

2004 Annual Report

Arkansas Supreme Court

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

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Arkansas Judiciary Homepage
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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 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.

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 are now under advisement by the Supreme Court.

II. Structure

1. COMMITTEE ON PROFESSIONAL CONDUCT

For the year 2004, the Committee continued to operate in the new model of three Panels established by the January 1, 2002, revisions to the Procedures. 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 2004 was as follows:

Panel A: Gwendolyn Hodge, Little Rock, Attorney at Large, Panel A Chair
 Win A. Trafford, Pine Bluff, Attorney, Fourth Congressional District
 Phillip Hout, Newport, Attorney, First Congressional District,
 Bart F. Virden, Morrilton, Attorney, Second Congressional District
 Ken R. Reeves, Harrison, Attorney, Third Congressional District
 Dr. Patricia Youngdahl, Little Rock, Non-attorney at Large
 Helen Herr, Little Rock, Non-attorney at Large

Panel B: Richard F. Hatfield, Little Rock, Attorney, Second Congressional District
J. Michael Cogbill, Fort Smith, Attorney, Third Congressional District,
and Panel B Chair
Harry Truman Moore, Paragould, Attorney, First Congressional District
Valerie L. Kelly, Jacksonville, Attorney at Large
John L. Rush, Pine Bluff, Attorney, Fourth Congressional District, Panel B Chair
Dr. Rose Marie Word, Pine Bluff, Non-attorney at Large
Sylvia S. Orton, Little Rock, Non-attorney at Large

Panel C: Justice (Ret.) David Newbern, Little Rock, Attorney at Large and Panel C Chair
Kenneth R. Mourton, Fayetteville, Attorney, Third Congressional District
Searcy Harrell, Jr., Camden, Attorney, Fourth Congressional District
Phillip D. Hout, Newport, Attorney, First Congressional District
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

2004 Executive Committee:

John L. Rush, Attorney, Committee Chair
Sylvia S. Orton, Little Rock, Committee Secretary
Gwendolyn Hodge, Little Rock, Panel A Chair
J. Michael Cogbill, Fort Smith, Panel B Chair
Justice (Ret.) David Newbern, Little Rock, 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.

2005 COMMITTEE MEETING CALENDAR:

January 21, 2005	Panel A
February 18, 2005	Panel B
March 18, 2005	Panel A
April 15, 2005	Panel B
May 20, 2005	Panel A
June 17, 2005	Panel B
July 15, 2005	Panel A
August 19, 2005	Panel B
September 16, 2005	Panel A
October 21, 2005	Panel B
November 18, 2005	Panel A
December 9, 2005	Panel B

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 Executive Director for the Committee is Stark Ligon. The budget of the Committee and Office for 2004-05 is about \$615,000, 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. The staff attorneys during 2004 were Nancie M. Givens - Deputy Director, Michael E. Harmon - Senior Staff Attorney, and Ann R. Dodson - Staff Attorney.

In calendar 2004, the staff presented twenty (20) CLE 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 Unauthorized Practice of Law Committee and the Supreme Court 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 2004 calendar year, the office sent 1,971 grievance forms to complainants requesting one, up from 1,916 mailed out in 2003.

During the 2004 calendar year, the Office received 1070 written complaints, down from 1082 received in 2003. The great majority of these consisted of informal complaints involving alleged lawyer misconduct. The remainder consisted of reports of alleged unauthorized practice of law, applications for financial relief from the client security fund, and administrative matters.

Following assigned review by staff attorneys of 801 disciplinary complaints received in calendar year 2004 (down from 824 in 2003), or pending cases from previous years:

640 complaints were found not to have a sufficient basis for a formal complaint;*
108 complaints were closed after investigation by staff attorneys;
31 complaints were closed following an informal letter to the reported attorney;
7 complaints were withdrawn by the complaining party;
7 complaints had no affidavit from the complaining party returned to the Office;
1 complaints were referred to outside agencies;
29 complaints were merged into petitions of surrender of license by the attorney;
2 were abated by the death of the attorney;
10 reinstatement petitions were filed;
7 interim suspension petitions were filed;
0 petition for transfer to inactive in lieu of discipline was filed;
9 petitions for surrender were received and approved;
2 disbarment actions were initiated from filed complaints; and,
164 new formal complaints were filed. (20.4% of files reviewed by staff attorneys, down from 21.8% in 2003)

* default category for staff actions closing grievance files

IV. Formal Actions Initiated

In 2004, there were 190 total formal cases opened for the Committee on Professional Conduct for action, down from 200 in 2003. Of the 190 cases, 164 became new formal complaints, 10 were Petitions for Reinstatement, 7 were Petitions for Interim Suspension, 9 were Petitions to Surrender Law License, and 2 of the formal complaints became disbarment actions.

V. Final Committee Actions

Final action was taken in 211 different files involving Arkansas attorneys during Calendar Year 2004 by the Committee on Professional Conduct or, in cases of disbarment, by the Arkansas Supreme Court. Of the 211 finalized cases in 2004, seven (7) were from 2002 cases, seventy-two (72) from 2003 cases, and 132 from 2004 cases. Ten (10) files opened involved reinstatement petitions. There are six primary forms of action that the Committee on Professional Conduct may take. Actions of the Committee are shown below. A warning is non-public. The other forms of sanction are public.

1. 2004 COMMITTEE DISPOSITION STATISTICS - see Appendix A for case summaries

Type Action	Panel A	Panel B	Panel C	Total
No Actions	14	10	0	24
Warnings	11	27	0	38
Cautions	30	23	0	53
Reprimands	17	19	0	36
Suspensions	5	4	0	9
Interim Suspensions	3	4	0	7
Surrenders	5	6	0	11
Merged into Surrender	0	14	0	14
Initiate Disbarment	3 (2 attys)	0	0	3
Abated by death				0
Voluntary Inactive	0	0	0	0
Consents	26	45	0	71
Reinstatements	5	5	0	10
Reinstatement denied	0	2	0	2
To Involuntary Inactive	0	1	0	1
Reconsideration denied	1	0	0	1
ARLAP Referral	0	0	0	0

Disposition	No.	%
No Action	24	12%
Warning	38	19%
Caution	52	27%
Reprimand	39	20%
Suspension	11	6%
Interim Suspension	20	10% (13 files on same attorney)
Surrender	10	5%
Disbarment	2	1%

Total 196

(Note: Beginning in 2002, surrender became an option available in lieu of disbarment proceedings or for any voluntary reason.)

2. FIVE YEAR STATISTICAL COMPARISON 2000-2004
(Unofficial)

Category	2000	2001	2002	2003	2004
Written complaints received	985	1,114	1,186	1,082	1,070
Closed by staff action	832	691	737	825	796
Formal Complaints filed	149	149	186	200	164
Supreme Court Referrals	38	34	45	50	40
Other Judicial Complaints	10	13	12	12	8
Other from Court Records					24
Formal Complaints closed	132	135	178	185	211
No Actions	15	12	30	15	24
Warnings	43	45	53	54	38
Cautions	29	14	31	28	53
Reprimands	24	26	35	37	36
Suspensions	12	19	14	20	9
Surrenders	5	13	5	5	11
Merged into surrender			1	14	29
Disbarments initiated	4	6	3	3	3
Reinstatements granted	3	3	3	8	10
Consent dispositions	N/R	13	35	54	71
ArLAP Referrals	N/A	N/A	2	0	0
# Attys Publicly Sanctioned*	N/R	57	61	72	101

* 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.

VI. Common Rule Violations

In the 2004 findings of the Committee on Professional Conduct Panels, the most common rule violations involved Arkansas Model Rules 1.3 and 8.4(d). Model Rule 1.3 states that a lawyer shall act with reasonable diligence and promptness in representing a client. Model Rule 8.4(d) states that a lawyer shall not engage in conduct that is prejudicial to the administration of justice. 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.

Arkansas Rule #	# Alleged	# Found	Rank (# Found)
1.1	41	17	10
1.2(a)	45	19	6
1.3	123	73	1
1.4(a)	59	42	3
1.4(b)	31	19	6
1.5(a)	6	2	
1.5(b)	9	3	
1.5(c)	4	4	
1.5(e)	0	0	
1.6	0	0	
1.7(a)	4	0	
1.7(b)	6	3	
1.8(a)	3	3	
1.8(b)	2	0	
1.8(c)	0	0	
1.8(e)	0	0	
1.8(j)	0	0	
1.9(a)	1	0	
1.9(b)	0	0	
1.9(c)	0	0	
1.10(a)	0	0	
1.12(a)	1	0	
1.15(a)	23	19	6
1.15(b)	12	7	
1.15(c)	3	1	

Arkansas Rule #	# Alleged	# Found	Rank (# Found)
1.15(d)	2	2	
1.15(f)	0	0	
1.16(a)	0	0	
1.16(b)	0	0	
1.16(d)	33	25	5
2.1	0	0	
3.1	0	0	
3.2	17	12	12
3.3(a)(1)	7	4	
3.3(a)(2)	2	1	
3.3(a)(4)	4	1	
3.4(a)	0	0	
3.4(b)	3	0	
3.4(c)	40	19	6
3.5(a)	0	0	
3.7	1	0	
4.1(a)	4	4	
4.1(b)	0	0	
4.2	2	0	
4.4	2	0	
5.1	7	4	
5.2	0	0	
5.3	1	0	
5.4(a)	0	0	
5.4(b)	0	0	

Arkansas Rule #	# Alleged	# Found	Rank (# Found)
5.5(a)	9	5	
5.5(b)	3	2	
7.1(a)	1	1	
7.2(d)	1	1	
7.3(b)	3	3	
7.3(d)	2	2	
8.1	2	1	
8.2(a)	2	1	
8.2(b)	0	0	
8.4(a)	17	13	11
8.4(b)	5	5	
8.4(c)	68	35	4
8.4(d)	116	56	2
8.4(g)	1	1	
8.5	0	0	

VII. Number of Attorneys Disciplined (2004)

Of the 211 final disciplinary actions by the Committee, thirty-five (35) involved attorneys who had been licensed for ten years or less; seventy-six (76) involved attorneys who had been licensed for eleven to twenty years; sixty-two (62) involved attorneys who had been licensed for twenty-one to thirty years; thirty-one (31) involved attorneys who had been licensed for thirty-one to forty years and seven (7) involved attorneys who had been licensed for more than forty years.

Years licensed	# of attorneys disciplined	Percentage
1-10	35	17%
11-20	76	36%
21-30	62	29%
31-40	31	15%
40+	7	3%

VIII. 2004 Trust Account "Overdraft" Reporting

43 Total reports received in 2004 from all banks and reporters

2004 and earlier reports handled by staff:

51 Closed by private letter disposition
12 Still under investigation
4 Formal complaints filed
6 Public sanction

Reasons given or determined for reports closed or that went to formal complaint in 2004 (some of the reports were on the same attorney trust account for repeated problems in close proximity to each other, usually caused by the same triggering event)

7 Caused by admitted Bank error
27 Caused by Attorney/office bookkeeping error
0 Caused by attorney error - bank fees not taken into account
6 Attorney used wrong account or wrong account number

- 7 "Late" deposits into trust account
- 4 Deposited funds not yet cleared by bank for use
- 0 Trust account checks stolen - forged
- 0 Attorney closed practice and started using account as personal account
- 2 Complaint abated by attorney death, license surrender or disbarment
- 0 IOLTA error
- 0 Credit card fee payment "reversed" out of trust account
- 1 Unexplained
- 1 Commingling of client and non-client funds

IX. FINES, RESTITUTION & COSTS ASSESSED

1. Fines	\$47,050.00
2. Restitution	\$143,624.53
3. Costs	\$6,681.74
Total	\$197,356.27

2004 DISCIPLINE CASE SUMMARIES

Final actions from January 1, 2004, through March 25, 2004, by the Committee on Professional Conduct. Summaries prepared by the Office of Professional Conduct. Full text documents are available on-line at <http://courts.state.ar.us/courts/cpc.html>.

DISBARMENT:

MICHAEL E. TODD of Paragould, Arkansas, Bar No. 78153, was disbarred by the Arkansas Supreme Court opinion issued February 19, 2004, affirming the judgment of the Circuit Court of Greene County, based on his conviction in federal court in November 2000 of two counts of aiding and abetting mail fraud and two counts of aiding and abetting money laundering, all felonies. His convictions were affirmed on appeal on November 23, 2001, by the Eighth Circuit Court of Appeals. Under the Supreme Court's disciplinary procedures as they existed prior to amendments effective January 1, 2002, the disbarment action was filed in circuit court. (CPC No. 2001-039)

SURRENDERS OF LAW LICENSE:

RANDALL HALFORD of Dallas, Texas, Bar No. 84060, surrendered his Arkansas law license, which was accepted by the Court on February 19, 2004, in No. 04-155, on the basis of his continuing to practice law on behalf of the Social Security Administration despite the fact of his suspension to practice law. Mr. Halford was employed by Social Security Administration, Office of General Counsel, from 1986 through 2000 or 2001. His Texas law license was suspended during 1993 for nonpayment of dues but he continued to represent to his employer that he was actively licensed to practice law in Texas. Mr. Halford's Arkansas law license was suspended for non payment of his license fee in 1985. He has also been suspended for failure to comply with the continuing legal education requirements. The rules and regulations of the Social Security Administration require that an attorney be actively licensed in a state, territory, Puerto Rico or the District of Columbia but he was not. Mr. Halford's conduct was found to have violated Model Rules 8.4(c) and 8.4(d).

WALTER A. KENDEL, JR. of Little Rock, Arkansas, Bar No. 88122 surrendered his Arkansas law license, which was accepted by the Supreme Court on January 15, 2004, in No. 03-1458. Mr. Kendel's Petition to Surrender was based upon his plea of guilty in Pulaski County Circuit Court in the case of *State of Arkansas v. Walter Kendel, Jr.*, case number CR-02-4375, to the felony offense of Computer Child Pornography in violation of Arkansas Code Annotated Section 5-27-603. A judgment order was entered against Mr. Kendel on June 16, 2003. Mr. Kendel's conduct violated Model Rule 8.4(b).

SUSPENSIONS:

STEPHEN E. ADAMS of Fayetteville, Arkansas, Bar No. 79002, in CPC No. 2002-136, had his Arkansas law license suspended for sixty (60) months by Order filed March 3, 2004, on a complaint by Debi Bennett for violations of Rules 1.3, 1.4(a), 1.15(a)(1), 1.15(b), 5.5(a), and 8.4(c). Adams failed to file a response to the Committee's complaint. Debi Bennett hired Mr. Adams to represent her in a civil lawsuit during 1993. A judgment in excess of \$100,000 was obtained. Mr. Adams continued to collect the Judgment on Ms. Bennett's behalf through a garnishment proceeding. Initially, Mr. Adams delivered the funds promptly to Ms. Bennett but in the last few years failed to do so. In addition, Mr. Adams stopped responding to Ms. Bennett's inquiries about the judgment, the balance, and the garnishment proceeding. Despite numerous demands, Mr. Adams failed to provide an accounting of the funds collected. As the disciplinary matter progressed, Mr. Adams advised the Executive Director that he would provide an accounting and respond concerning the funds, but failed to do so. Mr. Adams' law license has been suspended since 1997 for CLE deficiencies.

WILLIAM A. SIMS of Sausalito, California, Bar No. 71099, in CPC No. 2003-088, had his Arkansas law license suspended for twelve (12) months by Order filed March 18, 2004, on a complaint by Michael Minns, Esquire, of Houston, Texas, at the direction of the Ninth Circuit Court of Appeals, for violations of Rules 3.3(a)(2), 8.4(c), and 8.4(d). Sims was district counsel for the Internal Revenue Service in Hawaii in the 1980s. With trial counsel McWade, a member of the Oregon Bar, Sims was responsible for handling and trying a massive tax shelter class case involving approximately 1,300 consolidated tax cases and claims for hundreds of millions of dollars in unpaid taxes, penalties and interest. The case, finally styled *Dixon v. Commissioner*, began in 1985 and portions of it are still ongoing, even though Sims and McWade were removed from it the early 1990s and left the IRS. As the case neared trial before the United States Tax Court in the late 1980s, the IRS and the taxpayers' group each selected several "test cases" to try, with agreements by all parties that the outcome of the test cases would be binding on all involved. Prior to trial, Sims and McWade made undisclosed side agreements with two of the three taxpayers' "test case" petitioners that assured the two a favorable outcome regardless of the Tax Court's decision. After trial, Sims and McWade had to disclose the side agreements to the IRS to effectuate the agreements made with the two taxpayers who were witnesses. The result of the participation by one taxpayer in the side agreement was a refund of \$60,000 by the IRS to him, which he then used to pay his attorney's fees for the case in the same amount. An IRS investigation in 1992-93 led to the removal of Sims and McWade from the case and a remand to the Tax Court for further proceedings to determine the effect of the undisclosed side deals on the trial outcome. The Tax Court criticized the conduct of Sims and McWade but ultimately found the result would have been the same, even if the side deal had been disclosed. The taxpayers appealed to the Ninth Circuit, which finally found, in an opinion issued in January 2003, that what occurred at the first trial before the Tax Court, either with the knowledge or acquiescence of Sims and McWade, so permeated the entire proceeding so as to be a fraud on the court, and that what all but Sims and McWade thought was a legitimate adversarial proceeding was actually a charade fraught with concealed motives, hidden payments, and false testimony. In a separate

proceeding, the Tax Court suspended Sims from practice before it for two years by an order issued February 20, 2004.

TONY THURMAN of Mountain View, Arkansas, Bar No. 99037, in CPC No. 2003-041, had his Arkansas law license suspended for six (6) months and was ordered to pay \$700 restitution by Order filed January 22, 2004, on a complaint by Rev. Victor Prentice for violations of Rules 1.2(a), 1.3, 1.4(a), 1.16(d), and 3.2, and for failure to file a response to the Committee's complaint. He was also fined \$1,500 for failure to respond. Rev. Prentice hired Mr. Thurman to represent his church and him in a civil lawsuit that he wished to pursue, and paid Thurman \$700. Mr. Thurman never took any action to pursue the litigation for Rev. Prentice. Mr. Thurman did not respond to telephone calls nor to written requests for information. Rev. Prentice terminated Mr. Thurman's representation but Mr. Thurman failed to return the files and failed to return the unearned fee.

INTERIM SUSPENSIONS

BOB SAMUEL CASTLEMAN of Pocahontas, AR, Arkansas Bar No. 80024, in CPC 2004-037 was placed on Interim Suspension March 29, 2004, as a result of his guilty plea to a felony in United States District Court January 28, 2004.

THOMAS JAMES "T. J." HIVELY of Batesville, AR, Arkansas Bar No. 75060, in CPC 2004-035 was placed on Interim Suspension March 31, 2004, as a result of his being found guilty of several felonies in United States District Court March 9, 2004.

WESLEY JOHN "BUTCH" KETZ, JR. of Batesville, AR, Arkansas Bar No. 76065, in CPC 2004-036 was placed on Interim Suspension March 31, 2004, as a result of his being found guilty of several felonies in United States District Court March 9, 2004.

BOBBY KEITH MOSER of Little Rock, AR, Arkansas Bar No. 81122, in CPC 2004-034 was placed on Interim Suspension March 29, 2004, as a result of his failure to appear for his guilty plea to a felony in United States District Court February 17, 2004, in Michigan, his subsequently fleeing the country as a fugitive before being taken into custody in Madagascar and being returned to Arkansas March 15, and his indictment March 5 on new felony charges involving alleged trust account misappropriations.

REINSTATEMENTS:

ALLEN BIRD of Little Rock, Arkansas, Bar No. 68006 was reinstated by Committee Order filed March 2, 2004 in CPC No. 2004-021.

CHARLES P. BOYD, JR. of Little Rock, Arkansas, Bar No. 82023 was reinstated by Committee Order filed March 3, 2004, in CPC No. 2004-013.

JOSEPH D. HUGHES of Paragould, Arkansas, Bar No. 97021 was reinstated by Committee Order filed February 12, 2004, in CPC No. 2004-012.

TOM L. TRAVIS of Little Rock, Arkansas, Bar No. 95029 was reinstated by Committee Order filed February 23, 2004 in CPC No. 2004-018.

REPRIMANDS:

SHEILA F. CAMPBELL of Little Rock, Arkansas, Bar No. 83239, in CPC No. 2003-179, was reprimanded and fined \$500 by Order filed February 26, 2004, on a complaint from Janet Gingerich for violations of Rules 7.3(b)(4) and 7.3(d). Ms. Campbell sent a letter of solicitation to Janet Gingerich which failed to contain the phrase “ADVERTISING” in all capital letters as required by the Model Rules. In addition, the letter failed to disclose how Ms. Campbell obtained the information about the accident in which Mrs. Gingerich was involved.

JIMMY DOYLE of Searcy, Arkansas, Bar No. 2000-013, in CPC No. 2003-091, was reprimanded by Order filed January 29, 2004, on a complaint by Anthony Malone for violations of Rules 1.3, 1.4(a), and 8.4(d), following a public hearing before Panel A of the Committee on Professional Conduct held on January 16, 2004. Doyle stipulated to the facts contained in the formal complaint filed by the Office of Professional Conduct and offered only mitigation at the hearing. Doyle was employed by Malone to appeal a sentence from the White County Circuit Court of forty years in the Arkansas Department of Correction. Doyle timely filed a notice of appeal and the record. Doyle requested and received two extensions to file the brief on Malone’s behalf. A brief was due to be filed by January 24, 2003. No brief was filed. The Attorney General filed a motion to dismiss the appeal. The motion went unanswered by Doyle, and the Arkansas Court of Appeals granted the motion to dismiss on April 2, 2003. Doyle testified at a public hearing that he had been subjected to harassment from the local drug task force following a prank at a Halloween party. Doyle stated that after the prank, he shortly thereafter became a target in a federal grand jury investigation. A solo practitioner, he claimed he was experiencing difficulties during the representation of Malone in balancing the demands of his case load, harassment by the drug task force, federal grand jury investigation, and Malone’s appeal.

DON G. GILLASPIE of El Dorado, Arkansas, Bar No. 61010, in CPC No. 2002-032, was reprimanded and placed on supervised probation for six months on a referral from the Arkansas Supreme Court in *Undra Singleton v. State of Arkansas, CR-2002-057* on February 7, 2002, for violations of Rules 1.3 and 8.4(d), following public hearings before Panel A of the Committee on Professional Conduct on September 19 and November 21, 2003. Gillaspie represented Singleton on appeal from a Judgment entered on September 10, 2001. Gillaspie filed a timely notice of appeal but failed to tender the record within ninety days of the filing of the notice of appeal. Gillaspie filed a motion for rule on the clerk and the Arkansas Supreme Court granted the motion, referring the matter to the Office of Professional Conduct. Gillaspie presented information to Panel A that he suffered from medical conditions. Panel A directed Gillaspie to provide information from his medical provider that his medical condition did not impair his

ability to practice law. Information from the medical provider demonstrated that Gillaspie had been treated for the medical conditions and there was no reason medically why he could not continue to practice law. Panel A also considered Gillaspie's prior disciplinary history.

JOHNNY E. GROSS of Bentonville, Arkansas, Bar No. 95156, in CPC No. 2003-131, was reprimanded and fined \$250 by Order filed February 10, 2004, on a complaint arising from his representation of appellant Alvie Leon Phillips in CACR03-012 in the Arkansas Court of Appeals for violations of Rules 1.2(a), 1.3, 3.4(c), and 8.4(d). Mr. Gross lodged an appeal for his client, Phillips, on December 30, 2002. Mr. Gross received a seven (7) day Clerk's extension to file his brief, making it due brief no later than February 17, 2003. Mr. Gross failed to file a brief, failed to request an extension of time to file a brief, and failed to move to dismiss the brief or notify the Court that the appeal was no longer being pursued. On April 2, 2003, the Attorney General's office filed a Motion to Dismiss appeal. Mr. Gross did not respond and the Court of Appeals granted the Motion on April 16, 2003. Mr. Gross took no action to seek to have the appeal reinstated.

JOHNNY E. GROSS of Bentonville, Arkansas, Bar No. 95156, in CPC No. 2003-129, was reprimanded and fined \$1,000 by Order filed February 10, 2004, on a complaint from Bankruptcy Judge Richard Taylor of Fayetteville arising from Case No. 03-7003 for violations of Rules 1.1, 1.4(a), 3.3(a)(1), 3.4(c), 4.1(a), and 8.4(c). Mr. Gross filed a bankruptcy petition on behalf of Theresa Adams. Judge Taylor was the presiding judge in the case. Mr. Gross failed to include Ms. Adams' social security number on the initial pleadings. Despite advising that he was going to amend the pleadings to cure the deficiencies, Mr. Gross never did so. Judge Taylor discovered that Ms. Adams never signed the Petition and never reviewed the documents with Mr. Gross. The Petition which Mr. Gross filed contained a forged signature of Ms. Adams. Mr. Gross was ordered by Judge Taylor to refund \$500 in fees to Ms. Adams but failed to do so. In addition, Mr. Gross failed to appear at the meeting of creditors and two subsequent hearings ordered by Judge Taylor. Mr. Gross was held in contempt and as of August 11, 2003, had failed to comply with the contempt finding and the fine imposed.

REGINALD SHELTON McCULLOUGH of Little Rock, Arkansas, Bar No. 85102, in CPC No. 2003-079, was reprimanded and fined \$500 by Order filed March 1, 2004, on a complaint by the Committee based on information from the Arkansas Supreme Court opinion issued February 23, 2003, in No. 02-874, *Whaley v. Kroger Company*, for violations of Rules 3.1, 3.4(c), and 8.4(d). On February 28, 2003, the Arkansas Supreme Court issued an Opinion in the matter of *Whaley v. Kroger*. The matter came to the attention of the Office of Professional Conduct because Mr. McCullough was sanctioned by the Court in the opinion, and ordered to pay appellee's counsel \$1500 plus costs because the appeal McCullough filed was frivolous. Mr. McCullough based his appeal on a letter appellee's counsel wrote to him about settlement negotiations and the withdrawal of a Motion for Sanctions filed by McCullough. The Court found Mr. McCullough failed to base his appeal on fact or law. His conduct was found to be in violation of Rule 11 of the Arkansas Rules of Appellate Procedure - Civil.

CHARLES A. MORGAN of Texarkana, Arkansas, Bar No. 74178, in CPC No. 2003-142, was reprimanded and fined \$1,000 by Order filed March 3, 2004, on a complaint by the Committee based on information in the appeal file of *Hall Engineering v. Murphy Exploration et al.*, No. 03-795 in the Arkansas Supreme Court, for violations of Rules 1.1, 1.2(a), 1.3, 3.4(c), and 8.4(d). Mr. Morgan failed to timely file the record for his client's appeal within ninety (90) days of the filing of the Notice of Appeal. Mr. Morgan cost his client the right to have its matter heard on appeal. Mr. Morgan filed a Motion for Rule on the Clerk and admitted that the record was tendered sixteen (16) days late. The Supreme Court denied the Motion. Mr. Morgan did not act with enough preparation or diligence and failed to seek an extension of time in order to file the appeal.

LORI A. MOSBY of Little Rock, Arkansas, Bar No. 94016, in CPC No. 2002-164, by Committee Order filed October 31, 2003, on a complaint by Judge Darrell Hickman, was reprimanded and fined \$2,500. Her appeal was dismissed by the Supreme Court on March 25, 2004, in No. 04-241, and the Committee sanction became final when the Court denied her motion for rule on the clerk to file the record late. (See case summary in Vol. 39, No. 1.)

CARL D. PLUMLEE of Salem, Arkansas, Bar No. 76094, in CPC No. 2003-133, on a complaint by Paul Culbreath, by Order filed January 7, 2004, was reprimanded and assessed \$50 costs for violations of Model Rules 3.3(a)(1), 4.1(a), and 8.4(a). Plumlee represented the buyer in a real estate transaction, prepared a report containing a false statement on behalf of the realtor, and filed the report with the Arkansas Real Estate Commission. The report contained a statement that an easement contingency had been discussed with the seller and with Mrs. DeShazo, a previous owner of the property, when in fact it had not been discussed with them. Plumlee admitted in his response to the Complaint that he did prepare the report but that the Realtors had signed the document and attested it was true and correct.

CAUTIONS:

JESSE B. DAGGETT, II, of Marianna, Arkansas, Bar No. 71019, in CPC No. 2003-143, was cautioned by Order filed January 14, 2004, on a complaint by the Committee based on information in the Supreme Court opinion issued September 25, 2003, in the appeal in *Southern Farm Bureau Casualty Insurance Company v. Jesse B. Daggett*, No. 02-804, for violations of Rules 1.3 and 8.4(d). Daggett's client, Southern Farm Bureau, had a judgment for \$800,000 entered against it after a trial in Phillips County Circuit Court. Daggett got an extension of time to file the record for the full seven months allowed, but purposely less two days. He miscalculated the correct due date and tendered the record one day after his extension order time expired. His motion for rule on the clerk was denied, costing his client its right of direct appeal. The client paid the \$800,000 judgment and filed a legal malpractice action against Daggett in Pulaski County Circuit Court. The trial court granted summary judgment in favor of Daggett. On appeal, the Supreme Court held Southern Farm Bureau would have prevailed on its direct appeal and the trial court verdict would have been reversed and remanded for a new trial.

JANIE M. EVINS of Hot Springs, Arkansas, Bar No. 92068, in CPC No. 2003-139, on a complaint by Delores Monroe, by Order filed January 7, 2004, was cautioned and assessed \$50 costs for violations of Rules 1.3, 1.4(a), 1.8(a), 3.2, and 8.4(a). Ms. Monroe hired Ms. Evins in April 2001 to complete her divorce. Ms. Evins was to handle all the details of the divorce including the sale of Ms. Monroe's home, car and other items. Ms. Evins purchased Ms. Monroe's 1996 Cadillac vehicle from Monroe for \$10,000 on a payment plan, but with no written agreement, and fell behind on the payments to her client. The divorce was final on February 11, 2002, however, the Qualified Domestic Relations Order required for transfer of one-half of the client's spouse's retirement plan was not prepared by Evins until April 2003.

JAMES WARREN HYDEN of Little Rock, Arkansas, Bar No. 72061, in CPC No. 2003-097, was cautioned by Order filed March 3, 2004, on a complaint by the Committee based on information from the appeal file in Arkansas Supreme Court No. 02-1172, *Hyden et al. v. Highcouch, Inc., et al.*, for a violation of Rule 5.1(c)(2). Hyden and a young then-associate attorney of the firm represented his long time clients High and Couch in the sale of their business for \$5,500,000 in 1998. Two offers for that amount were discussed with the clients. Different advice was given the clients on the two offers in regard to whether personal guarantees should be required from the buyer principal as a condition of the transaction. The clients chose the buyer from whom no personal guaranty was required, and who bought the client's firm through new shell corporations with no assets and then financed the purchased assets to meet the immediate financial requirements of the sale to the sellers. Hyden did not attend the closing, sending the young associate to handle it. Financing statements were not ready at closing and were not completed thereafter. The buyer defaulted soon afterwards on its obligations and the sellers had to sue to enforce the buyer's notes. This case settled for \$1,400,000, allowing the sellers to recover a total of \$4,085,000 on the \$5,500,000 sale price. The clients then sued their former attorneys for malpractice and recovered a jury award of \$850,000, which was affirmed by the Arkansas Supreme Court June 12, 2003. The Committee found Hyden failed to properly supervise the young associate and left the clients unprotected and unsecured in the sale transaction.

NAIF SAMUEL KHOURY of Fort Smith, Arkansas, Bar No. 75070, in CPC Docket No. 2003-160, was cautioned by Order filed March 24, 2004, in a matter involving the Arkansas Supreme Court appeal of *Kevin Matthew Cholousky v. State of Arkansas*, No. 03-1040, for violations of Rules 1.1, 1.2(a), 1.3, 3.4(c), and 8.4(d). Mr. Khoury represented Mr. Cholousky in the probate court of Crawford County where an Order of Involuntary Commitment was entered on April 21, 2003. Mr. Khoury filed a timely Notice of Appeal on May 8, 2003, and then filed a timely Motion for Extension of Time to File the Record on Appeal, but failed to be certain that an Order was timely filed with the clerk extending the time to file the record. Mr. Khoury filed a Motion for Rule on the Clerk on September 15, 2003. The Supreme Court denied the Motion and Mr. Khoury's client's appeal was dismissed on October 2, 2003.

ALVIN Q. MALONE, formerly of Memphis, Bar No. 2001-051, in CPC No. 2003-148, was cautioned by Consent Order filed March 16, 2004, on a referral by the Arkansas Supreme Court

in CR2003-785, *Jason B. Rogers v. State of Arkansas*, for violations of Rules 1.3 and 5.5. Malone entered into a consent caution and was assessed costs in the amount of \$50.00. Malone represented Jason Rogers on an appeal from Crittenden County Circuit Court in 2002. Rogers was sentenced to twenty years in the Arkansas Department of Correction. Malone filed a timely notice of appeal but failed to file the record of the lower court proceedings. At the time of the filing of the notice of appeal, Malone had failed to pay his license fees for the year 2002 and was therefore suspended from the practice of law during the time he represented Rogers.

A. JEFF MOBLEY of Russellville, Arkansas, Bar No. 52017, in CPC No. 2003-189, was cautioned by Order filed March 1, 2004, on a complaint based on information from the appeal file in *Garretsen v. Johnson*, Arkansas Court of Appeals No. CA03-835, for violations of Rules 1.1, 1.3, 3.4(c), and 8.4(d). Mobley and a former “of counsel” attorney at his firm represented the Garretsens in an action in Yell County. The Garretsens lost and their notice of appeal was filed in March 2003 over the names of Mobley and the other attorney. The other lawyer terminated his relationship with the Mobley firm in late May 2003. Mobley filed for an extension of time to file the record, but in the wrong court. The record was tendered to the appellate court clerk late. After several motions were filed regarding the status of the appeal, the Clerk of the Court of Appeals notified Mobley he needed to file a motion for rule on the clerk. During this period, the Court of Appeals sought to certify the case to the Supreme Court, which declined to accept it. The Supreme Court eventually denied the motion for rule on the clerk and dismissed the appeal.

RICK C. SHUMAKER of Texarkana, Arkansas, Bar No. 82211, in CPC No. 2003-144, was cautioned by Order filed March 9, 2004, on a complaint by Cesar De Los Reyes for violations of Rules 1.2(a), 1.3, 1.4(a), and 1.15(a)(1). Mr. De Los Reyes hired Mr. Shumaker to handle a speeding ticket that he was issued in Miller County, Arkansas. Mr. Shumaker accepted money for his fee and for payment of the ticket from complainant, but did not deposit any of the funds in his IOLTA trust account, instead he cashed the check upon receipt. Mr. Shumaker did not take timely action with regard to the speeding ticket. He missed the court date causing Mr. De Los Reyes to receive a failure to comply citation. Mr. De Los Reyes also had his Texas Driver’s License suspended as a result. Mr. De Los Reyes and a staff member of the Sheriff’s Department in Miller County handled the matter with no assistance from Mr. Shumaker, except that he finally paid the ticket amount.

STUART C. VESS of North Little Rock, Arkansas, Bar No. 73124, in CPC No. 2003-192, was cautioned by Consent Order filed February 23, 2004, on a complaint based on information from the appeal file in *J & J Bonding, Inc. v. Arkansas Professional Bail Bondsman Licensing Board*, Arkansas Supreme Court No. 03-1125, for violations of Rules 1.1 and 8.4(d). Vess represented J&J Bonding, Inc., when the Bondsman Board temporarily suspended J&J’s license. The Bondsman Board suspended J&J’s license for nine months after a hearing. Vess filed an appeal to the Pulaski County Circuit Court. The two matters were consolidated into the same case. The Pulaski County Circuit Court issued an order denying J&J’s request for review of the Board’s decision. Vess filed a notice of appeal on June 18, 2003, but listed on the notice the Pulaski County case number which no longer existed due to the case consolidation. Vess

recognized his mistake and filed a subsequent notice of appeal on June 26, 2003, which listed the case number for the consolidated case. Vess tendered the record of the lower court proceedings to the Arkansas Supreme Court Clerk and was informed that the record was not timely as the time to file the record with the clerk started to run on the date of the first notice of appeal which, in this matter, was June 18. Vess filed a Motion for Rule on the Clerk and the Arkansas Supreme Court denied the motion. The appeal was dismissed.

STUART C. VESS of North Little Rock, Arkansas, Bar No. 73124, in CPC No. 2003-199, was cautioned by Consent Order filed February 23, 2004, on a referral by the Arkansas Supreme Court December 11, 2003, in *Kelly Vest v. State of Arkansas*, No. CR03-1300 for violations of Rules 1.3 and 8.4(d). Mr. Vess represents Kelly Vest in an appellate matter before the Arkansas Supreme Court. Mr. Vess failed to seek an extension of time to file the record on appeal. Mr. Vess did not tender the record for filing with the Clerk of the Court until fifty-one days after the ninety day deadline had expired. Mr. Vess filed a Motion for Belated Appeal and accepted responsibility for the late filing. The Supreme Court granted the Motion and referred Mr. Vess to the Committee.

DONALD WARREN, SR. of Pine Bluff, Arkansas, Bar No. 99007, in CPC No. 2003-198, was cautioned by Order filed March 24, 2004, on a referral by the Arkansas Supreme Court in *Eddie Lee Patrick, Jr. v. State of Arkansas*, CR 2003-1319, for violations of Rules 1.3 and 8.4(d). Mr. Warren represents Patrick on appeal to the Arkansas Court of Appeals. Mr. Warren failed to obtain a timely Order Extending the Time to file the Record with the Clerk of the Arkansas Supreme Court. The Order was entered within ninety days of the filing of the Notice of Appeal instead of within ninety days of the filing of the Judgment and Commitment Order as the Rule requires. Mr. Warren filed a Motion for Rule on the Clerk and accepted responsibility for the late filing. The Supreme Court granted the Motion and referred the matter to the Committee.

JASON L. WATSON of Fayetteville, Arkansas, Bar No. 89191, in CPC No. 2003-107, on a complaint before the Committee, by Order filed January 7, 2004, was cautioned and assessed \$50 costs for violations of Rules 1.3, 1.4(a), 1.4(b), 8.4(a), and 8.4(d). Wendy Golden hired Mr. Watson in May 2001 to handle a disability claim for her. Mr. Watson failed to communicate with Ms. Golden and failed to take action on the matter. Mr. Watson admitted that he failed to act with reasonable diligence, failed to explain the matter to his client, and failed to terminate his services once he discovered the case was not an administrative appeal.

ROBERT B. WHITE of Fayetteville, Arkansas, Bar No. 72111, in CPC No. 2003-119, was cautioned by Order filed January 20, 2004, on a complaint by Chelsea Holbrook for violations of Rules 1.2(a), 1.3, 1.4(a), 1.4(b), 3.2, 8.4(c), and 8.4(d). In November 2002 Ms. Holbrook hired White to take over her pending divorce case in Benton County Circuit Court. He failed to enter his appearance or obtain service on the husband, and in March 2003 he told Holbrooks her divorce would be final in about six weeks. A check for her at the clerk's office in May 2003 revealed her suit was dismissed earlier than month for failure to obtain service on the defendant.

Final actions from April 1, 2004, through June 30, 2004

DISBARMENT:

SAM WHITFIELD, JR. of Helena, Arkansas, Bar No. 82056, was disbarred by the Supreme Court by Per Curiam Order on April 8, 2004, in No. 03-768, following his failure to respond to the Committee's petition for disbarment and failure to provide an explanation for his failure to respond to the petition.

SURRENDER of LICENSE:

BOB SAMUEL CASTLEMAN of Pocahontas, Arkansas, Bar No. 80024, surrendered his Arkansas law license, which was accepted by the Court on June 17, 2004, in No. 04-637 on the basis of his guilty plea in United States District Court on January 28, 2004, to a felony involving sending a threatening communication (a poisonous snake) through the mail.

PETER R. "Rusty" DARLING of Fayetteville, AR (formerly of Nashville, AR), Bar No. 79051, surrendered his Arkansas law license, which was accepted by the Court on June 17, 2004, in No. 04-636, on the basis of his guilty plea to a felony involving a controlled substance in Howard County Circuit Court.

BARBARA MORGAN of Little Rock, Arkansas, Bar No. 87120, surrendered her Arkansas law license, which was accepted by the Court on July 1, 2004, in No. 04-717. See Morgan, Barbara, in the Interim Suspension category (below).

RODNEY P. OWENS of Bentonville, Arkansas, Bar No. 86138, surrendered his Arkansas law license, which was accepted by the Court on May 27, 2004, in No. 04-549, on the basis of his conviction in Benton County Circuit Court of the Class D felony offense of failure to pay tax, in violation of Arkansas Code Section 26-18-202..

SUSPENSION:

RONALD DALE JONES of Benton, Arkansas, Bar No. 92132, in CPC 2003-164, had his Arkansas law license suspended for thirty (30) days and was fined \$1,000 for failure to respond to the Committee's Complaint. He was also reprimanded and ordered to pay \$2,500 restitution by Committee Order filed April 21, 2004, on a complaint by William King for violations of Rules 1.2(a), 1.3, 1.4(a), 1.4(b), 3.2, 8.4(c) and 8.4(d). According to King, Jones represented King's corporation in a dispute with a property owner's association. Jones had previously done some legal work for King. Without King's knowledge, Jones accepted service of suit papers against the corporation and filed an answer for it in early 2001. Trial was set but King only learned of it by accident and Jones then requested a continuance. King claimed Jones only met with him for thirty minutes before trial to prepare, and the trial went against King in January 2003, resulting in an adverse judgment in excess of \$20,000. King paid Jones \$2,500 to appeal. Jones filed the

record but never filed a brief, in spite of obtaining two extensions to do so. The appeal was dismissed on appellee's motion in September 2003 but Jones failed to so notify King, who later was forced to pay the judgment with his appeal bond. Jones failed to: (1) abide by his client's decision to process the appeal to conclusion, (2) act with reasonable diligence in filing a brief, (3) keep his client reasonably informed on his legal matter, (4) explain the matter sufficiently to the client so the client could make timely and informed decisions, e.g. to hire other counsel to file his appellant's brief, (5) expedite his client's litigation matter, the appeal, and (6) inform his client of his failure to file a brief and the dismissal of the client's appeal. Jones' conduct, in failing to file a brief, was prejudicial to the administration of justice in that his action caused his client to lose his right to an appeal. (Jones was reinstated to good standing on May 24, 2004.)

DAVID C. MCMAHEN of Camden, Arkansas, Bar No. 78111, in CPC 2003-150, had his Arkansas law license suspended for six (6) months, was fined \$500, and ordered to pay \$400 restitution by Committee order filed June 18, 2004, on a complaint by April Bradford, for violations of Rules 1.2(a), 1.3, 1.4(a), 1.16(d), 5.5(a), and 8.4(d). Ms. Bradford hired Mr. McMahan in November 2002 to file a Chapter 7 bankruptcy for her, and paid part of his fee and the filing costs. He assured her he would file no later than December 31, 2002. She had difficulty contacting him and getting information about her matter. She finally wrote asking for a refund of her money and a return of her documents when no filing had occurred by late March 2003. Her new attorney wrote McMahan unsuccessfully seeking her documents. When Bradford hired McMahan, his license was administratively suspended for failure to pay his 2002 annual Supreme Court license fee and it remained in that status on the date of service of the Committee complaint. McMahan responded that he had health problems for several years, had lost her information when he had a computer failure, had simply procrastinated on paying his license fee, and that Ms. Bradford had failed to return completed forms to him that he needed to go forward with her matter. He paid his fees and was reinstated December 11, 2003. The Committee found his actions were a failure to abide by the client's decisions concerning her matter, showed a lack of diligence on her matter, he failed to keep her informed, he failed to return the unearned portion of the fee and her papers, he practiced law at a time when his license was administratively suspended, and his actions caused unnecessary delay in Bradford's bankruptcy.

SHEILA ANN WHARTON of Shreveport, LA, Arkansas Bar No. 80206, in CPC 2004-090, had her Arkansas law license reciprocally suspended for three (3) years by Committee Order filed May 24, 2004, as a result of her three year suspension of her Louisiana law license entered in that state on October 17, 2003, for multiple Rules violations involving six clients, including violations involving failure to refund unearned fees and conduct involving dishonesty, fraud, deceit or misrepresentation.

RICHARD H. YOUNG of Russellville, Arkansas, Bar No. 94149, in CPC 2003-161, had his Arkansas law license suspended for three (3) months and was fined \$500 for failure to respond to the Committee's Complaint. He was also reprimanded and fined an additional \$500 by Order filed March 30, 2004, on a complaint by Brinkley District Court Judge John Martin for violations of Rules 1.3, 1.15, 3.2, 8.4(a), 8.4(c) and 8.4(d). Mr. Young failed to appear in court, was held in

contempt and fined by Judge Martin, failed to respond to communications from the Court, failed to pay his contempt fine, and tried to pay his client's fine with a check drawn on his "closed" IOLTA trust account.

INTERIM SUSPENSION:

IVAN V. BOGACHOFF of Washington, D.C., Arkansas Bar No. 94009, in CPC 2004-055 was placed on Interim Suspension April 7, 2004, by Committee Order as a result of his guilty plea to felony bank fraud on March 5, 2004, before the United States District Court in the District of Columbia. His sentencing is set for September 15, 2004.

LUTHER VANCE MARKER of Little Rock, Arkansas Bar No. 92234, in CPC 2004-037 was placed on Interim Suspension April 6, 2004, by Committee Order as a result of his guilty plea in Pulaski Circuit Court December 2, 2003, to the Class C and D felony charges of delivery of drug paraphernalia and failure to keep records.

BARBARA MORGAN of Little Rock, Arkansas, Bar No. 87120, in CPC 2004-073 was placed on Interim Suspension May 21, 2004, by Committee Order as a result of the filing of numerous Committee Complaints questioning her handling of client matters, including accepting fees in divorce matters and not performing services or filing cases.

REINSTATEMENT OF LICENSE:

RONALD DALE JONES of Benton, Arkansas, Bar No. 92132, had his Arkansas law license reinstated to good standing by Committee Order filed May 24, 2004 in CPC No. 2003-164.

INVOLUNTARY TRANSFER TO INACTIVE STATUS:

CAROLE DIANE SEXTON of Fort Smith, Arkansas, Bar No. 92053, was involuntarily transferred to inactive status by Committee Order filed June 28, 2004, in CPC 2004-048, as a result of her alleging incapacity during a pending disciplinary proceeding. She is not entitled to practice law while in inactive status. She may be reinstated to active status upon a showing that her disability has been removed and she is fit to resume the practice of law.

REPRIMAND:

LARRY G. DUNKLIN of Little Rock, Arkansas, Bar No. 81051, in CPC No. 2003-085, was reprimanded and fined \$1,000 by Committee Order filed June 18, 2004, on a complaint from Michael Gans, Clerk of the United States Court of Appeals for the Eighth Circuit, for violations of Rules 1.2(a), 1.3, 3.4(c) and 8.4(d). Mr. Dunklin represented L. C. Davis in Federal court. Following his conviction, Davis filed a *pro se* notice of appeal one week later. Dunklin took no action on his client's behalf. The court issued two "show cause" orders to Dunklin in the case, each directing him to show why Davis' appeal should not be dismissed for failure to prosecute.

He failed to respond to either order. On March 5, 2003, an Order was filed with the United States Court of Appeals for the Eighth Circuit suspending Dunklin from the practice of law before that Court. Dunklin was reprimanded by the United States District Court for the Eastern District of Arkansas for failing to pursue his client's desired appeal. Mr. Dunklin responded to the Committee that his failure to respond to the show cause orders was an "oversight." He stated that Davis failed to consult with him prior to filing his pro se notice of appeal.

J. RUSSELL GREEN of Heber Springs, Arkansas, Bar No. 73043, in CPC No. 2003-146, was reprimanded and placed on twelve (12) months probation by Consent Order filed April 19, 2004, on a complaint developed from Orders of the Supreme Court in No. CR03-487, *Johnny Dean Johnson v. State of Arkansas*, for violations of Rules 1.1, 1.2(a), 1.3, and 3.4(c). Green, a part-time public defender, filed notice of appeal for Johnson, tendered the record, and filed a motion to withdraw as Johnson's appellate counsel. The Supreme Court denied his motion, but Green thereafter failed to take further action in the appeal. The appeal was dismissed on motion of the State, to which there was no response from Green. After being served with the Committee complaint, Green filed a motion to reinstate the appeal, which was granted.

JAMES EARL HENSLEY, JR. of Cabot, Arkansas, Bar No. 99069, in CPC No. 2004-003, was reprimanded by Order filed March 30, 2004, on a complaint from Jerry Kennedy for violations of Rules 1.4(a), 1.4(b), and 1.16(d). Mr. Hensley was hired to collect a business debt of \$47,700 for his client and later to handle the client's bankruptcy. Mr. Hensley withdrew the debt suit after his client went into bankruptcy, telling the client the trustee would pursue the debt. A bank subsequently sued the client's debtor and collected some money. Mr. Hensley failed to get a reaffirmation agreement on the client's business truck and it was repossessed. The client claimed difficulty in communicating with Mr. Hensley.

GARY JAMES MITCHUSSON of Forrest City, Arkansas, Bar No. 91267, in CPC No. 2003-168, agreed to a reprimand, payment of \$24,485.04 in restitution, and a \$2,500 fine by Consent Order filed April 19, 2004, on a complaint from Eugene and Martha Caudle for violations of Rules 1.4(a), 1.4(b), 1.8(a), and 1.15(b). Mitchusson represented the Caudles, on a one-third (1/3) contingency fee, in a personal injury matter arising from a collision in 1997. The case settled in August 2001 for \$125,000. Medicare had paid medical bills, so Mitchusson set aside \$41,789.17 for possible Medicare reimbursement, paid his clients \$40,557.68, and himself a fee and costs of \$32,653.15. He presented his clients with an agreement by which he also paid them an extra \$10,000 up front in exchange for their giving him any discount he could negotiate with Medicare. The Caudles claimed they were rushed into signing this agreement, it was not fully explained to them, and they had no chance to seek other advice on the matter. The Medicare difference, which Mitchusson took, was \$24,485.00, making his total take from the matter \$57,138.19, or 45.7%, compared to the total of \$50,557.68 his clients received. Mr. Mitchusson failed to: (1) keep the balance of his clients' funds for Medicare reimbursement in his trust account, (2) to reasonably explain the matter to his clients, and (3) to promptly notify Medicare upon receipt of funds in which it had an interest. He entered into a business transaction with his

clients on the Medicare discount amount without giving the clients the opportunity to seek advice of independent counsel.

LORI A. MOSBY of Little Rock, Arkansas, Bar No. 94016, in CPC No. 2003-058, was reprimanded and fined \$1,000 by Order filed June 18, 2004, on a complaint from Dr. Lance Audirsch of West Helena, for violations of Rules 1.15(b), 8.4(c), and 8.4(d). Ms. Mosby represented Mr. and Mrs. Terry Owens in a personal injury matter. They were referred by Ms. Mosby to Dr. Audirsch for treatment. Both Mr. Owens and Ms. Mosby signed a medical lien in favor of Dr. Audirsch in mid-2000 and returned it to his office. Ms. Mosby wrote on the lien form that it applied “for bills in file only.” Dr. Audirsch provided Ms. Mosby with information related to his treatment and billing on Mr. Owens. In July 2002, Dr. Audirsch’s office was notified the claim had settled and that Mr. Owens was responsible for paying his bill. Dr. Audirsch made numerous efforts to contact Ms. Mosby about the lien. He sent her copies of the lien at her request. Ms. Mosby responded to the complaint that she settled Owens’ claim after not having spoken with him for a year. She thought Dr. Audirsch was paid by Owens’ PIP coverage. She claimed she was in mourning for her father at the time in 2002 when Dr. Audirsch contacted her about the Owens account. The Committee found she failed to promptly deliver to Dr. Audirsch settlement funds he was entitled to receive. Her failure to deliver funds to Dr. Audirsch was conduct that was dishonest, deceitful, fraudulent, and misrepresentation.

RALPH MYERS, III, of McCrory, Arkansas, Bar No. 84112, in CPC No. 2002-051, was reprimanded, fined \$5,000, and ordered to pay Committee costs of \$548.14 by Consent Order filed April 19, 2004, on a complaint from Peter Fore for violations of Rules 1.4(b) and 1.8(a). Fore had a dispute with a bank over an \$8,000 auto loan and a “freeze” put on his account by the bank. He claims he went to Myers as a lawyer, and that Myers had never previously represented Fore. Myers claims Fore came to him to request a personal loan from Myers. Fore signed a document Myers prepared, which Fore claimed he understood was a mortgage, by which Fore obtained a refinancing loan from Myers, receiving \$17,405.46, and that Myers got \$5,000. The agreement provided for Myers to purchase Fore’s home for \$30,000 and set out conditions under which Fore could repurchase the home. Fore was to make the monthly payments to the bank on the loan. In December 2001 Fore entered into an agreement to sell his home for \$65,000 to a third party. When a release of the Myers “mortgage” was sought, Myers claimed ownership of Fore’s house through the document that was titled Warranty Deed and signed by Fore. Civil litigation was pending between Fore and Myers arising out of the same home deal, at the time of the Committee complaint. That litigation was settled, with Mr. Myers purchasing Fore’s home for \$70,000, and Fore receiving \$41,632.75. The nature of Myers’ role in the Fore matter was strongly disputed by both parties in the Committee proceeding. Mr. Myers agreed that he had failed to adequately explain the matter to Fore, and that he entered into a business arrangement with Fore, who claimed he was Myers’ client, without providing him the opportunity to seek independent counsel.

PAUL E. REVELS of DeQueen, Arkansas, Bar No. 83239, in CPC No. 2003-179, was reprimanded and fined \$2,500 by Order filed April 6, 2004, on a complaint from the Committee

staff for violations of Rules 1.15(a) and 8.4(c). Mr. Revels represented a client in a personal injury matter, received the settlement funds, withheld about \$23,000 to pay the client's medical bills, and then allowed his trust account balance to fall below the minimum required level to maintain this client's settlement funds balance on several occasions. Trust account funds were used to pay personal items, and commingling of client and personal funds occurred in his IOLTA trust account. On two occasions his overall trust account balance was negative. He was found to have converted from the trust account funds which were owed either to medical providers for his client or to the client. The Office of Professional Conduct has filed a notice of appeal from this sanction decision, claiming the findings are of "serious misconduct" and the Procedures require a sanction of at least a suspension for conversion of funds.

JEFFREY C. ROGERS of El Dorado, Arkansas, Bar No. 83150, in CPC No. 2004-002, was reprimanded, fined \$500, and ordered to pay \$1,000.00 restitution by Committee Order filed May 4, 2004, on a complaint from Harold and Faye Scott for violations of Rules 1.2(a), 1.3, 1.4(a), 1.16(d), 8.4(c) and 8.4(d). The Scotts hired Rogers to represent them in a real estate transaction where their grantor, Bell, was alleged to not be competent. After attempts to communicate with the grantor, Rogers was instructed to file suit, which he failed to do. The grantor then sued the Scotts. Pre-trial, the Scotts had difficulty contacting Rogers and he failed to take various actions in their suit that they requested of him. Rogers disputed these contentions. After a three day bench trial, the judge requested briefs from the parties. Rogers had not filed his brief on the due date. The Scotts went to his office, waited until he completed their brief, and then took it to the post office and mailed it themselves. The Scotts told Rogers to appeal, paid him a fee of \$1,700 for the appeal, and a transcript was prepared at a cost of \$1,200 to the Scotts. Rogers obtained an order for an extension of time to lodge the appeal. The Court of Appeals then granted the appellee's motion to dismiss the appeal. The Scotts went to Little Rock and examined the Clerk's file there, discovering that Rogers never filed an appellant's brief. Rogers responded that he could not complete the brief due to his workload. He failed to file a response to the motion to dismiss the appeal. He claimed he told the Scotts there was little merit to their appeal and they should abandon it. They dispute he told them such. Rogers had been employed and paid by the Scotts on two other matters for their son, which they claimed he failed to pursue. He admitted he had taken no action in one matter and was awaiting their son's instructions in the other matter.

JIM ROSE, III, of Fayetteville, Arkansas, Bar No. 79247, in CPC No. 2003-036, was reprimanded and fined \$2,500 by Consent Order filed June 4, 2004, on a complaint from Dr. Richard Back for violations of Rules 1.1 and 3.4(c). In 1997 Dr. R. Back hired Rose to prepare a contract to be signed by Dr. B. Back, his spouse, over a business dispute between the Backs. The document was termed a "post-nuptial" agreement and Dr. B. Back signed it. According to Mr. Rose, one of the purposes of the document was to insure the Backs' marriage stayed intact. In 1998 she sued him for divorce. Dr. R. back hired Rose, and declined a settlement offer on his belief that the post-nuptial agreement was valid. The trial judge found the agreement unenforceable for lack of consideration. Dr. R. Back hired an attorney to sue Rose for legal malpractice in 2000. During his deposition, Rose stated that he had told his client the agreement

was not enforceable. Dr. Back had taped conversations with Rose in which Rose stated the agreement was enforceable. Rose acknowledged the discrepancy, stating that as the divorce trial approached, and since his client spurned the settlement, he was merely taking a positive attitude toward the post-nuptial agreement for trial. The legal malpractice case was settled and that agreement was sealed. The Committee found Mr. Rose failed to provide competent representation to Dr. Back regarding the post-nuptial agreement, and that he did not give truthful testimony in a deposition in a court proceeding.

FRANK E. SHAW of Conway, Arkansas, Bar No. 79255, in CPC No. 2003-099, was reprimanded and ordered to pay \$825 restitution by Consent Order filed April 19, 2004, on a complaint from Jeremiah Holland for violations of Rules 1.2(a), 1.3, 1.4(a), 1.4(b), 1.16(d) and 3.2. Shaw was retained to represent Holland, barely eighteen at the time, in a murder trial in 1993, receiving \$8,825 in Holland's funds, of which \$8,000 was for the legal fee. Holland was convicted and is serving a life sentence. Shaw filed a notice of appeal and ordered the transcript, paying \$500 on the transcript fee. The record and transcript were never filed. Holland's inquiry years later revealed his direct appeal had not been filed. Holland's interlocutory appeal, by another lawyer, of a jurisdictional issue was being processed at about the same time as his trial, and was unsuccessful. Holland claimed he only knew that he had lost an appeal. Shaw failed to abide by his client's request for a direct appeal, failed to adequately communicate with his client, failed to account to the client for the balance of the client's funds he held, and failed to take reasonable efforts to expedite his client's litigation.

ANNE ORSI SMITH of Little Rock, Arkansas, Bar No. 88163, in CPC No. 2004-006, was reprimanded by Committee Order filed May 4, 2004, on a complaint from Circuit Judge Joyce W. Warren of Pulaski County for violations of Rules 1.1, 1.3, 3.4(c) and 8.4(d). She was also reprimanded and fined \$1,000 for failure to respond to the Committee's Complaint. Judge Warren appointed Ms. Smith to represent Ms. Whittamore on an appeal from an order terminating Whittamore's parental rights. The record was not timely lodged. Ms. Whittamore told Judge Warren she was told by Ms. Smith that Smith was going to dismiss her appeal. By her default, Smith was found to have failed to provide her client competent representation, to act diligently, to obey an obligation of the court, and to have engaged in conduct that was prejudicial to the administration of justice.

CAUTION:

GREGORY E. BRYANT of Little Rock, Arkansas, Bar No. 82024, in CPC No. 2004-033, was cautioned and fined \$500 by Consent Order filed May 24, 2004, on a referral from the Arkansas Supreme Court in an appeal involving Mary Hiang and Consuella Terrell, for violations of Rules 1.3 and 8.4(d). Bryant failed to obtain an order extending the time for lodging the record on appeal, and had to file a motion for rule on the clerk, after he tendered the record two weeks late. The motion was granted and his clients' appeal was allowed.

S. GENE CAULEY of Little Rock, Arkansas, Bar No. 94012, in CPC No. 2003-157, was cautioned and fined \$1,000 by Order filed June 3, 2004, on a complaint from Jay Garrett of the Kentucky Bar Association attorney discipline office for violations of Rules 7.3(b) and 7.3(d). Cauley's firm sent an unsolicited e-mail to a Kentucky business advertising that it represented investors and consumers in class action and corporate government litigation. The main focus of the e-mail was a firm named Cryolife, with which the Kentucky recipient had no connection. The Kentucky Office of Bar Counsel determined the e-mail was the unauthorized practice of law there and targeted spam solicitation and referred the matter to Arkansas. Cauley denied the charges, stating the e-mail was a notice required to be given by class lead plaintiff concerning the pendency of a class action suit. He stated the information in the e-mail was merely biographical and not solicitation. The Committee found the e-mail was a solicitation that (1) did not contain the required special notice about the office where any complaints about the solicitation or the lawyer could be sent, and (2) violated the rule that required such solicitations to disclose how the sender obtained the recipient's name, which disclosed information in Cauley's e-mail misrepresented to the recipient the source of the information.

TONA M. DEMERS of Pensacola Beach, FL, (formerly of Little Rock), Arkansas Bar No. 91024, in CPC No. 2003-120, was cautioned by Consent Order filed April 19, 2004, on a referral from the Arkansas Supreme Court for violations of Rules 3.4(c) and 8.4(d) arising out of her representation of Mervin Jenkins in No. CR01-081. Ms. DeMers was twice ordered by the Court to submit a proper abstract with her appellant's brief and failed to do so, requiring the State to finally have to submit a substantial supplemental abstract. Her actions caused the Court to have to expend additional and unnecessary time dealing with the case, conduct prejudicial to the administration of justice.

LISA M. DENNIS of Fayetteville, Arkansas, Bar No. 92169, in CPC No. 2004-008, was cautioned by Consent Order filed April 2, 2004, for violations of Rules 1.3 and 8.4(d), on a self-referral from Ms. Dennis arising out of her representation of Angela Doss in an appeal, No. 03-1074, from a trial court decision terminating Ms. Doss' parental rights. Ms. Dennis obtained an order for extension of time to file the appeal record, but she did not file the order until the 91st day, one day late. Her motion for rule on the clerk was denied and her client lost her right to appeal.

RON L. GOODMAN of Little Rock, Arkansas, Bar No. 86070, in CPC No. 2003-195, was cautioned and ordered to pay \$1,200 restitution by Consent Order filed April 19, 2004, on a complaint from Sheila Henley for a violation of Rules 1.5(c). Mr. Goodman had previously represented Ms. Henley in a bankruptcy when she hired him to represent her in a child custody and support matter in May 2003, where she sought recovery of \$8,000 in unpaid support. She paid him a retainer of \$1,000 but stated there was no discussion of any hourly rate fee for the matter. Goodman told her he would work the support matter on a contingency but never reduced the agreement, or any percentage amount, to writing. The court ordered payment of the \$8,000 arrearage at \$88 per week. Hensley states she asked Goodman how his fee would be paid with the \$88 weekly payments and she was told not to worry about it. She later received a bill for

\$2,000. She eventually received bills totaling \$3,800 for the matter, consisting of the \$2,000 retainer, hourly charges of \$1,700, and a “late fee” of \$100. Goodman was found to have failed to reduce a contingency fee arrangement to writing, as required by Rule 1.5.

ANN HILL of Hot Springs, Arkansas, Bar No. 93164, in CPC No. 2003-200, was cautioned by Consent Order filed April 19, 2004, on a referral from the Arkansas Supreme Court for violations of Rules 1.3 and 8.4(d). Ms. Hill represented Timothy Anderson in No. CR03-1286, an appeal from Garland County. She obtained a proper order for an extension of time to lodge the record on appeal but then filed the record one day late. Her motion for rule on the clerk was granted, and the appeal was accepted for filing.

WILLIAM M. HOWARD, JR. of Pine Bluff, Arkansas, Bar No. 87087, in CPC No. 2004-026, was cautioned and fined \$250 by Consent Order filed June 18, 2004, on a referral by the Arkansas Supreme Court for violations of Rules 1.3, 3.4(c), and 8.4(d). Emmitt Jones requested that his attorney, Mr. Howard, appeal a denial of Jones’ Rule 37 petition. Jones filed a *pro se* notice of appeal but Howard filed nothing. Jones then filed a *pro se* motion for belated appeal, requesting that Mr. Howard appeal the case. The Supreme Court granted the motion and directed Howard to file a brief. The brief was tendered one week late, with a motion to file belated brief and supplemental record. The motion was treated as one for rule on the clerk and it was granted when Mr. Howard accepted responsibility for the late filing. Mr. Howard agreed that he failed to act diligently, disobeyed an obligation to a court, and caused delay in the administration of justice.

RICHARD LANE HUGHES of Little Rock, Arkansas, Bar No. 83239, in CPC No. 2003-156, was cautioned by Committee Order filed April 7, 2004, on a complaint from Robert S. Murphy, for violations of Rules 1.4(a) and 3.2. Murphy hired Hughes to represent him in a divorce. Murphy had communication problems with Hughes and Hughes missed two court hearings on the divorce. Murphy got another lawyer to take over his case. Hughes responded that he had health problems during this time and that his actions did not prejudice the client’s case.

JEAN M. MADDEN of Little Rock, Arkansas, Bar No. 84096, in CPC 2004-023, was cautioned by Committee Order filed June 29, 2004, on a complaint by Lori A. Mosby, for a violation of Rule 7.3(b)(6). Ms. Madden failed to include on her solicitation letter to prospective clients the required language, “ANY COMPLAINTS ABOUT THIS LETTER OR THE REPRESENTATION OF ANY LAWYER MAY BE DIRECTED TO THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT, C/O CLERK, ARKANSAS SUPREME COURT, 625 MARSHALL STREET, LITTLE ROCK, AR 72201.”

JACK R. KEARNEY of Little Rock, Arkansas, Bar No. 77194, in CPC No. 2003-184, was cautioned by Order filed March 30, 2004, on a referral from the Arkansas Supreme Court for violations of Rules 1.3, and 8.4(d) in his representation of Billy Welch on appeal in No. CR 2003-539. Mr. Kearney tendered the record on his client’s Rule 37 appeal untimely. His second motion for rule on the clerk was granted and his client’s appeal allowed.

JOHN WILLIAM SETTLE of Fort Smith, Arkansas, Bar No. 73122, in CPC No. 2003-169, was cautioned by Order filed May 4, 2004, on a complaint from Marilyn Taylor for violations of Rules 1.4(a) and 1.4(b). Taylor hired Settle to defend her in a suit filed by her former landlord. After a hearing, judgment was entered against Taylor for \$1,991.42. Taylor claimed Settle did not tell her about the judgment and she first learned of it when she was garnished. She claimed she would have appealed if she had known in time to do so. Settle stated he thought he had notified Taylor, but he could not find any document showing he had notified Taylor of the judgment. He was found to have failed to keep his client informed of her matter and to explain it to the extent necessary for her to make informed decisions.

FRANK E. SHAW of Conway, Arkansas, Bar No. 79255, in CPC No. 2003-180, was cautioned and fined \$1,000 by Order filed March 31, 2004, on a referral from the Arkansas Supreme Court for violations of Rules 1.3 and 8.4(d) in his representation of James Rickey Mauldin on appeal in No. CR 2003-1197. Mr. Shaw failed to timely file the record on appeal, his motion for rule on the clerk was granted, and his client's appeal allowed.

RAYMOND T. "R.T." STARKEN of Cherokee Village, Arkansas, Bar No. 99003, in CPC No. 2004-010, was cautioned and fined \$500 by Committee Order filed May 4, 2004, on a complaint from Sharon Knight for violations of Rules 5.1(a), 5.1(c)(1), 5.1(c)(2), 5.5(b), 7.1(a), 8.4(a), and 8.4(c). Mr. Starken is married to Karen Starken, whose Arkansas law license was suspended in 1989 and remained so at the time of these events. After a favorable 7-4 vote on May 29, 2003, by the Arkansas Board of Law Examiners, her application for readmission was pending before the Arkansas Supreme Court when the telephone book display ad for Mr. Starken's law office came due for renewal in September 2003. He renewed the ad and had his wife added to the attorneys practicing there, even though she was not admitted in Arkansas at the time. By Order issued October 23, 2003, the Supreme Court unanimously denied Ms. Starken's readmission in Arkansas. Mr. Starken was found to have violated Rules related to misleading attorney advertising, deceit and misrepresentation, and holding out one not authorized to practice law in Arkansas as being associated with his law office.

ROY EDWARD THOMAS of Batesville, Arkansas, Bar No. 73122, in CPC No. 2004-025, was cautioned and fined \$500 by Consent Order filed April 27, 2004, on a complaint before the Committee for violations of Rules 1.15(a) and 8.4(a). Knowing he was required to have one, and having had an IOLTA trust account previously, Edwards had no IOLTA trust account from July 1997 to September 2001, and handled funds on at least two occasions during the period which were required to be placed in a trust account.

MARK E. VALESQUEZ of Fayetteville, Arkansas, Bar No. 98149, in CPC No. 2003-172, was cautioned by Consent Order filed April 19, 2004, on a complaint from Cristobal A. Mancia for violations of Rules 1.1, 1.3, 1.4(b), and 3.4(c). Valesquez represented Ms. Valles-Montes before the Immigration Court, using Mr. Mancia as the main contact. He told Mancia that Valles-Montes would not have to attend a hearing because it would be conducted telephonically. Valesquez failed to file a proper entry of appearance document with the Immigration Court and

he was not considered as counsel for Valles-Montes. She received a notice of hearing in December 2002 which she delivered to Velasquez. He sought a change of venue from Memphis twice, both being denied. Ms. Valles-Montes then prepared for what they thought would be a telephonic hearing with Mr. Velasquez from his office. The day before the hearing she learned it would be conducted in San Antonio, Texas, and Valles-Montes had to attend. She was unable to attend and was later arrested for this failure. Valles-Montes later learned Valesquez had submitted incorrect forms twice and the Texas court had returned them. She hired new counsel who successfully pursued a motion to reopen based on ineffective assistance of counsel by Valesquez. Mr. Valesquez returned to Ms. Valles-Montes \$750 of the fee she had paid him. Valesquez was found to have failed to: (1) properly prepare crucial forms for his client, (2) act with reasonable diligence, (3) adequately explain the matter to the client, (4) and failed to follow court requirements by not submitting a proper entry of appearance, causing same to be not considered by the court.

DONALD E. WARREN of Pine Bluff, Arkansas, Bar No. 99007, in CPC No. 2004-011, was cautioned and fined \$1,000 by Consent Order filed April 19, 2004, on a complaint from Circuit Judge Barry Sims of Pulaski County for violations of Rules 1.1, 1.2(a), 1.3, 3.2, 3.4(c), and 8.4(d). Warren represented Steven Mark Curtis in Pulaski Circuit Court and filed an appeal in June 2003 following his client's conviction. Judge Sims set three status hearings for Curtis and Warren failed to appear at all three. Warren failed to pick up the appeal transcript. At the last status hearing, another attorney appeared and advised the trial court that there was no appeal. Warren failed to: (1) perfect his client's criminal appeal, (2) abide by the client's decisions concerning the objective of the representation, an appeal, (3) act with reasonable diligence in his client's matter, (4) make reasonable efforts to expedite his client's litigation, the appeal, and (5) comply with the Court rule on timely filing appeal records and to appear for three court-ordered status hearings. His conduct was prejudicial to the administration of justice because it required the circuit court to expend additional time on the matter which would not have been needed if he had appeared as ordered.

B. DALE WEST of Monticello, Arkansas, Bar No. 89192, in CPC No. 2003-187, was cautioned and fined \$100 by Consent Order filed April 23, 2004, on a complaint before the Committee for violations of Rules 1.3 and 8.4(d). Mr. West represented Kenyon L. Glenn in an appeal, No. CACR03-903. West failed to obtain an extension of time to file his brief, failed to file a brief, and failed to respond to the State's motion to dismiss the appeal, which was granted. His motion to reinstate the appeal, which was granted, was only filed after he was served with the Committee's complaint. He was found to have failed to act diligently and to have engaged in conduct prejudicial to the administration of justice regarding this appeal.

Final actions from July 1, 2004, through September 30, 2004

SUSPENSION:

Charles Dawson Matthews, Bar No. 64026, of Reno, Nevada, by Committee Findings and Order filed August 23, 2004, on a complaint filed by Mr. and Mrs. Calvin McElhannon, in Case No. 2004-005 had his license and privilege to practice law in Arkansas suspended for twenty-four (24) months and was ordered to pay \$1,200.00 restitution to the McElhannons for violation of Rules 1.4(b) and 5.5(a). Matthews' Arkansas license was suspended November 28, 2000, in another matter. Thereafter he offered financial planning seminars and the McElhannons attended one in November 2002. They scheduled a meeting with Matthews, who then prepared for them documents establishing a trust, wills, powers of attorney, living wills, and other estate planning documents, charging them \$1,200 for the services. He told them he would have their documents reviewed by an attorney. Matthews never explained to the McElhannons that he held a law degree or was an attorney whose license was then suspended. The Committee found that Matthews was practicing law while his law license was suspended.

INVOLUNTARY TRANSFER TO INACTIVE STATUS:

Carole Diane Sexton, Bar No. 92053, of Fort Smith, Arkansas, by Committee Order filed June 28, 2004, was involuntarily transferred to inactive status upon her allegation of her incapacity during a disciplinary proceeding. She may be reinstated to active status by Committee action upon her showing that her incapacity has been removed and she is fit to resume the practice of law.

REPRIMAND:

Donny G. Gillaspie, Bar No. 61010, of El Dorado, Arkansas, by Committee Consent Findings and Order filed August 20, 2004, on a complaint filed by Judge Jim Hudson of the Miller County Circuit Court, in Case No. 2004-027, was reprimanded and fined \$500.00 for violation of Rules 3.4(c) and 8.4(d). Mr. Gillaspie failed to appear for a pretrial hearing December 2, 2003, and then failed to appear for jury trial December 8, 2003, in a criminal case before Judge Hudson. Gillaspie admitted he failed to place these dates on his office calendar.

David Mark Gunter, Bar No. 94004, of Hope, Arkansas, by Committee Consent Findings and Order filed August 20, 2004, on a complaint filed by the Office of Professional Conduct in Case No. 2004-114, was reprimanded and fined \$1,000.00 for violation of Rules 1.1, 1.2(a), 1.3, 3.4(c), and 8.4(d). Mr. Gunter failed to timely file an appeal for his client in a civil case involving termination of parental rights, resulting in the loss of the client's right to an appeal when the motion for belated appeal was denied.

Byron Cole Rhodes, Bar No. 79186, of Hot Springs, Arkansas, by Committee Consent Findings and Order filed September 20, 2004, on a complaint filed by James Elam in Case No. 2002-121,

was reprimanded, fined \$500.00, and ordered to pay \$1,000.00 restitution to Mr. Elam for violation of Rules 1.5(a) and 1.5(b). Mr. Rhodes, who had never represented Mr. Elam before, agreed to substitute as his counsel in defending a pending credit card debt collection case in Garland County Circuit Court on April 10, 2002, and to respond to a motion for summary judgment. There was no written fee agreement. Mr. Elam had a court-appointed guardian at the time, with whom he lived, due to his disability from a bipolar affective disorder, but the guardian did not accompany Elam to his first meeting with Rhodes. Elam paid Rhodes \$1,500, which Elam stated he understood to be the full fee. By April 15, 2002, Rhodes had done worked for which he billed Elam a total of \$3,962.50 at the rate of \$250 per hour. Elam paid an additional \$1,000, went home and told his guardian of the matter. She contacted Rhodes on April 15 and told him to stop work. The guardian then engaged another Hot Springs attorney who handled the matter promptly and satisfactorily for \$125 per hour. Rhodes billed Elam for an additional \$612.50 for work purported to have been done after April 15, which bill was not paid. Rhodes responded that Elam's matter was urgent when Elam came to him and that he had to work the matter as hard as he did immediately, or face a substantial risk of malpractice.

Byron Cole Rhodes, Bar No. 79186, of Hot Springs, Arkansas, by Committee Consent Findings and Order filed September 20, 2004, on a complaint filed by Mary Webb in Case No. 2004-064, was reprimanded and fined \$1,000.00 for violation of Rules 1.1 and 1.7(b). Mary Webb is the mother of Johnny Clark, who suffered permanent and disabling brain damage in a car wreck in July 1999. Suzanne Clark, Johnny's spouse, petitioned to be and was appointed Johnny's guardian in December 2000. Mary Webb was appointed Johnny's guardian on February 20, 2002, after Suzanne and Johnny separated and divorce was being contemplated. A Hot Springs attorney had been appointed Johnny's attorney ad litem in December 2000, to monitor his legal interests. Angela Echols was his attorney ad litem after July 2002. Suzanne Clark went to Mr. Rhodes seeking a divorce. A child custody and property settlement agreement and a decree of divorce were prepared in Mr. Rhodes office. In the Spring of 2002 Suzanne took Johnny to Rhodes' office where he was presented with these documents and signed them. Rhodes then sent the file, with the signed documents, to another Hot Springs attorney, along with a "fee" check from Rhodes for \$35.00 for his services. The second attorney contacted Johnny, reviewed the papers with him by telephone, signed off on the papers, and returned the file to Rhodes. This attorney later explained he had no information or idea Johnny was mentally impaired, and he would not have signed off on the divorce papers if he had possessed such information. Rhodes later filed the divorce and presented the papers to the court for approval. Neither Johnny's guardian nor his attorney ad litem knew of these events. Johnny told his mother about the visit to Rhodes office. His mother told the attorney ad litem, who went to the court house but was unable to find evidence of a filed divorce. The judge happened to be the same judge for Johnny's probate and guardianship case, caught the papers for the divorce, and declined to sign. She wrote counsel asking for an explanation. The divorce still had not been approved as of mid-2004. The couple's two minor children receive Social Security benefits on their father. The offered property settlement agreement failed to address child support issues or the existence of a marital asset, being Johnny and Suzanne's substantial tort claim in litigation in federal court for the accident that caused Johnny's disability.

CAUTION:

Charles Phillip Boyd, Jr., Bar No. 82023, of Little Rock, Arkansas, by Committee Consent Findings and Order filed September 9, 2004, on a complaint filed by Christopher Thomas, Director of the Supreme Court Office of Professional Programs, in Case No. 2003-181, was cautioned for violation of Rule 8.4(a). Mr. Boyd's Arkansas law license was suspended in March 2003 for noncompliance with the annual CLE requirements. In his petition for reinstatement, Mr. Boyd certified he attended a six hour credit CLE seminar put on by NBI on August 7, 2002. Mr. Thomas claimed the seminar was cancelled and that Mr. Boyd had misrepresented his attendance at it in his petition. In response to the Committee complaint, Mr. Boyd apologized for confusion; stated that he was suffering from an untreated medical condition at the relevant times; and that he had made a mistake on his petition, and did not intentionally provide dishonest information.

Charles Phillip Boyd, Jr., Bar No. 82023, of Little Rock, Arkansas, by Committee Consent Findings and Order filed September 9, 2004, on a complaint filed on a Supreme Court Per Curiam referral in Case No. 2004-088, was cautioned for violation of Rules 1.1 and 1.3. Mr. Boyd represented Lonnie Cavender in an action against St. Vincent Infirmiry Medical Center in Pulaski Circuit Court. Notice of appeal was filed and an extension of time to file the record was timely granted. The extension order was not timely filed, and the record was not accepted by the Supreme Court Clerk when tendered June 27, 2003. St. Vincent filed a partial record and motion to dismiss the appeal. Mr. Boyd filed a motion for rule on the clerk. The Court granted the motion to dismiss the appeal on March 25, 2004, thereby preventing Mr. Cavender from an opportunity to pursue his appeal.

Paul D. Budd, Bar No. 94048, formerly of Little Rock, Arkansas, by Committee Consent Findings and Order filed August 11, 2004, on a complaint filed by Huey Bobo in Case No. 2004-062, was cautioned for violation of Rules 1.3 and 8.4(d). Mr. Budd represented Mr. Bobo in a criminal trial and filed his notice of appeal. When problems with obtaining the trial transcript arose, Mr. Budd failed to get an extension order timely filed. Mr. Budd relocated to Minnesota late in 2003, and no appeal has been pursued for Mr. Bobo.

Alvin D. Clay, Bar No. 96075, of Little Rock, Arkansas, by Committee Findings and Order filed July 8, 2004, on a complaint filed by Circuit Judge Jim Hamilton of the 22nd Judicial District of Tennessee in Case No. 2003-190, was cautioned and assessed \$100 costs for violation of Rules 3.3(a)(1) and 8.2(a). Mr. Clay represented Ms. Mitchell in the Arkansas phase of a child custody matter that had been through courts in Alabama, Tennessee, and finally Arkansas from 1998 through 2003. Judge Hamilton had granted the father custody in the Tennessee proceedings and directed Ms. Mitchell to return the child to the father. Ms. Mitchell failed to comply with the final Tennessee order. The order was registered in Arkansas and Ms. Mitchell was jailed in Union County for contempt for eight months while she failed to disclose the child's location. Ms. Mitchell alleged an improper relationship between Judge Hamilton and the child's father, which she claimed had resulted in favorable rulings to the father by Judge Hamilton. A client of Mr. Clay brought the Mitchell case to Mr. Clay, and, he claimed, the client did most of the

investigation and work on the Mitchell matter. Mr. Clay took the research, and, relying on it and contacts he made with Ms. Mitchell's former Arkansas attorney and reports in an Arkansas newspaper, Clay filed a petition in Union County in which he alleged the improper relationship (that they were "childhood friends") between Judge Hamilton and the father. Judge Hamilton strongly denied any improper relationship with the father.

Kathy Cruz, Bar No. 87079, of Hot Springs, Arkansas, by Committee Findings and Order filed September 9, 2004, on a complaint filed by Renae Whitmoyer in Case No. 2004-091, was cautioned for violation of Rules 1.3, 1.4(a), 1.4(b), and 8.4(c). Ms. Cruz began representing Frigidaire Financial Corporation (Frigidaire) in June 1999 on two collection accounts - Bill's Appliances (Bill's) and Starlite Video (Starlite), working with Ms. Whitmoyer of Frigidaire. Cruz was told time was of the essence. Ms. Whitmoyer had difficulty getting status reports from Ms. Cruz and her office. Bill's filed bankruptcy and received a discharge. The client kept seeking status reports so it would know its options. Ms. Cruz kept promising reports to Whitmoyer but none were provided. Attempts to get information from Ms. Cruz's office were not successful, including efforts by the attorney (Gorman) who referred Frigidaire to Ms. Cruz. Gorman was only able to speak with Cruz once, in April 2003.

Joshua McHughes, Bar No. 67040, of Little Rock, Arkansas, by Committee Findings and Order filed September 2, 2004, on a complaint filed by Smitty W. Aaron in Case No. 2004-057, was cautioned for violation of Rules 1.2(a), 1.5(c), 1.15(a)(1), 1.15(a)(3), and 5.5(b). Mr. McHughes was hired on a 25% contingent fee basis by Mr. Aaron to collect bad debts on sales of Aaron's vehicles. There was no written fee agreement, as required in such matters by Rule 1.5(c). A McHughes employee, Sammy Sparks, who was not an attorney consulted with Mr. Aaron, reviewed Aaron's files, and gave advice as to which files he thought could be collected. Mr. Aaron gave a check for \$2,380 for advanced filing fees and costs which was not deposited in McHughes' attorney trust account. Aaron terminated McHughes' services and requested return of his files. They had a disagreement over McHughes charges for service on defendants. McHughes stated he never met with Aaron and that all contacts with Aaron were by other staff members.

Nealon M. Pomtree, Bar No. 96004, of Little Rock, Arkansas, by Committee Consent Findings and Order filed September 20, 2004, on a complaint filed by the Office of Professional Conduct in Case No. 2004-109, was cautioned and fined \$500 for violation of Rule 3.1. Mr. Pomtree represented the News in a civil action in Cleburne County. When they terminated his services, he claimed a lien for his contractual one-third attorney's fee. The News settled their claim for \$700,000 and the paying carrier issued two checks, including one in the names of the clients and Pomtree for his \$233,333.33 fee claim. Pomtree then had another lawyer file suit against the carrier in Pulaski County, seeking to tie up the entire \$700,000 settlement proceeds until his fee issue was resolved. His Pulaski action failed to disclose to the court there the pending action in Cleburne County where that court reserved the attorney's fee issue for future resolution. The Pulaski suit was dismissed and Rule 11 sanctions of \$3,105.00 were imposed on Pomtree. This decision was affirmed on appeal, in an opinion that stated Mr. Pomtree testified at hearing that he

wanted the entire settlement placed in the court registry to give him more leverage over the former client in forcing a resolution of the attorney's fee lien issue.

Byron Cole Rhodes, Bar No. 79186, of Hot Springs, Arkansas, by Committee Consent Findings and Order filed September 20, 2004, on a complaint filed by James Chandler in Case No. 2002-122, was cautioned, fined \$250.00, and ordered to pay \$639.00 restitution to Mr. Chandler for violation of Rules 1.15(a), and 1.16(d). Mr. Rhodes represented Mr. and Mrs. Chandler on criminal charges in Malvern Municipal Court in 2001. They were convicted and he filed their notices of appeal. Fines and restitution totaling \$1,278.50 were assessed. The Chandlers paid Rhodes \$2,000, with their understanding being that \$1,278.50 would be applied to their fines and restitution and the \$721.50 balance applied to their legal fees with Rhodes. One week later Rhodes told the handlers they needed to pay appeal bonds of \$3,000, which Rhodes had not paid from the \$2,000 they had earlier paid him. The Chandlers terminated Rhodes and hired Mr. Casady. Return of the \$1,278.50 was demanded but it was not returned. At jury trials on appeal, the Chandlers were acquitted on all charges. Chandler then hired Casady on a 50% contingency to recover the \$1,278.50 from Rhodes. Casady got a court order for Rhodes to repay the money, which he did with a check from his office account, with Casady keeping half and paying half over to the Chandlers. Rhodes responded that the \$2,000 payment was part of a non-refundable retainer fee for him to represent the Chandlers on appeal. He deposited the \$2,000 in his office account.

Byron Cole Rhodes, Bar No. 79186, of Hot Springs, Arkansas, by Committee Consent Findings and Order filed September 20, 2004, on a complaint filed by Dr. Jeffrey J. Carson in Case No. 2004-061, was cautioned, fined \$500.00, and ordered to pay \$2,346.00 restitution to Dr. Carson for violation of Rule 1.15(c). Ms. Gray and Ms. Childress were patients of Dr. Carson and clients of Mr. Rhodes from a motor vehicle collision in February 2001. Dr. Carson billed their insurance company directly for his first round of treatments for each lady (Gray \$1,458.00 and Childress \$1,478.00), expecting direct payment from Gray's carrier due to his assignment of benefits from each woman. Rhodes contacted the carrier and had the checks sent to him instead. When Dr. Carson learned of the diversion of his payments, he contacted Rhodes requesting the payments but did not receive them. Dr. Carson's second round of medical billings went to the carrier with medical liens and were paid to him without incident. Unable to obtain payment from Rhodes or his patients, in June 2002 Dr. Carson sued the patients in district court for the balances held by Rhodes. Each woman then filed bankruptcy using Rhodes as her attorney. Rhodes' settlement sheets for each client list a deduction of \$200.00 for bankruptcy filing fee and a bankruptcy legal fee to him of \$784.38. Rhodes failed to maintain in his trust account portions of the funds from the clients' settlements until disputes involving portions of these funds were resolved with Dr. Carson.

Byron Cole Rhodes, Bar No. 79186, of Hot Springs, Arkansas, by Committee Consent Findings and Order filed September 20, 2004, on a complaint filed by Letri Buckley Bradford in Case No. 2004-071, was cautioned and ordered to pay \$1,450.00 restitution to Ms. Bradford for violation of Rule 1.5(b). Ms. Bradford met with Mr. Rhodes on May 22, 2001, to discuss Rhodes

representing her brother Mr. Buckley on a criminal appeal from his retrial. She stated Rhodes told her he would not charge her by the hour, but would require \$2,000 to start. On May 24 she brought him the trial transcript from Mr. Buckley's first trial in 1999 and \$2,000. Rhodes was to meet with her brother at the prison on May 28. The next day, May 25, Ms. Bradford called Rhodes, told him she had changed their mind about his representation, and requested a refund. She told Rhodes she was going to see her brother in prison on May 29, and he asked her to let him (Rhodes) know if her brother wanted a visit from Rhodes June 2. On May 30 Mr. Buckley and Rhodes spoke by telephone and then Mr. Buckley called his sister and told her he did not want Rhodes as his attorney. This was communicated to Rhodes and he was asked to have a refund check available at his office. When a family member went to Rhodes office for the refund check, a bill for an additional \$1,475 was presented, but no refund check. A letter demanding an accounting of all charges was sent to Mr. Rhodes but there was no further communication between Bradford and Mr. Rhodes. Rhodes responded that he had several telephone calls, including one for 49 minutes with Mr. Buckley, on the matter and reviewed the 1999 trial transcript.

Mark L. Ross, Bar No. 79249, of Little Rock, Arkansas, by Committee Consent Findings and Order filed August 19, 2004, on a complaint filed by the Office of Professional Conduct in Case No. 2003-103, was cautioned for violation of Rules 1.15(a)(1) and 1.15(d)(1). Mr. Ross's IOLTA trust account was overdrawn on three occasions, due to his actions. No client funds were misapplied. He had to deposit personal funds into the account to bring it back in balance, resulting in impermissible "commingling" of client and personal funds in the trust account.

David W. Talley, Bar No. 82155, of Magnolia, Arkansas, by Committee Consent Findings and Order filed August 20, 2004, on a complaint filed by Kevon D. Trotter in Case No. 2004-098, was cautioned for violation of Rules 1.1, 1.3, and 1.4(a). Mr. Talley failed to notify his client of the issuance of the mandate of the Court of Appeals affirming the client's conviction, resulting in the client being denied the right to seek post-conviction relief under Rule 37.

Don W. Trimble, Bar No. 91078, of Little Rock, Arkansas, by Committee Consent Findings and Order filed July 29, 2004, on a complaint filed by Christopher Culpepper, D.C. doing business as Liberty Chiropractic Clinic, in Case No. 2004-056, was cautioned for violation of Rule 1.15(b). Mr. Trimble's client was treated by Dr. Culpepper, a chiropractor, and a medical lien signed by Trimble and the client was given to Dr. Culpepper in July 2000 to secure payment of the client's \$1,580.00 bill for treatment. Dr. Culpepper's efforts to get information on the status of the client's case were not successful. In October 2002, Liberty called the client's carrier and learned the case had been settled in September 2000. The settlement check did not have Liberty or Dr. Culpepper on it. After receiving a certified letter from Dr. Culpepper, Mr. Trimble sent him a check for \$1,580.00 on December 31, 2003, over three years after the settlement funds were received by Trimble.

Final actions from October 1, 2004, through December 31, 2004

DISBARMENT:

MICHAEL ANTHONY PRICE of Little Rock, Bar No. 81133. In an Opinion issued December 16, 2004, the Supreme Court accepted the report and sanction recommendation of the appointed Special Judge, Jack Lessenberry, after a trial, and ordered the disbarment of Respondent Price for violations of Rules 1.3, 1.4(a), 1.4(b), 1.15(a), 1.16(d), 8.4(a) and 8.4(d) in a complaint involving Timothy Stallings, while a patient at the Arkansas Partnership Program of the Arkansas State Hospital, and violations of Rules 1.1, 1.6(d), 3.2, 3.3(a)(1), 3.4(c)5.5(a), 8.4(c) and 8.4(d) on a complaint by United States District Judge Susan Weber Wright in a matter involving litigation concerning Anthony Vance. Mr. Price had previously been found to have violated numerous Rules in Committee cases involving complaints from United States Bankruptcy Judge James Mixon, Cleotis Gatson, and David Scott Curtis. In the Stallings and Curtis matters, Price failed to refund funds he received specifically for physician evaluations that were not performed on his clients. Price commenced private law practice in 1999 and never had a proper attorney trust account into which to place client funds he received. He was found to have solicited and received a \$10,000 loan from a friend under circumstances that the judge found met the essential elements of the crime of fraud by deception. The Court held that Respondent's claim of a severe emotional disability under the Americans with Disabilities Act (ADA) was not established by the proof at trial.

SURRENDER:

BOBBY KEITH MOSER of Little Rock, Bar No. 81122. On November 4, 2004, in No. 04-1145, the Supreme Court accepted the surrender of Mr. Moser's law license on the basis of his guilty pleas to felonies in United States District Court in late 2004. Among the charges to which he plead is an allegation that he converted from his trust account over \$1,800,000 belonging to several clients. Moser is awaiting sentencing.

BRIAN LEE SPAULDING of Springdale, Bar No. 89229. On December 16, 2004, in No. 04-1311, the Supreme Court accepted the surrender of Mr. Spaulding's law license on the basis of his felony convictions in Washington County Circuit Court in May 2004 on several controlled substance charges. He is currently serving a two year sentence.

KAREN ALEXANDER STARKEN of Cherokee Village, Bar No. 89066. On October 21, 2004, in No. 04-1094, the Supreme Court accepted the surrender of Ms. Starken's law license on the basis of her petition that recited the Court had denied her petition for reinstatement from suspension through the Arkansas Board of Law Examiners in No. 03-777 on October 23, 2003, and because she had a pending disciplinary case, No. 2004-032, before the Committee.

SUSPENSIONS:

DAVID L. CLARK of Amity, Bar No. 95093, in No. 2003-135, by Committee Findings and Order filed November 19, 2004, on a complaint by Debbie Briscoe, had his law license suspended for six (6) months and was fined \$750 for failure to respond to the Committee's complaint. On the underlying complaint, he was reprimanded and fined \$500 for violations of Rules 1.3, 1.4(a), 1.4(b), 1.16(d), 8.4(a) and 8.4(d). Ms. Briscoe's legal services plan assigned her to Mr. Clark to seek recovery of funds she claimed from a former employer. Clark advised Ms. Briscoe of actions he had taken on her behalf, including sending letters to the former employer. The attorney for the former employer responded that it received nothing from Clark until sent the same materials later by Briscoe. Ms. Briscoe was unable to communicate with Clark. Mr. Clark filed no legal action for Briscoe and the former employer filed bankruptcy. Clark failed to act with reasonable diligence, failed to communicate with his client, and apparently abandoned her representation. He was served by warning order, he failed to respond to the Committee complaint, and his whereabouts are unknown to the Committee at this time.

JIMMY E. DOYLE of Searcy, Bar No. 2000013, in Case No. 2004-068, by Committee Findings and Order filed December 1, 2004, on a complaint by Sandra Fairchild about her criminal case, had his law license suspended for three (3) months and was fined \$1,000 for violations of Rules 1.3, 3.4(c), and 8.4(d). For his failure to respond to the Committee complaint, he received a reprimand and was fined an additional \$500. Fairchild received a 168 month sentence in a circuit court judgment filed August 14, 2003. Mr. Doyle filed her notice of appeal on September 15, 2003, one day late. As of August 20, 2004, no appeal record had been tendered to the Supreme Court Clerk. Mr. Doyle had received several prior sanctions for problems with appeals within a short time period before this one.

PAUL E. REVELS of DeQueen, Bar No. 91110, in a Supreme Court Opinion issued December 9, 2004, in *Comm. on Prof. Conduct v. Revels*, No. 04-808, had his attorney's license suspended for three months, in lieu of the reprimand previously imposed by a majority vote of a Committee Panel, and the Court affirmed a Committee-imposed fine of \$2,500, on violations of Rules 1.15(a) and 8.4(c). The Committee Panel imposed a reprimand. The Executive Director appealed that sanction decision, contending Section 17(B) of the Court's Procedures required a sanction that either terminated or restricted (suspended) an attorney's license when "serious" misconduct, such as conversion of client funds and dishonesty, was found by the Committee. The Committee Panel found Revels made cash deposits into his trust that were unsupported by proper documentation, deposited checks for earned legal fees into his trust account, failed to write checks from his trust account to himself for earned legal fees, deposited into his trust account salary checks for his services as city attorney, made cash withdrawals from his trust account, commingled his funds with client and third party funds in his trust account, and apparently used trust funds for his own personal use. The balance of his trust account repeatedly dropped below the amount of funds supposed to be held in trust and on two occasions the account showed an overall negative balance.

RICHARD H. YOUNG of Russellville, Bar No. 94149, in a Committee Consent Findings and Order filed October 18, 2004, in No. 2004-089, agreed to a suspension of his law license for five months, retroactive to March 31, 2004, and to taking an additional six hours of CLE as a reinstatement condition, on a complaint by United States Bankruptcy Judge Richard Taylor, for violations of Rules 1.1, 1.3, 4.1(a), 8.4(c) and 8.4(d). Young represented debtor Ramirez, and twice filed deficient schedules, failed to appear at several creditors meetings, and failed to appear at a hearing on a motion that he disgorge fees. The court found his fees excessive and ordered a refund, which Young did not make at that time. He missed subsequent hearings on proceedings in the case, and gave a check on insufficient funds to the Court Clerk for the refund, among other problems. At a hearing he repeatedly misrepresented to the court the status of the fee repayment to his client.

REINSTATEMENT:

RICHARD H. YOUNG of Russellville, Bar No. 94149, in Committee No. 2004-177, had his Arkansas law license reinstated by the Committee on December 13, 2004, from his suspension Orders of March 3 and October 18, 2004 (No. 2004-089).

REPRIMAND:

VANDELL BLAND, SR. of West Helena, Bar No. 92062, in Case No. 2004-148, by Committee Consent Findings and Order filed December 15, 2004, on a complaint by Joyce Davenport, was reprimanded and fined \$1,000 for violations of Rules 1.2(a), 1.3, 1.15(a), 1.15(b), and 8.4(c). Mr. Bland settled a personal injury claim for Ms. Davenport and accounted to her for it on August 22, 2000, withholding \$3,000 to pay Traylor Chiropractic Clinic for her bill there. Traylor had a medical lien for its services, signed by the client and Bland in May 2000. Traylor was unable to learn the status of Davenport's claim from Bland, and finally learned of the August 2000 settlement in December 2003 from an insurance company. Bland was contacted by the Office of Professional Conduct on this matter on September 13, 2004, and he sent his check for \$3,000 to Traylor that day. Mr. Bland's trust account balance fell below \$3,000 on several occasions between August 22, 2000, and September 13, 2004, falling as low as \$319.20 at one point.

ZIMMERY CRUTCHER, JR of Little Rock, Bar No. 74029, in Case No. 2004-058 by Committee Findings and Order filed October 6, 2004, on a complaint by Alexander Grubbs, was reprimanded, fined \$1,000, and ordered to make \$1,000 restitution for violations of Rules 1.3, 1.4(a), 1.4(b), 1.5(b), and 1.16(d). Mr. Grubbs hired Mr. Crutcher for a fee of \$1,500 to represent him in a matter where Grubbs' vehicles had been sold without his consent. Crutcher had never represented Grubbs and failed to provide a written fee agreement. After paying Crutcher the first \$1,000, Grubbs was unable to contact him for four months in an attempt to pay the fee balance. There was no indication Mr. Crutcher ever took any substantive action for Mr. Grubbs. The Office of Professional Conduct contacted Mr. Crutcher for Mr. Grubbs, resulting in

the return of Grubbs' papers several months later but no refund of any unearned fee. A second letter from the Office to Mr. Crutcher got no response.

MICHAEL B. DABNEY of Marked Tree, Bar No. 76162, in Case No. 2004-097, by Committee Findings and Order filed October 27, 2004, on information provided by the Social Security Administration (SSA) involving his representation of nine SSA clients in 1999-2003, was reprimanded and ordered to pay total restitution of \$10,994.68 for violations of Rules 1.5(a), 1.15(a), 3.4(c), and 8.4(c). Mr. Dabney represented clients seeking disability benefits, SSI benefits, or both, from the SSA. Attorney fees in disability awards are paid the attorney by separate SSA check. Any attorney fee for an SSI award must be obtained from the award recipient. The SSA determines the total maximum fee award that the attorney may receive from the SSA and the client and so notifies the client and attorney. If the attorney collects fees from the client, potentially excess fees must be held in trust until the SSA makes a final fee determination. In the nine cases, Mr. Dabney received excess fees ranging from \$498.50 to \$2,363.75 and failed to maintain such excess funds in his trust account. Mr. Dabney failed to refund the excess fees to these clients upon receiving final fee award notice letters from the SSA. Upon being served with the complaint, Mr. Dabney acknowledged the excess fees and agreed to make restitution to the clients, which he has now done.

CHARLES DARWIN DAVIDSON, SR. of Little Rock, Bar No. 73026, in Case No. 2004-041, by Committee Findings and Order filed October 1, 2004, on a complaint by the Court of Appeals for the Sixth Appellate District of Texas, was reprimanded and fined \$2,000 for violations of Rules 4.1(a), 8.4(a), 8.4(c) and 8.4(d). On January 13, 2004, Mr. Davidson filed a motion to appear *pro hac vice* before the Texas court, representing in his motion, *inter alia*, that he had not been the subject of any disciplinary proceedings in Arkansas within the previous five years, a false statement, since he had been publicly cautioned in Arkansas by the Committee on August 5, 2003. He stated in response that he signed the Texas certification without reading it and acknowledged his error.

ANN C. DONOVAN of Fayetteville, Bar No. 78043, in Case No. 2003-173, by Committee Consent Findings and Order filed October 18, 2004, on a complaint by Beverly Larry, was reprimanded and fined \$1,000 for violations of Rules 1.15(a)(1), 1.16(d), 5.5(a), and 8.4(d). Ms. Larry hired Donovan to represent her in a paternity matter, in which time was of the essence. An advance payment of \$130 for costs was not placed in a trust account. Larry claimed she had difficulty communicating with Donovan. No court papers were filed for Larry by Donovan. Larry terminated Donovan's services and asked for a fee and expense refund and the return of pictures of her daughter left with Donovan. No refund was made. Larry sued Donovan in small claims court for the fee paid. Judgment was granted to Larry against Donovan on August 25, 2003, Donovan filed for bankruptcy. Eventually repayment of the fee and costs was made through the bankruptcy court. Donovan failed to pay her annual law license fee for 2002, due by March 1, 2002, until March 20, 2002, and she was therefore practicing law while her license was automatically suspended during this period.

JOHN FRANK GIBSON, JR. of Monticello, Bar No. 66021, in Case No. 2004-123, by Committee Consent Findings and Order filed October 18, 2004, on a self-report by Mr. Gibson arising from his appellate representation of Joe Lee Bennett in 2003-04, was reprimanded and fined \$1,500 for violations of Rules 1.1, 1.3, and 8.4(d). Bennett was convicted of a felony on May 30, 2003, sentenced to twelve (12) years on July 21, 2003, and Gibson prepared, but failed to file, a notice of appeal. Gibson discovered the unfiled notice of appeal on February 10, 2004, self-reported to the Committee, and filed a motion for belated appeal for Bennett.

RICHARD L. HUGHES of Little Rock, Bar No. 82081, in Case No. 2004-128, by Committee Consent Findings and Order filed October 18, 2004, on a complaint by Debra Davis, was reprimanded, fined \$250, and ordered to pay \$600 restitution for violations of Rules 1.3, 1.4(a), 1.4(b), 3.2, 8.4(a) and 8.4(d). Davis hired Hughes in April 2003 to represent a friend in a custody/guardianship/paternity action. He filed a petition in Saline County, discovered there was a simultaneous proceeding in the same matter in Van Buren County, and told Davis he would get the matter in Van Buren County transferred to Saline County. They failed to appear at a hearing in Van Buren County and the other party received a custody order. At the hearing in Saline County in June 2003, although seen in the courtroom earlier, Hughes could not be found when the case was called. Davis got a continuance. Hughes explained his disappearance as caused by an anxiety attack and that he became ill while waiting for the case to be called. Davis and his client terminated him after the Saline County hearing and asked him for a fee refund, but they did not hear from Hughes.

Q. BYRUM HURST, JR. of Hot Springs, Bar No. 74082, in Case No. 2003-121, by Committee Consent Findings and Order filed October 25, 2004, on a referral by the Supreme Court in No. CR02-878, *Johnny Paul Dodson v. State*, was reprimanded for violations of Rules 1.3, 3.2, and 8.4(d). After his appeal was dismissed for failure to file a brief, Dodson filed a *pro se* motion to reinstate his appeal. The Court directed Mr. Hurst to file a motion to file belated brief and to appear for a show cause hearing on contempt. Hurst appeared before the Court and admitted the factual allegations against him. As Hurst had previously been sanctioned in this case by the Committee for failure to file a brief for Dodson in 2003, the Court declined to hold him in contempt and again referred him to the Committee. He filed a brief on March 11, 2004, which was refiled March 18 after corrections were made. On June 10, 2004, the Court directed Hurst to file a substituted brief. As a result of ongoing delays in the appeal, the Court again referred Hurst to the Committee. Hurst's briefs of March 11 and 18 failed to comply with the Court's directives.

JEFFREY H. KEARNEY, formerly of Pine Bluff, now of Jackson, MS, Bar No. 91249, in Case No. 2004-099, by Committee Findings and Order filed November 3, 2004, on a complaint by Donald Jackson, was reprimanded and ordered to pay restitution of \$1,350.00 for violations of Rules 1.1, 1.3, 1.4(a), 3.2, and 8.4(d). Mr. Kearney was hired to represent Mr. Jackson in a divorce. Jackson received no notice of the hearing, and neither Jackson nor Kearney appeared at the hearing. Child support and spousal support were ordered by wage assignment against Jackson, who stated he was terminated when his employer received the wage assignment. Jackson was therefore unable to meet his support obligations and was cited back in for contempt.

Kearney attempted to have the support order set aside but failed. He claimed service of the hearing notice was not proper. Opposing counsel had called Kearney to confirm his availability for the date before she contacted the judge's office for a hearing setting. A letter with notice of the hearing was hand-delivered to Kearney's office. Opposing counsel called his office and confirmed receipt of the notice letter with Respondent's law partner. The dismissal decision by the trial court was affirmed on appeal by the Court of Appeals.

CHARLOTTE B. MURPHY of Little Rock, Bar No. 90115, in Case No. 2003-151, by Committee Consent Findings and Order filed October 18, 2004, on a complaint by William T. Hancock, was reprimanded and fined \$250 for violations of Rules 1.2(a), 1.4(b), 8.4(a), and 8.4(d). Hancock's wife was killed in an auto accident in January 1999. He was sent a "proof of death" claim form to complete on her life insurance policy. He hired Murphy to represent him on a contingent fee basis in a wrongful death claim arising from the auto accident. She assisted him in completing the one-page life insurance claim form. Murphy had the \$30,000 in life insurance proceeds sent to her, and they were deposited into her trust account. She kept \$7,500 as a fee. Mr. Hancock stated he did not fully understand what was going on at the time. His son made inquiry of Murphy's office and was told the \$7,500 was going to cover the costs of the wrongful death case. The life insurance company was contacted and it told the son that all of the life insurance proceeds should have gone to the husband. Contacted again, Murphy finally paid the \$7,500 to Hancock, less funds he authorized to be paid on a bill. Hancock terminated Murphy from the wrongful death case, she gave notice of her attorney's fee lien on the claim, and later intervened in the wrongful death suit. After a hearing the court found Hancock had terminated their relationship with cause.

JAMES A. PENIX, JR. of Springdale, Bar No. 73092, in Case No. 2003-011, by Committee Findings and Order filed October 25, 2004, after a public hearing, on a complaint by Margaret Mitchell and Joseph Paul Smith, was reprimanded and fined \$5,000 for violations of Rules 1.2(a), 1.4(a), 1.4(b), 1.5(a), 1.5(c), 1.7(a), 1.7(b), and 1.15(b). Mr. Penix represented Ms. Mitchell in a personal injury claim, which settled for \$97,500 in June 2001. Penix received the funds and was to make distribution authorized by the client, including paying several medical provider bills she owed, including \$35,593.42 to NW Medical Center (NWMC) and \$5,963.89 to QualChoice. Ms. Mitchell claimed Penix told her he would attempt to negotiate reductions in the bills and he and she would split any reductions. Ms. Mitchell obtained the services of Smith to try to better understand what had happened to the \$97,500. Smith calculated that Penix owed Mitchell \$13,827.80 and requested his payment to her. When the matter was not resolved, Mitchell went to the prosecutor's office. Eventually Penix paid the \$13,827.80 to Mitchell through the prosecutor's office. No copy of the required written fee agreement for the contingent fee was produced. Penix claimed he had been retained by Medical Reimbursement of America (MRA), which had been hired by NWMC, to collect the medical lien of NWMC on the Mitchell settlement funds, which he held, and that the \$13,827.50 represented his attorney fees for this effort and for his fee for the subrogation claim of QualChoice. The Panel found, *inter alia*, Mr. Penix was in a conflict of interest position with his client as to the NWMC and QualChoice collection matters, that his total fee of \$46,227.80 (47.41%) claimed (\$32,400 from the personal

injury settlement and an additional \$13,827.50 from the two medical claims) was unreasonable under his original fee contract (one-third of any recovery) with his client, that he failed to promptly deliver funds to third parties who had an interest in the funds, and that he failed to adequately explain to his client how the settlement funds would be applied to her medical bills. There was no appeal of the Committee decision.

JON ROGERS SANFORD of Russellville, Bar No. 70063, in Case No. 2004-117, by Committee Consent Findings and Order filed December 15, 2004, on a complaint derived from the Opinion issued December 11, 2003, in *Sanford v. Sanford*, Supreme Court No. 02-789, was reprimanded and ordered to pay restitution of \$50,000 to his former spouse Sherry Sanford Scott for violations of Rules 1.4(b) and 1.7(b). Mr. Sanford prepared a property settlement agreement and trust for his then-wife in their divorce proceeding, in which she was not represented by counsel. The trust agreement provided, *inter alia*, in one provision that he would not receive a fee for his services as trustee, and in another provision that he would receive compensation under a formula for managing and selling marital properties. Problems between the parties arose over the operation and management of the trust by Mr. Sanford. Ms. Sanford sued, alleging breach of fiduciary duty and other issues. The trial court found a breach of fiduciary duty by Mr. Sanford and awarded judgment to Ms. Sanford. The Supreme Court affirmed. The restitution will be paid through an arrangement in bankruptcy court.

RICHARD N. TURBEVILLE of Little Rock, Bar No. 83176, in Case No. 2004-122, by Committee Consent Findings and Order filed December 15, 2004, on a complaint by the Committee based on several trust account overdraft notices, was reprimanded for violations of Rules 1.15(a) and 8.4(c). In March 2004, Mr. Turbeville advised the Office of Professional Conduct he was in the process of closing an old trust account and opening a new one in a different bank, but he did not open the new account for some time thereafter. He paid personal and office bills directly from his old trust account, in which he claimed no client funds remained at the time. He deposited at least \$25,000 in client settlement funds in the old trust account on April 21, 2004, resulting in prohibited commingling of client and personal funds. No client funds were lost and no client has complained.

CAUTION:

ROLAND E. DARROW, II, of Little Rock, Bar No. 93003, in Case No. 2004-131, by Committee Consent Findings and Order filed November 19, 2004, on a complaint by Sandy Durham, was cautioned for violations of Rules 1.3, 1.4(a), 3.2, 8.4(a), and 8.4(d). Mr. Darrow represented Ms. Durham in a child support matter. At a hearing April 16, 2002, the trial judge directed Darrow to prepare the Order, which he failed to do. He failed to keep his client advised of the status of the matter. He finally prepared the Order and it was entered September 29, 2004, after Darrow was served with the Committee Complaint.

JOHN ROBERT IRWIN of Morrilton, Bar No. 95151, in Case No. 2004-106 by Committee Findings and Order filed October 1, 2004, on a referral by the Supreme Court in CR-04-179,

Irene Waddle v. State, was cautioned for violations of Rules 1.1, 1.3, 3.4(c) and 8.4(d). The appellate record was untimely tendered, a motion for rule on the clerk was filed and granted, and the appeal went forward.

GARY JOE MORPHEW of Little Rock, Bar No. 79216, in Case No. 2004-095, by Committee Findings and Order filed October 27, 2004, on a complaint by Odell Voice, was cautioned for violations of Rule 1.4(a). Mr. Voice hired Mr. Morpew to represent him in the sale of timber from lands owned by Mr. Voice's father. Voice claimed he was unable to communicate with Morpew and find out what Morpew was doing on his behalf.

JAMES M. PRATT, JR. of Camden, Bar No. 74124, in Case No. 2003-111, by Committee Consent Findings and Order filed October 18, 2004, on a complaint by Shrader Gant, was cautioned and fined \$500 for violations of Rules 1.3, 1.4(a), 1.4(b), and 1.5(c). Mr. Gant hired Mr. Pratt in October 2001 to represent him on a personal injury claim that arose from an August 2001 event. Gant was released by his treating physician in June 2002. Despite repeated efforts through June 2003, Gant claimed he was unable to get status reports about his matter from Pratt. No required written contingent fee agreement was produced. After the Complaint was served, Pratt filed a civil complaint in Mr. Gant's behalf and the matter is now pending.

DANA A. REECE of Little Rock, Bar No. 87142, in Case No. 2004-029, by Committee Findings and Order filed November 16, 2004, on a referral by the Supreme Court in No. CR 03-1082, *Amy Bankston v. State*, was cautioned and fined \$500 for violations of Rules 1.3, 3.4(d), and 8.4(d). No notice of appeal was filed after Bankston was convicted of second degree murder and other felonies and given an eighty (80) year sentence when the four counts were ordered to run consecutively. New counsel filed a Motion for Belated Appeal. After remand to the trial court and a hearing there, a finding was made that Bankston sufficiently informed Reece of her desire to appeal. A belated appeal was granted by the Supreme Court, and Reece was removed as appellate counsel.

ALVIN SCHAY of Little Rock, Bar No. 75176, in Case No. 2004-120, by Committee Findings and Order filed December 7, 2004, on a referral by the Supreme Court in No. CR 04-313, *Donald Simmons v. State*, was cautioned and fined \$500 for violations of Rules 1.3 and 8.4(d). For failure to file a response to the Committee's complaint, he was fined an additional \$1,000. Mr. Schay failed to lodge the appellate record with the Supreme Court Clerk in time. His Motion for Belated Appeal was granted and the appeal went forward.

ALVIN SCHAY of Little Rock, Bar No. 75176, in Case No. 2004-155, by Committee Consent Findings and Order filed December 15, 2004, on a referral by the Supreme Court in No. CR 04-759, *Billie Baxter v. State*, was cautioned and fined \$250 for violations of Rules 1.3 and 8.4(d). Schay failed to timely tender the appeal record to the Supreme Court Clerk and was required to file a motion for rule on the clerk. The motion was granted and the appeal went forward.

GEORGE VAN HOOK, JR., of El Dorado, Bar No. 73123, in Case No. 2004-066, by Committee Consent Findings and Order filed November 19, 2004, on a complaint based on information obtained from the Supreme Court file in No. 03-1421, *Lou Ella Benton et al. v. Vickie McHenry et al.*, was cautioned for violations of Rules 1.3 and 8.4(d). The record in this civil appeal was not timely lodged with the Supreme Court Clerk. A Motion for Rule on the Clerk was denied by the Court, and appellate lost her right to have an appeal.

ROBERT R. WHITE of Fayetteville, Bar No. 72111, in Case No. 2004-092, by Committee Consent Findings and Order filed November 19, 2004, on a complaint by the Committee that arose from an automatic trust account overdraft bank notice and subsequent trust account audit by the Office of Professional Conduct, was cautioned for violations of Rules 1.15(a) and 1.15(d). Mr. White commingled personal funds with client funds in his trust account when he deposited proceeds of two life insurance policies, totaling over \$270,000, into his trust account in 2001. He made numerous withdrawals from his trust account for non-client or personal purposes. He failed to maintain separate ledgers for individual client funds held in his trust account. On four occasions trust account checks were presented for payment when there were not sufficient funds in his trust account to pay said checks. On three of these occasions his bank covered his check. On one occasion the check was returned.