

# ***2011 Annual Report***

***Arkansas Supreme Court***

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

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

# I. Introduction

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

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

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

## II. Structure

### 1. COMMITTEE ON PROFESSIONAL CONDUCT

For the year 2011, the Committee continued to operate in the new model of three Panels established by the January 1, 2002, revisions to the Procedures. Late in 2008, the Supreme Court authorized and selected members for four full panels effective January 1, 2009, hereafter known

as Panels A, B, C, and D (Reserve). Each panel is composed of seven members appointed by the Arkansas Supreme Court. Five are lawyers, with one lawyer appointed from each Congressional District and one from the State at large. The remaining two positions are filled by persons who are not lawyers and are selected by the Arkansas Supreme Court from the State at large. Panel membership in 2011 was as follows:

Panel A:

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

Panel B:

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

Panel C:

Honorable Kathleen Bell, Helena, Attorney, First Congressional District  
Kenneth R. Mourton, Fayetteville, Attorney, Third Congressional District  
Searcy Harrell, Jr., Camden, Attorney & Panel Chair, Fourth Congressional District (replaced by Joseph Hickey of El Dorado in November 2011)  
Scott Stafford, Little Rock, Attorney, At Large  
Michael Mayton, Little Rock, Attorney, Second Congressional District  
Beverly Morrow, Little Rock, Non-attorney at Large  
Mark Limbird, Scranton, Non-attorney at Large

Panel D:  
(Reserve)

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

2011 Executive Committee:

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

The 2012 Executive Committee consists of:

Win Trafford, Pine Bluff, Committee Chair  
Sylvia Orton, Little Rock, Committee Secretary  
Steven Shults, Little Rock, Panel A Chair  
Barry Deacon, Jonesboro, Panel B Chair  
Judge Kathleen Bell, Helena, Panel C Chair

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

#### **COMMITTEE MEETING CALENDAR:**

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

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

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

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

The Committee employs an attorney Executive Director and staff who function as the Office of Professional Conduct, which is housed in the Justice Building located on the Arkansas State Capitol grounds in Little Rock. The Office of Professional Conduct receives all complaints involving attorneys licensed to practice law in the State of Arkansas, investigates the complaints, provides assistance in the preparation of formal complaints, and processes formal complaints for submission to the Committee. The budget of the Committee and Office for 2011-2012 is about \$835,000, totally funded by a portion of the annual license fee paid by Arkansas-licensed attorneys to the Arkansas Supreme Court.

The Office of Professional Conduct is staffed by four staff attorneys, an administrative

assistant, a secretary, and an investigator. The staff attorneys perform all duties and possess such authority of the Executive Director as the Executive Director may delegate, except for the final determination of sufficiency of formal complaints. In addition to Executive Director Stark Ligon, the Office staff attorneys during 2011 were Nancie M. Givens - Deputy Director, Michael E. Harmon - Senior Staff Attorney, and Charlene A. Fleetwood - Staff Attorney.

In calendar 2011, as in previous years, the staff presented a number of “continuing legal education” programs or speeches on law-related topics across the state.

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

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

### **III. Administration**

The Office of Professional Conduct receives telephone calls, letters, e-mails and faxes from individuals across the country requesting information on how to initiate complaints against attorneys licensed to practice law in the State of Arkansas. During the 2011 calendar year, the Office opened new files on 735 grievances on attorneys alleged lawyer misconduct, significantly down from 888 new files opened in 2010.

In 2011, following assigned review by staff attorneys of disciplinary complaints received in calendar year 2011 and carry-over cases from previous years, 806 files were closed, down from 845 files closed in 2010.

### **IV. 2011 Formal Actions Initiated**

In 2011, there were 97 new formal Complaint attorney discipline cases opened for the Committee on Professional Conduct for panel action, down from the 119 total new formal Complaint cases opened in 2010 and the 144 such Complaints opened in 2009. In 2011, 106 formal Complaint files were closed, compared to 119 closed in 2010.

### **V. 2011 Final Committee Actions (Appendix A)**

Final action was taken in 109 different formal Complaint files involving Arkansas attorneys during Calendar Year 2011 by panels of the Committee on Professional Conduct. There are five primary forms of action, or sanction, that the Committee on Professional Conduct may take. The lowest, a warning, is non-public. The other forms of sanction - caution, reprimand,

license suspension, and initiating disbarment proceedings - are public sanctions.

## **VI. 2011 - Most Common Rule Violations**

In the 2011 findings of the Committee on Professional Conduct Panels, as in most previous recent years, the most common rule violations involved Arkansas Rules 8.4(d) (not engaging in conduct prejudicial to the administration of justice), 1.3 (acting with reasonable diligence and promptness in representing a client), and 1.4(a)(3) (keeping the client reasonably informed about the status of the client’s matter). The following listing contains the Arkansas Rule alleged, the number of times the Committee found the rule to have been violated, and ranking of the ten most frequently violated Rules in 2011.

Rule	Alleged	Found	Rank (# Found)
1.1	23	11	
1.2(a)	5	1	
1.3	48	38	1
1.4(a)	1	1	
1.4(a)(1)	1	1	
1.4(a)(2)	2	0	
1.4(a)(3)	23	12	3
1.4(a)(4)	16	8	7
1.4(b)	1	1	
1.5(a)	1	1	
1.5(b)	2	1	
1.5(e)	1	1	
1.7(a)	3	2	
1.7(a)(1)	3	1	
1.7(a)(2)	2	0	
1.7(b)	1	1	
1.8(a)	1	1	
1.9(a)	4	2	
1.10(a)	2	0	
1.15(a)	3	3	
1.15(a)(1)	7	6	8
1.15(a)(5)	2	2	
1.15(b)	1	1	
1.15(b)(1)	6	6	9
1.15(b)(2)	12	9	6
1.16(a)	1	0	
1.16(d)	6	5	10
2.1	1	0	
3.1	2	1	
3.3(a)(1)	5	2	

3.3(a)(2)	1	0	
3.3(a)(3)	1	1	
3.3(a)(4)	1	0	
3.4(b)	3	2	
3.4(c)	15	8	7
3.5(b)	1	0	
3.8(d)	1	0	
4.1	1	1	
4.2	1	0	
4.4	5	3	
5.1(b)	1	0	
5.1(c)(2)	1	0	
5.3(b)	1	1	
5.5(a)	5	4	
7.2(c)	1	1	
8.1(a)	2	2	
8.1(b)	2	2	
8.4(b)	11	11	4
8.4(c)	20	10	5
8.4(d)	51	37	2

## VII. “Practice Aging” of Attorneys Disciplined (2011)

Of the 2011 final disciplinary actions by the Committee, based on number of years licensed in Arkansas, attorneys were publicly sanctioned as follows:

Years Licensed	# of attorneys publicly disciplined	Percentage
1-10	10	18%
11-20	18	32%
21-30	10	18%
31-40	14	25%
40+	4	7%

(Several attorneys were publicly sanctioned more than once in 2011.)

## VIII. 2011 Fines, Restitution & Costs

	Imposed in 2011	Collected in 2011
Fines:	68,000.00	41,700.00
Restitution:	11,140.00	11,621.36
Costs:	6,857.70	7,009.48
Total:	85,997.70	60,330.84

(Note: some of the collections in 2011 were assessed in cases finalized in earlier years.)

## **IX. 2011 Trust Account “Overdraft” Reporting**

- 64 Total reports received in 2011 from all banks and reporters (compared to 47 in 2010). Forty-six of these files were closed after a summary investigation and explanation by the attorney involved.
- 20 Files are still “open” to some extent, such as awaiting additional documentation from the attorney.
- 0 Of these 2011 reports have resulted in filing a formal Complaint to date.
- 2 Number of 2011 reports still “open” that are potential cause for some concern, although no client funds are believed to be unaccounted-for.

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

## **X. Summaries of 2011 Public Sanctions**

**Please see attached Appendix B.**

## Appendix A

### ELEVEN YEAR STATISTICAL COMPARISON 2001-2011 (Unofficial)

Category	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Files opened	873	1,028	972	892	826	804	819	859	861	888	735
Closed by staff	691	737	825	796	868	1137	784	786	742	845	806
Complts filed	149	186	200	164	159	156	140	114	144	119	97
Sup. Ct Refers	34	45	50	40	34	39	50	33	41	18	17
Judicial Refers	13	12	12	8	8	19	6	4	4	6	10
Other				24	7	16	9	15	15	7	14
Complts closed	135	178	185	211	181	173	182	122	128	119	106
No Actions	12	30	15	24	18	19	13	10	11	10	7
Warnings	45	53	54	38	33	53	41	37	46	26	20
Cautions	14	31	28	53	41	29	34	20	28	15	24
Reprimands	26	35	37	36	31	30	26	14	14	19	20
Suspensions	19	14	20	9	17	12	23	12	10	10	11
Surrenders	13	5	5	11	6	7	1	6	5	3	14
Merge/surrend		1	14	29	5	4	0	6	18	6	9
Disbar initiated	6	3	3	3	7	2	1	1	2	1	2
Disbarments		0	0	3	0	2	2	2	4	3	0
Reinstated	3	3	8	10	13	11	6	0	6	2	2
Consents	13	35	54	71	51	64		45	50	28	29
JLAP Refers	N/A	2	0	0	1	3	0	0	0	0	0
# Attys Public Sanctioned*	57	61	72	101	102	68	67	49	44	44	60

\* 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.

## Appendix B - 2011 Disciplinary Summaries

### SURRENDER:

**BAKER, CINDY M., #2000022, formerly of Berryville and now residing in Missouri,** in Case No. 11-80 petitioned to surrender her law license, in lieu of probable disbarment proceedings, based on her December 2010 guilty plea to felony controlled substance offenses in the Circuit Court of Carroll County, Arkansas. The surrender was accepted by the Supreme Court on February 9, 2011.

**BURNETT, JOHN MAX, Bar #95082, of Rogers.** On April 14, 2011, in Case No. 11-263, the Arkansas Supreme Court accepted the surrender of the Arkansas law license of Mr. Burnett in lieu of probable disbarment proceedings arising from two Complaints. The first was No. CPC 2010-106, a complaint by Steven Bigger, who hired Mr. Burnett in September 2008, to represent him in a medical malpractice action. Approximately six (6) months after Mr. Bigger hired Mr. Burnett, Burnett left the firm where he had his office, and Burnett was difficult to communicate with thereafter. Mr. Bigger left numerous messages which were not returned. Mr. Burnett filed suit for Mr. Bigger in January 2010, but failed to have the defendants in the matter served within the time allowed. Mr. Bigger terminated Mr. Burnett's representation and sought to have the file contents returned, but Mr. Burnett took no action to comply. Mr. Bigger had new counsel try to obtain an extension of time to serve the defendants. The request was denied and the matter was dismissed with prejudice. Mr. Burnett's failure to act left Mr. Bigger without the ability to seek redress for the medical issues in court. Rules 1.3, 1.4(a)(3), 1.4(a)(4), 1.16(d), and 8.4(d) were all alleged to have been violated in that formal disciplinary complaint.

The Second Complaint was No. CPC 2011-006. Nancy Geary, who has since passed away, was represented by Mr. Burnett in a lawsuit claiming mis-diagnosis of cancer. Mr. Burnett was able to obtain a \$525,000 settlement from the defendants in the lawsuit in September 2009. Local counsel in West Virginia wire transferred \$453,970.70 into Mr. Burnett's trust account on September 28, 2009. Immediately funds were used for the improper purpose of covering the \$37,778.13 negative balance then present in Mr. Burnett's trust account on the date of the wire transfer. Within days, Mr. Burnett completely depleted the funds, even the \$282,000 owed to Ms. Geary and / or Medicaid. Mr. Burnett never provided Ms. Geary with any of the funds prior to her death in May 2010. He has never accounted for the funds to her estate nor did he do so for her. Rules 1.15(a)(1), 1.15(a)(5), 1.15(b)(1), 8.4(b), and 8.4(c) were alleged to have been violated in the information contained in that formal disciplinary complaint. At about the same time as he was surrendering in Arkansas, he also surrendered his New Mexico license based on misconduct alleged in various matters there.

**CLAY, ALVIN D., #96075, of formerly of Little Rock and now of Blytheville,** in Case No. 11-13 petitioned to surrender his law license, in lieu of disbarment proceedings, based on his 2008 felony conviction in United States District Court for the Eastern District of Arkansas, in Case No. 04-CR-274. The surrender was accepted by the Supreme Court on January 20, 2011.

**CLEMONS, ELGIN R., JR., #2007220, formerly of Little Rock and now residing in New Jersey,** in Case No. 11-147 petitioned to surrender his law license, in lieu of facing disciplinary proceedings for serious misconduct, based on his dealings with certain clients and third parties and alleged misrepresentation of his status with a certain foreign financier. The surrender was accepted by the Supreme Court on February 24, 2011.

**DONATHAN, BENJAMIN THOMAS, Bar No. 2008167,** of Russellville, Arkansas, petitioned to surrendered his Arkansas law license, which was accepted and ordered by the Supreme Court on September 15, 2011, see 2011 Ark. 366, in lieu of probably disbarment proceedings arising out of several felony forgery charges against him pending in Johnson County Circuit Court.

**HARDIN, LUTHER B., #76048, formerly of Conway and now residing in Florida,** in Case No. 11-237 petitioned to surrender his law license, in lieu of disbarment proceedings, based on his March 7, 2011, guilty plea to two felony charges in the United States District Court for the Eastern District of Arkansas, in Case No. 11-CR-56. The surrender was accepted by the Supreme Court on March 31, 2011.

**HARTSFIELD, LARRY JAMES, Bar #69030, of Little Rock.** On April 28, 2011, in Case No. 11-385, the Arkansas Supreme Court accepted the surrender of the law license of Mr. Hartsfield in lieu of disbarment proceedings which had been directed to be filed by the Committee on Professional Conduct, arising from his dealings with the Estate and Trust of George Hamilton Lescher, for which he served as the executor and sole trustee for about twenty (20) years. In early 2009, in a circuit court proceeding in Cross County, Mr. Hartsfield was found to not be able to account for about \$220,000 that should have been among the trust assets, and judgment for \$298,000 was entered against him. Mr. Hartsfield was unable to perfect an appeal. He then filed for bankruptcy protection, but the court denied him discharge of the Lescher judgment debt, finding it was based on a court finding of fraud.

**HAWKINS, DAVID BRUCE, Bar No. 2001182,** of Russellville, Arkansas, petitioned to surrendered his Arkansas law license, which was accepted and ordered by the Supreme Court on September 8, 2011, see 2011 Ark. 341, in lieu of probably disbarment proceedings arising out conversion of client funds entrusted to him.

**JONES, AARON C., Bar #2000011, of Little Rock and Benton.** On April 14, 2011, in

Case No. 11-272, the Arkansas Supreme Court accepted the surrender of the law license of Mr. Jones in lieu of probable disbarment proceedings arising from his felony conviction in September 2010 and resulting ten year prison sentence in case No. 09-CR-287, in United States District Court in December 2010 on four felony charges - mail fraud and using fire to commit mail fraud. Mr. Jones elected not to appeal his federal conviction, and is now serving his sentence.

**LEWIS, KEVIN HAROLD, Bar No. 93019**, of Little Rock, Arkansas, petitioned to surrendered his Arkansas law license, which was accepted and ordered by the Supreme Court on September 15, 2011, see 2011 Ark. 340, in lieu of facing disciplinary proceedings for serious misconduct arising out of felony criminal charges against him pending in the United States District Court for the Eastern District of Arkansas involving fraud causing the loss of many millions of dollars, to which charge he has entered a guilty plea.

**RICKARD, ROBERT L., Bar No. 2001065**, of Rogers, Arkansas, petitioned to surrendered his Arkansas law license, which was accepted and ordered by the Supreme Court on November 17, 2011, at 2011 Ark. 495, in lieu of facing disciplinary proceedings arising out several grievances and a Complaint against him before the Committee on Professional Conduct having to do with funds he received in a client's settlement that were subject to a claim for subrogation.

**SLAGLE, RICHARD L., Bar No. 69072**, of Hot Springs, Arkansas, petitioned to surrendered his Arkansas law license, which was accepted and ordered by the Supreme Court on November 3, 2011, at 2011 Ark. 466, in lieu of probable disbarment proceedings arising out issues with funds he handled as trustee of a deceased Garland County client's trust, his activities as the executor of the client's estate, and other matters.

**WHITE, ROBERT RAGON, Bar No. 72111**, of Fayetteville, Arkansas, petitioned to surrendered his Arkansas law license, which was accepted and ordered by the Supreme Court on July 27, 2011, see 2011 Ark. 301, in lieu of facing disciplinary proceedings for serious misconduct arising out of a long-time shortage of funds belonging to a family member's estate for which he was the attorney. The funds were repaid once the grievance was filed.

**YOE, ROBERT E., Bar #76148, of Fort Smith**. On April 28, 2011, in Case No. 11-387, the Arkansas Supreme Court accepted the surrender of the law license of Mr. Yoes in lieu of probable disbarment proceedings arising from his dealings with \$65,000 in funds of a client, Jerald Rhodes, in a 2006 real estate transaction. Mr. Yoes placed the \$65,000 in his attorney trust account in August 2006, and thereafter his trust account balance fell as low as \$130 in May 2007-April 2008 while it should have contained the \$65,000. When demand was made on him for Mr. Rhodes, Mr. Yoes made full restitution in May

2008 with funds obtained from other sources. Mr. Yoes entered a “no contest” plea to a charge of felony theft of property in circuit court in May 2010 on the same matter, had sentencing deferred, and was placed on five years probation.

**DISBARMENT PROCEEDINGS DIRECTED TO BE INITIATED:**

**BENNETT, BRUCE J., Bar No. 92140**, of Bentonville, Arkansas is the Respondent / Defendant in a petition for disbarment filed December 15, 2011, as an original action in the Supreme Court of Arkansas, in Case No. 11-1259. A Committee Panel voted to initiate disbarment proceedings as a result of grievances filed by Attorney Harry McDermott and the Honorable Judge Robert H. Wyatt, Jr., as a result of a case filed against Bennett by Bennett’s former client, Darrell Cavanagh, in Committee Case No. CPC 2011-062, involving unreasonable fees, misappropriation of fees, misuse of client funds, false statements to a tribunal, conduct involving fraud, deceit, dishonesty, or misrepresentation, and other matters. In reaching this result, the Committee Panel found Bennett’s prior disciplinary record was a factor in consideration of it’s sanction in the matter. Bennett, who was already on license suspension from other Committee matters, was placed on interim suspension during the disbarment proceeding.

**JENKINS, JR., NEWTON DONALD, Bar No. 94231**, of Van Buren, Arkansas, is the Respondent/Defendant in a petition for disbarment filed December 15, 2011, as an original action in the Supreme Court of Arkansas, in Case No. 11-1260. A Committee panel voted to initiate disbarment proceedings as a result of a grievance filed by Kenneth Hixson, Esq, for his client Mike Cormack, in Committee Case No. CPC 2011-043, involving unreasonable fees, making a false statement to a tribunal, falsifying evidence, engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation, and other matters. In reaching this result, the panel found Jenkins’ prior disciplinary record was a factor. On September 8, 2011, in Case No. CPC 2010-054, Jenkins had been placed on license suspension for twenty-four (24) months.

**\*\*\*REES, F. DAVID #79238, of Jonesboro**, on February 25, 2011, was placed on interim suspension in Committee Case No. CPC 2010-088, based on the action of a Committee panel to initiate disbarment proceedings against him, now Supreme Court No. 11-359.

**SUSPENSION:**

**BRIZZOLARA, JAMES P., Jr., Bar #2000180, of Little Rock and Tennessee**, in Committee Case No. CPC 2011-014, had his Arkansas law license reciprocally suspended for a period of twenty-four (24) months (beginning on July 29, 2010) based on a like Order from the Tennessee Supreme Court and Tennessee Board of Professional Responsibility regarding his Tennessee law license. The suspension in Tennessee was based on failure to pay fees, to complete CLE requirements, and Mr. Brizzolara’s arrest, charges, and criminal case disposition in Williamson County, TN, relating to felony

prescription drug fraud.

**CREWS, ROBERT BRENT, Bar No. 91237**, of Jonesboro, Arkansas, had his law license suspended for twelve (12) months and was fined \$2,500.00 by Committee Findings & Order filed October 24, 2011, on a referral from United States District Court Judge James M. Moody in Committee Case No. 2011-047, for violations of Arkansas Rules 1.1, 1.3, 3.4(c), 5.5(a), 8.1(b), and 8.4(d). In March 2011, Judge Moody provided information and court documents showing that on December 7, 2009, Mr. Crews was appointed to represent Robert Doffee-Maxwell in his civil rights claim in federal court, filed as Case No. 08-CV-15, against the Arkansas Department of Correction. Judge Moody outlined Crews's pattern of not responding to communications from the court on the case, culminating in the need to cancel a trial, relieve Crews as counsel, and appoint new counsel for the client. Mr. Crews was contacted by e-mails from the Office of Professional Conduct on March 28, April 8, and May 13, 2011, about this case and he did not respond. Many attempts were made after April 2011 to contact Mr. Crews by telephone at his Jonesboro and Walnut Ridge offices, his home number, and his cell number about this case and he did not respond. Mr. Crews did not pay his 2011 Arkansas Supreme Court mandated law license renewal fee, due by March 1, 2011, until May 13, 2011, and he was thus practicing law while his license was suspended from March 2 - May 12, 2011.

**FLETCHER, SCOTT DOUGLAS, Bar No. 91236**, of Little Rock, Arkansas, was suspended for sixty (60) months and fined \$10,000.00 by Committee Hearing Findings & Order filed September 29, 2011, on a Complaint filed by Sam Perroni, Esq., in Case No. 2010-028, for violations of Rules 1.1, 1.2(d), 1.4(b), 1.15(b), 4.1(a), and 8.4(c), which the panel found to constitute "serious misconduct." At submission time, no notice of appeal has been filed.

Mr. Fletcher worked at Jewell & Moser, P.A., later known as Jewell, Moser, Fletcher & Holleman (JMFH), from 1991 until he left about August 1, 2002. Mildred Buck of Saline County, an elderly widow with no children, died testate in April 2001. Her god-daughter, Jewell Rapier, had cared for Ms. Buck in her later years. Ms. Rapier knew Scott Fletcher through her employment at a dental office. Rapier and Fletcher worked together in 2000 to provide Ms. Buck with a variety of estate planning services. After Ms. Buck died, Rapier exercised complete legal control over the Buck Estate, the Buck Trust, and the Buck limited partnership (Buck LP), of which the Buck Trust was the sole limited partner and owned 99% of the ownership units. Fletcher was Rapier's sole legal adviser in her various fiduciary capacities until March 2003, when Rapier obtained new counsel. The Buck LP owned over 1,000 acres of rural land in Saline County. Ms. Rapier was the sole general partner of the Buck LP. In March 2001, Ms. Rapier engaged Travis Yingling who appraised a certain 561 acre tract at \$500 per acre. In April 2002, Roger Parker appraised the 561 acres at \$1,450 per acre for Mr. Ives. In January 2003, Dwight Pattison appraised the 561 acre tract at \$1,500 per acre for the Maertens

plaintiffs.

From December 2001 through August 2002, relying on legal advice from Fletcher, in her fiduciary capacities Ms. Rapier sold Buck Trust or Buck LP lands to (1) herself and her husband, (2) to a retirement trust for a corporation they controlled, (3) to her brother and his wife, (4) to friends, and (5) to neighboring landowners. Mr. and Mrs. Rapier, or entities they owned or controlled, purchased about 216 acres. Ms. Rapier also sold the 561 acre Buck LP tract to Ives & Associates (Ives) through a “strawman” entity, Maumelle Properties, Inc. (“MPI”), that was controlled by Fletcher’s law firm (JMFH). Rapier negotiated a sales price of \$350,000 (\$625 per acre) with Ives for the 561 acres. Then, acting on advice from Fletcher and JMFH, Rapier first sold the 561 acres to MPI for \$280,650, the Yingling \$500 per acre appraised value, and MPI then promptly resold the same land to Ives for the agreed \$350,000, about \$65,716 more. The many beneficiaries of the Buck Trust were not provided information about the existence of or their interests in the Buck Trust or the activities of Rapier as Trustee and as general manager of the Buck LP until late 2002.

The signature “Robert J. Standard” appeared on documents in the Buck LP-Maumelle Properties - Ives 561 acre transactions in 2002, and particularly on the offer & acceptance, the \$280,650 MPI promissory note, and mortgage from MPI to the Buck LP. The “Robert Standard” signatures were notarized in several places by Desha Kyzer, Mr. Fletcher’s secretary from 1994 to present date. There are suggestions that the signatures may have been forged by another JMFH partner. Mr. Fletcher describes Mr. Standard as a long-time best friend from Illinois. Mr. Standard did not appear in this case by affidavit or testimony, on the subject of the 2002 execution of the MPI land sale documents. Mr. Fletcher testified at hearing that he did not become aware of the “Robert Standard” name even being on the MPI transaction documents until the Maertens v. Rapier suit was filed in October 2002, or maybe even later.

The “net” seller’s proceeds of approximately \$65,716 from the MPI to Ives sale closing in April 2002, funds that all agreed belonged to the Buck LP, were basically unaccounted for to anyone outside Jewell Rapier and Scott Fletcher until late July 2003, when Keith Moser, a former member of JMFH, provided the information in the Maertens v. Rapier lawsuit as to the distribution or whereabouts of the funds. Neither Rapier or Fletcher disclosed to the Buck Trust beneficiaries, as Buck LP participants, that \$31,878.94 of these funds had been disbursed on May 14, 2002, from the JMFH client trust account to Jewell Rapier’s new hunting club by an JMFH trust check signed by Scott Fletcher, and that on the same day \$32,832.73 was disbursed by JMFH client trust account check signed by Scott Fletcher, to JMFH as “earned fees” and expenses in payment of the May 14, 2002, JMFH billing to the “strawman,” Maumelle Properties, Inc., in connection with its sale of the 561 acres to Ives in early April 2002. This \$32,832.73 could not have been residing in any JMFH trust account from then until August 22, 2003, when Keith Moser produced a check for \$33,832.73 drawn on his new Moser firm client trust account to place these funds into the court registry in the Maertens lawsuit. The disbursements on May 14, 2002, left a true balance of only \$1,000.00 of “Maumelle-to-Ives” seller’s funds that should have been thereafter held for

the Buck LP in the JMFH client trust account, or accounted-for to the Buck LP. Mr. Fletcher left the JMFH firm by August 1, 2002, and the other principal lawyers left soon thereafter.

Robert Maertens, for the Buck Trust, filed a state court civil suit against Ms. Rapier in October 2002, based on his limited information that the 561 acre tract had been sold twice in March-April 2002. with 100% seller financing. The suit asked for an inventory and accounting by Jewell Rapier of the Buck Trust and the Buck LP. Shortly thereafter, Fletcher arranged for Steve Curry to represent Jewell Rapier, individually and as Buck Trustee, in the suit, while Scott Fletcher continued to represent the Buck LP and Rapier as general partner of the Buck LP. In early November 2002, Fletcher filed an Answer for the Buck LP, but did not mention anything about assets, make any accounting, or mention the status of the \$65,716 due to the Buck LP from the Maumelle-Ives sale. Curry filed an Answer for Jewell Rapier but never mentioned assets and made no accounting of the \$65,716.

On November 3, 2002, Fletcher wrote Curry that Keith Moser had recently informed Fletcher that the \$65,716 was “credited in the JMFH client trust account still and that he [Moser] will testify as the corporate designee of Maumelle Properties, Inc. I guess the \$65,716.67 can be moved from the JMFH client trust account ASAP, if necessary.” Fletcher never mentioned that he personally signed the two JMFH trust checks on May 14, 2002, that disbursed \$64,716 of the Buck LP funds. Fletcher later stated he knew this information was false at the time of his letter to Curry. On November 12, 2002, Keith Moser was deposed in the Maertens suit, and stated the two Ives closing checks, the \$65,716 were “deposited into our trust account,” “Those funds are still in our trust account,” and “those funds right there belong to Buck Properties I, LLLP.” Moser also testified that Fletcher handled all this, Moser did not prepare the federal estate tax return for the Buck Estate, Rapier was Fletcher’s client, the proceeds of the MPI sale to Ives were still in Moser’s trust account, and had not been distributed to the Buck LP because Moser was waiting for a Buck federal estate tax “closing letter.”

On February 11, 2003, the Maertens plaintiffs filed their First Amended and Substituted Complaint, naming additional Defendants, including Ives & Associates, Maumelle Properties, Keith Moser and Moser’s separate law firm client trust account, stating the \$65,000 cash difference in the Buck-MPI-Ives was then being held by Moser in his trust account, the funds were property of the Buck Trust, and should be delivered to the Trust. Fletcher filed the Answer for Buck LP, denying that the approximately \$65,000 from the MPI-Ives transaction was being held in the Moser trust account. On July 23, 2003, Don Spears, now Jewell Rapier’s counsel, replacing Curry, wrote Moser and Fletcher, asking for the Buck LP money from whoever has it. An exchange of letters among Spears, Moser, and Fletcher followed in late July 2003, but Fletcher did not disclose to Spears the information Fletcher personally had about his disbursement of the \$64,716 by the two JMFH trust checks in May 2002. In August 2003, Keith Moser interplead into Court \$33,832.73 he stated was “currently” in the Moser trust account and belonged to Buck LP. He stated that the balance of these [Buck LP] funds was transferred, at some unstated date, to the new Moser & Associates, P.A. client trust account.

By July 2003, negotiations between the Maertens plaintiffs and Jewell Rapier resulted in an agreement where she made certain admissions and agreed to entry of a judgment of almost \$1,000,000 against her for her conduct in the Buck matters. Rapier agreed to personally sue Fletcher for legal malpractice in connection with his earlier representation of her in her various Buck fiduciary capacities. Tim Dudley filed her suit against Fletcher in September 2003, in which Rapier admitted that she had committed breaches of her fiduciary duties, relying upon legal advice she received from Mr. Fletcher.

On July 21, 2004, Fletcher was deposed in the Rapier v. Fletcher third party suit. He stated that the Maumelle-Ives net seller's proceeds check was deposited into the JMFH trust account and a trust check of about \$34,000 went to JMFH for legal fees and costs, on the firm's statement to MPI. He stated that, after the disbursements to (1) Jewell Rapier, for her undocumented fees as Buck executor, trustee, and general partner, and (2) to JMFH, about \$1,000 remained reserved for other expenses. This was the first disclosure by Fletcher as to what happened to the Buck LP \$65,716.67. Fletcher stated that as of July 29, 2003, he understood the JMFH trust account balance to have been about \$40. Fletcher admitted that in his handwritten letter of November 3, 2002, to [Steve] Curry, he knowingly told Curry a falsehood about the statement Fletcher attributed to Moser about the \$65,000 still being in the firm trust account. Fletcher explained his false statement by saying he wrote Curry to talk to Moser about it. Fletcher stated this was his way of "signaling" Curry that Curry should somehow not accept Fletcher's knowing false statement about the whereabouts of the Buck LP funds.

The suit was settled in September 2004, in a confidential agreement within Fletcher's \$1,000,000 policy limit, and without Fletcher admitting any wrong-doing. In May 2005, his carrier cancelled Fletcher's coverage, and he purchased a six year extended coverage policy. Starting in late 2003, the new co-trustees and co-general partnerships of the Buck entities were able to "reverse" most of the Rapier land sales and recover those properties for the Buck LP. The 561 acre tract could not be legally recovered .

Mr. Fletcher responded that he provided competent counsel to Jewell Rapier; the sales by Rapier as general partner of Buck, LP were authorized by the partnership agreement and the law; no property was purchased below the fair market value, since the value was determined by the 2001 independent appraisal of Travis Yingling; the later appraisals by Pattison and Parker used inappropriate comparables and had other issues; there was no reason for either Rapier or Fletcher to believe that the Yingling appraisal did not validly establish the fair market value of the Buck property; the Buck LP property that is the focus of the complaint, the 561 acres, was sold to Ives for above the Yingling appraisal amount; based on advice given him by Keith Moser, a more experienced attorney at the time, of the use of the "straw man" transaction; Ms. Rapier earned the "fee" funds she received; JMFH performed many services for Rapier over a several-year period as she acted in her various "Buck" capacities; and Rapier authorized payment of these legal fees. Fletcher stated that at no time did he know MPI to be a client of JMFH, and he did

not give Spears any false information in July 2003, because Rapier was Spears client and she knew about the \$64,000 at the time.

**JENKINS, NEWTON DONALD, JR., Bar No. 94231**, of Van Buren, Arkansas, was suspended for twenty-four (24) months and fined \$5,000.00, by Committee Hearing Findings & Order filed September 8, 2011, on a Complaint filed by Brian Foster in Case No. 2010-054, for violations of Rules 1.1, 1.3, 1.7(a), 3.4(b), 4.4(a), 8.4(c), and 8.4(d), and that Mr. Jenkins engaged in “serious misconduct.” Jenkins has filed a notice of appeal, but his motion for a stay pending appeal has been denied.

Brian Foster, a friend, managed the dental practice of Dr. Conine while she was unavailable in part of 2005. A dispute arose and Conine sued Foster in Pulaski Circuit Court in 2006. Foster answered *pro se*. Conine filed an Amended Complaint. In October 2006, Foster paid a fee and employed Donald Jenkins, an acquaintance from having lived in Jonesboro. Jenkins claimed that in November 2006 he mailed for filing his Entry of Appearance for Foster and a First Amended Answer and Counter-Claim. There is no documentary evidence presented showing these pleadings were received or filed in Pulaski County. At a hearing on January 4, 2007, Foster and Jenkins did not appear and defend, and judgment was granted to Dr. Conine for over \$45,000 against Foster. In early April 2007, Foster first learned of the judgment and contacted Jenkins, asking what had happened. Dr. Conine actively pursued collection of the judgment against Foster. In late April 2007, Jenkins filed a motion to set aside the Conine judgment, basically admitting he dropped the ball legally for his client Foster in the matter. At a hearing on August 14, 2007, Jenkins stated to the Court that the pleadings his office sent in November 2006, to the Pulaski County Circuit Clerk for filing were never received back in his office, indicating any non-delivery. Foster’s Motion to Set Aside Judgment was denied. Dr. Conine continued her active collection efforts, using attorney Paul Herrod. Foster employed Little Rock attorney Robert Cortinez, II, to negotiate with Herrod and Conine on relief from her judgment. In September 2008, Cortinez wrote Jenkins and put Jenkins on notice that Foster was asserting a claim for legal malpractice against Jenkins arising out of the Conine judgment against Foster. Jenkins responded in a letter a week later that Foster was an old friend, Jenkins had no insurance or assets to address Foster’s negligence claim, and Jenkins offered to do a *pro bono* bankruptcy for Foster to discharge the Conine judgment debt, which was Foster’s only substantial debt. Foster’s efforts through Cortinez to negotiate a settlement with Conine were not successful. On December 12, 2008, Jenkins filed a Chapter 7 petition for Foster in Fort Smith, but Jenkins failed to list the claim Foster had earlier asserted against Jenkins for potential malpractice arising out of the 2007 Conine judgment against Foster.

In early 2009, Dr. Conine, using attorney Charles Embry, sought to protect her judgment from dischargeability by Foster in bankruptcy. After learning of Jenkins’ failure to list the malpractice claim that had been asserted by Cortinez for Foster against Jenkins, and for other reasons, Embry filed an “adversary proceeding” (“AP”), No. 09-ap-07076, in bankruptcy court in May 2009 to determine dischargeability of Foster’s debt to Conine, based on claims of fraud and other issues. Jenkins answered in the “AP” case for Foster

on May 28, 2009, stating “Debtor denies he has a claim against his attorney [Jenkins].” The Court ordered Foster to file new and corrected schedules and other reports. Late on July 23, 2009, Jenkins filed additional schedules for Foster, which again did not disclose the Foster malpractice claim asserted against Jenkins. On July 24, 2009, at a “341(a)” first meeting of his creditors, Foster was careful in his response to the Trustee about Foster’s possible malpractice claim against Jenkins, and Jenkins specifically denied that such a malpractice claim existed. On July 24, 2009, starting at about 4:27 p.m., Jenkins faxed Embry eighteen (18) pages of materials in the Foster “AP” case, Jenkins later described these materials faxed on July 24, 2009, as Foster’s responses to Requests for Admissions Embry had earlier propounded to Foster. The materials Jenkins actually faxed to Embry on July 24, 2009, were Foster’s responses to Interrogatories and Requests for Production of Documents, and not Foster’s responses to Requests for Admissions from Embry/Conine. The issues about what documents were actually sent by Jenkins to Embry became the subject of a “show cause” proceeding in bankruptcy court that led to a one year practice suspension order against Jenkins being issued by that Court on September 12, 2011. Jenkins has filed a notice of appeal, but his motion for stay pending his bankruptcy suspension appeal has been denied. In mid-August 2009, Embry filed a motion to disqualify Jenkins as Foster’s counsel in both cases. On September 2, 2009, the Court agreed, and removed Jenkins as Foster’s counsel in both cases due to Jenkins’ “obvious conflict.” Foster has since proceeded *pro se* in his bankruptcy case and has filed amended schedules now listing his malpractice claim against Jenkins. In January 2010, Foster filed suit in Pulaski County Circuit against Jenkins over Foster’s “Conine” malpractice claim, and that suit is pending. Embry claims Jenkins abused the legal and court process and unnecessarily burdened Embry and his client Conine by failure to give notice to Embry when Foster and/or Jenkins were not going to appear for bankruptcy hearings in Fort Smith. This cost Embry, and his client Conine, unnecessary time, expense, and aggravation in fees and by Embry driving from North Little Rock to Fort Smith for several scheduled meetings of creditors, only to learn the hearing was not to go forward due to the absence of Foster or Jenkins or both.

**KARNEY, MICHAEL EUGENE, Bar No. 95241**, now of College Station, Texas, on a Complaint filed by Shira P. Minton, Esq. of the U. S. Securities & Exchange Commission (SEC), and by Elizabeth A. Majors, had his license suspended for thirty-six months and was fined \$5,000, by Committee Findings and Order filed December 12, 2011, in Committee Case No. CPC 2011-066, for violation of Rules 3.4(c), 5.5(a), and 8.4(c). Mr. Karney was also Reprimanded and fined an additional \$1,000 for his failure to respond to the Formal Complaint. Karney was licensed in Arkansas and Oklahoma. Karney was employed with the SEC from December 2004 to October 2007, as a Legal Branch Chief and from October 14, 2007, and forward as an Attorney Advisor. Both positions with the SEC required Karney to maintain a license to practice law in at least one state. Karney’s Oklahoma license was suspended in June 2005, and he was removed from the Oklahoma membership rolls in September 2006. Karney failed to pay his

annual Arkansas license fees for the years 2005 2011, resulting in suspension of his license in Arkansas from March 2, 2005.

Karney was the subject of an SEC investigation by the Office of Inspector General (OIG) into allegations that he was not a member in good standing of any state bar and other related matters. In May 2010, Karney was deposed by the OIG. He testified that he was a member of the Arkansas Bar, that he received notice of his dues every year, that he paid those dues, and that he attended CLE courses and provided that information to the Arkansas Bar. Mr. Karney stated that he last paid his annual bar license fees in 2009 and that the fee was \$210. Karney was presented with information from the Arkansas Supreme Court Clerk and the Arkansas Office of Professional Programs which showed that he had not paid license fees since 2005 and his license was suspended by the Arkansas Continuing Legal Education Board in May 2005. Karney stated that the documents he was presented must be incorrect, as he had paid his license fees and was in compliance with CLE requirements.

Karney was served with a formal complaint and a response was due on or before September 19, 2011. Karney requested and was granted two extensions of time, and still failed to file a timely response. After the Panel's Findings and Order were sent to Karney, he filed a Motion for Reconsideration, which was denied by the Panel.

**TEAGUE, ROBERT D., Bar No. 93126**, of Rogers, Arkansas, had his law license suspended for twelve (12) months by Committee Findings & Order filed December 20, 2011, on a self-referral and a complaint by Johnnie E. Rhoads, Esq. in Committee Case No. 2010-104, for violation of Arkansas Rule 8.4(c). In March 2009, Rhoads and Teague, who had practiced together for many years with other attorneys in a predecessor law firm, formed Rhoads & Teague, PA, as equal partners or shareholders, and moved to new leased office space in Rogers. According to Teague, in June-October 2009, he suffered from periods of anger, depression, and excessive alcohol use, while dealing with financial stress. Starting in July and through September 2009, on at least seven occasions, and totaling about \$23,490, Teague personally received from firm clients fee payments due to Rhoads & Teague and converted these funds to his own use. In mid-November 2009, Rhoads discovered Teague's actions regarding conversion of firm fees and started an investigation. The partners split up on November 17, 2009. By early December 2009, Teague had made partial payments to the former firm of about \$6,350 to restore missing funds. An accounting was conducted and the parties settled on \$23,490 as the total in diverted fee funds. Teague then paid the former firm \$17,140 in February 2010 to resolve the issue.

#### **INTERIM SUSPENSION:**

**BENNETT, BRUCE J., Bar No. 92140**, of Bentonville, Arkansas, was placed on Interim Suspension by Committee Order filed December 1, 2011, in Committee Case No. 2011-062, as a result of initiation of disbarment proceedings against Bennett in his

representation of his former client, Darrell Cavanagh and misappropriation of client funds, conduct involving dishonesty, fraud, deceit, or misrepresentation, and other matters.

**HARTSFIELD, LARRY J., 69030, of Little Rock**, on March 18, 2011, was placed on interim suspension in Committee Case No. CPC 2011-009, based on the action of a Committee panel to initiate disbarment proceedings against him.

**JONES, GREGORY D., Bar No. 87095**, of Fayetteville, Arkansas, was placed on Interim Suspension by Committee Order filed December 12, 2011, in Committee Case No. 2011-092. Jones abandoned his law practice several months earlier, has failed to protect the interests of many clients or provide them their files, has disappeared from the area, and on December 21, 2011, a receiver (OPC) was appointed by the Circuit Court to take possession of his files, attempt to locate clients, and get their files to them, as well as to check his client trust account.

**LEWIS, KEVIN H. #93019, of Little Rock**, on January 7, 2011, was placed on interim suspension in Committee Case No. CPC 2010-118, based on allegations that his conduct, involving alleged fraudulent improvement district bonds and other matters, poses a substantial threat of serious harm to the public and his clients.

**REES, F. DAVID #79238, of Jonesboro**, on February 25, 2011, was placed on interim suspension in Committee Case No. CPC 2010-088, based on the action of a Committee panel to initiate disbarment proceedings against him, now Supreme Court No. 11-359.

**REINSTATEMENT:**

**CALDWELL, KATHLEEN L., Bar No. 82187**, of Memphis, Tennessee, was reinstated from suspension by Committee Order filed October 20, 2011, in Case No. 2010-003.

**REPRIMAND:**

**CARLYLE, GERALD, Bar No. 72019**, of Newport, Arkansas, was reprimanded and fined \$500.00 by Committee Findings & Consent Order filed October 21, 2011, in Case No. 2011-011, on Complaint filed by Janice A. Johnson, for violations of Arkansas Rules 1.16(d) and 8.4(d). Mr. Carlyle was hired and paid to represent Elmer G. Robinson in a divorce proceeding in August 2006. When Mr. Robinson was served with the Complaint for Divorce that his estranged wife had filed in Pulaski County Circuit, he delivered the Complaint to Carlyle, who failed to file a timely Answer. A Motion to Strike was filed, Carlyle failed to file a response, the Motion was granted, and at a hearing the trial court would not allow Mr. Carlyle or Mr. Robinson participate in any fashion after she granted the Motion to Strike. The property division was completed without any testimony or information from Mr. Robinson. Carlyle hired other counsel to

assist in an appeal. In September 2008, the Court of Appeals reversed and remanded so Mr. Robinson could participate in the evidentiary hearing on property division. Carlyle failed to advise Mr. Robinson or his attorney-in-fact Janice Johnson of the appellate decision. When they learned of it, they tried to contact Carlyle to have a hearing set, but Carlyle did not communicate with them. When they were finally able to speak with him in 2010, Carlyle advised that he was too ill to represent Mr. Robinson and that he would return the file to Mr. Robinson. As of the date of the filing of the formal complaint, Carlyle had not returned the file. Carlyle failed to give Mr. Robinson or Ms. Johnson timely notice that he was no longer going to represent Mr. Robinson after the remand. Carlyle's failure to take action following the remand caused an extremely lengthy delay in taking action to have Mr. Robinson's arguments heard and to have his interests in the property determined. Mr. Robinson died in August 2010 without ever having his property interest determined.

**CATLETT, S. GRAHAM, Bar No. 77029**, of Little Rock, Arkansas, was reprimanded and fined \$1,500.00 by Committee Findings & Order filed October 19, 2011, on a Complaint filed by Charles Vestal, who later became Sarah Anne Vestal, in Committee Case No. 2011-051, for violation of Arkansas Rule 8.4(c). Mr. Vestal started a wholesale organic tomato production business in Arkansas in 2002, and secured a USDA-NOP organic producer certificate for his tomato greenhouse site, Arkansas. In July 2004, Mr. Vestal and his long-time attorney, Mr. Catlett, and others, incorporated Vestal Gourmet Foods, Inc. ("VGFI") to operate and expand the wholesale organic tomato production business. VGFI basically took over Vestal's former business. Mr. Vestal, also a CPA, was the experienced farmer. Mr. Catlett was the lawyer, business adviser, and developer of sources of project financing. In April 2005, a loan closed whereby VGFI borrowed \$770,000 in SBA guaranteed funds for a greenhouse expansion, which was then implemented when a \$486,393 contract for construction of a new greenhouse for VGFI was signed.

On or about June 4, 2005, the VGFI greenhouse organic tomato crop failed. The field organic tomato crop being raised was not ready for market at the time, leaving VGFI without a source of organic tomatoes to supply to its many retail customers in central Arkansas. By July 5, 2005, the field tomato crop had also failed. In June 2005, Vestal, Catlett, and others involved in VGFI discussed the emergency situation. A plan was devised by which VGFI would purchase non-organic tomatoes at Arkansas markets, mainly in Warren, label these tomatoes as "organic" using the company's USDA (United States Department of Agriculture) organic labels, and continue to sell them as "organic" products, which commanded a higher price from retail customers, until a source of organic tomatoes could be developed or a new crop could be raised at the VGFI facility. Between June 5 - July 11, 2005, VGFI agents delivered 103 shipments of mis-labeled "organic" tomatoes to retail customers in the little Rock area, as detailed in the USDA Report of Investigation.

In December 2005, Mr. Vestal reported the mislabeled tomato sales matter to both the USDA and the FBI. The USDA conducted an investigation. In January 2007, a Report of Investigation was issued by USDA. In June 2009, an adverse Decision was issued by the Administrator of the Agricultural Marketing Service and served on Catlett and Vestal, basically revoking the VGFI organic certification but not imposing any financial penalties. The Decision found that the mislabeling scheme in which Catlett participated involved 103 willful violations of the OFPA and NOP regulations. In late June 2009, Catlett waived any appeal rights from the Decision, ending any resistance by the Catlett parties to the Decision. In early January 2010, Ms. Vestal waived any appeal rights from the Decision, ending any resistance by her to the Decision. In a separate and personal settlement agreement, the USDA agreed with Vestal that she had been the “whistleblower” in the VGFI case and had been in compliance with NOP (National Organic Program) regulations at all relevant times. Ms. Vestal self-reported the USDA investigation result to the IRS as part of her employment process. In January 2010, the IRS closed the file without action and she continued in her IRS employment.

**CLOUETTE, JAMES P., Bar #74025, of Little Rock,** in Committee case No. CPC 2010-002, on April 15, 2011, had a second hearing in this case, after an appeal by the Executive Director and a remand by the Arkansas Supreme Court, in Case No. 10-844, in an opinion issued February 17, 2011, in Ligon v. Clouette, 2011 Ark. 86, affirming in part; reversing in part; and remanding in part for further proceedings before the Panel related to sanction. The Court held that a caution was a sanction not available to the panel where “serious misconduct” was found, based on Mr. Clouette’s being found guilty at a non-jury trial by the circuit court of felony possession of a controlled substance on August 1, 2008. At the second hearing, the Panel found that the new sanction shall be a Reprimand, with probation with conditions for twenty-four (24) months, being the same conditions imposed by the Circuit Court of Pulaski County in No. CV-2009-1191, as set out in the Order of Probation of that Court filed January 5, 2010.

The Committee panel found Mr. Clouette had committed “serious misconduct,” which normally carries a sanction of a license suspension or disbarment. Where there has been serious misconduct, under the Court’s attorney discipline Procedures a reprimand is a sanction only available in very limited circumstances. The Executive Director filed a notice of appeal on May 9, 2011, from the second panel action, seeking to review the new sanction. The appeal was pending at the end of 2011.

**COLSON, DONALD W., #2005166, of Benton,** was Reprimanded, ordered to pay \$750 restitution, and fined \$1,000 in Committee Case No. CPC 2010-077, on February 18, 2011, for violations of Rules 1.3, 1.4(a)(3), 1.4(a)(4), and 1.15(b)(2). In 2008, Billy Hale hired and paid Mr. Colson \$750 as part of a \$1,000 retainer fee in an employment issue. Mr. Colson did not place these client funds in an IOLTA trust account, nor did Colson not take any action on Mr. Hale’s behalf. Mr. Hale called on numerous occasions but

did not receive information about the matter from Mr. Colson or his staff. Colson responded to inquiry from the Office of Professional Conduct and placed some blame on his former secretary for the lack of information to Hale. Colson did acknowledge that he was ultimately responsible for providing information to Hale.

**ELDRIDGE, JOHN D. “JAY,” III, Bar No. 74043**, of Augusta, Arkansas, was reprimanded and fined \$5,000.00 by Committee Findings & Order filed July 19, 2011, on a Complaint filed by Ima Jean Lindsey in Case No. 2011-022, for violations of Rules 1.1, 1.3, and 8.4(d). Eldridge represented the Estate of Ernest Coles and the personal representative, Ima Jean Lindsey, starting in 2002. Ms. Lindsey gave Eldridge \$90,000 in 2003, which he used to pay state and federal taxes. Thereafter Eldridge failed to file timely state and federal tax returns on behalf of the Estate. Ms. Lindsey learned of this in June 2006, and employed new counsel to handle the matter. In 2008 the Estate was notified by the IRS that it had incurred penalties and interest in the amount of \$21,148.93t. The Estate made demand on Mr. Eldridge, who paid \$25,000 to settle the tax matter. The sanction was mitigated by the absence of any prior disciplinary history.

**GRASBY, RICHARD M., Bar No. 85060**, of Little Rock, Arkansas, was reprimanded, fined \$1,000.00 and ordered to pay restitution in the amount of \$140.00, by Committee Findings & Order filed September 21, 2011, on a Complaint filed by Randy Price in Case No. 2011-049, for violations of Rules 1.1, 1.3, 1.4(a)(4) and 8.4(d). Grasby represented Randy Price in a case involving two traffic offenses in Conway County District Court. After being found guilty in District Court, Mr. Price requested an appeal to Circuit Court, and in February 2007 provided Grasby with a \$140 cashier’s check for the appeal filing fee. Mr. Grasby failed to file a request for appeal with the Circuit Court within thirty days of the judgment as required by Rule 36(b) of the Arkansas Rules of Criminal Procedure. As the request for appeal was not timely, Mr. Price’s right to an appeal as guaranteed by the Arkansas State Constitution was denied. Mr. Price requested information about the status of his appeal but Mr. Grasby failed to respond to the requests. Mr. Price did not know of the failure of his appeal, and later learned an arrest warrant had been issued for him for failure to pay his fines. When Price attempted to renew his driver’s license, a condition of his employment, he was unable to do so because he had been removed from the system as a result of his District Court \*convictions. In January 2009, Price was arrested on the road on an outstanding warrant from the District Court in the sam old case. Price paid a \$160 bond and was released. Price then met with Grasby, who opened his “Price” file, and saw the original cashier’s check from 2007 for the appeal fall out of the file. The sanction was enhanced because of Grasby’s prior disciplinary history.

**HARRELSON, JEFF, Bar #96118, of Texarkana**, on April 26, 2011, in No. CPC 2011-002, was Reprimanded for violation of Rules 1.1 and 8.4(d). The Arkansas Supreme Court referred Mr. Harrelson to the Committee for his failure to comply with its directives in re-briefing a matter involving denial of a Rule 37 Petition by a death row

inmate, Justin Anderson. Mr. Harrelson was directed by the Court to re-brief after his first appellant's brief. The Court specifically set out in the Per Curiam ordering re-briefing what was expected of Mr. Harrelson. Mr. Harrelson filed a substituted brief but did not comply with the directives or instructions of the Court. The Court relieved Mr. Harrelson from representation of Appellant and appointed other counsel to prepare the brief. Justice Brown dissented to the extent that he thought Mr. Harrelson should be cited to show cause why he should not be held in contempt for failing to properly re-brief.

**HICKS, RICKEY H., Bar No. 89235**, of Little Rock, Arkansas, was reprimanded by Committee Consent Findings & Order filed September 22, 2011, on a Complaint filed by Felicia P. Daniel in Case No. 2010-070, for violations of Rules 1.3, 1.15(a)(1), 1.15(b)(2), and 8.4(d). In July 2008, Ms. Daniel hired Mr. Hicks to represent her in a pending federal litigation. Mr. Hicks was paid \$3,800 as a retainer, which he did not place in his IOLTA trust account. The \$3,800 was for services to be rendered in the future and also any costs and expenses associated with the representation. Mr. Hicks failed to keep Ms. Daniel's funds separate in a trust account until Hicks either earned the fee or paid the expenses. Ms. Daniel's lawsuit was dismissed on March 23, 2009. According to her, Mr. Hicks did not tell Ms. Daniels of the dismissal until a brief phone call on April 1, 2009. He had a more in-depth conversation with Ms. Daniel in May 2009, when the time for filing a Notice of Appeal had already expired. Mr. Hicks advised that he verbally told Ms. Daniel about the dismissal of the litigation in ample time for her to pursue an appeal, but acknowledged that he did not do so in writing and therefore had no proof he had so notified her.

**HICKS, RICKEY H., #89235, of Little Rock**, was Reprimanded and fined \$2,500, in Committee Case No. CPC 2010-079, on January 11, 2011, for violation of Rules 1.3, 1.4(a)(3), 1.4(a)(4), 1.15(b)(1), and 1.15(b)(2). Dondie Ray Franklin, along with three other individuals, hired Mr. Hicks to complete civil litigation which had been filed by another lawyer. Mr. Franklin paid Mr. Hicks \$2000 before Hicks made his entry of appearance, and Hicks failed to place the funds in his trust account. Hicks did not return telephone calls made to him by Franklin seeking information about the pending litigation. Hicks also only sent Franklin two letters during the time Hicks represented Franklin. The lawsuit was dismissed in June 2009 but did not advise Franklin of this fact, nor did he send the Order of Dismissal to Franklin. Mr. Franklin learned about the dismissal when he called the Court Clerk. After learning of the dismissal, Franklin called Hicks, ut Hicks would not discuss the matter.

**IRWIN, TIMOTHY SETH, Bar #2002066, of Russellville**, by Findings & Order filed June 20, 2011, in Committee case No. CPC 2011-017, after a panel ballot vote, was reprimanded for violation of Arkansas Rules 8.4(b) and 8.4(d) in a case that came to the Committee from newspaper accounts of his arrest in a state court criminal case. On April 4, 2008, Mr. Irwin and his friend Mr. Stringer, both of the Russellville area, were

arrested coming out of Irwin's law office after a meeting with an informant, who was assisting in a drug investigation in Russellville, Pope, County, Arkansas, and both were charged with felony criminal offenses. Irwin was a local criminal defense attorney, and also served as a public defender in the adjoining 15<sup>th</sup> Judicial District. On the day of his arrest, Seth Irwin was interviewed by members of the Fifth Judicial District Drug Task Force and gave a statement. Mr. Stringer did not give a statement.

On March 10, 2009, Mr. Stringer entered a plea, and was placed on probation, with no time to serve, and thereafter was available to assist the State in the prosecution of the charges against Mr. Irwin. On March 12, 2009, Mr. Irwin entered a "no contest" plea to the amended count of Class C felony "possession" of cocaine, was ordered placed on probation for sixty (60) months, to pay a fine of \$1,850, and to serve a term of 180 days incarceration at a state Regional Correctional Facility. Mr. Irwin served his 180 days and was released in September 2009. The transcript of Mr. Irwin's plea hearing on March 12, 2009, reveals that the Court accepted his plea of "no contest" to the felony charge and that the parties and the Court understood, and so stated, that if Mr. Irwin successfully completed the terms of his sixty (60) month probation the criminal case against him would be dismissed and that there would be no conviction entered against him.

The Committee panel found Mr. Irwin had committed "serious misconduct," which normally carries a sanction of a license suspension or disbarment. Where there has been serious misconduct, under the Court's attorney discipline Procedures a reprimand is a sanction only available in very limited circumstances. The Procedures do not provide any stated means for the Office of Professional Conduct to seek any review of such a sanction and panel disposition at a ballot vote that the respondent attorney accepts and makes "final." The Executive Director filed a petition for writ of certiorari with the Arkansas Supreme Court on June 20, 2011, as Case No. 11-631, seeking a review of the sanction. The petition was denied by the Court on \_\_\_\_\_.

**JACKSON, STEVEN R., #97142, of Lowell**, in Committee Case No. CPC 2010-031, on March 15, 2011, by Committee Findings & Order, was Reprimanded, fined \$500, and ordered to pay \$50 restitution, on a complaint by Russell Hinton, for violation of Rules 1.3, 1.4(a)(3), and 1.4(a)(4). Hinton had a daughter, Rachel, whose custody was with her mother, Ms. Coffey. In March, 2009, Rachel approached her father about having custody changed to her father. Mr. Hinton contacted Mr. Jackson to represent him in a change of custody matter. Hinton paid Jackson \$50.00 on March 13, 2009 for a reopening filing fee and on that same day a Motion to Modify Custody, Child Support and Visitation was filed, along with a summons to be served upon Ms. Coffey. Hinton made several telephone calls to Jackson inquiring about the status of his pending matter. The Motion was never served upon Ms. Coffey and on August 6, 2009, the court dismissed the matter pursuant to Rule 4 of the Arkansas Rules of Civil Procedure. Hinton discovered the dismissal when he called the court about the matter. Jackson admitted that he represented Hinton in the matter involving Ms. Coffey and stated that

he had represented Hinton in two previous child custody matters involving Ms. Coffey and in a divorce from his second wife. Jackson admitted that Hinton did call his office inquiring about the status of his legal matter but that there were numerous meetings between the two concerning both pending matters. Jackson stated that Hinton was fully informed when there were negotiations with Ms. Coffey but the negotiations were halted as there was an issue concerning arrearage in child support owed to Coffey, and Hinton was possibly in contempt in the other legal matter where Hinton chose to devote his limited financial resources.

**JACKSON, STEVEN R., Bar No. 97142**, of Bentonville, Arkansas, was Reprimanded and fined \$5,000 by Committee Findings & Order filed October 21, 2011, in Committee Case No. 2010-096, on a Complaint filed by Norman & Barbara Booth for violation of Rules 1.3, 1.4(a)(3), 8.4(d). Jackson represented the Booths in the sale of property in which closing was set for March 24, 2006, but failed to occur. Jackson filed suit in Carroll County Circuit Court against Eagle Creek. Interrogatories and Requests for Production of Documents were propounded to the Booths, through Jackson. he Booths provided Jackson with their answers. Eagle Creek filed a Motion to Compel when no responses were received. The court directed the Booths to respond on or before April 18, 2008, but they did not. Eagle Creek filed a Motion to Dismiss and Jackson filed a Notice of Voluntary Non-Suit dismissing the Booths' lawsuit. Jackson failed to notify the Booths of the filing of the voluntary dismissal, failed to respond to his clients requests for information about the lawsuit, failed to advise the Booths about the effect of the voluntary non-suit, and failed to re-file their suit within one year of the dismissal.

**KEETER, BOBBY K., Bar No. 77076**, of Mena, Arkansas, was reprimanded and fined \$1,000.00 by Committee Findings & Order filed November 14, 2011, in Committee Case No. 2011-057, on a Complaint filed by Randy Rainwater, Esq., for violations of Rules 3.4(c), 4.1, 4.4 and 8.4(c) of the Arkansas Rules of Professional Conduct. Rainwater reported Keeter for conduct with regard to issuance of a subpoena duces tecum on November 2, 2010, in the matter of *Chase v. Chase* in Scott County Circuit Court. Mr. Keeter issued the subpoena in a case where there was no hearing scheduled, but asserted that there was a hearing scheduled. Mr. Keeter failed to provide notice to Mr. Chase that a Petition for extending an Order of Protection had been filed in DR2009-137; he failed to provide notice, as required by Rule 45 of the Rules of Civil Procedure, that a subpoena had been issued for Mr. Chase's bank records; he failed to serve Mr. Chase's counsel with notice of the subpoena three (3) days before service as required by Rule 45 of the Rules of Civil Procedure, since no hearing was scheduled in the matter in which the subpoena was issued; and he failed to serve Mr. Chase's counsel with the subpoena in accordance with Rule 5(b) of the Rules of Civil Procedure as required by Rule 45 of the Rules of Civil Procedure. Keeter obtained documentation and information from Mr. Chase's bank account in violations of the law in Arkansas which sets out the specific method for the use of subpoenas for production of documents. While representing Ms. Chase, Keeter falsely set out in a subpoena he issued that a

hearing was scheduled in DR2008-112 when no such hearing was scheduled. By an act of omission, Keeter deceitfully hid from Mr. Rainwater that a subpoena had been issued for Mr. Chase's personal and business bank account records, in that no notice was given to Mr. Rainwater, as counsel for Mr. Chase, prior to service and compliance with the subpoena. In a conversation with Mr. Rainwater during the week of November 1, 2010, Mr. Keeter advised that he would inform Mr. Rainwater of the date of the hearing Keeter scheduled in the Order of Protection matter in Scott County, but he did not do so.

**LEWELLEN, ROY C. "BILL," #82093, of Marianna,** in Committee Case No. CPC 2009-094, by Findings & Order filed March 10, 2011, was reprimanded and fined \$10,000 for violations of Rules 1.1, 3.1, 3.3(a)(1), 3.4(c), 4.4(a), and 8.4(d), on a referral from United States Bankruptcy Judge James Mixon and on a complaint from Bill Thompson and Boyd Rothwell. Mr. Lewellen had previously represented Tommy Robinson in state court in 2002-2004 in aspects of Robinson's legal issues with Thompson, Rothwell, and various business entities in which the three of them were investors. In March 2005, Thompson and Rothwell placed Robinson in an involuntary bankruptcy proceeding. In that matter the trustee settled certain matters, which were confirmed by the court in June 2006. One of the matters resolved then was an easement of about \$1,635,000 paid in August 2005 by the United States to Wildlife Farms for an easement on the 2,500 acre property owned by Wildlife, in which Robinson, Thompson, and Rothwell had once been investors. Claiming he had been defrauded by his former partners in Wildlife on the easement payment, in December 2006, Robinson engaged Lewellen to file a state court suit and *lis pendens* against the 2,500 acre property which was set for a nationally advertised auction sale on December 19, 2006. Lewellen filed suit on December 18 and derailed the auction sale, on which Wildlife had pre-paid auction expenses exceeding \$100,000. Thereafter, Lewellen and other counsel filed pleadings in the Robinson bankruptcy cases, seeking relief from the stay as to the 2,500 acre property for the purpose of pursuing Robinson's fraud claim in his new state court case. The Robinsons' bankruptcy counsel at the time was not counsel with Lewellen on the new December 18, 2006, state court complaint, and was not consulted by Lewellen before he filed this new state court action. Later, Lewellen basically admitted before Judge Mixon that he filed the new state court suit in December 2006 based solely on information given him by Tommy Robinson and Lewellen made no real independent investigation into the attendant facts and circumstances, and did not consult with Robinson's bankruptcy counsel, before filing the new suit.

In May 2007, Judge Mixon denied Mr. and Mrs. Robinson a discharge in bankruptcy on the basis of their false statements and non-disclosure of material financial matters. In April 2007, Judge Mixon found Robinson and Lewellen in civil contempt over filings on the new fraud claims, assessed expenses and fees, jailed them, and ordered them to release the *lis pendens*, which they did a day later. Much litigation followed, in bankruptcy, federal district, and federal appellate courts. Lewellen was assessed judgments for attorney's fees and costs of about \$30,000 for his involvement in the

Robinson-Wildlife matters, which judgments were eventually affirmed. Wildlife, Thompson, and Rothwell had unsatisfied counterclaim judgments against Mr. and Mrs. Robinson from the state court case in Monroe County. In March 2009, Wildlife, Thompson and Rothwell filed writs of garnishment in Monroe Circuit Court against the Robinsons and attempted to collect on the state court judgments. On April 10, 2009, the Robinsons filed a *pro se* Motion to Squash [sic] Writ of Garnishment and for Injunctive Relief, asserting that any judgment arising from the foreclosure on the Robinsons' interest in Wildlife should be deemed to have been satisfied by the Robinsons' share of the large equity Wildlife had in proceeds from Wildlife's sale of the conservation easement on the farm property (alleged to be in the \$6-8 million range) to the USA in 2005. On May 19, 2009, Lewellen entered his appearance as the Robinsons' attorney and filed an Amended Motion to Squash [sic] Writ of Garnishment, Request for Injunctive Relief, etc., subsequently supported with Brief, for the Robinsons. The basis for both motions was a matter already ruled on or settled adversely to the Robinsons by unappealed orders - the Wildlife foreclosure, acts by the bankruptcy trustee that were approved by that court, and the Robinsons having no claim on the funds from the USA easement on the Wildlife farm. On June 3, 2009, counsel for Wildlife wrote Mr. Lewellen, asking him to delete certain portions of his Amended Motion and certain claims in it or be faced with a motion for Rule 11 sanctions in the state court case and a motion for contempt in the Robinson bankruptcy case. On July 6, 2009, Wildlife (now "Mallard Pointe Lodge"), Rothwell, and Thompson filed their Motion for Order of Contempt in the Robinson bankruptcy case. The Motion was set for hearing on September 17, 2009. By agreement of the attorney for Wildlife, et al. and the attorney for Lewellen, in late July, Mr. Lewellen filed a Motion to Withdraw as Counsel for Writ of Garnishment. On August 3, 2009, an Order Relieving Counsel [Lewellen] and Withdrawal of Pleadings was filed. In return for the withdrawal of the representation and withdrawal of pleadings, Wildlife, et al. agreed not to pursue state court sanctions or a bankruptcy contempt order against Mr. Lewellen, but did not release him from any other claims based on such conduct. Wildlife, Thompson, and Rothwell have unpaid judgments against Lewellen of \$29,329.53 for sanctions and attorneys fees in bankruptcy court, plus \$1,920.32 on attorneys fees and costs awarded in the state court case.

**SCHMIDT, PAUL A., SR., Bar No. 67048**, of Cabot, Arkansas, was reprimanded and fined \$1,000.00 by Committee Findings & Order filed September 21, 2011, on a Complaint filed by Dr. Joe Abrams in Case No. 2011-040, for violations of Rules 1.3, 3.4(c) and 8.4(d). Dr. Abrams' business, Abrams Enterprizes, LLC, were represented by Mr. Schmidt in a bankruptcy proceeding beginning in 2009. Mr. Schmidt filed a Statement pursuant to Rule 2016(B) which disclosed that attorney's fees of \$3,561 had been paid in the case. Mr. Schmidt did not disclose that the attorney's fees had been paid by Dr. Abrams, and not by the debtor, Abrams Enterprizes, LLC. Following a show cause hearing subsequent to a hearing Mr. Schmidt's Application to Employ Attorney, Debtor's Motion to Sell and Application to Employ Real Estate Broker, Judge Taylor entered an Order on July 29, 2009, directing Mr. Schmidt to disgorge all fees paid to him

back to Dr. Abrams. As of the date of the filing of the formal disciplinary complaint, almost two years later, Mr. Schmidt had not delivered those fees to Dr. Abrams. In responding to the formal disciplinary complaint, Mr. Schmidt advised that the unintentional errors made in the Rule 2016(B) Statement were caused because of the urgency of the situation with regard to a sale date for certain property and a pending foreclosure on property owned by Abrams Enterprises, LLC. Although not ordered to do so by the Committee, Mr. Schmidt, through counsel, delivered the fees to be returned to Dr. Abrams during the pendency of the formal disciplinary matter.

**STONE, WILLIAM MATTHEW, #2001143, of Mountain Home**, by Findings & Order filed March 29, 2011, was Reprimanded, fined \$1,000, and ordered to pay \$3,500 restitution in Committee case No. CPC 2010-101, on a complaint by Charlene Acklin, for violations of Rules 1.3, 1.4(a)(3), 1.4(a)(4), 1.15(b)(1), 1.15(b)(2), 8.4(c), and 8.4(d). Ms. Acklin hired Mr. Stone in August 2005, to seek a remedy for her against a contractor who had caused damage to her home with siding. Stone was paid \$3,500 before any work was undertaken and failed to place the funds in his IOLTA trust account. Stone provided false information to Acklin on numerous occasions. Stone also failed to take action in a diligent fashion and did not file a lawsuit on her behalf until May 2007. Stone was not forthcoming with information for Acklin when she sought information about the status of the litigation.

**TAPP, JOHN SKYLAR, #76123, of Hot Springs**, Findings & Order filed March 28, 2011 was Reprimanded and fined \$1,000 in Committee Case No. CPC 2010-095, on a referral by District Court Judge Jerry Ryan, for violations of Rules 1.7(a)(1), 3.4(c) and 8.4(d). Judge Ryan reported Mr. Tapp for continuing to represent a party in litigation against Tapp's former law partner after having been disqualified by order from the representation. Tapp represent Ronald Kirk against Jonathon Jones, who had represented Kirk in a divorce proceeding. During the course of the Kirk representation, Jones and Tapp were members of the same law firm. When Kirk terminated Jones from representing Kirk, Jones discussed the matter with Tapp and sought his advice on how to handle the situation. It was on the issues Jones discussed with Tapp which Kirk sought legal recourse against Jones in district court. Judge Ryan disqualified Tapp from representing Kirk against Jones, but Tapp continued to file pleadings for Kirk. Judge Ryan held Tapp in contempt of court.

**TRAVIS, THOMAS LEWIS, Bar No. 95029**, of Little Rock, Arkansas, was reprimanded by Committee Consent Findings & Order filed October 21, 2011, in Committee Case No. 2011-065, on a self-report, for violations of Rules 1.3 and 8.4(d). Mr. Travis represented Jose Alvarez-Fierros in removal proceedings in Immigration Court in Memphis and was directed by the presiding Judge to file a Motion to Suppress before March 5, 2010. Although Mr. Travis did file the Motion, he did not file it with the Court before the deadline. When Mr. Travis appeared for hearing on the Motion, he learned that the Motion had not been filed with the Court as required. The Motion to Preterm

filed by the Department of Homeland Security was granted and Mr. Travis' client did not obtain the relief he was seeking. Mr. Travis appealed to the Board of Immigration Appeals, but the appeal was dismissed. Mr. Travis accepted responsibility for the prejudice which occurred to his client for Mr. Travis' failure to file the Motion with the Court by March 5, 2010.

**TRIMBLE, DON, #91078, of Little Rock**, was Reprimanded and fined \$500 on January 26, 2011, by Consent Findings & Order in Committee Case No. CPC 2010-103, for admitted violations of Rules 1.3, 1.4(a)(3), 1.15(b)(1), 1.15(b)(2) and 8.1(a). Mr. Trimble was hired by Raymond Jones of New York to represent him in a land matter. Jones had been informed there was construction on his property in Morrilton. Mr. Jones contacted Mr. Trimble, and him a \$2,500 retainer, which was not placed in a trust account nor maintained there until earned. Jones provided Trimble with the documentation related to his legal issue. Trimble cashed the retainer check and acknowledged receipt of it and the file contents in an e-mail in January 2010. Trimble assured Jones that he would provide Jones with monthly status reports, which he failed to do. Trimble did not respond to requests for information from Jones, nor did he take action on Jones' behalf. After being contacted by the Office of Professional Conduct, Trimble returned the \$2,500 to Jones. The refund did not resolve the delay experienced by Jones in having his legal issue addressed. In his letter to the Office of Professional Conduct, Trimble was not forthright in two of the reasons he gave for his delay in addressing Jones' legal matter. Trimble incorrectly stated he was preparing to go to St. Louis and then going there to argue orally before the 8<sup>th</sup> Circuit Court of Appeals, allegedly causing a delay in addressing the Jones legal matter. Court records show Trimble's only recent oral argument was in September 2009, months before he was hired and paid to assist Jones.

**WILSON, JIMMIE L., Bar No. 73128**, of West Helena, Arkansas, was reprimanded and fined \$1,500.00 by Committee Findings & Order filed July 13, 2011, on a Per Curiam Order Complaint in Case No. 2010-043, for violations of Rules 1.2(a), 1.4(b), 3.4(c), 5.5(a), and 8.4(d). Mr. Wilson represented Clarence Richardson on criminal charges in Phillips County. The third appeal of Richardson's case, No. CR 09-952, resulted in an Opinion issued May 6, 2010, in which the Court referred Mr. Wilson to the Committee on Professional Conduct. Mr. Wilson's Arkansas law license was suspended from March 2-26, 2010, for his failure to pay his 2010 license fee. On March 19, Wilson requested from the Court an extension of time to file his client's brief, but that extension was denied. From March 20 until stayed on March 29, Wilson's law license was also suspended for failure to comply with the Court's CLE requirements. Wilson tendered his brief on March 22, 2010, but his license was still suspended so his brief was not accepted for filing. Wilson failed to file any brief for his client between March 29, the date both of his license suspensions were lifted or stayed, and May 6, the date the Opinion was issued. The Opinion, issued without the benefit of a Brief for Richardson, was adverse to his client's position, dismissing the State's appeal because

the Court held the trial court's favorable order granting Richardson's motion to dismiss on a "speedy trial" rule violation after trial was a nullity.

**CAUTION:**

**ALDWORTH, JOHN C., #82001, of Clinton**, was Cautioned, fined \$250, and ordered to pay \$300 restitution by Consent Findings & Order in Committee Case No. CPC 2010-109, on January 26, 2011, for violations of Rules 1.15(a)(1), 1.15(b)(2) and 1.16(d). David Connolly hired Mr. Aldworth in September 2009 to represent him in a divorce, and paid Aldworth a total of \$5,200 in September-October 2009. Aldworth failed to place any of the payments into his IOLTA trust account, although part of the payments were for costs and legal services to be provided in the future. In mid October 2009, Connolly advised Aldworth that he and his wife were going to attempt reconciliation and he wanted the divorce dismissed. Connolly asked for refund of the advanced payment of fees. Aldworth put Connolly off for months and then paid him in installments, instead of paying him the funds owed diligently and promptly when the representation was terminated.

**BARTON, MARK E., #96248, of El Dorado**, was Cautioned and ordered to pay \$400 restitution in Committee Case No. CPC 2010-085, by Findings & Order filed February 23, 2011, for violation of Rules 1.3, 1.4(a)(3), 1.4(a)(4), and 1.15(b)(2). Tim Wilson hired Mr. Barton to represent him in probate of his mother's estate. Barton was paid \$400, with \$250 was to be used for court costs. Barton never placed those funds in an IOLTA trust account until expended. Barton filed a probate document which contained numerous errors. Barton was not diligent in either the filing, the service of the other heir, or any actions after the other heir hired counsel. Barton failed to return telephone messages left for him by Wilson or on Wilson's behalf and failed to keep Wilson informed of any actions taken by Barton on Wilson's behalf.

**BENHAM, KEDRON, Bar #2007075, of Springdale**, on June 17, 2011, was cautioned on a consent to discipline agreement for violations of Rules 1.1, 1.3 and 8.4(d) of the Arkansas Rules of Professional Conduct in Committee Case No. CPC 2011-036. Jose Zuniga-Garcia hired Mr. Benham to represent his wife and he in certain immigration matters. They were seeking to be able to remain in the country and needed his assistance in filing all the appropriate documents in order to do so. A hearing was scheduled in March 2010 in immigration court in Kansas City on the relief requested, but the matter was not heard because Mr. Benham failed to timely file necessary and required supporting documentation. It then became necessary for a Motion to Reopen to be filed. Mr. Benham assured Mr. Zuniga-Garcia that a Motion would be filed or he would find another Attorney to do so. Mr. Benham did not take action to do so until February 2011. Mr. Benham failed to recognize that a Motion to Reopen had to be filed with 180 days after a dismissal or closing of the immigration case and therefore did not file one in a

timely manner. All conduct by Mr. Benham was admitted in an Affidavit he submitted on behalf of Mr. Zuniga-Garcia.

**BUMPASS RONALD E., Bar No. 74020**, of Fayetteville, Arkansas, was cautioned and fined \$250.00 by Committee Consent Findings & Order filed August 19, 2011, on a Complaint filed by Ronald Lay in Case No. 2011-030, for violations of Rules 1.3 and 8.4(d). In August 2007, Ron Lay hired Mr. Bumpass,, after Mr. Lay was injured in an accident inside the Northwest Arkansas Airport. Mr. Lay spoke with Mr. Bumpass by telephone and Mr. Bumpass agreed to represent Mr. Lay. Mr. Lay was a resident of New York and depended on Mr. Bumpass to handle this matter for him with TSA, since the accident occurred in Arkansas. Mr. Bumpass routinely advised Mr. Lay to wait and the matter would be handled. Mr. Bumpass did not submit the claim to TSA in a timely fashion and it was denied. Mr. Bumpass did not stay in contact with Mr. Lay and failed to advise him with the claim was denied. Mr. Bumpass attempted to have the matter reconsidered but that request was denied as well.

**DAVIS, RONALD L., JR., #98016, of Little Rock**, was Cautioned by Consent Findings & Order on February 21, 2011, in Committee Case No. CPC 2010-074,, for violations of Rules 1.1, 1.3, and 8.4(d), in the dismissal of the appeal involving his client McCastle, No. CACR09-933. Mr. Davis requested and received two extensions to file the brief. Davis then filed a Petition for Writ of Certiorari to Complete the Record, which was granted. Davis received the record in February 2010, did not file it with the Clerk, and took no further action in the appeal for his client. The State filed its Motion to Dismiss in August 2010, Davis did not respond, and the appeal was dismissed. After the disciplinary matter was initiated, Davis took the necessary steps to have the appeal reinstated and pursued for McCastle.

**DAVIS, RONALD L., JR., #98016, of Little Rock**, in Committee Case No. CPC 2010-098, by Consent Findings & Order filed February 21, 2011, was Cautioned for violation of Rules 1.3 and 8.4(d) in an appeal involving his client Johnson, No. CACR09-1050. Appellant's brief was due November 2, 2009. After two extensions and a grant of a Petition for Writ of Certiorari to Complete the Record, Appellant's new brief deadline was set as March 1, 2010. No brief was filed, and on March 30, 2010, the Attorney General's Office filed a Motion to Dismiss the appeal for failure to file the required appellant's brief. The Court dismissed the appeal on April 21, 2010. On April 22 and May 15, 2010, OPC contacted Mr. Davis about the status of possible reinstatement of Johnson's appeal. On June 11, 2010, Davis filed a Motion to Reinstate Appeal and File Belated Brief, accepted full responsibility for the brief not being timely filed, and tendered the brief. On June 30, 2010, the Court granted the motion, noted the brief was filed, and one Judge noted he would refer Davis to the Committee on Professional Conduct.

**DYER, DUSTIN D., Bar No. 2003082**, of Benton, Arkansas, was Cautioned, fined \$1,000 and ordered to pay restitution in the amount of \$750.00 by Panel Findings & Order filed November 28, 2011, in Committee Case No. 2011-037, on a complaint filed by Richard

L. Spickard, for violation of Rules 1.3, 1.4(a)(3), 1.4(a)(4), 1.16(d), and 8.1(b). Spickard employed Dyer in August 2009 to represent him in a criminal pardon application. Spickard made repeated requests for information about his matter by telephone and by visiting Dyer's office. In February 2010, Spickard called and requested the return of his file and all documents provided to Dyer. Spickard did not receive either and turned to the Office of Professional Conduct (OPC) for assistance. Dyer was contacted by OPC but did not respond to the request. A Complainant was then filed and in his response, Dyer stated Spickard knew that he was not entitled to a refund and there were no documents which belonged to him; that nobody simply requested a copy of his client's file; and, that the letter from the Office of Professional Conduct demanded a full refund for Spickard and his paperwork, and not the surrender of papers which belonged to Spickard.

**FISHER, STEPHEN, #91073, of Little Rock**, was Cautioned, ordered to pay \$1,000 restitution, and fined \$500, in Committee Case No. CPC 2010-078, on January 26, 2011, for violations of Rules 1.4(a)(3) and 8.4(d). Brenda Day hired and paid Mr. Fisher \$1,000 to represent her in seeking guardianship of her sister who was bedridden and in a nursing facility. Fisher failed to communicate with Ms. Day, and he never filed a Petition for Guardianship on her behalf.

**GEAN, ROY R, JR., Bar #47007, of Fort Smith**, in Committee Case No. CPC 2010-082, on April 25, 2011, after a hearing, was cautioned for violation of Arkansas Rule 1.4(a)(3) on a complaint by David and Stephanie Porter. Mr. Gean represented the Porters in a motor vehicle accident in December 2004 involving Mr. Porter, Amanda Gregory, and Billy Maxey. Ms. Porter believed that her husband's headaches and series of strokes were related to the motor vehicle accident. During the period of Mr. Porter's medical treatment, Shelter Insurance filed suit against Mr. Porter and Mr. Maxey. Mr. Gean represented the Porters in that matter. In December, 2007, Mr. Gean filed suit on behalf of the Porters against Mr. Maxey, and Maxey was served. In July 2008, the Court sent a letter to Mr. Gean stating that Mr. Maxey had been served, that no answer had been filed, and Mr. Gean should submit a proper court order within ten days from the date of the letter, or the court would assume there was no objection to entry of an Order of Dismissal. No response to the letter was filed by Mr. Gean. Mr. Gean stated that he believed the service on Mr. Maxey was not good. Mr. Gean stated that he told Ms. Porter that he needed a medical opinion which would show Mr. Porter's headaches and stroke were related to the accident, and that the Porters must obtain that medical opinion. Mr. Gean stated that he could not obtain the medical records as by doing so he would violate the Rules of Professional Conduct which prohibit attorneys from providing financial assistance to clients, if he paid for the records. The medical opinion was never obtained and the court dismissed the lawsuit in October, 2008.

**GOODMAN, RON L., Bar No. 86070**, of Conway, Arkansas, was cautioned and ordered to pay \$2,500.00 restitution by Committee Findings & Consent Order filed November

21, 2011, in Case No. 2010-080, on a complaint filed by Ellen Lewis, for violations of Rules 1.4(a)(3), 1.15(b)(2), and 1.16(d). In August 2007, Ms. Lewis hired Mr. Goodman to represent her in post-Decree issues following completion of her divorce. The fee agreement Mr. Goodman provided Ms. Lewis required \$2500 for services in the matter and an additional \$2500 if there was a trial. In November 2007, Mr. Goodman requested Ms. Lewis deposit another \$2500, because a court appearance was going to be necessary, and she did as requested. Mr. Goodman did not place those funds in an IOLTA trust account until earned and until a trial was held. Mr. Goodman did not stay in communication with Ms. Lewis. There were many weeks of no communication when Ms. Lewis was attempting to determine the status of her legal matter. Mr. Goodman failed to return the unearned portion of the fee, the second \$2500, which was paid for a trial as reflected in his fee agreement prepared by him and presented to Ms. Lewis when she employed him.

**HOPKINS, CARL W., #94215, of Van Buren**, was Cautioned, fined \$150, and ordered to pay \$400 restitution by Consent Findings and Order in Committee Case No. CPC 2010-069, on February 21, 2011, for violations of Rules 1.3, 1.15(a)(1) and 1.15(b)(2). Carolene Ramer hired Mr. Hopkins in October 2007 to represent her in a bankruptcy proceeding. Hopkins was paid \$699 for fees and costs but failed to place the funds in his IOLTA trust account. He negotiated the check and none of Ramer's funds were maintained or protected. There is no proof of any action taken by Hopkins to pursue the Ramer bankruptcy as he was hired to do.

**HOPKINS, CARL W., #94215, of Van Buren**, was Cautioned and ordered to pay \$450 restitution by Consent Findings and Order in Committee Case No. CPC 2010-097, on February 21, 2011, for violations of Rules 1.3, 1.15(a)(1), 1.15(b)(2), and 8.1(b). Raymond and Tamra Chastain hired Mr. Hopkins in December 2006, to file a bankruptcy proceeding on their behalf. Hopkins was paid in full the amount requested. He did not place the full amount in his trust account nor did he maintain the amount in the trust account or safeguard it. Hopkins never filed the Chastain bankruptcy proceeding for Complainants. Hopkins failed to provide his complete trust account records as requested by the Office of Professional Conduct.

**JACKSON, STEVEN R., #97142, of Lowell**, in Committee Case No. CPC 2010-011, by Findings & Order filed March 15, 2011, was Cautioned, fined \$1,500, and ordered to pay \$600 restitution, for violation of Rules 1.1 and 1.4(a)(3) on a complaint by Rose Marie Linares. Ms. Linares employed Mr. Jackson to represent her in a divorce and paid him the attorney's fee, filing costs, and publication fees. On April 29, 2008, Jackson filed a Complaint for Divorce. A warning order was published twice in May 2008. On September 2, 2008, Ms. Linares' divorce case was dismissed by the court pursuant to Rule 4(I) of the Arkansas Rules of Civil Procedure, for lack of prosecution and activity. Linares stated that she was unaware that her divorce case had been dismissed, but Jackson stated she was so informed. In March, 2009, Linares called the Washington

County Clerk to get a copy of her divorce decree, and was informed that the divorce case had been dismissed in 2008. Linares called Jackson and spoke to him. Jackson stated that he would check into the matter and that Linares should call him the following Monday. Linares was unable to speak to Jackson for a period of time thereafter. In May, 2009, Jackson filed a second Complaint for Divorce for Ms. Linares. On October 2, 2009, Ms. Linares' divorce case was dismissed by the court because Mr. Linares had not been served. Jackson stated that Ms. Linares had failed to pay for the second publication notice and he had not agreed to advance those costs. Ms. Linares then employed new counsel.

**KEARNEY, JACK R., Bar No. 77194**, of Little Rock, Arkansas, was cautioned and fined \$500.00 by Committee Consent Findings & Order filed October 21, 2011, in Committee Case No. 2010-093. on a complaint filed by Leon Harden, III. Kearney was retained in 2005 by Harden for representation on a drug possession charge. Harden's two co-defendants each took plea deals, and Harden's case proceeded to trial. In April 2006, Harden was convicted, of possession of cocaine with intent to deliver, and sentenced to eighty (80) years in the Arkansas Department of Corrections. His co-defendant's plea deals resulted in a twenty (20) year sentence for one and probation for the other. The prosecutor made a plea offer to Kearney for Harden for a twenty (20) year prison sentence. Kearney responded to the offer in a letter, dated February 3, 2006. Kearney turned down any offers that required his client to plead and go to prison, without discussing the plea offer with his client. After Harden's conviction, Kearney then filed a Notice of Appeal and Motion for Modification of Sentence in May 2006, and Motion for New Trial in June 2006. In the Motion for New Trial, Kearney improperly argued to the court that the 80 year sentence imposed was illegal and that his client had never been offered a plea deal. The judge did not agree with Kearney, and told Kearney that according to Kearney's own February 6 letter that the State verbally offered Harden a twenty (20) year deal and Kearney told them he wouldn't take any prison time. Kearney requested that the court sentence Harden to the twenty (20) years previously offered by the State, which Kearney had previously turned down. The circuit judge rejected Kearney's arguments and denied his Motion for New Trial. The decision was made by Harden and his new attorney to dismiss his appeal and proceed with a Rule 37 Petition in circuit court. The appeal was dismissed and the Rule 37 Petition was filed in August 2007. After hearing in October 2007, the Court granted the Rule 37 Petition. The circuit judge entered his Findings and Conclusions from the Rule 37 hearing on November 27, 2007, finding that Harden's conviction remained unaffected by his decision and that he was not vacating Harden's sentence. The circuit judge, did however, rule that because of some crucial errors by Kearney, Harden was entitled to a new trial on the issue of punishment alone. The circuit judge found Kearney provided ineffective assistance of counsel to Harden, including failing to disclose and discuss the plea offer of twenty (20) years with Harden. The court also found that those errors also violated the Arkansas Rules of Professional Conduct. A new jury trial was held on Harden's punishment in June 2008. Harden was

sentenced to fifty-five (55) years in the Arkansas Department of Corrections and did not appeal

**KEARNEY, JESSE L., Bar #76062, of Pine Bluff**, was cautioned by Committee Findings and Order filed April 22, 2011, in Committee Case No. CPC 2010-115, on a complaint filed by Rob Kraus of Global Financial, for violation of Rule 1.15(a)(5). Mr. Kearney represented Stanley Williams in a civil suit in U.S. District Court against Williams' insurance company for denying his claim against his renter's insurance policy. While the litigation was pending, Williams entered into an agreement with Global Financial for a "litigation" loan or advance. Before any funds could be disbursed, Global sent a Letter of Instruction to be signed by Williams and Kearney. The document gave Kearney instructions, approved and agreed to by Williams, to place a lien and security interest against any and all proceeds due Williams from his suit. Kearney was instructed to protect and satisfy the debt owed to Global by Williams before paying any funds over to Williams. Kearney and Williams both signed the Letter of Instruction agreeing to abide by the terms and the signed document was returned to Global. Only after receiving the signed document from Kearney and Williams agreeing to protect the loan, did Global issue a \$1,980.00 check to Williams. Kearney and the insurance company settled Williams' claim and the lawsuit was dismissed. From the settlement, no disbursement was made to Global pursuant to the signed Letter of Instruction.

**KNOLLMAYER, MICHAEL J., Bar No. 86105**, of Jacksonville, Arkansas, was Cautioned, fined \$250.00 and ordered to pay transportation costs in the amount of \$300 by Committee Findings & Order filed November 14, 2011, in Committee Case No. 2010-063, on a complaint filed by Ms. Jimmie Ellis, for violation of Rule 1.9(a). Ellis employed Knollmeyer Law Office in July, 2008, to represent her in a divorce action, which was filed and Mr. Ellis served. On November 24, 2008, Ms. Ellis was granted a divorce and the decree provided that her ex-husband was to provide her with title to twenty acres in Independence County. The next day, Mr. Ellis filed a Chapter 13 bankruptcy proceeding, using Laura Grimes, an attorney associated with Knollmeyer's law office. In December 2008, Ms. Ellis learned that her ex-husband had filed bankruptcy and that an attorney in her attorney's law office was representing her ex-husband. Knollmeyer Law Office withdrew from the representation of Mr. Ellis in the bankruptcy matter. In September, 2010, Ms. Ellis received a deed for the twenty acres of property. Immediately before the public hearing in his disciplinary case, Mr. Knollmeyer admitted to a violation of Rule 1.9(a) and proposed a Caution, \$250 fine, costs, and \$300 restitution to Ms. Ellis for her travel expenses. The Panel accepted the proposal.

**LAMBERT, WALTER CRAIG, Bar #87100, of North Little Rock**, in Committee Case No. CPC 2010-010, by Findings & Order filed May 20, 2011, was cautioned and fined \$500 for a violation of Arkansas Rule 1.3, on a referral from the Arkansas Supreme Court in No. CR10-108, Brian Heard v. State. Mr. Lambert represented Mr. Heard in a Rule 37 petition in Calhoun County Circuit Court. The court denied the petition, a timely

notice of appeal was filed, and the record was timely lodged. After two requests for extensions of time to file a brief for Mr. Heard had been filed and granted, Mr. Lambert filed another request for extension of time which was denied. A brief on Mr. Heard's behalf was due to be filed by October 28, 2010. No brief was filed. After a motion to dismiss was filed by the State, Mr. Lambert filed a Motion for Belated Brief, which was granted by the Arkansas Supreme Court. Lambert was referred to the Committee on Professional Conduct.

**RICKARD, ROBERT L., #2001065, of Bentonville**, in Committee Case No. CPC 2007-135, by Consent Findings & Order filed March 18, 2011, was Cautioned and ordered to pay \$1,204.70 restitution, for violation of Rules 1.3 and 8.4(d) in a case that came to the attention of the Office of Professional Conduct from the dismissal of No. 07-936, a civil appeal, in October 2007. Mr. Rickard represented Midd Development, LLC, (MIDD) in a civil suit in Benton County Circuit Court. Following an adverse judgment of \$63,000, on May 30, 2007, Rickard timely filed MIDD's notice of appeal. Rule 5(a) of the Rules of Appellate Procedure—Civil, requires the record to be filed with the clerk of the Arkansas Supreme Court within ninety (90) days from the filing of the first notice of appeal, unless the time is extended by order of the circuit court. On August 31, 2007, Rickard tendered the record to the Supreme Court Clerk, who refused it as being untimely tendered. On September 11, 2007, Rickard filed a Motion for Rule on Clerk, stating that the record was not tendered timely because of error by the court reporting service in forwarding its portion of the completed record to another court reporter, rather than to Rickard. The record was eventually tendered to the appellate clerk three days after the deadline. On October 4, 2007, the Arkansas Supreme Court denied Rickard's Motion for Rule on Clerk, and the appeal was dead. MIDD funds paid for the \$150.00 filing fee and the \$1,054.70 cost of the appeal transcript.

**SMITH, STEVEN R., Bar #91177, of Little Rock**, in Committee Case No. CPC 2011-020, by Findings & Order filed June 24, 2011, on a self-referral and a referral from the Arkansas Supreme Court, was cautioned in a case involving a criminal appeal for Denisse Serrano, for violations of Arkansas Rules 1.3 and 8.4(d). The Serrano record was due to be filed with the Arkansas Supreme Court Clerk on August 9, 2010. Mr. Smith did not tender the record to the Clerk until August 11, 2010, and filed a Motion for Rule on the Clerk on the same date. The motion was denied, because the notice of appeal, though timely, failed to correctly identify the convictions from which the appeal was being brought, as required by Rule 5(a) of the Rules of Appellate Procedure—Civil. On September 9, 2011, Mr. Smith filed a second Motion for Rule on the Clerk, which was granted, and the matter was referred to the Committee on Professional Conduct.

**STRICKER, RALPH THEODOR, Bar No. 80139**, of Jonesboro, Arkansas was cautioned by Committee Findings & Order filed October 21, 2011, in Committee Case No. 2011-055, on a complaint filed by Adam B. Fogleman, Esq., for violation of Rule 1.5(e) and 7.2(c). This matter concerns advertising done by Mr. Stricker in Arkansas on behalf of

Merritt and Associates, P.C., an Oklahoma law firm. The advertisement solicits other attorneys to refer their product liability cases to the Merritt Firm. In return for the referrals, the Merritt Firm would pay the referring attorney a referral fee. According to the advertisement, the fee is not based on any work to be performed by the referring attorney, or any joint representation, but simply on the referral itself, with the Merritt Firm doing all the work and advancing all costs.

**TAPP, JOHN SKYLAR, Bar No. 76123**, of Hot Springs, Arkansas, was cautioned and fined \$2,500.00 by Committee Findings & Order filed September 22, 2011, on a Per Curiam Order Complaint in Case No. 2011-038, for violations of Rules 1.1, 1.3, and 8.4(d). Mr. Tapp represented Ronald Collins in the attempt to set aside the adoption by Mr. and Mrs. Fason of Caden Fason. Collins was the biological father of Caden. After a hearing, the trial judge found the Petition to Set Aside should be denied; a companion paternity case for Collins against Mrs. Fason, should be denied and dismissed; and the adoption of Caden by the Respondents Fason should remain intact.

Tapp filed his first Notice of Appeal in the adoption case on November 9, 2010, appealing the ruling announced earlier, but the actual final Order was not filed until November 18, 2010. Rule 4(a), AR Rules of App. P. - Civil, would automatically treat Tapp's Notice of Appeal as having been filed on the day after the judgment was filed on November 18.

On November 18, 2010, Tapp filed a Motion to Strike Notice of Appeal, which was granted by Order of the trial court on November 30. Tapp then filed a new Notice of Appeal on November 29, from the final Order filed on November 18, claiming he thus had a new ninety (90) days, or until February 28, 2011, to file his appellate record. Tapp tendered his record on February 29, 2011, but the Clerk determined that the trial court did not have authority to strike the first Notice of Appeal and notified Tapp that he needed to file a Motion for Rule on the Clerk, which he did on March 7, 2011. Tapp asserted that the trial court retained jurisdiction of the case until the record was actually filed with the Supreme Court and that the trial court could vacate or set aside his original Notice of Appeal, allowing him to file a second one later. Tapp's Motion to Strike Notice of Appeal was not joined in on by all parties by joint stipulation, as required by Rule 3(b), AR Rules of App. P. - Civil (2010), adopted in 2005. On April 7, 2011, the Supreme Court denied Tapp's Motion.

On April 12, 2011, Tapp filed a Motion to Reconsider, citing the same proposition as he did in his original Motion, and cited Stahl v. State, 328 Ark. 106, a criminal case, for the proposition that the trial court can dismiss a notice of appeal upon motion to dismiss by the appellant. He did not cite Rule 3(b), Ark. R.App. P. - Civil (2010), which governs civil appeals. This motion was also denied. Mr. Tapp has been a counsel of record in about fifty-six (56) reported state appellate cases, both civil and criminal. Mr. Collins has lost his right to appeal the trial court decision affirming the adoption by another man of a child he claims to be his son.

**WANN, MASON J., Bar #2007293, of Fayetteville,** by Consent Findings & Order filed April 15, 2011, in Committee Case No. CPC 2011-008, agreed to a caution and \$500 fine for violation of Arkansas Rules 1.3 and 8.4(d). In a case in which he was not trial counsel, Mr. Wann failed to file the record on appeal for the firm's clients, Tom and Nancy Muccio, within ninety (90) days of the date of the filing of the first Notice of Appeal. A Motion to Dismiss Appeal was filed by the appellee. Mr. Wann responded in great detail about why the civil appeal should not be dismissed, but the Court dismissed it based on the procedural error. As a result of the dismissal, the clients do not have an opportunity for appellate review of the \$828,926.23 Judgment entered against them, and which has been satisfied from their supersedeas bond.

**WEST, B. DALE, Bar #89192, of Monticello,** by Consent Findings & Order filed June 17, 2011, in Committee Case No. CPC 2011-032, agreed to a caution and \$500 fine for violation of Arkansas Rules 1.3 and 8.4(d) in a criminal appeal for Ronald Deron Green. The Judgment and Commitment Order was entered on September 9, 2010, and a timely notice of appeal was filed. On December 20, 2010, Mr. West tendered the record to the Arkansas Supreme Court Clerk but the record was incomplete, lacking volume four and the circuit clerk's certification. After being notified, Mr. West tendered the remainder of the record and filed a Motion for Rule on the Clerk. The Arkansas Supreme Court granted the motion and referred the matter to the Committee on Professional Conduct.

**VESS, STUART C., #73124, of North Little Rock,** in Committee Case No. CPC 2010-105, by Consent Findings & Order filed February 21, 2011, was Cautioned for violation of Rules 1.3 and 8.4(d) in a complaint base don information related to civil appeal No. 10-144. Bob's Bail Bonds (Bob's) employed Mr. Vess to seek judicial review in circuit court of an agency decision. The court affirmed the decision of the Bail Bond Licensing Board. Vess appealed, and Bob's brief was to be filed by March 23, 2010. On March 22, 2010, Vess was granted a one-week clerk's extension, making his brief due March 30, 2010. On March 30, 2010, Vess filed a motion for extension of time, stating his workload included numerous court appearances and the appeal had complex issues which necessitated an additional thirty days. The Court granted the motion making his brief due by April 30, 2010. On April 29, 2010, Vess filed a motion for a stay of briefing as he discovered that the order of the Bail Bond Licensing Board had not been included in the record. The motion was granted, briefing was stayed, and the record was to be supplemented by June 4, 2010. In the Order, the Court stated that the brief was due to be filed fifteen days after the supplement to the record was filed. The record was supplemented on June 3, 2010. The brief was due to be filed by June 18, 2010, but none was filed. On September 30, 2010, the State filed a motion to dismissed as no brief had been filed. Though a response to the motion to dismiss was filed, the Arkansas Supreme Court granted the State's Motion to Dismiss on October 28, 2010. Vess attributed the failure file his brief to his failure to place the new due date on his calender, as there was no exact date set in the Order, and no additional scheduling order issued after the record was supplemented.

