2009-100, on a complaint by Jennifer Monterola, was reprimanded by Consent Findings & Order filed October 15, 2010, for violation of Rules 1.1, 1.2(a), 1.3, 1.4(a)(3), 1.4(a)(4), 1.15(a)(2), 3.4(c), 5.5(a), and 8.4(d). In July 2007, Ms. Monterola employed and paid Mr. Suphan to represent her in obtaining an annulment from her husband, an illegal alien when they married and who had been deported from the USA. She gave Suphan a total of \$340.00 in cash for part of his legal fee and the case filing fee. By late August 2007, Suphan had received an additional \$220.00 for Monterola's account in a check from her grandmother. Monterola thereafter was unable to contact Suphan, as his telephone number was disconnected or out of service at times. Suphan finally filed her divorce complaint in March 2008. Ms. Monterola had to transport Mr. Suphan from his home in Maumelle to the Pulaski County Courthouse and then back for him to file her case, as he told her he had no available transportation at the time.

Mr. Suphan did not pay his 2008 Arkansas law license renewal fee, due by March 1, until June 13, 2008. His license was in automatic suspension status on March 20, 2008, when he filed Ms. Monterola's Complaint. He practiced law at a time when his Arkansas law license was suspended in 2008.

On July 28, 2008, Monterola mailed Suphan a check written by her grandmother and payable to The Daily Record for \$125.00, but her check was never reported to her as being negotiated. Ms. Monterola later reported that Mr. Suphan informed her that he had misplaced

the \$125.00 check and would file the warning order once he located the check. She thereafter continued to have difficulty communicating with Suphan about the status of her case. She found his telephone was disconnected again in August 2008. She did not receive any returns from Suphan of her numerous calls for six weeks prior to September 24, 2008, when she filed her grievance at the Office of Professional Conduct (OPC). Suphan failed to obtain service of summons on Mr. Monterola within 120 days as required by Court rule. A Dismissal Order Without Prejudice was filed September 17, 2008, in Ms. Monterola's case. She was not notified of this event by Mr. Suphan, if he knew of the dismissal.

Starting on September 26, 2008, OPC attempted to assist Ms. Monterola by contacting Mr. Suphan, encouraging direct communication between attorney and client, and asking for appropriate and timely action in her case. On October 8, 2008, Mr. Suphan provided an e-mail status report. On December 4, 2008, Mr. Suphan sent OPC a faxed status report. Included in the documents provided by Mr. Suphan to OPC was a copy of an e-mail Suphan sent to Ms. Monterola on October 8, 2008, in which he informed her he was sending the warning order to the Daily Record to be published, a hearing could be set thirty (30) days thereafter, and that he would get her divorce wrapped up without further delay. The warning order was first published on November 28, 2008. In neither of his status reports to OPC, which were promptly forwarded to Ms. Monterola, did Mr. Suphan disclose that the original Complaint had been dismissed by Court order filed September 17, 2008, for failure to obtain timely service upon the defendant. A review of the case docket shows that Mr. Suphan filed an Amended Complaint for Ms. Monterola on October 7, 2008, to try to get the same case started again, apparently paying the new filing fee from his funds. Even with the six week delay in publishing the warning order, Mr. Suphan represented to his client that he should have her in a final hearing by about January 1, 2009. No such hearing has been held and Ms. Monterola had not received a divorce as of June 30, 2009

On March 12, 2009, Suphan filed a new Complaint for Divorce for Monterola in Pulaski Circuit Court, paid a \$140 filing fee, and had summons issued. No further action is shown by the case docket. Suphan did not pay his 2009 law license renewal fee, due by March 1, until March 11, 2009. His Arkansas law license was in automatic suspension status from March 2-11, 2009, ending the day before he filed Ms. Monterola's new Complaint. He practiced law at a time when his Arkansas law license was suspended in 2009. After December 2008, OPC communicated many times with Mr. Suphan requesting that he take appropriate action in Ms. Monterola's matter. By 2010 he was able to function better. He provided his client her file. In June 2010 he made a \$540 refund to her. In August 2010 he got reinstated by the CLE Board. He is now working with ArJLAP, doing better, and reports he has a stable personal environment for the first time in many months, and has slowly returned to a limited law practice in Morrilton.

**THOMAS L. TRAVIS , Bar No. 95029**, of Little Rock, was Reprimanded in CPC 2009-009, following public hearing, on a complaint by Martha and Jose Islas, for violations of Rules 1.5(a) and 1.16(d), and ordered to make \$1,000 restitution to the Islases. Jose Islas was a

beneficiary of an alien employment certification proceeding which Mr. Travis filed for Mr. Islas' then employer. Several years later, Mr. Islas filed for an adjustment in status. When he did so, he and his new counsel, Barry Frager of Memphis, were advised that the USCIS would need a copy of the originating form filed in order to determine the qualifying date for Mr. Islas. Mr. Travis had that document in the file maintained at the time of representation of Mr. Islas and his former employer. Mr. Travis did not return the telephone calls of Mr. Islas' new counsel nor did he provide the document as requested, contrary to Mr. Travis' previous testimony in another case about how he does so when asked for specific documents. Mr. Islas' request for adjustment in status was initially denied. He was given a short period of time to request that denial be reviewed and to provide the documentation. Mr. Travis was aware of the time sensitive nature of immigration proceedings, as this is his primary practice area. Instead of providing the document as requested and as the Rule of Professional Conduct contemplates, Mr. Travis charged Mr. Islas \$1000 to provide the document. Mr. Travis blamed Mr. Frager for the situation in which Mr. Islas found himself. Mr. Travis also stated that it was because Mr. Islas and his wife asked for the original document and not a copy. He stated that the \$1,000 charge was for all the time spent looking for the original document.

**CAUTION:**

**MARK E. BARTON, Bar No. 96248, of El Dorado**, was cautioned by Committee Findings & Order filed May 6, 2010, in CPC No. 2009-139, on a complaint by Myron Anderson, Jr. for violation of Rules 1.1, 3.4(c) and 8.4(d). Mr. Barton filed a criminal appeal for Anderson, No. CACR 08-458. His brief contained a three page argument, cited no authority for his arguments, and his arguments were determined by the Court of Appeals to be frivolous. He was not thorough enough in his representation of Mr. Anderson to include more than one sentence in his argument concerning the sufficiency of the evidence. Mr. Barton failed to cite authority or advance any argument for his untenable assertion that mere inconsistency in the testimony of different witnesses is of itself so destructive of the jury's ability to discern the truth that it somehow renders otherwise-sufficient evidence insufficient to support a criminal conviction. Barton failed to set out in his brief what testimony he was referring to or which elements of the offenses were lacking sufficient proof to support Anderson's conviction. Mr. Barton failed to preserve for appeal the issues relating to a specific deficiency such as insufficient proof on the elements of the offense. Barton failed to comply with Arkansas Rule of Criminal Procedure 33.1(c) when he failed to make an adequate directed verdict motion by failing to present a specific deficiency such as insufficient proof on the elements of the offense.

**JAMES P. CLOUETTE, Bar No. 74025, of Little Rock**, was cautioned after a public hearing before Panel B on June 18, 2010, by Findings & Order filed June 24, 2010, in CPC No. 2010-002, for violation of Rule 8.4(b), (committing a criminal act), on a complaint generated from information in the state newspaper about his criminal case in Pulaski County Circuit Court. Clouette is a veteran Arkansas criminal defense attorney. In March 2009, he was charged by Information with the Class C Felony offense of possession of a controlled

substance, methamphetamine, that occurred on or about August 1, 2008, in a public bank lobby in Little Rock during business hours. At a bench trial on November 23, 2009, Mr. Clouette was found guilty of the felony charge, judgment was deferred under ACA § 5-64-413, and he was placed on probation for two years, as shown by the Order of Probation filed January 5, 2010. Any felony is defined as a “serious crime” by the Court’s Procedures, Section 2.J.

Mr. Clouette responded that he maintained his innocence throughout his criminal case; that no judgment of conviction has been entered against him; that if he successfully completes his two year probation period no judgment of conviction will be entered against him; that a finding of guilt against him should not be used by the Committee; that his alleged criminal act was not an offense involving violence, dishonesty, breach of trust, or serious interference with the administration of justice; that the Arkansas Supreme Court has recognized the problem in the legal community by establishing its Arkansas Lawyer Assistance Program (now JLAP) to assist lawyers with certain problems by their referral to that program, instead of the Committee taking action against them; and that possession of drugs is not alone prejudicial to the administration of justice.

At the hearing Mr. Clouette testified that he had an alcohol problem for many years and had used controlled substances for recreational purposes for several years before the incident in August 2008. He testified that he had no specific recollection of having possessed the methamphetamine found in the bank lobby on August 1, 2008. He stated after he became aware of the arrest warrant being issued for him in October 2008, he had enrolled in ARLAP (now JLAP), was meeting his contract requirements there, had been subjected to periodic random drug testing since May 2009 in circuit court, and had been “clean” or negative at every test. Little Rock attorney Bill Luppen testified for Mr. Clouette that he had known Clouette for many years, saw Clouette several times a week in criminal court, and that he had never seen Clouette impaired or in a condition where Luppen thought Clouette’s ability or performance as a lawyer was an issue. Pulaski Circuit Court, Fourth Division, Bailiff Clyde Steelman testified for Mr. Clouette that he had administered the drug tests to Clouette at the Pulaski County Courthouse on an almost weekly basis since May 2009, that all tests had been negative for controlled substances, and that the testing continued. [The Executive Director appealed to the Supreme Court as No. 10-844.]

**ERWIN L. DAVIS, Bar #71022**, of Fayetteville was cautioned by Findings & Order filed October 12, 2010, in Committee No. CPC 2010-021, after a hearing, for violation of Rule 1.3. Davis represented Jim Henson in a Rule 37 Post-Conviction matter in Washington County Circuit Court. After the decision, Mr. Davis filed a notice of appeal. Davis began to work on Henson’s brief and received two extensions. The last extension was to December 23, 2009. Davis admitted that he did not file a Motion for Extension of Time on or before December 23, 2009, but did ship such a Motion on December 22, 2009. He received a letter dated January 5, 2010, which stated that his Motion had not been timely filed. Davis did nothing further until February 16, 2010, when he filed a Motion to File Belated Brief. The Arkansas Supreme

Court granted Davis's Motion and his client's appeal continued. After a hearing before Panel A, Davis was cautioned and assessed \$150 costs. Davis has filed a Notice of Appeal to the Arkansas Supreme Court.

**MILDRED H. HANSEN, Bar No. 87071**, of Little Rock, Arkansas was cautioned, following a public hearing, by Committee Findings and Order filed January 28, 2010, in CPC 2009-070, on a complaint filed by Chad Fason, for violations of Rules 4.4(a) and 8.4(d). Ms. Hansen represented Mr. Fason's ex-wife in a visitation and child support dispute. On May 19, 2008 Fason along with his attorney, Mildred Wineland, and Hansen along with her client, Fason's ex-wife, were before Judge Alice Gray in Pulaski County Circuit Court for a full day hearing on the matter. Hansen and Wineland were on the record informing the Court which issues they had settled, when Hansen leaned over to speak with Wineland regarding Tuesday night visitations. At this point the parties requested to go off the record. When informed by Wineland that the Tuesday night visitation would no longer be kept for summer visitation, Hansen then asked Fason directly whether he wanted to keep Tuesday night visitations. When Fason replied, "no," Hansen then whispered to Fason, "I'll see you go back to federal prison." Ms. Wineland advised the Court that Hansen had just threatened her client. When asked about the exchange by the judge, Hansen basically admitted she had made the statement to Fason.

**CARL W. HOPKINS, Bar #94215**, of Van Buren, Arkansas, on complaint of Lera Shelby, was Cautioned by Consent Findings and Order filed December 14, 2010, in Committee No. CPC 2010-075, for violation of Rules 1.3, 1.5(b), 1.15(a)(1) and 1.15(b)(2). Mrs. Shelby hired Mr. Hopkins to represent her in a bankruptcy proceeding during April 2008. Shelby had many creditors and had been sued by some. She presented all of this information to Hopkins as requested. She took the \$1,250 in fee he requested to him as well. Hopkins failed to place the fee arrangement with Shelby in written form in spite of not having ever previously represented her, and failed to explain the rate or basis of his fee to Shelby. The payment of advanced fees and costs was not placed in Hopkins' IOLTA trust account, so the client's funds were not safeguarded. Hopkins did not file the bankruptcy. When Shelby requested her fees be refunded, Hopkins told her that someone would send a refund. No refund was sent. Mrs. Shelby finally hired an attorney who sued Mr. Hopkins. They settled for \$500 in order to not expend any additional funds on costs, etc.

**MAX M. HORNER, JR, Bar No. 2001067**, of Jacksonville, Arkansas was cautioned by Committee Findings and Order filed February 23, 2010, in CPC 2009-085, on a complaint filed by Florida Attorneys Harold Patricoff and Sandra Upegui, for violations of Rules 3.4(c) and 8.4(d). Horner acted as counsel for KLM Petroleum, Inc. (KLM), which had its principal place of business in Arkansas. KLM purchased large quantities of aviation fuel from World Fuel, a Texas corporation with its principal office in Miami, Florida, and failed to pay for the fuel. World Fuel obtained a judgment in Federal Court against KLM in the amount of \$348,247.63.

On August 23, 2007, Max Horner faxed a letter to Patricoff offering to settle World Fuel's claim in exchange for World Fuel's dismissal of the lawsuit. World Fuel accepted the offer. The first lawsuit was to be dismissed without prejudice when Horner provided to Patricoff confirmation that Horner had in his trust account \$355,186.35 plus \$2,000.00 in attorney's fees and that the funds would be deposited in Patricoff's firm trust account.

Not receiving the money as agreed, World Fuel filed a second lawsuit on September 7, 2007, in federal court in Miami, naming KLM, Tri-State Petroleum, Inc., and Max M. Horner, Jr., as defendants. Horner was served with the Complaint and received an extension of time to file his response. On November 13, 2007, the parties entered into a Settlement Stipulation, whereby proceedings against Horner would be stayed pending payment by KLM as set forth in the agreement. If KLM defaulted, the suit would be reinstated against all defendants. KLM failed to make payments as agreed and World Fuel had the suit be reinstated on January 24, 2008. On March 4, 2008, default judgments were granted against defendants KLM and Tri-State Petroleum. World Fuel filed a Motion for Sanctions and Motion to Compel against Horner, who filed a Motion for Continuance. The Court had already granted the motions, and denied as moot Mr. Horner's motion. The Court granted the Motion for Sanctions against Horner for failure to comply with its October 7, 2008, Order, stating that "Horner, an attorney, knew or should have known of his discovery obligations and the necessity of complying with court dates. Such disregard by Horner clearly indicates to this Court that his conduct exemplifies one of willfully disregarding court orders and litigation obligations." On November 25, 2008, the court entered a final judgment after default against Horner for \$341,826.23.

**DARRELL W. JOHNSON, Bar #65026, of Fort Smith**, by Committee Consent Findings & Order filed July 16, 2010, was cautioned in Case No. CPC 2010-029, for violation of Rule 5.5(a) on a complaint from the Oklahoma Bar Association. During 2008-2009, Johnson practiced law in the district courts in two Oklahoma counties, filing signed pleadings in cases there while not licensed or admitted to do so. A Complaint was filed against him by the Oklahoma Bar Association on a complaint filed by Oklahoma counsel in those cases. Johnson was ordered to cease practicing law in Oklahoma until he was duly admitted by the Oklahoma Supreme Court or by *pro hac vice* application. Johnson admitted he had practiced law in these Oklahoma courts as charged. He explained that the bulk of his practice is in bankruptcy, and that his appearances and filings in Oklahoma courts were for clients who were going to file bankruptcy petitions through him. His filings in Oklahoma state courts were for the purpose of "buying time" to get the new client's cases filed in federal bankruptcy court in Oklahoma, where he could practice without being admitted or licensed by the Supreme Court of Oklahoma.

**JEFFREY KEARNEY, Bar #91249, of Pine Bluff, AR**, was cautioned by Committee Findings and Order filed November 17, 2010, in Committee No. CPC 2010-049, on a complaint filed by Terry Otter, for violation of Rule 1.3. In August 1991, Otter pled guilty to kidnaping and two counts of rape and is currently serving a forty (40) year sentence in the

Arkansas Department of Corrections. In May 2008, the Arkansas Sex Offender Assessment Committee (hereinafter "SOAC"), assessed Otter as a level-four sexually violent predator. Otter hired the Kearney Law Office to represent him. Otter requested administrative review of SOAC's assignment which was granted. The assignment level was subsequently upheld. Otter had thirty (30) days from receipt of the findings to petition for judicial review. Kearney filed Otter's Petition for Judicial Review on December 4, 2008. SOAC responded, requesting that the action be dismissed. The court found that because Kearney did not timely file the Petition for Judicial Review and the court was without jurisdiction to hear the matter on the merits. The Petition for Judicial Review was dismissed with prejudice. Kearney filed a Notice of Appeal from the court's dismissal. The Arkansas Court of Appeals affirmed the trial court's dismissal.

**JEAN M. MADDEN, Bar No. 84096, of Little Rock**, was cautioned by Committee Consent Findings & Order filed April 16, 2010, in CPC No. 2009-114, on a referral from U.S. Bankruptcy Chief Judge Audrey Evans, for violations of Rules 1.4(a)(2) and 1.4(a)(3) in No. 02-bk-23841, a Chapter 13 case for Ethel West. Ms. West had two main creditors, a car loan and a home mortgage. The mortgage was to remain outside the bankruptcy plan. During the life of the bankruptcy case, payment plans were modified or amended on several occasions. Eventually, the mortgage was brought into the plan. During discussions of the modification or amendment of the payment plans, the mortgage company provided information that there was an arrearage. Ms. West continued to make payment into the plans according to the Orders. In 2007, Ms. West's bankruptcy case was coming to a close and the Trustee sent a notice to creditors requesting status information. The mortgage company provided information showing that Ms. West was in arrears in the amount of \$4,925.51, with pre-petition arrearage of \$1,183.31, attorney's fees from a plan modification, and post-petition arrearage of \$3,894.26. The mortgage company filed a notice of amended claim raising its claim from \$1,683.31 to \$5,577.57. No objection was received from Ms. West's attorney. Ms. West filed a letter with the court raising objections and complaints about her lawyer. The court conducted a hearing, at which Ms. West appeared and an attorney from Ms. Madden's firm, who Ms. West had never met, appeared. The court allowed the parties to discuss the matter and a settlement was then reached. The court inquired about the allegations Ms. West raised in her letter to the court. Ms. West then testified about her experience with the Madden Law Firm. Ms. West stated that she had not missed a bankruptcy payment yet she was somehow in arrears. She stated that she called Madden Law Firm but could not speak to an attorney to explain the matter to her. Only during the break in the hearing was it explained to her how she owed the \$5,577.57. Ms. West stated that she paid Madden Law Firm \$2,500 for a service she believed she did not receive. The court then directed Ms. Madden to appear at a "show cause" hearing in January 2008. At the hearing, Ms. Madden testified about what occurred in Ms. West's bankruptcy case and that she was not aware of any complaints by Ms. West. Ms. Madden explained that she did not appear at the previous hearing because she believed the matter had been settled. The court entered an Order Disgoring Fees on November 10, 2008, and referred the matter to the Committee. In the Order, the court found that Ms. Madden had failed to do several things, chiefly failing to communicate with her client.

**DENNIS R. MOLOCK, Bar #79211**, of Stuttgart, Arkansas, was cautioned and ordered to pay a \$400 fine Consent Findings and Order filed in Committee No. CPC 2010-072 for violation of Rules 1.1, 1.3, and 8.4(d) of the Arkansas Rules of Professional Conduct. The Arkansas Supreme Court granted Mr. Molock's Motion for Rule on the Clerk in *Pennister v. State*, CR10-579, on August 6, 2010, and referred the matter to the Committee. Mr. Molock represented Mr. Pennister in a criminal case in Arkansas County Circuit Court. A conditional plea of guilty was entered following the denial of Pennister's Motion to Suppress. The Judgment from which the appeal was to be taken was filed on September 15, 2009. Mr. Molock did not file a Notice of Appeal until February 17, 2010, one hundred and eleven days following the filing of the Judgment.

**STEPHEN B. NISWANGER, Bar # 96012, of Little Rock**, was cautioned by Committee Consent Findings and Order in Case No. CPC 2010-044, for violation of Rule 3.4(c). The Supreme Court referred Mr. Niswanger to the Committee for the language he used in his Petition for Rehearing and accompanying brief in *Darryl V. Talley v. City of North Little Rock*, Supreme Court No. 2009-11. Mr. Niswanger wrote that the Court may have used dishonest legal reasoning in reaching its decision, along with other statements questioning the Court's decision. The cumulation of all the various statements made about the Court making erroneous decisions, having other than legal reasons, etc., made the language and tenor of the pleading disrespectful to the Court, inappropriate, and in violation of Arkansas Supreme Court Rule 1-5, as that Rule has been interpreted to also include members of the Arkansas Supreme Court.

**CHARLES DWAIN OLIVER, Bar No. 2001009**, of Hampton, Arkansas, was cautioned in CPC 2009-098 by Committee Findings & Order filed January 8, 2010, on a complaint by attorney Tracey Rothermel for violations of Rules 1.7(a) and 8.4(d). Ms. Rothermel is a Deputy Prosecuting Attorney for the 13<sup>th</sup> Judicial District in Arkansas. Mr. Oliver is the City Attorney for the City of Hampton in the same judicial district. Mr. Oliver prosecutes misdemeanor violations of State law for the State of Arkansas in his duties as City Attorney. During his time as City Attorney Oliver has represented at least one criminal defendant in Circuit Court against the State of Arkansas in the 13<sup>th</sup> District. This is a conflict that appears to not be able to be waived. Motions were filed and a hearing conducted based on Mr. Oliver's representation of the criminal defendant in circuit court while still acting as City Attorney, with the circuit judge denying the state's motion to disqualify Mr. Oliver, holding the defendant had waived the conflict. Neither side appealed the circuit court. Here, Mr. Oliver did not request a public hearing and accepted the result of the Committee's ballot vote.

**JOHN I. PURTLE, Bar No. 50075**, of Conway, Arkansas, was cautioned in CPC 2009-068 by Committee Findings & Order filed January 8, 2010, on a referral from Circuit Judge Phillip Whiteaker of Lonoke County, for violations of Rules 3.1 and 8.2. Mr. Purtle represented the plaintiff in a foreclosure matter, where the defendant filed an *ex Parte, pro se* Petition for Temporary Restraining Order to stop the sale. The Circuit Court granted the request until a

hearing could be scheduled. A hearing was held but no notice had been served upon Mr. Purtle or his client. The Court dismissed the case. Mr. Purtle filed a Motion for Reconsideration and a document entitled "Supplemental Update," stating that the "court's sua sponte initiated entwinement with Mr. Jackson (i.e., which fully explains the subsequent cover-up by this court of its inexcusable shocking illegal conduct in this case), is fully set forth in said "Request for Transcription of All Ex Parte Proceedings." In the Request, Mr. Purtle again made statements alleging a cover-up between the opposing party and the Court. Mr. Purtle then requested that the Court provide him with the date and time of all ex parte communications the Court had with defendant Jackson, including times the Court, among other things, prayed, sang, initiated prayer, and initiated singing with Mr. Jackson and all ex parte communications the Court had about the lawsuit to specified individuals. Mr. Purtle filed a notice of appeal and stated in the notice that the transcript "revealed that this court sua sponte aided and abetted Mr. Jackson's fraud as well as revealing the existence of more unreported ex parte communications by Mr. Jackson with this court." According to Mr. Purtle, the transcript showed the court's ex parte discussions. In a letter to the Court, Mr. Purtle made some allegations including: "At no time in my long career...have I seen such a collapse of the legal system as has happened in this case that was conducted entirely ex parte. ...[E]very safeguard, designed over hundreds of years to prevent what should never happened, was violated without any thought as to the consequences."

Mr. Purtle represented Mr. Wallring in a matter where a Mr. Jackson defaulted a farm mortgage. Mr. Jackson filed an *ex parte, pro se* Petition for Temporary Restraining Order to stop the sale set, which was granted until a hearing could be held on December 11, 2006. There was no service on Mr. Wallring by Mr. Jackson. On June 15, 2007, the Court dismissed the case. Mr. Purtle filed a Motion for Reconsideration. On July 12, 2007, Mr. Purtle filed a document entitled "Supplemental Update" and stated that the "court's sua sponte initiated entwinement with Mr. Jackson (i.e., which fully explains the subsequent cover-up by this court of its inexcusable shocking illegal conduct in this case), is fully set forth in said "Request for Transcription of All Ex Parte Proceedings." In the Request, Mr. Purtle again made the statement that there was an unlawful fraudulent entwinement with Mr. Jackson and the Court resulting in a cover-up. Mr. Purtle then requested that the Court provide him with the date, time and a precisely detailed re-creation summary of all ex parte communications the Court had with Mr. Jackson, including times the Court, among other things, prayed, sang, initiated prayer, initiated singing, with Mr. Jackson and all *ex parte* communications the Court had about the lawsuit to specified individuals. On July 16, 2007, Mr. Purtle filed a notice of appeal, stating that the transcript "revealed that this court sua sponte aided and abetted Mr. Jackson's fraud as well as revealing the existence of more unreported ex parte communications by Mr. Jackson with this court." A transcript from the December 11, 2006, hearing was not originally part of the record but was then discovered by Mr. Purtle, who claimed the transcript showed the court's *ex parte* discussions and that there had been no service upon Mr. Purtle or his clients. Mr. Purtle thereafter requested a transcript of all *ex parte* proceedings between Mr. Jackson and the Court and sent a letter dated September 10, 2007, to the Judge Whiteaker, making allegations that included: "At no time in my long

career, both as an attorney and Associate Justice of the Arkansas Supreme Court, have I seen such a collapse of the legal system as has happened in this case that was conducted entirely *ex parte*. It appears to me that every safeguard, designed over hundreds of years to prevent what should never happened, was violated without any thought as to the consequences." Mr. Purtle went on to demand Judge Whiteaker provide certain information, before Purtle filed the record with the court, to address the incomplete and missing matters that are required to be in the record, and explain the untruthful matters currently existing in the record. [Mr. Purtle died later in 2010.]

**CECILY P. SKARDA, Bar No. 98114**, of North Little Rock, was cautioned and ordered to pay \$2,500 restitution, by Committee Findings & Order filed June 24, 2010, in CPC No. 2010-007, on a complaint by Dena Rogers, for violations of Rules 1.3, 1.4(a)(3), 1.15(a)(1), 1.15(b)(2) and 8.4(d). Ms. Rogers hired Ms. Skarda to represent her in a post-decree matter involving her ex-husband. Ms. Rogers paid Ms. Skarda \$2,500 as a retainer for fees to be earned and costs associated with pursuing the matter. Ms. Skarda failed to place the funds in her IOLTA trust account. Skarda did not diligently represent Rogers. She failed to keep Rogers informed of the status of any actions she took on her behalf. Ms. Skarda's own billing statement demonstrates that no services were provided for weeks at a time. Skarda admitted she told her client that she would bill at an hourly rate, but that she considered the retainer as having been earned immediately. Skarda did make a \$630 refund, for which she will receive credit against the restitution ordered..

**F. MATTISON THOMAS, III , Bar No. 2002007**, of El Dorado, was Cautioned by Committee Findings & Order filed February 22, 2010, in CPC 2009-124, on a complaint by Martha Wilson for violation of Rules 1.1, 1.2(a) and 8.4(d). Mr. Thomas represented Mrs. Wilson in a lawsuit against a medical supply company. The lawsuit was originally filed for Mrs. Wilson and her husband. Mrs. Wilson's husband died during the pendency of the lawsuit. A day before Mr. Thomas filed a Motion to Voluntarily Dismiss the lawsuit, Mrs. Wilson was named Personal Representative of the Estate of her late husband. Mr. Thomas did not designate the proper new plaintiff party after the Personal Representative was appointed but before he dismissed the lawsuit. When the lawsuit was re-filed, Mrs. Wilson was the plaintiff. The defendants moved to dismiss because of the incorrect party plaintiff. The motion was granted, the trial court was affirmed on appeal. Mr. Thomas' error caused Mrs. Wilson to not be able to present her claims in court.

