

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

IN RE: LISA DIANE DAVIS
Arkansas Bar ID #2001072
CPC Docket No. 2012-067

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based were developed from information provided to the Committee by Summer Wolfenbarger on August 10, 2012. The information related to the representation of Ms. Wolfenbarger in 2009-2012 by Respondent Lisa Diane Davis, an attorney practicing primarily in Piggott, Clay County, Arkansas. On October 24, 2012, Respondent was served with a formal complaint, supported by affidavits from Summer C. Wolfenbarger, Amy Scott, Briana Bohr, William Mowrer, and Diane Sledge. Respondent failed to file a response to the Complaint, which failure to timely respond, pursuant to Section 9.C(4) of the Procedures, constitutes an admission of the factual allegations of the formal Complaint and extinguishes Respondent's right to a public hearing.

As a contract grower for Tyson Foods, in 2009 Summer Wolfenbarger ("Summer") operated a "breeder" (grower) operation on her parents' farm in Clay County, Arkansas. Amy Scott was Tyson's "service tech" for Summer's poultry operation. In 2009 Tyson required growers such as Summer to "retrofit" or update their poultry houses. Summer's two existing houses would be divided into four houses. She obtained substantial project financing, about one million dollars in all, through Kennett National Bank of Kennett, Missouri, where her loan officer was William Mowrer.

Summer contracted with Southern Poultry, Inc. ("Southern"), an Arkansas business owned by Michael "Mike" James, of Drasco, Arkansas, for the retrofit. Contracts for the retrofit of the four houses were signed in late December 2009, and work began soon thereafter, with an

explicit understanding that “time was of the essence” to complete the job, so as to not interrupt the normal Tyson poultry delivery cycle for Summer. Problems arose with Southern’s performance on the first contract, involving houses one and two. On advice of her lawyer, Lisa Davis of Piggott, Summer made written demands by e-mails on Southern to take corrective action. When such action was not forthcoming, on advice of counsel Davis, Summer had her bank withhold the final 10% payment of about \$21,000 on the first contract. Summer terminated Southern for breach of contract. Summer then contracted with Modern Poultry, Inc. of Alabama to complete or redo work on houses one and two and to do all the work on houses three and four. Modern completed the work on the first contract for about \$21,000, did all work on the second contract completely to Summer’s satisfaction, and Modern was paid in full.

In October 2010, Southern sued Summer and her husband Jeff personally in Cleburne County Circuit Court in Heber Springs, home county of Southern, for what amounted to \$146,562 plus attorney’s fees. Lisa Davis filed an Answer for the Wolfenbargers but no counter-claim, although Summer had specifically requested Davis file a counter-claim for at least the \$21,000 she had to pay Modern to complete/fix what Southern did not do or do correctly on the first contract. Problems caused by Southern’s performance caused delay and project cost overruns, which also could have been relief sought in a counter-claim. In early 2011, Southern had to file a motion to compel against Davis when she did not timely respond to discovery sent to her for Summer. The case was finally set for jury trial during March 22-30, 2012.

On March 22, 2012, Lisa Davis’s law license was suspended for three months in another matter. Davis notified Summer of the suspension but assured her either (a) she would have her license back by the time the case actually went to trial, if Summer would seek a continuance, or (b) Davis would have an attorney friend step in to assist the Wolfenbargers. Shortly after her law

license was suspended, Davis directed Summer to make a \$2,500 “fee” payment in cash to Briana Bohr, a former Davis employee. Summer made the payment. Bohr states that Davis told Bohr to keep the money, to settle some obligation Davis had to Bohr.

The trial was first continued until June 12-15, 2010², and then again until July 25, 2012. To obtain the last continuance without objection by Southern, Summer had to agree to waive her right to a jury trial and agree to a bench trial before only the judge.

Davis’ suspension was up by June 22, 2012, and she was able to file for reinstatement at any time thereafter. Her petition for reinstatement was received at the Office of Professional Conduct (OPC) on July 11, 2012. Due to a response filed by OPC, the matter was not finally resolved until an Order was filed August 20, 2012, reinstating her as of that date, or certainly by August 21, 2012.

With Davis’ law office closed, on July 16, 2012, Summer began texting Davis to find out about her upcoming trial. On July 24, Davis informed Summer that Davis was not reinstated and Davis’ attorney friend was not available for court on July 25. Davis suggested that Summer fake an illness, get a doctor’s excuse, and try to get another trial extension or continuance. Summer declined to do that, and then made hasty calls unsuccessfully trying to locate an attorney who could go to court with her the next day. Summer obtained her case file from Davis that same evening, and she and her husband made the three hour drive to trial the next day without legal representation. The bench trial resulted in Summer not being able to get her evidence into the record, because Davis had failed to file any counter-claim, Davis did properly disclose it pre-trial, or Summer did not know how to get it in at trial over objections. Judgment for \$159,062, including \$12,500 in attorney’s fees, was granted against the Wolfenbargers and filed on August 17, 2012. Summer was able to find a local lawyer who filed her notice of appeal to at least

preserve her right to an appeal, while she attempts to find and pay an attorney to actually do her appeal.

Briana Bohr of Greene County, Arkansas, Summer's niece, worked at times in Davis's law office. Ms. Bohr has described her conversation with Ms. Davis in which Ms. Davis told Ms. Bohr that Davis had seen an unfiled copy of a Wolfenbarger counter-claim in Davis's office file. Summer states there was no such pleading in the file copy Davis gave her on July 24, 2012, and Davis has failed to provide OPC with a copy after being requested to do so.

Summer filed her grievance against Ms. Davis with OPC on August 10, 2012. OPC sent Ms. Davis a copy of the grievance on August 28, 2012, and e-mailed Ms. Davis four times since then asking her for her version of these events or for documents in the matter. Davis failed to respond.

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

A. The conduct of Lisa Diane Davis violated Rule 1.1 in that Davis failed to file an obvious and client-requested counter-claim for the Wolfenbargers in defending the Southern Poultry lawsuit against them. The available evidence, including testimony of a former Davis law office employee, indicates Davis claims she prepared a counter-claim, saw one in her file, but failed to file it. Arkansas Rule 1.1 requires that a lawyer shall provide competent

representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

B. The conduct of Lisa Diane Davis violated Rule 1.2(a) in that it was the decision and objective of her clients, the Wolfenbargers, that Davis file a counter-claim for them to seek at least the approximately \$21,000 they were damaged by the breach of contract by Southern Poultry in the suit Southern filed against the Wolfenbargers, and, without informing the

Wolfenbargers, Davis failed to file any counter-claim for them. Arkansas Rule 1.2 (a) requires that a lawyer shall abide by a client's decisions concerning the objectives of representation, subject to paragraphs (c) and (d), and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation....

C. The conduct of Lisa Diane Davis violated Rule 1.4(b) in that if Ms. Davis had advised her clients, the Wolfenbargers, before March 22, 2012, the date of her suspension, or even before July 11, 2012, the date she filed her petition for reinstatement, that circumstances and situations not involving the clients might cause Davis to not be in good standing to practice law until late July or August 2012, the clients would have had a reasonable time and opportunity to try to employ other counsel to represent the client in their trial and possibly receive the relief the clients sought, or at least a better outcome than the clients eventually received at trial. Arkansas Rule 1.4(b) requires that a lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

D. The conduct of Lisa Diane Davis violated Rule 1.4(a)(3) in that knowing she only filed her petition for reinstatement on July 11, 2012, Davis failed to keep her clients the Wolfenbargers reasonably informed about the status of their matter, by failing to notify them an adequate time before July 24, 2012, that her law license likely would not be reinstated by July 25, 2012, so they could make other plans for legal representation at their trial on July 25, 2012. Arkansas Rule 1.4(a)(3) requires that a lawyer shall keep the client reasonably informed about the status of the matter.

E. The conduct of Lisa Diane Davis violated Rule 1.16(d) in that on July 24, 2012, when Davis delivered to her client Summer Wolfenbarger what was represented by Davis to be the “Wolfenbarger” case file, Davis did not include a copy of a draft counter-claim Davis told Briana Bohr that Davis had seen in the file, action by Davis that did not protect the interest of her clients, the Wolfenbargers, and did not provide them with papers to which they were entitled.

Arkansas Rule 1.16(d) requires that, upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

F. The conduct of Lisa Diane Davis violated Rule 8.4(c) in that (1) in late March 2012, Ms. Davis assured the Wolfenbargers that if her law license was not reinstated by their trial date, Davis would have a lawyer friend cover for her as counsel for the Wolfenbargers. As a result of this assurance, and in reliance on it, the Wolfenbargers did not know they needed to make other plans for counsel, and delayed making any such plans, until Davis informed them on July 24, the day before their scheduled trial, that neither Davis nor any backup counsel Davis obtained would be available to them at their trial on July 25, 2012; (2) due to her license suspension, in late March 2012, as Davis was asking for a \$2,500 payment from the Wolfenbargers, Davis stated to the Wolfenbargers that Davis would have what amounted to “backup” legal counsel, a lawyer friend of Davis, available to go to trial with the Wolfenbargers if Davis was not reinstated by their trial date. On the assurance of at least backup counsel being available at trial, the Wolfenbargers made the \$2,500 payment. On the day before their July 25, 2012, trial, Davis informed the Wolfenbargers she had no such backup counsel available to appear in court with them; (3) just before her trial on July 25, 2012, Davis advised her client Summer Wolfenbarger to fake an illness, seek a doctor’s statement or excuse, and use that as a basis for trying to again continue her trial, conduct by Davis involving dishonesty, fraud, deceit or misrepresentation; and (4) in July 2012, when Davis delivered to her client Summer Wolfenbarger what was represented by Davis to be the “Wolfenbarger” case file, Davis did not include a copy of a draft counter-claim Davis told Briana Bohr that Davis had seen in the file, all conduct by Davis involving dishonesty, fraud, deceit or misrepresentation. Arkansas Rule 8.4(c) provides that it is professional misconduct

for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

G. The conduct of Lisa Diane Davis violated Rule 8.4(d) in that as a result of Ms. Davis’ failure to secure and have available the “back-up” counsel she promised the Wolfenbargers for their trial, if Davis was not able to attend as their counsel, the Wolfenbargers had to go to trial *pro se*, and suffered a large judgment against them as a result, thereby being deprived of the assistance of any counsel at their trial. Arkansas Rule 8.4(d) provides that it is professional

misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel B, that the Arkansas law license of **LISA DIANE DAVIS**, Arkansas Bar ID# 2001072, be, and hereby is, **SUSPENDED for TWENTY-FOUR (24) MONTHS** for her conduct in this matter, and she is ordered to pay \$50.00 case costs. In assessing the sanction, Respondent's prior disciplinary record was a factor. For her failure to file a Response to the Complaint, Respondent is sanctioned with a separate **Reprimand and fined \$1,000.00.**

The suspension shall become effective on the date this Findings and Order is filed of record with the Clerk of the Arkansas Supreme Court. The \$1,050.00 in fine and costs assessed herein shall be payable by cashier's check or money order payable to the "Clerk, Arkansas Supreme Court" delivered to the Office of Professional Conduct with thirty (30) days of the date this Findings and

Order is filed of record with the Clerk of the Arkansas Supreme Court.

ARKANSAS SUPREME COURT COMMITTEE
ON PROFESSIONAL CONDUCT - PANEL B

By: /s/ Barry Deacon, Chair, Panel B

Date: January 2, 2013

Original filed with the Arkansas Supreme Court on
March 26, 2013