

**BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL A**

IN RE: DAVIS HENRY LOFTIN, Respondent
Arkansas Bar ID#79196
CPC Docket No. 2012-057

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Gennie White in an Affidavit dated September 7, 2012. The information related to the representation of Gennie White and her husband, Gerry, by Respondent, Davis Henry Loftin, an attorney practicing primarily in West Memphis, Arkansas, beginning in 2011.

On September 26, 2012, Respondent was served with a formal complaint, supported by affidavit from Gennie White. Mr. Loftin filed a timely response. The matter proceeded to ballot vote before Panel A pursuant to the Arkansas Supreme Court Procedures Regulating the Professional Conduct of Attorneys at Law.

The information presented to the Panel for consideration was as follows:

1. During August 2011, Gerry and Gennie White met with Davis Henry Loftin to discuss representation in a Chapter 7 Bankruptcy proceeding. Mr. Loftin was provided information by the Whites with regard to the items they did not wish to lose through the bankruptcy. They wished to have Reaffirmation Agreements for their 2009 Ford Explorer, 2006 Dodge Stratus, and furniture.
2. On September 8, 2011, the Whites met with Mr. Loftin again to pay his fee of \$1100 and to sign documents so the bankruptcy process could begin.
3. According to Mr. Loftin, there were some initial problems with the bankruptcy

because Mr. and Mrs. White were above the income level for a Chapter 7 bankruptcy but, after Mr. White signed a statement that the majority of the debt had been accumulated while he was on active duty, the Whites were eligible for Chapter 7 bankruptcy protection.

4. On September 28, 2011, the Whites signed Reaffirmation Agreements for the Ford Explorer and furniture.

5. Mr. Loftin explained in his response to the formal disciplinary complaint that the three reaffirmation agreements were prepared, signed and then forwarded to the creditors or filed with the Court.

6. On October 14, 2011, the meeting of creditors was held in the White bankruptcy.

7. On December 14, 2011, the Whites were discharged from bankruptcy.

8. At no time between the filing of the bankruptcy on September 14, 2011, and the date of discharge December 14, 2011, did Mr. Loftin file the Reaffirmation Agreement with regard to the Ford Explorer, nor did he make certain one was filed in order to protect his clients.

9. Mr. Loftin did not know why the Ford reaffirmation agreement was not filed since the other two agreements were properly filed. According to Mr. Loftin, he considered the agreement to be filed upon his mailing the agreement to Ford.

10. On January 16, 2012, the Ford Explorer was repossessed at the Whites' home. Ford had never received a Reaffirmation Agreement from Mr. Loftin.

11. On January 17, 2012, Mr. Loftin filed a Motion to Reopen Chapter 7 Case.

12. On January 18, 2012, Honorable Audrey Evans signed an Order Reopening the Chapter 7 bankruptcy, explaining that, since the Debtors had received a discharge on December 14, 2011, the reaffirmation agreement might not be enforceable.

13. On January 27, 2012, the Whites were aware that their vehicle was still in Little Rock but they could not obtain it because they did not have the funds and because the Reaffirmation Agreement was still not signed and filed.

14. On January 30, 2012, the Whites signed the Reaffirmation Agreement documents.

15. The Reaffirmation Agreement with Ford was filed on January 31, 2012.

16. Mrs. White learned she would have to send a \$325 repossession fee to Ford. She did so on January 31, 2012.

17. Mr. Loftin wrote Mr. White a check in the amount of \$200 on January 31, 2012, with a memo "settlement of claim".

18. On February 6, 2012, Gerry White flew to Texas to obtain the Whites' vehicle from the private auction site, after borrowing funds from family members in order to do so.

19. On February 7, 2012, Mr. Loftin provided an IOLTA Trust Account Check to Gerry White in the amount of \$540, with the notation "claim settlement".

20. On February 9, 2012, Mrs. White wrote Mr. Loftin and set out all the funds the Whites were forced to spend because the Reaffirmation Agreement was not filed prior to discharge. No response was received.

21. On March 5, 2012, Mrs. White sued Mr. Loftin in Small Claims Court in West Memphis.

22. Mr. Loftin was served with the Complaint on March 22, 2012, making his response due no later than Monday, April 23, 2012, to be timely.

23. Mr. Loftin filed his untimely Response on April 24, 2012 and denied he was responsible for the Whites' losses and blamed a third party, Ford Motor Credit.

24. On April 26, 2012, trial was held before Judge J. Michael Stephenson. Although he said Mr. Loftin may have been negligent, Judge Stephenson said Mrs. White did not prove her claim by the required standard. He dismissed her claim.

25. In responding to the formal disciplinary complaint, Mr. Loftin expressed that he did not believe he violated Rule 1.1 because he did complete the three reaffirmation agreements for his clients properly.

26. Mr. Loftin admitted that he did not follow up on the reaffirmation agreement with Ford and that not checking the docket to insure that the agreement was, in fact, filed was his fault.

27. Mr. Loftin also admitted that not checking that the agreement was properly and timely filed did cause further filings to be necessary in his clients' bankruptcy case and was prejudicial to the administration of justice.

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

1. That Mr. Loftin's conduct violated Rule 1.1 because Mr. Loftin was not thorough enough in his representation of the Whites to be certain that the Reaffirmation Agreement with regard to their Ford Explorer was filed in the bankruptcy proceeding prior to discharge of the Whites from bankruptcy. His failure to do so resulted in the Whites' Ford Explorer being repossessed and them being forced to spend more funds to ensure that it was not sold at private auction in Texas. Rule 1.1 requires that a lawyer provide competent representation to a client, including the legal knowledge, skill, thoroughness and preparation reasonably necessary for the

representation.

2. That Mr. Loftin's conduct violated Rule 1.3 because Mr. Loftin did not act in a timely and diligent manner with regard to being certain that the Reaffirmation Agreement with Ford on behalf of the Whites was filed before discharge was granted in the bankruptcy proceeding. Although it appears through other court proceedings that Mr. Loftin wishes to place the blame on another, it was his responsibility to act timely and diligently in representation of his clients, the Whites. Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

3. That Mr. Loftin's conduct violated Rule 8.4(d) because Mr. Loftin's failure to be certain that the Reaffirmation Agreement for his clients with regard to their Ford Explorer was filed before discharge in bankruptcy led to the repossession of the Whites' vehicle, more filings in the bankruptcy matter, and an expenditure of funds by the Whites which would not have been necessary otherwise. Rule 8.4(d) requires that a lawyer not engage in conduct that is prejudicial to the administration of justice.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel A, that DAVIS HENRY LOFTIN, Arkansas Bar ID# 79196, be, and hereby is, REPRIMANDED for his conduct in this matter. In addition, pursuant to Section 18.A of the Procedures, Mr. Loftin is assessed the costs of this proceeding in the amount of FIFTY DOLLARS (\$50). Mr. Loftin is ordered to pay a fine in the amount of FIVE THOUSAND DOLLARS (\$5,000), pursuant to Section 18.B of the Procedures. Further, Mr. Loftin is ordered to pay restitution in the amount of ONE THOUSAND ONE HUNDRED DOLLARS (\$1,100) for the benefit of the Whites, his former clients, pursuant to

Section 18.C of the Procedures. In assessing the sanction in this matter, Mr. Loftin's prior disciplinary record was a factor specifically considered by the Panel. The fine, restitution, and costs assessed herein, totaling SIX THOUSAND ONE HUNDRED FIFTY DOLLARS (\$6,150), shall be payable by cashier's check or money order payable to the "Clerk, Arkansas Supreme Court" delivered to the Office of Professional Conduct within thirty (30) days of the date this Findings and Order is filed of record with the Clerk of the Arkansas Supreme Court.

ARKANSAS SUPREME COURT COMMITTEE
ON PROFESSIONAL CONDUCT - PANEL A

By: /s/ Steven Shults, Chair, Panel A

Date: December 12, 2012

Original Filed with the Arkansas Supreme Court
January 16, 2013