



# Arkansas Supreme Court Committee on Professional Conduct

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## 2018 Annual Report

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### Office of Professional Conduct

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# I. Introduction

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

**History:** Amendment 28 to the Arkansas Constitution was adopted by the voters in 1938. The amendment placed with the Arkansas Supreme Court the sole 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 397-525 of the 2019 Court Rules, Volume 2, of the Arkansas Code. The attorney discipline Procedures implementing these Rules are in the same Volume 2, at pages 345-395.

**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.

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## II. Structure

### 1. COMMITTEE ON PROFESSIONAL CONDUCT

For the year 2018, the Committee continued to operate in the new model of four Panels authorized by the Supreme Court as of January 1, 2002, designated Panels A, B, C, and D (Reserve). Each panel is composed of seven members appointed by the Arkansas Supreme Court. Five members are lawyers, with one lawyer appointed from each Congressional District and one from the State at large. The remaining two positions are filled by persons who are not lawyers and are selected by the Court from the State at large. Panel membership in 2018 was as follows:

**Panel A:** T. Benton Smith, Jr., Jonesboro, Attorney, First Congressional District  
Lisa C. Ballard, North Little Rock, Attorney, Second Congressional District  
Mark L. Martin, Fayetteville, Attorney, Third Congressional District  
Michael W. Boyd, Magnolia, Attorney, Fourth Congressional District  
Danyelle J. Walker, Little Rock, Attorney at Large  
Karolyn Jones, North Little Rock, Non-attorney at Large  
Tanya R. Owen, Fayetteville, Non-attorney at Large

**Panel B:** Michael E. Mullally, Jonesboro, Attorney, First Congressional District  
David P. Glover, Little Rock, Attorney, Second Congressional District  
James S. Dunham, Russellville, Attorney, Third Congressional District  
Stephen Crane, Magnolia, Attorney, Fourth Congressional District  
Niki T. Cung, Fayetteville, Attorney, Attorney at Large  
Elmer Ritchie, Little Rock, Non-attorney at Large  
Carolyn Morris, Danville, Non-attorney at Large

**Panel C:** Keith L. Chrestman, Jonesboro, Attorney, First Congressional District  
James A. Simpson, Jr., Searcy, Attorney, Second Congressional District  
Tonya L. Patrick, Fayetteville, Attorney, Third Congressional District  
Joseph Hickey, El Dorado, Attorney, Fourth Congressional District  
Marshall S. Ney, Rogers, Attorney, At Large  
Shelia Brown, Pine Bluff, Non-attorney at Large  
Carlton Saffa, Non-attorney at Large

**Panel D:** (Reserve) Laura E. Partlow, West Memphis, Attorney, First Congressional District  
Scott S. Hilburn, Little Rock, Attorney, Second Congressional District  
Timothy C. Hutchinson, Fayetteville, Attorney, Third Congressional District  
Paul W. Keith, Monticello, Attorney, Fourth Congressional District  
E. Kent Hirsch, Springdale, Attorney at Large  
Mitchell Lowe, Little Rock, Non-attorney at large  
Ronnie Williams, Menifee, Non-attorney at large

The **2018 Executive Committee** consisted of:

Michael W. Boyd, Magnolia, Panel A, Committee Chair  
James S. Dunham, Russellville, Panel B, Committee Secretary  
T. Benton Smith, Jr., Jonesboro, Panel A Chair  
Michael E. Mullally, Jonesboro, Panel B Chair  
Joseph Hickey, El Dorado, Panel C Chair

The **2019 Executive Committee** will consist of:

James S. Dunham, Russellville, Panel B, Committee Chair  
Lisa C. Ballard, North Little Rock, Panel A, Committee Secretary  
T. Benton Smith, Jr., Jonesboro, Panel A Chair  
Stephen R. Crane, Magnolia, Panel B Chair  
Joseph Hickey, El Dorado, Panel C Chair

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

### **COMMITTEE MEETING CALENDAR:**

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

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

Panels C and D meet “on call” for special settings of hearings.

## **2. OFFICE OF PROFESSIONAL CONDUCT**

The Committee employs an attorney Executive Director and staff who function as the Office of Professional Conduct, which is housed in offices at the Riverdale Plaza at 2100 Riverfront Drive, Little Rock, Arkansas 72202. The Office of Professional Conduct receives all complaints involving attorneys licensed to practice law in the State of Arkansas, investigates the complaints, provides assistance in the preparation of formal complaints, and processes formal complaints for submission to the Committee. The budget of the Committee and Office for 2018-2019 is about \$927,000, totally funded by the Supreme Court by a portion of the annual license fee paid by Arkansas-licensed attorneys to the Arkansas Supreme Court. No state or taxpayer funds are provided to support the office and committee.

The Office of Professional Conduct is staffed by four staff attorneys, a paralegal, and two administrative assistants. 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 2018 were Michael E. Harmon - Deputy Director, Charlene Fleetwood - Senior Staff Attorney, and Caroline Bednar - Staff Attorney.

In calendar 2018, as in previous years, the staff presented “continuing legal education” programs or speeches on law-related topics across the state.

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

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

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### **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 2018 calendar year, the Office opened new files on 697 grievances on attorneys alleged lawyer misconduct, increased from 616 new files opened in 2017. For statistical information pertaining to 2018 grievances only, see attached Appendix A.

In 2018, following assigned review by staff attorneys of disciplinary complaints received in calendar year 2018 and carry-over cases from previous years, 549 files were closed, down from 550 files closed in 2017. For additional statistical information, see attached Appendix B.

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### **IV. 2018 Formal Actions Initiated**

In 2018, there were thirty-three (33) new formal Complaint attorney discipline cases opened for the Committee on Professional Conduct panel action, down from the thirty-four (34) new formal Complaint cases opened in 2017. In 2018, forty-one (41) formal Complaint files were closed, compared to forty-eight (48) closed in 2017.

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### **V. 2018 Final Committee Actions**

Final action was taken in forty-one (41) formal Complaint files involving Arkansas attorneys during the 2018 calendar year by the Office and the Committee on Professional Conduct. There are five primary forms of action, or sanction, that the Committee on Professional Conduct may take. The lowest, a warning, is non-public. The other forms of sanction - caution, reprimand, license suspension, and initiating disbarment proceedings - are public sanctions. In 2018, twenty-three (23) attorneys received at least one public sanction, up from eighteen (18) in 2017.

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## VI. 2018 - Most Common Rule Violations

In the 2018 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), 8.4(c) (not engaging in conduct involving dishonesty, fraud, deceit or misrepresentation), 1.3 (acting with reasonable diligence and promptness in representing a client), and 1.1 (competence). A list containing the Arkansas Rule alleged and the number of times the Committee found the rule to have been violated in 2018 is attached as Appendix “C”.

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## VII. “Practice Aging” of Attorneys Disciplined (2018)

Of the 2018 final disciplinary actions by the Committee, based on number of years licensed in Arkansas, twenty-three (23) attorneys were publicly sanctioned as follows. (Attorney age information is not available):

Years Licensed	No. of Attorneys Publicly Sanctioned	Percentage
01-10 (2008-2017)	3	13.04%
11-20 (1998-2007)	8	34.78%
21-30 (1988-1997)	6	26.09%
31-40 (1978-1987)	4	17.39%
41+ (before 1978)	2	8.7%
Total	23	100%

(Several attorneys were publicly sanctioned more than once in 2017.)

## VIII. 2018 Fines, Restitution & Costs

Type	Amount Imposed (2018)	Amount Collected (2018)
FINES:	\$21,919.06	\$23,767.06
RESTITUTION:	\$19,570.00	\$10,420.00
COSTS:	\$10,793.18	\$ 9,627.48
TOTALS:	\$52,282.24	\$43,814.54

(Note: some of the collections in 2018 were assessed in cases finalized in earlier years.  
Costs in disbarment cases are rarely collected.)

## **IX. 2018 Trust Account “Overdraft” Reporting**

There were fifty-eight (58) notices received in 2018 from all banks and reporters, compared to sixty-seven (67) in 2017. Most of these files were closed after a summary investigation and explanation by the attorney involved. None of the 2018 files has resulted in filing a formal Complaint to date.

There are a few 2018 files still “open” to some extent, such as awaiting additional documentation from the attorney. Of the few 2017 files still open, none are believed to involve a loss of client funds.

The overwhelming majority of overdraft reports were due to some form 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.

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## **X. Summaries of 2018 Public Sanctions – Appendix “D”**

	Number	Designation	Description	Annual Total
2		<b>Attorney</b>		
3	001	A-A/C	Attorney Conduct	81
4	002	A-A/S	Advertisement / Solicitation	6
5		<b>Criminal</b>		
6	003	CR-D	Criminal Defense	147
7	004	CR-P	Criminal Prosecution	85
8	005	CR-A	Criminal Appeal	6
9		<b>Domestic Relations</b>		
10	006	DR-D	Divorce	51
11	007	DR-C	Custody	39
12	008	DR-C/S	Child Support	7
13	009	DR-QDRO	Qualified Domestic Relations Order	2
14	010	DR-V	Visitation	5
15	011	DR-DA/OP	Domestic Abuse / Order of Protection	4
16	012	DR-P	Paternity	3
17		<b>Juvenile</b>		
18	013	J-DHS	Department of Human Services	5
19	014	J-FINS	Families in Need of Services	0
20		<b>Probate</b>		
21	015	PR-E	Estate	25
22	016	PR-T	Trust	11
23	017	PR-W	Will	0
24	018	PR-POA	Power of Attorney	2
25	019	PR-G	Guardianship	11
26	020	PR-A	Adoption	5
27	021	PR-CC	Civil Commitment	4
28		<b>Bankruptcy</b>		
29	022	BNK-7	Chapter 7	7
30	023	BNK-11	Chapter 11	0
31	024	BNK-13	Chapter 13	20
32		<b>Civil</b>		
33	025	CV-A	Appeal	3
34	026	CV-C	Contract	26
35	027	CV-DC	Debt Collection	2
36	028	CV-F	Foreclosure	0
37	029	CV-J	Judgment	0
38	030	CV-LL/TN	Landlord / Tenant	0
39	031	CV-MM	Medical Malpractice	5
40	032	CV-MVA	Motor Vehicle Accident	28
41	033	CV-FED	Civil - Federal	6
42	034	CV-PI	Personal Injury	12
43	035	CV-PR	Property	37
44	036	CV-T	Tort	5



45	037	CV-UD	<a href="#">Unlawful Detainer</a>	1
46	038	CV-N	Negligence	0
47	039	CV-INJ	<a href="#">Injunction</a>	2
48	040	CV-MISC	Miscellaneous	1
49		<b>Miscellaneous</b>		
50	041	SSD-SSI	Social Security Disability / Income	2
51	042	WC	<a href="#">Workers Compensation</a>	7
52	043	ACC	Arkansas Claims Commission	3
53	044	IMGN	<a href="#">Immigration</a>	4
54	045	SCPC	Supreme Court Per Curiam	0
55	046	ARGV	<a href="#">Arkansas State Government</a>	0
56	047	IRS	Federal or State Taxes	0
57	048	EMP	<a href="#">Employment</a>	24
58	049	DC-SC	District Court - Small Claims	0
59	050	INT-PR	<a href="#">Intellectual Property</a>	0
60	051	BS-CP	Business / Corporation	1
61	052	USVA	<a href="#">Veterans Administration</a>	0
62	053	UPL-REF	<a href="#">UPL Committee Referral</a>	2
			TOTAL GRIEVANCES:	697
<b>No.</b>	<b>Disposition</b>	<b>Description</b>		
18	Formal	Formal Complaint		
0	Diversion	Diversion / Probation		
0	ACL	Atty/Client Resolution Letter		
387	NSF*	No Sufficient Finding		
34	W/D*	Withdrawn by Complainant		
8	Merged-S	Merged with Surrender		
0	Merged-D	Merged with Disbarment		
0	Disbarred	Closed - Disbarred		
3	Closed-D	Closed - Deceased		
0	Closed-S	Closed - Surrendered		
1	FTR	Complainant Failed to Respond		
0	UPL	Unauthorized Practice of Law		
246	Open	Investigation Pending		
697	Total			

Category	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Files opened	873	1,028	972	892	826	804	819	859	861	888	735	794	716	744	657	725	616	697
Closed by staff	691	737	825	796	868	1137	784	786	742	845	806	646	478	732	595	663	550	549
Complaints filed	149	186	200	164	159	156	140	114	144	119	97	85	67	51	57	52	34	33
Appellate Referrals	34	45	50	40	34	39	50	33	41	18	17	40	7	14	7	14	3	2
Judicial Referrals	13	12	12	8	8	19	6	4	4	6	10	18	3	8	11	7	13	13
Attorney Referrals	N/A	N/A	N/A	24	7	16	9	15	15	7	14	38	37	28	33	14	9	16
Complaints closed	135	178	185	211	181	173	182	122	128	119	106	74	78	63	45	53	47	41
Withdrawn	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
No Actions	12	30	15	24	18	19	13	10	11	10	7	4	4	5	2	3	5	2
Warnings	45	53	54	38	33	53	41	37	46	26	20	13	8	10	17	14	10	7
Cautions	14	31	28	53	41	29	34	20	28	15	24	8	10	17	10	7	6	11
Reprimands	26	35	37	36	31	30	26	14	14	19	20	11	11	5	7	7	11	11
Suspensions	19	14	20	9	17	12	23	12	10	10	11	9	12	4	3	5	13	15
Surrenders	13	5	5	11	6	7	1	6	5	3	14	8	3	2	6	6	1	1
Merge / surrender	N/A	1	14	29	5	4	0	6	18	6	9	1	1	2	3	2	0	0
Deemed Surrendered (Rule 7)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	3	0
Disbarment initiated	6	3	3	3	7	2	1	1	2	1	2	1	4	2	0	1	0	0
Disbarments		0	0	3	0	2	2	2	4	3	0	0	5	2	0	0	2	1
Reinstated	3	3	8	10	13	11	6	0	6	2	2	5	9	7	11	2	2	2
Consents	13	35	54	71	51	64		45	50	28	29	18	7	8	13	13	14	7
Refer to ArJLAP	N/A	2	0	0	1	3	0	0	0	0	0	0	0	0	0	0	1	0
No. of Attys Publicly Sanctioned*	57	61	72	101	102	68	67	49	44	44	60	29	30	27	25	21	18	23



## Appendix “D” - 2018 Cases

### DISBARRED

**ROBERT BRENT CREWS** of Jonesboro, Bar No. 91237, in Supreme Court Case No. D-14-67 opened in early 2014 was ordered disbarred by the Arkansas Supreme Court on May 10, 2018, for his default pre-trial and in the sentencing phase in a case involving six separate client complaints, from Paula Rondell, Warren Graddy, Georgia McCabe, Thomas Ashcraft, Jr., James Houston, and Hinane Zitan. Crews was placed on license suspension for twelve months in October 2011 from an earlier matter and then on interim suspension in December 2013 for the disbarment case. In March 2014, Crews filed a general denial to the six matter petition for disbarment and basically filed nothing thereafter, including his required trial witnesses list. As a sanction for that omission and others, his Answer was struck, he was left in default in the case, a sentencing hearing was set for February 15, 2018, Crews failed to attend, and the Special Judge thereafter entered findings of fact, conclusions of law, and a recommendation for the sanction of disbarment. The case was set for briefing to the Supreme Court with Crews to brief first. He failed to file a brief. The Court disbarred him.

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### SURRENDER

**CHRISTOPHER ROBERT HART** of Little Rock, Bar No. 2003084, offered the surrender of his Arkansas law license in Case No. D-18-881, which was accepted and ordered by the Supreme Court on November 15, 2018. Hart’s petition acknowledged his felony convictions for drug possession offenses in Garland County on May 1, 2018, and twenty-four-month prison sentence and in Johnson County on May 29, 2018, and thirty-six-month prison sentence, and that his sentences had been placed into execution. The Committee on Profession Conduct had placed Hart’s law license on interim suspension on August 25, 2017.

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### SUSPENSION

**CHARLES DWAIN OLIVER** of Hampton, Bar No. 2001009, on a complaint by Melvin Junior related to representation in a bankruptcy matter, by Committee Findings and Order filed May 30, 2018, in No. CPC 2018-002, for violations of Rules 1.1, 1.3, 1.4(a)(3), 8.1, and 8.4(c), had his law licensed suspended for four (4) months and was ordered to pay \$1,500 restitution. For failing to file a response to the complaint, Oliver was assessed a separate reprimand. In September 2015 Junior employed Oliver to file a Chapter 7 bankruptcy and paid him a \$1,500 fee. Thereafter Junior was unable to contact Oliver, Oliver filed no bankruptcy for Junior, Oliver did not refund any fee to Junior, and Oliver failed to respond to several Rule 8.1 requests for information from OPC, resulting on the filing of the Complaint in early 2018.

**CHARLES DWAIN OLIVER** of Hampton, Bar No. 2001009, in Case No. CPC 2018-003, by Findings & Order filed July 27, 2018, was suspended for a period of 60 months for violations of Rules 1.1, 1.16(a), 3.1, 3.3(a)(1), 3.3(a)(3), 3.4(a), 3.4(c), 3.7(a), 8.4(a), 8.4(c), and 8.4(d). Oliver was also reprimanded for his failure to respond to the formal complaint. The complaint was based on information provided by Circuit Judge Robin Carroll. In 2015, Oliver drafted three Wills for

Jimmie Sue Roark, the last two on November 2016, each appointing Oliver to probate her Will. Roark died January 1, 2017. For daughter Cindy, Attorney Michael Stuart contacted Oliver by letter to advise Stuart had the third Will in his possession, and asked Oliver to start the probate proceedings. On January 19, 2017, Oliver filed the Roark Petition in Calhoun County with the November 1 (second) Will. The court appointed daughter Cecilia as executrix. Stuart moved to set aside the order, attaching the November 10 (third) will and filed a Contest of Will, alleging Oliver made false representations to the court and failed to list or give notification of the probate of the estate to all heirs included in the Will. The main differences between the second and third wills were the beneficiaries and distributions of estate assets.

Oliver appeared on behalf of the Executrix and the Estate. Stuart appeared on behalf of the other three sisters. Oliver alleged that the November 10 (third) Will was invalid and that is why he filed the November 1 (second) Will, alleging that when he drafted the November 10 Will Roark “was not herself.” Oliver brought into question Roark’s mental state at the time he made changes to the November 1 Will on November 10. The court questioned Oliver concerning his personal involvement in Roark’s three wills and asked if he realized that he would become a witness to Roark’s competency by offering into probate the second will rather than the third will executed nine days later. Cecilia filed a petition to contest the November 10 Will and to have the November 1 Will declared the last Will of Roark. The court found (a) Oliver failed to give notice to the beneficiaries or Stuart Law Firm of the probate of the November 1 Will; (b) Oliver failed to notify the court of the November 10 Will, which revoked the November 1 Will; (c) Cecilia failed to file any objections to the Contest and Motion to Set Aside the Order; and (d) no contest of the November 10 Will had been filed pursuant to Arkansas statute. The court set aside the order appointing Cecilia as Executrix and probating the November 1 Will. An independent administrator was appointed. Oliver was removed as attorney for the Roark estate.

**DANA A. REECE** of North Little Rock, Bar No. 87142, in Case No. CPC 2018-010, on a referral by Circuit Judge Mackie Pierce, by Findings & Order filed August 7, 2018, had her law license suspended for six (6) months for violations of Rules 1.1, 1.3, 1.4(a)(4), and 8.4(d). Reece represented Ms. Jordan Kittler in a divorce case before Judge Pierce. Reece, opposing counsel Pipkins, and the trial court assistant participated in a telephone conference and agreed a hearing would be held on July 10, 2017. When the case was called, both parties and counsel Pipkins were present. Reece was not present. Ms. Kittler stated that other than when Reece advised her of the court date, she had not spoken to Reece since that conversation. After being advised of the situation and her options, Ms. Kittler chose to go forward with the hearing, and the issue of marital debt was addressed. The following day, Reece entered Judge Pierce’s office to speak to him. Judge Pierce was on the bench, so Reece spoke to the law clerk and trial court assistant. Reece stated that she wanted to apologize to Judge Pierce for her mistake in calendaring the hearing and joked that her client did better without her.

**WILLIAM KURT MORITZ** of Hope, Bar No. 99021, in CPC File No. 2017-030. Moritz was suspended from the practice of law for a period of six months on June 12, 2017, in the case of *In Re: William Kurt Moritz*, CPC File No. 2016-153. Moritz was also suspended from the practice of law for a period of sixty (60) months on June 12, 2017, in the case of *In Re: William Kurt Moritz*, CPC File No. 2016-161. On October 24, 2017, Shunquiz Trotter was looking for legal assistance for her fiancé, Tommy Hamilton. Trotter called Moritz’s law office, spoke to him, and then met with him there. Moritz agreed to represent Hamilton and accepted money from Trotter. Moritz and Trotter then exchanged text messages about court proceedings. Moritz did

not appear in court. Moritz failed to file a timely response to the formal complaint. On March 20, 2018, a committee panel issued a new sixty (60) month license suspension to Moritz for violations of Rules 8.4(c) and 8.4(d), imposed a \$1,000 fine, and \$50 costs, and also imposed a Reprimand and a \$1,000 fine for failure to respond to the formal Complaint.

**DANA A. REECE** of Little Rock, Bar No. 87142, CPC File Nos. 2013-031, 2014-034, and 2014-038. In April 2016, Reece agreed to a consent proposal where she admitted violation of certain Rules of Professional Conduct and offered a three-month suspension of her license, with the period of suspension stayed, subject to conditions of probation for a period of twenty-four months. In January 2017, the Office of Professional Conduct filed a Petition for Revocation alleging Reece failed to comply with the conditions. Reece responded to the petition. On February 13, 2018, Panel C of the Committee on Professional Conduct found Reece to have violated the conditions of probation and suspended Reece's license to practice law for a period of three months. Reece filed a notice of appeal and the matter is pending. The Rules found violated were 1.3, 1.4(a)(3) and 1.16(d) in CPC No. 2013-031, 1.3, 1.4(a)(3) in CPC No. 2014-034, and 1.15(d) and 3.4(c) in CPC No. 2014-038.

**CHARLES DWAIN OLIVER** of Hampton, Bar No. 2001009, in Committee Case No. CPC 2018-007, by Findings & Order filed October 19, 2018, was suspended for a period of sixty (60) months for violations of Rules 1.1, 1.3, 1.4(a)(3), 1.4(a)(4), 8.1, and 8.4(c). Oliver was ordered to pay \$800.00 restitution and assessed \$50.00 cost. Oliver was also reprimanded for his failure to respond to the formal complaint. The complaint was based on information provided to the Committee by Milton Parker in a criminal record expungement matter.

In June 2010, Parker hired Oliver to get prior criminal records expunged and paid him \$800.00 for the representation. Parker later made several unsuccessful attempts at contacting Oliver. Oliver obtained an Order to Seal on September 1, 2011. The order sealed Parker's criminal record from a conviction on May 20, 1992, in Calhoun County, Arkansas. Parker moved to Illinois. In 2015, he and his wife desired to adopt a child and completed the necessary paperwork, which included a background check. Parker failed the background check. Parker again unsuccessfully attempted to contact Oliver to inquire as to why his criminal records were not expunged, including making several trips to Arkansas to talk with Oliver. Parker states that Oliver was hired to expunge all of his criminal records, and that even though Oliver managed to seal one of his criminal records in Calhoun County, he failed to include and get sealed his other criminal records in Calhoun and Union Counties. After unsuccessfully attempting to contact Oliver, Parker filed a grievance with the Office of Professional Conduct (OPC) in mid-2015. From 2015, OPC made several unsuccessful attempts at getting Oliver to respond in writing to the allegations made against him in Parker's grievance by written communication and telephone calls to Oliver. No written response was received from Oliver to the OPC requests.

**CHARLES DWAIN OLIVER** of Hampton, Bar No. 2001009, in Committee Case No. CPC 2018-008, by Findings & Order filed October 19, 2018, was suspended for a period of sixty (60) months for violations of Rules 1.1, 1.3, 8.1, and 8.4(c). Oliver was ordered to pay \$350.00 restitution and assessed \$50.00 cost. Oliver was also reprimanded for his failure to respond to the formal complaint. The complaint was based on information provided to the Committee by Larry Romine, Sr. in a criminal record expungement matter.

On August 25, 2015, Romine hired Oliver to get his son's prior criminal record expunged. Romine paid Oliver \$350.00 for the representation. Oliver did not take any action or file any pleadings on behalf of Romine's son. Oliver did not provide Romine or his son with a refund of the \$350.00 paid to him. Romine filed a grievance with the Office of Professional Conduct (OPC) on June 12, 2017. OPC made several unsuccessful attempts at getting Oliver to respond in writing to the allegations made against him in Romine's grievance by written communication and telephone calls to Oliver. No written response was received from Oliver to the OPC requests.

**CHARLES DWAIN OLIVER** of Hampton, Bar No. 2001009, in Committee Case No. CPC 2018-009, by Findings & Order filed October 19, 2018, was suspended for a period of sixty (60) months for violations of Rules 1.1, 1.3, 1.4(a)(3), 1.4(a)(4), 8.1, and 8.4(c). Oliver was ordered to pay \$800.00 restitution and assessed \$50.00 cost. Oliver was also reprimanded for his failure to respond to the formal complaint. The complaint was based on information provided to the Committee by Steven Harrelson in a criminal record expungement matter.

On October 31, 2014, Harrelson hired Oliver to get Harrelson's prior criminal record expunged. Harrelson paid Oliver \$800.00 for the representation. Harrelson later made several attempts at contacting Oliver. When Harrelson was able to contact Oliver, Oliver would make excuses as to why he had not filed the expungement petition. Eventually Oliver stopped responding to Harrelson's attempts to contact him. Oliver did not take any action or file any pleadings on behalf of Harrelson, nor did he refund the \$800.00 paid to him. Harrelson filed a grievance with the Office of Professional Conduct (OPC) in late 2017. OPC made several unsuccessful attempts at getting Oliver to respond in writing to the allegations made against him in Harrelson's grievance by written communication and telephone calls to Oliver. No written response was received from Oliver to the OPC requests.

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### **SUSPENSION (Stayed with probation)**

**ANN CECELLIA DONOVAN** of Rogers, Bar No. 78043, in Case No. CPC 2017-020, by Consent Findings and Order filed January 19, 2018, was placed on license suspension for twenty-four (24) months, with the suspension fully stayed, for her violation of Rules 1.1, 1.3, 5.3(b), and 8.4(d). Donovan represented a client on a Social Security matter. Donovan should have filed an appeal for her client within sixty days, but the request for hearing was untimely. Upon receiving notification that her request was denied, the client contacted Donovan, who blamed her assistant for the delay. The client terminated Donovan's representation, and filed a pro se Request to Vacate Notice of Dismissal to Social Security. The SSA ALJ's order "found good cause to vacate the dismissal order and to reopen [the] claim...one of the potential good cause reasons for missing the deadline to file her request for hearing is that the claimant relied upon the representative to file the request for hearing."

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### **INTERIM SUSPENSION**

**MATTHEW M. HENRY** of Little Rock, Bar No. 2005167, on March 7, 2018, by an Order issued by Committee Panel A in Case No. CPC 2018-013, upon a verified petition by the Executive Director, was placed on interim suspension pending further disciplinary proceedings. Henry was found to presently pose a substantial threat of serious harm to the public and his clients due to

shortages of trust account funds probably totaling over \$400,000 related to two clients or former clients, an outstanding court pickup order in another case, and ten new grievance files having been opened against him since October 2016 at the Office of Professional Conduct. The interim suspension order remains in place, as Henry has not filed any motion to vacate or modify the suspension.

**JENNIFER L. MAHER** of North Little Rock, Bar No. 2010126, in Case No. CPC 2018-005, upon a verified petition by the Executive Director, by order filed March 7, 2018, pursuant to §16.A(2) of the Procedures, upon her plea to a “serious crime,” was found to presently pose a substantial threat of serious harm to the public or to her clients, and was placed on interim suspension. Maher entered a guilty plea to the charge of theft by receiving in Pulaski County District Court in November 2017, where she was fined \$100 and ordered to pay court costs and restitution in the amount of \$529.00. Maher has two other criminal matters pending.

**DUSTYN CODIE MARTIN**, of Hamburg, AR, Bar No. 2016051, in Case No. CPC 2018-027, was placed on interim suspension October 18, 2018, as a result of Martin’s recent arrest on felony charges in Ashley County where about \$108,000 of a divorce client’s funds delivered to Martin for safekeeping in mid-2016 were not returned to the client upon request in mid-2018, and Martin could not account for the status of the funds upon request of the client or OPC. Martin made a \$30,000 refund payment to the client before his arrest in mid-October 2018. On October 18, 2018, in Drew County Circuit Court No. 22CR-18-181, Martin was charged with two felony offenses arising out his handling of the funds of this now former client.

**JEFFREY LEE HAYNES** of Fort Smith, Bar No. 95243, on information provided by law enforcement in Ozark, Franklin, Arkansas, and by Sebastian County Circuit Judge Stephen Tabor, in Committee Case No. CPC 2018-28, by Panel Order filed October 29, 2018, had his Arkansas law license placed on interim suspension as a result of his arrest on felony drug possession charge in that county on October 24, 2018, and due to issues in cases before Judge Tabor. Haynes had a felony drug possession conviction in Sebastian County in 2000 which led to his surrender of his law license on October 12, 2000. His 2011 application for readmission to the Bar was approved by the Arkansas Board of Law Examiners and granted by the Supreme Court in March 2013.

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## REPRIMAND

**THERESA L. CALDWELL** of Maumelle, Bar No. 91163, in Case No. CPC 2016-058, on a complaint by David Hamilton of New Blaine, Arkansas, by Panel A hearing findings and order filed March 2, 2018, on violations of AR Rules 1.5(c), 1.8(a), and 3.3(a), was Reprimanded and ordered to pay \$2,110.55 hearing costs. Other rule violations charged were found not proven. Hamilton was a central Arkansas-based businessman with varied business interests in the late 1990s and into the mid-2000s. Hamilton and Caldwell became acquainted in the mid-1990s when Caldwell practiced in a small Little Rock law firm, with Sharon Streett, where Hamilton also worked while attending some law school. By the mid-2000s, Hamilton had suffered business setbacks, was involved in much litigation, and Caldwell became his counsel in many of these matters. Hamilton’s main business venture, in the pet supply field, was liquidated through a Chapter 7 “no-assets” bankruptcy in 2007-2009, which was handled by other counsel.



In late 2003, Hamilton and wife purchased a 458-acre farm property on the Pulaski-Lonoke County line, with a first mortgage of about \$481,000 to AgHeritage Farm Credit and a second mortgage for most of the balance of the purchase price to the seller, a Sims Farm Trust. Hamilton intended to turn the property into a private prison facility, if several million dollars in funding could be obtained for the project. An oral agreement was made between Hamilton and Caldwell by which she would become the general counsel for the new project, at a \$125,000 salary, around October 1, 2005, if funding was obtained. From August 2005 through April 2007, Caldwell claimed she put substantial time and effort into the new venture. The farm property was first deeded to Hamilton and wife, and was to then be transferred into a new LLC that Caldwell created on September 27, 2005, called CARDC. The deed for the farm property from the Hamiltons to the new LLC, prepared by Caldwell on a deed form she obtained from lawyer Jason Stuart on March 1, 2006, was allegedly signed and notarized on September 28, 2005, witnessed by Caldwell's two adult sons in Fayetteville, but was not recorded until August 30, 2006. Caldwell later admitted asking her sons to sign the deed and had it backdated to September 2005. The person who actually took the deed to Lonoke and got it recorded in August 2006 was disputed at hearing.

Funding for CARDC did not appear and Caldwell became dissatisfied with her arrangement with CARDC and Hamilton. Sims sued on the second mortgage on the farm property. The suit was dismissed in May 2006, after Hamilton obtained funding from a friend, Teeter, the borrowed funds went through the Caldwell client trust account, and Sims was paid in full. On November 30, 2006, AgHeritage sued in Lonoke County to foreclose on its unpaid note and first mortgage. The claims of AgHeritage in this suit were dismissed in December 2010 when AgHeritage was paid in full by Hamilton's mother, who took title to the farm. Efforts to obtain investor funding for the prison project in 2006-2007 were not successful. On March 6, 2007, Hamilton, as its principal, approved a letter from CARDC prepared by Caldwell, for use with her creditors, stating she was owed \$140,000 from CARDC. Through her legal representation of the Hamiltons and their business interests, Caldwell knew about much of their personal and financial matters.

Differences between Caldwell and Hamilton came to a head in early April 2007, when Caldwell demanded Hamilton tell her exactly what her interest in his CARDC project and property was or would be, for the services she had rendered to him. Hamilton denied he had ever promised her any ownership interest in his venture. At a meeting of just the two of them, which Caldwell secretly taped, she demanded Hamilton give her a note for \$1,000,000 or sign over one-half of his prison business venture, which they had discussed as being valued then in the \$9-10,000,000 range, based on appraisals of the farm property as it would be improved and developed for the prison project. Hamilton declined. A few days later, at a second meeting, which Caldwell again secretly taped, Caldwell, Hamilton and two mutual lawyer friends, Sharon Streett and her husband Julian, met to discuss the dispute. At that meeting, Caldwell conceded she had no written agreement with Hamilton and that her involvement in the prison venture was contingent on it being funded. Hamilton consulted with attorney Jason Stuart about these matters. Thereafter, Caldwell withdrew as counsel for Hamilton and his business entities in the various pending litigation matters. On May 7, 2007, Caldwell filed a materialmen's and laborer's lien against the 458-acre farm, to secure her claim for \$250,559 for materials and services. On August 7, 2007, a cross-claim was filed in the AgHeritage foreclosure suit for Caldwell against Hamilton and his entity that owned the farm, claiming she was owed \$4,857,699 for her alleged promised 50% ownership interest in the prison venture and for services she had rendered. Shortly thereafter, Hamilton filed a grievance against Caldwell, and OPC contacted Caldwell.

Stuart represented Hamilton in contesting the Caldwell cross-claim and lien. At a hearing on November 20, 2007, the trial court voided the Caldwell lien. The next day, Caldwell's counsel filed a lis pendens against the same farm property. In March 2008, the trial court nullified the Caldwell November 2007 lis pendens. Various appeals were attempted. Caldwell never prevailed in any court on any of her claims of an ownership interest in Hamilton's businesses. In the end, the prison venture never got funded, the farm was sold out of the foreclosure lawsuit to Hamilton's mother, and Caldwell was never paid anything by Hamilton or any of his businesses for her work. Hamilton and Stuart contended Caldwell attempted to extort the approximately \$4,500,000 or more from Hamilton by means of her spurious cross-claim and her efforts to interfere with Hamilton's efforts to obtain critical project financing.

**RICHARD L. MAYS, JR.** of Little Rock, Bar No. 2010150, in Case No. CPC 2015-094, on a Complaint initiated as a result of media coverage of Mays' resignation from the Arkansas Parole Board in late July 2015, by Panel C hearing findings and order filed March 28, 2018, on violations of Rules 1.11(d), 7.1, 8.4(c), and 8.4(d), was, by a 4-3 vote, Reprimanded, assessed a \$10,000 fine, and ordered to pay \$2,242 hearing costs. The three panelists in the minority voted for a three-month license suspension. Other rule violations charged were found not proven. After obtaining a BBA degree, an MBA degree, and then his law degree in 2001, Mays went to work for the family Little Rock law firm in 2001 as a law clerk. In 2007 the Governor appointed him to a position as one of seven Commissioners of the Arkansas Parole Board (APB), a full-time salaried state job. In September 2010, Mays was licensed to practice law in Arkansas. Mays was reappointed as a Commissioner in December 2011 for a full term, and served until his resignation in mid-July 2015.

In mid-October 2013, the APB investigator, Belken, conducted interviews at the East Arkansas Regional Unit at Brickeys of ADC inmates eligible for parole consideration by the APB at its meeting on October 24, 2013. The unit interview process involved creation of an interview sheet and a recommendation by the interviewer. During the interview of inmate Staggers, Belken was informed that Mays had represented Staggers in his underlying criminal case plea that resulted in the sentence to ADC from which Staggers was seeking parole. Belken's written recommendation was to deny Staggers parole for one year. Back at the APB, Belken shared this information with APB Chair Felts, who informed Belken that Mays had a conflict, he should not vote on the Staggers file, and to check the Staggers file the evening before the Board meeting to make sure Mays did not vote on it. The Staggers file, with no vote by Mays, was voted on by the full Board on October 24, 2013, and the recommended denial was approved. A few days later, the inmate records system at APB showed the Board action on Staggers was to defer for two weeks. At about this time other commissioners asked Belken about a blank Staggers vote sheet Mays brought to them on or about October 29, 2013, asking them to approve parole release, a form several members signed based on representations by Mays. An internal APB investigation revealed that Mays had gone into the paper Staggers file after the Board action, removed and shredded the original Belken vote sheet and denial recommendation, and replaced it with a new vote sheet created by staff for Mays. Mays then falsely marked the new interview form as the interview work of a third Board member and recommending release on parole for Staggers. Mays admitted his conduct to Board members. A new vote affirmed the Staggers denial. Staggers applied for reconsideration in December 2013, and the Board, with Mays voting with the majority, instead of recusing, voted to again deny. In 2014-2015, Mays also voted on parole files of at least two other inmates whom he had represented in their underlying criminal cases.

In 2014, Belken found materials on the law firm website where Mays worked that informed viewers of Mays connection with the parole process while advertising Mays' services as a criminal defense lawyer. Mays' personal LinkedIn site falsely indicated he had been an attorney since 2001, when he had not been licensed in any jurisdiction until he was in Arkansas in 2010. Mays was suspended from his duties by Chair Felts in June 2015. Mays had a meeting with the Governor in July 2015 and resigned his position. In September 2015, a mass mailing solicitation letter was sent to hundreds of inmates eligible for parole over the names of Mays and another attorney, offering their services and Mays' expertise as a former Parole Board member for eight years, using language that was likely to create an unjustified expectation about the results the lawyers can achieve for the potential client. (At submission deadline, the period for filing any notice of any appeal to the Arkansas Supreme Court had not expired.)

**THOMAS C. MORRIS, III** of Bella Vista, Bar No. 84110, in Case No. CPC 2017-034, by Findings and Order filed March 28, 2018, on information provided to OPC by another person, was Reprimanded for his violation of Rules 3.4(c) and 8.4(d). In another case, on April 21, 2017, the Committee on Professional Conduct issued an Order of Interim Suspension on Morris, and Morris received notice that he was on interim suspension. Section 22 of the Procedures applies to former attorneys, including those on interim suspension. While suspended, Morris sent a demand letter using Tom Morris & Associates letterhead on behalf his client. The letter stated Morris was the attorney representing the client and invited the recipient to contact Morris regarding the matter. Also, Morris' legal website remained active despite Morris being on interim suspension.

**CHARLES DWAIN OLIVER** of Hampton, Bar No. 2001009, in Committee Case No. CPC 2017-026, by Findings & Order filed March 20, 2018, on a complaint filed by Thomas Slaughter, for violations of Rules 1.1, 1.3, 1.4(a)(3), 1.4(a)(4), 8.1, and 8.4(c), was reprimanded and assessed an \$800 fine and \$50 costs. Oliver was also reprimanded for his failure to respond to the formal Complaint and assessed a \$1,000 fine. In April 2013, Slaughter employed and paid Oliver \$800 in fees to get Slaughter's criminal record expunged. Slaughter then made several unsuccessful attempts at contacting Oliver. Oliver did not take any action or file any pleadings on behalf of Slaughter. Oliver did not provide Slaughter with any refund of the \$800.00 fee paid. From late 2014 on, the Office of Professional Conduct (OPC) made several unsuccessful attempts at getting Oliver to respond in writing to the allegations made against him in the grievance by written communication and telephone calls to Oliver. No written response has ever been received from Oliver to the OPC requests.

**KEN DAVID SWINDLE** of Rogers, Bar No. 97234, in case No. CPC 2017-023, on information provided by attorney Bradley Mullins, by Findings & Order filed July 25, 2018, was reprimanded and fined \$6,000 for violation of Rule 5.4(a)(2) for impermissibly splitting a legal fee with a non-attorney who referred the client to Swindle. Swindle had a client for whom a \$180,000 settlement was obtained in early 2014. The client was referred to Swindle by Rogers tax-preparer Francisco Menendez, a non-lawyer. Swindle agreed with Menendez that Swindle would give Menendez 10% of the fee Swindle obtained on the client. Swindle's Settlement Memorandum of March 19, 2014, for the client shows the \$180,000 settlement recovery and a \$60,000 attorney's fee to Swindle. There is no charge listed for Francisco Menendez. By his IOLTA trust account check, Swindle then paid Menendez \$6,000, representing 10% of Swindle's earned legal fee in the matter. Menendez and Mullins confirmed the fee-splitting arrangement in the matter, and Mullins confirmed the knowing disregard by Swindle for the professional conduct rules governing such fee arrangements. On July

20, 2018, Swindle withdrew his request for a public hearing in this case and agree to pay negotiated costs related to all three cases.

**KEN DAVID SWINDLE** of Rogers, Bar No. 97234, in case No. CPC 2016-119, on information provided by a Court of Appeals opinion from June 19, 2013 in Ken Swindle v. Rogers Board of Education & Anita Turner, No. CV-12-1081, at a public hearing on July 19, 2018, by Findings & Order filed July 26, 2018, was reprimanded and ordered to pay the Rogers School District \$7,120 restitution for its legal fees and expenses for violations of Rules 3.1, 4.4(a), and 8.4(d). Swindle agreed to pay negotiated costs totaling \$3,480 related to all three cases and waived his right to appeal in the two hearing cases. In March 2012, Swindle's five-year-old son J.S., a kindergarten student, who was called down for his third use of the "F-word" at school. Principal Turner called the father at 11:15 a.m. to come pick J.S. up, as he was being suspended for the remainder of the school day. Mr. Swindle declined to do so, and informed Ms. Turner that if she suspended his son he would file a lawsuit. Rather than pick up his son, after a brief court appearance, Swindle prepared his complaint against the school district and Turner, filed it in Bentonville at 2:51 p.m., and then personally took a copy to Ms. Turner at school in Rogers. Swindle's complaint asked that his son be allowed to return to school pending a school board hearing on the matter, that any record of the suspension be deleted from the son's record, and for a jury trial. Because neither parent picked up J.S., he served about 3.5 hours of in-school suspension on March 13 in Principal Turner's office doing school work until the end of the normal school day at 2:45 p.m.

On May 15, 2012, the Rogers School Board conducted a hearing on the J.S. case. By a 6-0 vote, the Board affirmed the disciplinary action taken by school personnel toward J.S. Swindle then amended his complaint, adding a claim for breach of contract, claiming the school discipline policy constituted a contract between the school and the parents and student and that the district had violated its own policy by the action taken against J.S. Judge Duncan ruled there was no contractual obligation regarding the discipline, Principal Turner acted appropriately on March 13, and the intervening cause for the son's suspension was the failure of the parents to pick up their child when offered the opportunity to do so. Judge Duncan entered an Order denying Swindle relief and granting summary judgment to the school district and Turner. The Court of Appeals affirmed the trial court, stating, in part, that Swindle's request for relief lacked foundation in any source of law. The Supreme Court denied review. The school board expended at least \$7,120.33 in legal fees and costs to defend the suit and the appeals.

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### CAUTION

**THERESA L. CALDWELL** of Maumelle, Bar No. 91163, in Case No. CPC 2015-002, on a complainant by Mafalda Casas-Cordero, then of Mountain Home, by hearing findings and order filed March 2, 2018, for violations of AR Rules 1.9(a) and 3.3(a), was Cautioned and assessed \$2,110.63 in hearing costs. Other rule violations charged were found not proven. Ms. Casas-Cordero (Mafalda) and Anthony Mira (Anthony) were married and living in California when their daughter Antonia was born in 1994. The parents divorced in 1999. Mafalda and Antonia later relocated to Mafalda's native Chile in early 2005. Later in 2005 Anthony obtained sole custody of Antonia in the California courts. In October 2008, Mafalda and Antonia both relocated from Chile to Mountain Home, Arkansas, to join Anthony in his new retirement home. Mafalda and Anthony did not remarry. Antonia had special learning disabilities. The parents became dissatisfied with the manner in which the Mountain Home School District (MHSD) attempted to deal with these issues

and provide appropriate and required educational services through an Individual Educational Program (IEP) for Antonia.

On or about August 18, 2009, the parents met with Caldwell in Little Rock and employed her for representation in a “Due Process” Complaint process against MHSD under the IDEA law. Caldwell’s contract showed only Anthony as her client, but almost all, if not all, pleadings she filed were in the names of both parents as parties and her clients. Three days later Caldwell filed the Due Process Complaint. The matter was settled on September 28, 2009, just before the hearing was to start. The parties developed a new IEP for Antonia that was approved on October 14, 2009. Caldwell later denied she ever represented Mafalda in the MHSD matter, claiming Anthony paid her fees and was her sole client in the MHSD matter.

In January 2010, problems arose between Antony and Mafalda and he had her removed from his residence and filed suit for a restraining order to bar Mafalda from contact with him and Antonia. Mafalda filed a response, seeking visitation with Antonia and that the TRO be set aside. After a hearing in early March 2010, the judge issued an order directing the start of visitation for Mafalda in April and that neither parent was to remove the minor child from Arkansas. Upon learning of the new order, Anthony fired his counsel and hired Caldwell, who filed her appearance. The next day, Mafalda’s new counsel filed a new and separate change of custody case against Anthony. Upon being served with summons and the new complaint, on March 20, Anthony packed up Antonia and drove them to Los Angeles, supposedly for a “spring break trip,” where they remained until well after the Arkansas litigation was concluded.

Mafalda’s counsel wrote Caldwell, stating that Caldwell had a conflict in representing Anthony against Mafalda in a custody action involving the same child where Caldwell has just a few months previously represented both parents in a case against the child’s school district and which involved the child’s educational well-being. Caldwell declined to withdraw, and stayed in the custody case through an appeal. In May 2010, the Arkansas court asked Caldwell if any court action involving Antonia was pending in California and Caldwell stated she thought there was but she would need to check on that. Mafalda’s counsel stated there was nothing then pending in California. Anthony did not reopen the California divorce case until October 2010, and then the Arkansas court was notified. During this time, Caldwell failed to correct a false statement of material fact made to the Arkansas court, while challenging the jurisdiction of the Arkansas court and alleging the custody dispute should be heard in California. In December 2010, the Arkansas court found that, although it had jurisdiction of Antonia, the California court was the more convenient forum for the custody case, as the child was there, as were several key witnesses, and sent the matter to California to be heard and resolved. Mafalda appealed this decision and lost. The custody and visitation litigation in California ended when Antonia turned eighteen in December 2012.

**VICKY BUSSEY INGRAM** of El Dorado, Bar No. 94168, on a complaint by Frederick Rainey, by Committee Findings and Order filed June 25, 2018, in No. CPC 2018-011, for violations of Rules 1.1, 1.3, 3.4(c), 8.1 and 8.4(d) was cautioned. She was also separately reprimanded for her failure to file a response to the complaint. Ingram, a public defender, represented Rainey on appeal from a 192 month prison sentence in Cleveland County Circuit Court, an appeal in which Ingram had problems filing a rule-compliant brief. Ingram failed to file a rebrief after being ordered to do so by the Court of Appeals, resulting in her removal from the appeal on October 8, 2014, and new appellate counsel being appointed.

**JANICE W. VAUGHN** of North Little Rock, Bar No. 84161, on a complaint by James Cameron Lohstoeter, by Committee Findings and Order filed April 2, 2018, in No. CPC 2013-027, for violations of Rules 1.16(a)(1) and 8.4(c), was cautioned. After the deaths of their father and then their mother, the five Lohstoeter siblings had disagreements about family assets and trusts. Two siblings, using Vaughn, a friend, apparently as pro bono counsel, sued the other siblings and other defendants in 2008 and refiled the lawsuit in 2009. The litigation ended in September 2011. The defendants collectively expended about \$85,000 in the litigation. Vaughn had become a full-time staff appellate attorney for the state public defender commission in October 2001, where she was thereafter prohibited from engaging in private law practice. In the Lohstoeter litigation, Vaughn used state resources (telephone, email, and her office time) on behalf of her private clients and used state “sick leave” at least once when she attended a lengthy meeting at a law firm on behalf of her clients. Vaughn retired from her state job shortly before the Committee final order was filed.

**FRANCIS PARKER JONES, III** of Benton, Bar No. 2006083, in Case No. CPC 2017-007, on a complaint filed by the Public Employees Claims Division (PECD) of the Arkansas Insurance Department, by Findings & Order filed August 21, 2018, was cautioned for violations of Rules 1.15(a)(6), 4.4(a), 8.4(c) and 8.4(d). Jones represented Jonathan Warner, an employee of the Arkansas Department of Correction, who was injured while driving an ADC van hit by a rented vehicle being driven by an uninsured driver. From the rental car company, Warner received \$25,000 which was placed in Jones’ trust account. As a State employee, Warner was insured by the PECD, which, by letter of September 20, 2010, put Jones on notice of the amount of benefits paid on behalf of Warner and asserted a right of subrogation and an absolute lien by Arkansas law. The van Warner was driving was insured by a policy with a \$100,000 limit, which was interpled with the court. At a hearing the parties reached an agreement that Warner would receive \$61,400 of the \$100,000. PECD claimed Warner had received \$96,000 in benefits and that there was an agreement where it was entitled to receive \$39,750 of the funds received by Warner. PECD mailed Jones a workers’ compensation petition and a proposed order which detailed the amount of the benefits provided to Warner, the amount of money received by Jones, and the amount of money to be received by Warner following distribution. Jones did not respond to that letter or any follow-up letters from PECD. PECD then filed a grievance with the Office of Professional Conduct. Jones deposited \$25,000 from the rental car policy and then distributed the \$61,400 to Warner as his share of the van insurance proceeds. Jones then withdrew \$25,920 for his legal fees and \$31,635 presumably then went to his client. The balance in his trust account was \$29,060, over \$10,000 less than the \$39,750 PECD claimed it was due. Jones denied he agreed or that the court order required him to pay the \$39,750 claim of PECD.

**JEREMIAH DUANE PEARSON** of Siloam Springs, Bar No. 2001218, on a complaint by Susan Harder, in Case No. CPC 2018-019, by Consent Findings & Order filed August 7, 2018, was cautioned and ordered to pay a fine of \$869.06 and costs of \$200 for violations of Rules 1.1, 1.2(a), 1.4(a)(3), 1.4(c), and 8.4(d). Harder retained Pearson in February 2015 in a personal injury case. Pearson failed to communicate with Harder, and Harder believed her case with Pearson ended with no action and she filed bankruptcy in May 2017. The bankruptcy court discharged Harder’s debts. Pearson settled Harder’s case without her knowledge or authorization. Immediately after receiving payment in September 2017, Pearson collected his 25% contingency fee of \$1,069.06 and made no payment to Harder. In November 2017, Harder learned from her chiropractor that Pearson had

settled her case and received payment. Harder contacted Pearson, who then distributed funds to Harder.

**MELYNDA GIBSON PEARSON** of Texarkana, Texas, Bar No. 95076, on a complaint by Lori Nelson, in Case No. CPC 2018-004, by Findings & Order filed July 31, 2018, was cautioned for her violations of Rules 1.3, 1.16(d), and 8.1(b). Pearson represented Nelson in a divorce during which Pearson received three payments from the opposing party to go toward dental expenses of Nelson and her children. Pearson deposited these funds in April and May 2016 but failed to pay the providers until February 2017, after having been terminated by Nelson in December 2016. OPC wrote to Pearson on three dates, sent by multiple methods, and Pearson failed to respond to OPC's requests for information.

**KEN DAVID SWINDLE** of Rogers, Bar No. 97234, in Case No. CPC 2016-096, on information provided by a Court of Appeals opinion of March 12, 2014 in Ken Swindle v. Southern Farm Bureau Casualty Ins. Co., No. CV-13-753, at a public hearing on July 18, 2018, by Findings & Order filed July 26, 2018, was cautioned for a violation of Rule 8.4(d) for filing and pursuing a hasty and frivolous lawsuit through three courts over his two clients' settlement checks. Swindle agreed to pay negotiated costs totaling \$3,480 related to all three cases and waived his right to appeal in the two hearing cases. Swindle represented two clients on injury claims against an insured of Southern Farm Bureau Casualty Insurance Company ("SFB"). Both claims were settled, SFB checks on First Security Bank ("FSB") were issued, and releases executed in August 2012. SFB delivered its checks dated August 22, 2012, to Swindle for \$13,500 payable to client D, Swindle, and Unruh Chiropractic Clinic, and for \$11,000 payable to client P, Swindle, and Unruh. Swindle deposited both settlement checks twice in his IOLTA account at Arvest Bank, and twice in September each check was returned due to either improper or illegible endorsements according to the 2013 affidavit of a long-time FSB officer. Swindle disputes this through the statement of then FSB employee Lyles, as related by the 2013 affidavits of Davia Swindle and Palacios in the civil case. On Friday September 28, 2012, referencing Palacios' telephone call with SFB adjuster Blackburn the previous day, Swindle made demand on SFB by faxed letter for full payment of \$24,500 for both checks by 5:00 p.m. that same day or he would file suit for breach of contract and seek attorney's fees. Blackburn's 2013 affidavit stated that in the telephone conversation with Palacios he offered to issue replacement checks to Swindle. Swindle disputed this offer was made on September 28. The 2013 affidavit of an FSB officer gave her version of the facts involving the checks in and around September 2012, concluding SFB always had adequate funds on deposit at FSB to cover these two SFB checks. May 2013 affidavits submitted by two Swindle Law Firm employees relate that a then Rogers FSB employee Lyles informed them on September 28, 2012, that the endorsements on the settlement checks were good but there were no funds in the account for these checks. Swindle submitted no affidavit from Lyles.

On Monday, October 1, 2012, at 12:39 p.m., Swindle filed suit against SFB over the two checks. On October 19, 2012, SFB counsel Sidney Davis, Jr., mailed Swindle two replacement checks by certified mail, restricted delivery. Swindle and his office failed to sign for the Davis letter, and the two replacement checks were returned to Davis. On November 9, 2012, Davis emailed Swindle that he had sent replacement checks by certified mail and asked if Swindle had received the checks. Swindle responded that he had not received them. On February 8, 2013, attorney Paul Smith, for Swindle, wrote Davis asking that SFB reissue the checks. On February 18, 2013, Davis mailed Smith a second set of replacement checks and asked Smith if that ended the matter. On April 9, 2013,

Swindle's motion for judgment on the pleadings was filed, stating Swindle had been paid and the only issue remaining was an award of attorney's fees for Swindle, as the prevailing party. An Order was entered granting summary judgment to SFB and awarding \$6,785.60 in attorney's fees against Swindle to SFB. Swindle appealed.

Swindle sought reversal on two points: (1) entry of judgment to SFB was error, and (2) sanctions against Swindle for filing a "frivolous" lawsuit were not warranted in the case. The Court of Appeals affirmed on both issues, stating SFB did everything required of it regarding payment of the settlement funds, including that immediate payment of the settlement funds was not procured because of repeated mistakes by appellant (Swindle), and Swindle appeared to have filed suit out of anger rather than any need to do so. Rehearing was denied. On review, the Supreme Court in No. CV-14-250 affirmed in part, reversed in part, and vacated the Court of Appeals opinion. The four-judge majority vacated the \$6,785 award of attorney's fees against Swindle. All seven justices voted to affirm the trial court on its grant of summary judgment to SFB and to deny Swindle an award of attorney's fees as the prevailing party.

**ROBERT ALSTON NEWCOMB** of Little Rock, Bar No. 73087, in Committee Case No. CPC 2017-025, on a complaint by Bernstine Bullard, by Consent Findings & Order filed October 19, 2018, to which Newcomb consented, the Panel found he should receive a caution and pay restitution of \$1,000, for violation of Rule 1.4(a)(3) for failing to keep Ms. Bullard reasonably informed in 2016-2017 about the status of her federal employment discrimination lawsuit against the Arkansas Department of Correction. In early 2017, Newcomb failed to file a response to a second motion for summary judgment, which was later granted. Newcomb stated that he was dealing with medical issues during this period but that was no excuse for his neglect of this client matter. He also stated that after discovery there was a substantial chance his client would not have prevailed in her case.

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