

# ***2003 Annual Report***

***Arkansas Supreme Court***

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

Justice Building, Room 110  
625 Marshall Street  
Little Rock, AR 72201

(501) 376-0313  
(501) 376-3638 Fax  
1-800-506-6631

Arkansas Judiciary Homepage  
<http://courts.state.ar.us/>

Arkansas Attorney Discipline Homepage  
<http://courts.state.ar.us/courts/cpc.html>

## ***I. Introduction***

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.

## ***II. Structure***

### **1. COMMITTEE ON PROFESSIONAL CONDUCT**

For the year 2003, the Committee continued to operate in the new model of three Panels established by the 2002 revisions to the Procedures. Each panel is composed of seven members appointed by the Arkansas Supreme Court. Five are lawyers, with one lawyer appointed from each Congressional District and one from the State at large. The remaining two positions are filled by persons who are not lawyers and are selected by the Arkansas Supreme Court from the State at large. Panel membership in 2003 was as follows:

- Panel A: Gwendolyn Hodge, Little Rock, Attorney at Large, Panel A Chair  
Win A. Trafford, Pine Bluff, Attorney, Fourth Congressional District  
Richard A. Reid, Blytheville, Attorney, First Congressional District,  
Panel A Vice-Chair  
Bart F. Virden, Morrilton, Attorney, Second Congressional District  
Ken R. Reeves, Harrison, Attorney, Third Congressional District  
Dr. Patricia Youngdahl, Little Rock, Non-attorney at Large  
Helen Herr, Little Rock, Non-attorney at Large
- Panel B: Richard F. Hatfield, Little Rock, Attorney, Second Congressional District  
and Panel B Vice-Chair  
J. Michael Cogbill, Fort Smith, Attorney, Third Congressional District  
Harry Truman Moore, Paragould, Attorney, First Congressional District  
Valerie L. Kelly, Jacksonville, Attorney at Large  
John L. Rush, Pine Bluff, Attorney, Fourth Congressional District, Panel B Chair  
Dr. Rose Marie Word, Pine Bluff, Non-attorney at Large  
Rita M. Harvey, Little Rock, Non-attorney at Large
- Panel C: Justice (Ret.) David Newbern, Little Rock, Attorney at Large and Panel C Chair  
Kenneth R. Mourton, Fayetteville, Attorney, Third Congressional District  
Searcy Harrell, Jr., Camden, Attorney, Fourth Congressional District  
Phillip D. Hout, Newport, Attorney, First Congressional District  
Robert D. Trammell, Little Rock, Attorney, Second Congressional District,

and Panel C Vice-Chair  
Beverly Morrow, Pine Bluff, Non-attorney at Large  
Sylvia Orton, Little Rock, Non-attorney at Large

2003 Executive Committee:

Ken R. Reeves, Harrison, Attorney, Committee Chair  
Dr. Patricia Youngdahl, Little Rock, Committee Secretary  
Gwendolyn Hodge, Little Rock, Panel A Chair  
Richard A. Reid, Blytheville, Panel A Vice-Chair  
John L. Rush, Pine Bluff, Panel B Chair  
Richard F. Hatfield, Little Rock, Panel B Vice-Chair  
Justice (Ret.) David Newbern, Little Rock, Panel C Chair  
Robert D. Trammell, Little Rock, Panel C Vice-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.

**2004 COMMITTEE MEETING CALENDAR:**

January 16, 2004	Panel A
February 20, 2004	Panel B
March 19, 2004	Panel A
April 16, 2004	Panel B
May 21, 2004	Panel A
June 18, 2004	Panel B
July 16, 2004	Panel A
August 20, 2004	Panel B
September 17, 2004	Panel A
October 15, 2004	Panel B
November 19, 2004	Panel A
December 10, 2004	Panel B

**2. OFFICE OF PROFESSIONAL CONDUCT**

The Committee employs an attorney Executive Director and staff who function as the Office of Professional Conduct, and are housed in the Justice Building located on the Arkansas State Capitol grounds in Little Rock. The Office of Professional Conduct receives all complaints involving attorneys licensed to practice law in the State of Arkansas, investigates the complaints, provides assistance in the preparation of formal complaints, and processes formal complaints for submission to the Committee. The Executive Director for the Committee is Stark Ligon.

The Office of Professional Conduct is staffed by four staff attorneys, an administrative assistant, a secretary, and an investigator. The staff attorneys perform all duties and possess such authority of the Executive Director as the Executive Director may delegate, except for the final determination of sufficiency of formal complaints. The staff attorneys during 2003 were Nancie M. Givens, Deputy Director, Michael E. Harmon, Senior Staff Attorney, and Ann R. Dodson, Staff Attorney.

In calendar 2003, the staff presented twenty-five (25) CLE programs or speeches on law-related topics across the state. A listing of the programs is attached as Appendix A.

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.

The total budget of the Committee and Office for 2003-04 is slightly more than \$587,000, funded by a portion of the annual license fee paid by Arkansas-licensed attorneys to the Arkansas Supreme Court.

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

### ***III. Administration***

The Office of Professional Conduct receives telephone calls, letters, e-mails and faxes from individuals across the country requesting information on how to initiate complaints against attorneys licensed to practice law in the State of Arkansas. During the 2003 calendar year, the office sent 1,916 grievance forms to complainants requesting one, down from 1,927 in 2002.

During the 2003 calendar year, the Office received 1082 written complaints, down from 1114 in 2002. The great majority of these consisted of informal complaints involving alleged lawyer misconduct. The remainder consisted of reports of alleged unauthorized practice of law, applications for financial relief from the client security fund, and administrative matters.

Following assigned review by staff attorneys of 824 disciplinary complaints received in calendar year 2003 (down from 843 in 2002), or pending from previous years:

438 complaints were found not to have a sufficient basis for a formal complaint;  
88 complaints were closed after investigation by staff attorneys;  
41 complaints were closed following an informal letter to the reported attorney;  
25 complaints were withdrawn by the complaining party;  
20 complaints had no affidavit from the complaining party returned to the Office;  
6 complaints were referred to outside agencies;  
19 complaints were merged into petitions of surrender of license by the attorney;  
3 were abated by the death of the attorney;  
9 reinstatement petitions were filed;  
3 interim suspension petitions were filed;  
1 petition for transfer to inactive in lieu of discipline was filed;  
5 petitions for surrender were received and approved;  
2 disbarment actions were initiated from filed complaints; and,  
181 new formal complaints were filed. (21.8% of files reviewed by staff attorneys, up from 21.5% in 2002)

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

In 2003, there were 200 total formal cases opened for the Committee on Professional Conduct for action, up from 186 in 2002. Of the 200 cases, 181 became new formal complaints, 9 were Petitions for Reinstatement, 3 were Petitions for Interim Suspension, 5 were Petitions to Surrender Law License, and 2 became disbarment actions.

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

Final discipline was imposed in 195 different files involving Arkansas attorneys during Calendar Year 2003 by the Committee on Professional Conduct or, in cases of disbarment, by the Circuit Court or Arkansas Supreme Court. Of the 195 finalized cases in 2003, 1 file was from 1996, 1 was from 1997, 1 file was from 2000, 7 were from 2001, 65 were from 2002, and 121 were from 2003. Nine (9) files opened involved reinstatement petitions. There are six primary forms of action that the Committee on Professional Conduct may take. Actions of the Committee are shown below. A warning is non-public. The other forms of sanction are public.

#### **1. 2003 COMMITTEE DISPOSITION STATISTICS - see Appendix A for case summaries**

Type Action	Panel A	Panel B	Panel C	Total
No Actions	9	6	0	15
Warnings	21	30	3	54
Cautions	15	9	4	28
Reprimands	16	18	3	37
Suspensions	9	11	0	20
Interim Suspensions	9	0	0	9
Surrenders	3 *	2 **	0	5
Merged into Surrender	4	8	0	12
Initiate Disbarment	2 ***	0	0	2
Abated by death				0
Voluntary Inactive	0	0	0	0
Consents	19	24	11	54?
ARLAP Referral	2	0	0	2

Disposition	No.	%
No Action	15	9%
Warning	54	32%
Caution	28	16%
Reprimand	37	22%
Suspension	20	12%
Interim Suspension	9	5%
Surrender	5	3%
Disbarment	2	1%

Total 170

\* There were actually 8 files on which a surrender was accepted but only three attorneys.

\*\* There were actually 5 files on which a surrender was accepted but only two attorneys.

\*\*\* There were a total of 5 files on which a vote was made to initiate disbarment but they involved only two attorneys

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

**2. FOUR YEAR STATISTICAL COMPARISON 2000-2003**  
(Unofficial)

Category	2000	2001	2002	2003
Written complaints received	985	1,114	1,186	1,082
Closed by staff action	832	691	737	825
Formal Complaints filed	149	149	186	200
Supreme Court Referrals	38	34	45	50
Other Judicial Complaints	10	13	12	12
Formal Complaints closed	132	135	178	185
No Actions	15	12	30	15
Warnings	43	45	53	54
Cautions	29	14	31	28
Reprimands	24	26	35	37
Suspensions	12	19	14	20
Surrenders	5	13	5	5
Complaints merged into surrender			1	14
Disbarments initiated	4	6	3	3
Reinstatements granted	3	3	3	8
Consent dispositions	N/R	13	35	54
ArLAP Referrals	N/A	N/A	2	0
Number of Attorneys Disciplined *	148	81	111	121

\* includes multiple separate sanctions against some attorneys

## ***VI. Common Rule Violations***

In the 2003 findings of the Committee on Professional Conduct Panels, the most common rule violations involved Arkansas Model Rules 1.3 and 8.4(d). Model Rule 1.3 states that a lawyer shall act with reasonable diligence and promptness in representing a client. Model Rule 8.4(d) states that a lawyer shall not engage in conduct that is prejudicial to the administration of justice. The following listing contains the Arkansas Model Rule alleged, the number of times the Committee found the rule to have been violated, and ranking of the ten most frequently violated Rules.

Arkansas Rule #	# Alleged	# Found	Rank (# Found)
1.1	32	22	6
1.2(a)	16	10	9
1.3	116	61	1
1.4(a)	62	43	2
1.4(b)	46	30	3
1.5(a)	6	2	
1.5(b)	6	2	
1.5(c)	3	1	
1.5(e)	0	0	
1.6	2	1	
1.7(b)	7	2	
1.8(a)	3	2	
1.8(b)	2	1	
1.8(c)	0	0	
1.8(e)	2	2	
1.8(j)	2	1	
1.9(a)	3	1	
1.9(b)	1	0	

1.9(c)	1	1	
1.10(a)	1	0	
1.15(a)	14	9	10
1.15(b)	11	7	
1.15(c)	1	1	
1.15(d)	0	0	
1.15(f)	1	1	
1.16(a)	2	0	
1.16(b)	2	1	
1.16(d)	27	17	7
2.1	1	0	
3.1	2	0	
3.2	19	12	8
3.3(a)(1)	6	4	
3.4(a)	1	1	
3.4(b)	1	1	
3.4(c)	30	26	5
3.5(a)	1	0	
4.1(a)	4	1	
4.1(b)	1	1	
4.2	3	1	
4.4	3	2	
5.1	0	0	
5.2	0	0	
5.3(b)	1	0	
5.4(a)	1	0	

5.4(b)	1	0	
5.5(a)	4	4	
5.5(b)	4	2	
7.1(a)	1	0	
7.2(d)	3	1 (3)	
7.3(d)	2	2 (2)	
8.1	0	0	
8.2(a)	2	1	
8.2(b)	1	0	
8.4(a)	17	8	
8.4(b)	10	7	
8.4(c)	46	29	4
8.4(d)	116	61	1
8.5	0	0	

### ***VII. Number of Attorneys Disciplined (2003)***

Of the 195 final disciplinary actions by the Committee, fifty-six (56) involved attorneys who had been licensed for ten years or less; forty-seven (47) involved attorneys who had been licensed for eleven to twenty years; fifty-nine (59) involved attorneys who had been licensed for twenty-one to thirty years; twenty-six (26) involved attorneys who had been licensed for thirty-one to forty years and six (6) involved attorneys who had been licensed for more than forty years.

Years licensed	# of attorneys disciplined	Percentage
1-10	56	29%
11-20	47	24%
21-30	59	31%
31-40	26	13%
40+	6	3%

## ***VIII. 2003 Trust Account “Overdraft” Reporting***

Reports received in 2003

48	Total reports received from all banks and reporters
33	Closed by private letter disposition
10	Still under investigation
2	Formal complaints filed
3	Formal complaint likely to be filed
0	Public sanction

Reasons for reports (some of above reports were on the same attorney trust account for repeated problems in close proximity to each other, usually caused by the same triggering event)

2	Caused by admitted Bank error
10	Caused by Attorney/office bookkeeping error
2	Caused by attorney error - bank fees not taken into account
4	Attorney used wrong account or wrong account number
7	“Late” deposits into trust account
4	Deposited funds not yet cleared by bank for use
2	Trust account checks stolen - forged
0	Attorney closed practice and started using account as personal account
1	Formal complaint abated by attorney death, license surrender or disbarment
1	IOLTA error
1	Credit card fee payment “reversed” out of trust account

## ***IX. FINES, RESTITUTION & COSTS ASSESSED***

1. Fines	\$46,400.00
2. Restitution	\$29,761.50
3. Costs	\$2,778.34
Total	\$78,939.84

## 2003 ANNUAL REPORT - APPENDIX B

**1. Final actions from January 1, 2003, through March 25, 2003, by the Committee on Professional Conduct.** Summaries prepared by the Office of Professional Conduct. Full text documents available on-line at <http://courts.state.ar.us/courts/cpc.html>.

### SUSPENSIONS:

**ALLEN W. BIRD, II, Bar No. 68006, of Little Rock, Arkansas,** in No. 2001-140, on a complaint by United States Bankruptcy Judge Robert Fussell, by Findings and Order filed February 28, 2003, was suspended for one (1) year effective March 1, 2003, fined \$25,000, and ordered to pay costs of \$50, for violating Rules 3.3(a)(1), 3.4(c), and 8.4(c), which the Panel characterized as "serious misconduct" under Section 17 of the Procedures. In 1986 Bird was appointed trustee in three bankruptcy cases involving NWFEX, Inc., insolvent corporations that sold tens of thousands of money orders through retail stores in thirteen states. In this complex case that lasted twelve years, Mr. Bird was able to gather and distribute \$5,799,509 to claimants, including the sole corporate shareholder. Judge Fussell commented on the superior result obtained by Mr. Bird's performance as trustee. Judge Fussell found that Mr. Bird had breached his fiduciary duty and committed fraud by overpayments of trustee fees. He found Mr. Bird was not entitled to any compensation for services performed, except for fees received from state regulators. He ordered Mr. Bird to return to the estate \$199,979.26, the amount of interim trustee fees paid, and surcharged Mr. Bird \$339,369.26 for legal fees and expenses of the law firm that represented the corporate owner in his dispute with Bird, as trustee. The Committee found Mr. Bird knowingly made a false statement to the court in a 1992 motion for trustee's fees when he failed to list \$88,000 in interim fees already received, stating later that he had forgotten the earlier payments to himself. He was found to have failed to have given proper notice and failed to have obtained court orders to: (1) approve the sale and disposition of the corporation's personal property in 1996; (2) to pay for certain accounting services, (3) to pay a \$10,000 bonus to a corporate employee, and (4) to pay legal fees to the Rose Law Firm, where Mr. Bird was a partner at the time of these events. He was found to have testified falsely before Judge Fussell on several matters, including previous interim trustee payments, and making overpayments of trustee's fees to himself. Mr. Bird acknowledged his oversights in not obtaining prior court approval for some of the actions he took as trustee, but stated that his duties were extremely complex and the results of the actions he took harmed no one and actually resulted in very good results for all involved claimants. He stated the duplicate fee billings were the result of oversight and were not intentional.

**HENRY THOMAS JONES, IV, Bar No. 97018, of Little Rock and Sherwood, Arkansas,** in No. 2002-118, on a complaint by Mary Worthen, by Findings and Consent Order filed January 17, 2003, was suspended for thirty (30) days and fined \$1,000 for violations of Rules 1.3, 1.4(a), 3.2, 3.4(c), and 5.5(a). In June 2001, Ms. Worthen hired Jones to represent her in a dispute with a book publishing company over royalties and certain rights to a book she had written and the company had published. Jones failed to timely file suit as directed by his client, failing to inform

his client until February 2002 that his license had been administratively suspended during the time he represented her. Jones failed to timely respond to the client's request for information about her matter. Jones failed to timely respond to discovery, as ordered by the trial court, and was sanctioned \$250 by the court for this failure. Jones failed to pay his Supreme Court license fees for 2001 and 2002 and failed to comply with the CLE requirements for the year ending June 30, 2001, yet he continued to practice law while administratively suspended for these violations.

**REGINALD SHELTON McCULLOUGH, Bar No. 85102, of Little Rock, Arkansas**, in No. 2001-142, on a complaint by Janet Ball, by Findings and Order filed March 5, 2003, was suspended for thirty (30) days effective April 18, 2003, placed on probation for 24 months, ordered to take an additional six hours of CLE in 2003, and ordered to pay restitution of \$3,250.00 and costs of \$102.75, for violations of Rules 1.3, 1.4(a) and 1.16(d). Mr. McCullough was hired in 2000 by Mrs. Ball to have her husband, Gaylon Ball, moved from a federal prison in Texas to a state prison in Arkansas. McCullough's effort for the Balls apparently consisted only of four letters he wrote in January 2001, one of which went to Mr. Ball. Mrs. Ball requested an accounting and a refund of her funds. Mr. McCullough stated he did more work on the Ball case, but his response did not show any proof of it.

**REGINALD SHELTON McCULLOUGH, Bar No. 85102, of Little Rock, Arkansas**, in No. 2002-027, on a complaint by John Beck, by Findings and Order filed March 5, 2003, received the same concurrent sanctions set out in 2001-142 above, but with a \$1,000 fine and costs of \$88.15, for violations of Rules 1.1, 1.3, 1.4(a), 1.4(b), 1.16(d), 3.4(c) and 8.4(d). In 1996, McCullough was to represent Beck in a suit against Sheriff Judy Pridgen and Saline County on a 40% contingent fee basis, with McCullough advancing costs for the unemployed Beck. Suit was filed in federal court in March 1997, and discovery problems ensued regarding the taking of Beck's deposition. McCullough failed to comply with various court orders on discovery, and filed a motion for voluntary non-suit, which was denied. The trial judge then dismissed Beck's suit with prejudice. At Beck's insistence, and without properly explaining the effect of the dismissal with prejudice, McCullough refiled the suit exactly one year later. Communication between client and attorney then became difficult. McCullough made false statements to his client about the status of the suit. McCullough failed to provide Beck with a copy of his file when it was requested.

**REGINALD SHELTON McCULLOUGH, Bar No. 85102, of Little Rock, Arkansas**, in No. 2002-058, on a complaint by Shirley Williams, by Findings and Order filed March 5, 2003, received the concurrent sanctions set out in 2001-142 above, plus costs of \$80.00. Williams hired McCullough in December 1996 to represent her in a suit against the City of Little Rock's police department over her son's death. McCullough stated he advised her up-front that her claim was doubtful, but maybe he could get her a settlement offer by filing suit. He stated she was a difficult client from the beginning, especially on discovery responses, but she never terminated his representation. He told her they had a court date of March 12, 2001. Due to difficulty in contacting her attorney and getting information about her court date, Ms. Williams finally contacted the court clerk. She was told her suit had been dismissed with prejudice because Mr. McCullough had not responded to discovery and court orders to compel responses. Mr.

McCullough also stated he was enduring health problems during this time period.

**CHARLIE RUDD, Bar No. 89087, of Hot Springs, Arkansas,** in No. 2002-114, on a complaint by Lucy Newcomb, by Findings and Order filed March 12, 2003, was suspended for three (3) months, fined \$500 and ordered to pay costs of \$50 for violations of Rules 1.3, 1.4(a) and 1.16(d). He was also fined \$1,000 for failing to respond to the complaint. Newcomb hired Rudd and paid him \$800 to file suit to attempt to obtain custody of her grandchildren. She later told Rudd to close her file, take out what she owed him, and refund the unearned balance to her. Rudd failed to file any pleadings for her, apparently did nothing for her, and failed to refund any unearned fee balance.

**WOODSON D. WALKER** of Little Rock, Bar No. 76135, in CPC No. 2001-088, on June 27, 2002, was suspended for twelve (12) months and ordered to pay costs of \$858.64, on a complaint by attorney Lizabeth Lookadoo for her client State Farm Automobile Insurance Company (“State Farm”) for violating Model Rules 1.4(a), 1.15(b) and 8.4(d). Without notice to State Farm, Walker settled a personal injury claim for his client Buckley in March 1998, after agreeing in writing in October 1997 to protect the \$4,132.07 subrogation interest State Farm had in payments to its insured Buckley. State Farm learned of the settlement in December 1998 from the carrier for the other party, and thereafter made repeated demand on Walker for its subrogation funds from the settlement. Walker’s settlement sheet reflected the State Farm claim, but there was no proof it was paid. State Farm finally sued Walker in November 2000, and got a default judgment in March 2001, which was paid in March 2002, four years after the settlement and after Lookadoo filed her disciplinary complaint in 2001. Walker answered that the Buckley file was misplaced in an office move and he was trying to verify the obligation. He allowed the default to be taken against him on advice of counsel. Action became final in 2003 when appeal to the Supreme Court was dismissed.

#### **REPRIMANDS:**

**G. B. “BING” COLVIN, III, Bar No. 66014, of Monticello, Arkansas,** in No. 2002-137, on a referral from the Arkansas Supreme Court, by Findings and Order filed March 10, 2003, was reprimanded and assessed costs of \$50 for violations of Rules 1.3 and 8.4(d) for failing to timely file his client’s appellate brief in Ross Lamar Burnett v. State, No. CR-2002-336.

**JOHNNY E. GROSS, Bar No. 95156, of Bentonville, Arkansas,** in No. 2002-150, on a referral by the Arkansas Supreme Court, by Findings and Order filed March 6, 2003, was reprimanded, fined \$1,000, and assessed costs of \$50 for failing to respond to the Committee’s complaint served upon him.

**DAVID MARK GUNTER, Bar No. 94004, of Hope, Arkansas,** in No. 2002-098, on a referral from the Arkansas Supreme Court in Jerry Edmonds v. State, No. CR-2001-1050, by Findings and Consent Order filed February 7, 2003, was reprimanded and ordered to pay costs of \$50 for violating Rules 1.3, 3.4(c) and 8.4(d). Mr. Gunter failed to timely file the record in this appeal.

**DAVID MARK GUNTER, Bar No. 94004, of Hope, Arkansas**, in No. 2002-134, on a referral from the Arkansas Supreme Court in Rufus A. Box v. State, No. CR-2002-751, by Findings and Consent Order filed February 7, 2003, was reprimanded and ordered to pay costs of \$50 for violating Rules 1.3 and 8.4(d). Mr. Gunter failed to timely file the notice of appeal in this case.

**DAVID MARK GUNTER, Bar No. 94004, of Hope, Arkansas**, in No. 2002-186, on a referral from the Arkansas Supreme Court in Harmon Williams v. State, No. CR-2002-1075, by Findings and Consent Order filed February 7, 2003, was reprimanded and ordered to pay costs of \$50 for violating Rules 1.3 and 8.4(d). Mr. Gunter failed to timely file the record in this appeal.

**WILLIAM RAY NICKLE, Bar No. 86135, of Jonesboro, Arkansas**, in No. 2002-109, on a complaint by Brandon and Charlene Harper, by Findings and Order filed January 3, 2003, was reprimanded and ordered to pay costs of \$50 for violations of Rules 1.4(b) and 1.5(b). Nickle was hired in late 2000 and later paid \$1,000 to represent Mrs. Harper on a child support matter and before the state nursing board on an appeal of her suspension. Nickle claimed that representation in a child support matter was not discussed until much later. The parties had disagreements as to whether and when the legal fees were paid, and got involved in a subsequent problem when the Harpers had a dispute with a local auto dealer over purchase of a vehicle, and a claim by Nickle that the Harpers used his name without permission in the dispute with the dealership. The Committee found Nickle did not adequately explain to the Harpers the basis for his fees to them, that he was seeking additional fees from them, and would use their non-payment of these additional fees as a basis for withdrawing as Mrs. Harper's attorney.

#### **CAUTIONS:**

**JAMES SCOTT ADAMS, Bar No. 81001, of Morrilton, Arkansas**, in No. 2002-144, on a referral from the Arkansas Supreme Court in CR-2002-353, Carl Gene McGhee v. State, by Findings and Consent Order filed February 7, 2003, was cautioned for violating Rules 1.3 and 8.4(d) for failing to perfect his client's appeal after timely filing a notice of appeal, and for causing a delay of three years in the resolution of his client's appeal.

**FREDYE MAC LONG ALFORD, Bar No. 76165, of Texarkana, Texas**, in No. 2002-111, on a complaint by Elizabeth Millwood, by Findings and Consent Order filed March 4, 2003, was cautioned, fined \$1,000, and assessed costs of \$50 for violating Rules 1.4(b) and 8.4(d). Ms. Long represented Ms. Millwood in a divorce in which Mr. Alford represented Mr. Millwood. Long and Alford became good friends during the short course of the case. Long failed to disclose this developing social relationship (Long and Alford later married) to Ms. Millwood before Long filed a motion to withdraw, so Ms. Millwood had no chance to make an informed decision about continuing her representation by Ms. Long. The manner in which Ms. Long handled her motion to withdraw did not give Ms. Millwood reasonable notice so she could have had the chance to object to the motion, if she so desired.

**T. DAVID CARRUTH, Bar No. 87027, of Clarendon, Arkansas,** in No. 2002-092, on a complaint by Keith Grayson, by Findings and Consent Order filed January 17, 2003, was cautioned and ordered to pay restitution of \$400 for violating Rules 1.6(a), 1.9(a), 1.9(c), 1.16(d), 3.3(a)(1), 3.4(c), 8.4(c), and 8.4(d). Mr. Carruth was hired to represent Mr. Ho on a contingent fee contract in a personal injury case in early 1997. Carruth filed suit for Ho. The contract called for a percentage of recovery, but if Carruth was discharged by Ho, then Carruth would have a lien against any recovery based on his time expended at \$100 per hour. Ho discharged Carruth in June 2001, and Carruth filed both a lien claim for \$22,366.42 (based on \$150 per hour) and filed an intervention in his own client's pending lawsuit, making certain disclosures therein that revealed confidential client information. The order entered in August 2001, relieving Carruth as Ho's counsel directed him to deliver a copy of his extensive case file to Mr. Ho for use by Ho and his new counsel, when retained. Mr. Carruth failed to deliver the file copy. Mr. Grayson, Ho's new counsel, had to go to some lengths, over six months, and pay out \$400 to get a partial copy of the file, before Carruth allowed Grayson to take the file and make a full copy in Little Rock. Carruth filed an amended lien claim for \$15,953.92, based on the correct \$100 hourly rate, only after the Office of Professional Conduct pointed out his use of the incorrect \$150 hourly rate.

**MICHAEL W. FREY, Bar No. 96022, of Camden, Arkansas,** in No. 2002-140, on a complaint by Yvonne Young, by Findings and Order filed January 30, 2003, was cautioned, fined \$1,000, ordered to pay restitution to Young of \$800, and assessed costs of \$50, for violating Rules 1.1, 1.3, 1.4(a), 1.4(b), 3.2, and 8.4(a). Young hired Frey and paid him the \$800 fee she said he quoted to file a Chapter 7 bankruptcy for her, which he filed in March 2002. Frey failed to timely file schedules for her and the case was dismissed in June 2002. Young was unable to contact Frey to get information on her case. Frey responded that he quoted a fee of \$850 and that Young failed to provide him certain information needed to complete her paperwork. The Committee found no documentation to support Frey's claims.

**STEPHEN KYLE HUNTER, Bar No. 85077, of Pine Bluff, Arkansas,** in No. 2002-097, on a referral by the Arkansas Supreme Court in No. CR-1994-113, Lenzy McCullough v. State, by Findings and Consent Order filed March 5, 2003, was cautioned for violating Rules 1.3 and 3.4(c). Mr. Hunter failed to timely file the record in his client's appeal.

**ROBERT D. KLOCK, Bar No. 76066, of Lowell, Arkansas,** in No. 2002-131, on a complaint by the Office of Professional Conduct based on a published opinion of the Arkansas Supreme Court in No. CR-2001-787, Angel Flores v. State, by Findings and Consent Order filed January 9, 2003, was cautioned for violating Rules 1.1 and 8.4(a). The court found Mr. Klock's representation of Mr. Flores in a murder trial, at which he received a life sentence, was "ineffective assistance of counsel," and reversed and remanded the matter for a new trial with other counsel.

**ROY C. "BILL" LEWELLEN** of Marianna, Bar No. 82093, in CPC No. 2000-134, on August 28, 2002, was cautioned on a referral from the Arkansas Supreme Court arising from his

participation in the case of Terrance Robinson and Tamagum Robinson v. State, CR-99-112, for violating Model Rules 1.1 and 1.3. After a trial at which they were represented by other counsel, that counsel filed a motion for new trial for them on May 10, 1999. The judgment and commitment order was not filed until May 24, 1999, by former counsel. After a hearing on the motion for new trial July 8, Mr. Lewellen filed the notices of appeal on July 8. On October 18, 2000, the Supreme Court held that the motions for new trial were void because they were filed before the judgments were entered. The notices of appeal were filed 45 days after entry of judgment. The posttrial motions did not extend the period of time to file the appeal, so the appeal was untimely. Lewellen filed a motion for reinstatement of appeal/belated appeal and took responsibility. The Court granted his motion for belated appeal and referred the matter to the Committee. Mr. Lewellen answered that he relied upon S. Ct. Crim. Rule 2(a)(2), ACA 16-89-130(b), and ARCrP 33.3, as it existed in 1999. He stated he was not aware of Brown v. State, 333 Ark. 698, 970 S.W.2d 287 (1998), where the Court decided that posttrial motions were ineffective because they were filed before the judgment was entered, as this case was not listed in the case notes to ACA 16-89-130(b). Affirmed on appeal to the Arkansas Supreme Court in 2003.

**CLAUDELL WOODS, Bar No. 83188, of Magnolia, Arkansas**, in No. 2002-177, on a referral by the Arkansas Supreme Court in No. CR-2002-177, James Neal v. State, by Findings and Order filed March 10, 2003, was cautioned for violating Rules 1.3 and 8.4(d). Mr. Woods failed to timely file the record in his client's appeal.

#### **DIVERSION:**

**BILLY ELBERT ROSS, Bar No. 68056, of Blytheville, Arkansas**, in No. 2002-165, by Findings and Order filed February 28, 2003, was referred to the Arkansas Lawyers Assistance Program (ArLAP), and imposition of further diversion, sanctions, fines and costs was suspended for six months pending reports to the Committee of his progress at ArLAP. Ross was judicially referred for appearing in Osceola District Court on September 11, 2002, in an intoxicated condition, leaving court after being ordered to remain there, and for being arrested for a DWI shortly after leaving court. He was found to have violated Rules 1.3, 3.2, 3.4(c), 8.4(b) and 8.4(d).

#### **2. Final actions from March 26, 2003, through July 11, 2003.**

#### **DISBARMENTS FILED:**

**KENNETH G. FUCHS, #81063, Conway**, as **Arkansas Supreme Court No. 03-633**, a petition for disbarment was filed June 6, 2003, based on Committee action in No. 2003-001, a complaint by Greg Fiddler, No. 2003-010, a complaint by Circuit Judge John Dan Kemp, and No. 2003-013, a complaint by Terry Turley. The petition was dismissed on motion by the Committee by Court Order on July 3, 2003, after the Court accepted the surrender of Mr. Fuchs' law license June 12, 2003.

**MICHAEL A. PRICE, #81133, Sherwood, as Arkansas Supreme Court No. 02-1328**, a petition for disbarment was filed December 10, 2002, based on Committee action in No. 2002-112, a complaint by Timothy Stallings and Summer Emley, and No. 2002-119, a complaint by Judge Susan Webber Wright. Trial was conducted before Special Judge Jack Lessenberry in April 2003, and the case is pending.

**JAMES S. SCOTT, JR., #87154, North Little Rock, as Arkansas Supreme Court No. 03-308**, a petition for disbarment was filed March 19, 2003, based on Committee action in No. 2002-128, based on Scott's felony conviction in Pulaski Circuit Court, which is on appeal. The Court has assigned Honorable John Cole as Special Judge to preside over the disbarment proceedings, which are being held in abeyance pending the outcome of the appeal.

**SAM WHITFIELD, JR., #82056, Helena, as Arkansas Supreme Court No. 03-768**, a petition for disbarment was filed July 3, 2003, based on Committee action in No. 2002-166, a complaint by Linda Watson, No. 2002-167, a complaint by Delmar McIllwain, and No. 2003-017, a complaint by Willie Ann Westberry. Service of process on Mr. Whitfield is pending.

#### **SURRENDERS:**

**KENNETH G. FUCHS, #81063, Conway, in Committee No. 2003-076 and Arkansas Supreme Court No. 03-633**, on June 12, 2003, the Court accepted the surrender of Mr. Fuchs' law license in lieu of pending disbarment proceedings from a petition for disbarment filed June 6, 2003.

#### **CONTEMPTS:**

**KENNETH G. FUCHS, #81063, Conway, in Arkansas Supreme Court No. 02-1234**, on June 5, 2003, was found to be in contempt of the Supreme Court for failure to pay fines and restitution ordered by the Committee in three cases on September 3, 2002, and for failure to produce trust account bank records to the Office of Professional Conduct pursuant to two subpoenas issued in 2002. Mr. Fuchs was ordered jailed until he complied with these two items. He was jailed from June 5 to June 11, 2003, when his compliance with the Court's Contempt Order was dissolved as being rendered moot by the Court's acceptance of Mr. Fuchs' surrender of his law license June 12, 2003.

#### **REINSTATEMENTS FROM SUSPENSION:**

**REGINALD SHELTON McCULLOUGH, #85102, Little Rock, in No. 2003-073**, on June 20, 2003, was reinstated by Committee panel vote to the practice of law after a 30 day suspension that began April 18, 2003.

#### **SUSPENSIONS:**

**PAUL E. HERROD, #84070, North Little Rock, in No. 2002-084**, on a complaint by David Clark, by Order filed May 16, 2003, for violations of Model Rules 1.16(b)(1), 3.3(a)(2), 3.4(b), 3.4(c), 4.1(b), 8.4(c), and 8.4(d), was suspended for three (3) months effective that date, fined \$1,500.00, ordered to take two additional CLE “ethics” hours, ordered to pay costs of \$204.94, and required to send a letter of apology to the presiding judge in the court case, on a guilty plea for his conduct in representing Lance Burrow in Faulkner Circuit Court on criminal charges in 2001. Herrod essentially allowed his client Lance Burrow to go through the court proceeding, and receive a probation sentence, using the name of his brother, Thomas Burrow. Lance Burrow was on probation from a drug offense at the time, and Thomas had no criminal record. Herrod failed to correct the error even though he was aware of his client’s “borrowed identity” at the time. The deception was discovered when Lance failed to report to his probation office in Pulaski County. Herrod claimed he felt the “client confidence” requirement of Model Rule 1.6 kept him from disclosing his client’s false statements made in court. Herrod also used the wrong name for his client in some pleadings he prepared and filed.

**ELIZABETH B. TURNER, #90181, Little Rock, in No. CIV-2001-12175, Pulaski Circuit Court**, by an Agreed Order of Discipline entered April 28, 2003, concluded a disbarment proceeding by accepting a five (5) year suspension that started September 20, 2001, and agreed to pay a fine of \$9,000.00 in three equal annual installments. Ms. Turner was involved in a series of events involving then-State Senator Nick Wilson and others in a child support program initiated by the State of Arkansas in mid-1997, which led to the filing of federal criminal charges against Wilson and many of the participants, but not Turner. Turner was a cooperating government witness. At Wilson’s direction Turner worked with others to put together a plan by which she billed another lawyer for work she did not perform, and then she paid a portion of her check to Wilson. She also prepared grant applications for the new State attorney ad litem program and was awarded and funded \$375,000 to operate such programs in two judicial districts. Other attorneys in on the plan were to receive substantial sums from her from her program grants for consulting fees or for legal work. After a few months, she resigned her position with the program and returned all but about \$6,500 of the funds to the State. She agreed her conduct violated Model Rules 8.4(b) (a criminal act), and 8.4(c) (conduct that involved dishonesty, fraud, deceit or misrepresentation).

**WOODSON D. WALKER, #76135, Little Rock, in No. 2001-088**, by agreement began a one year suspension of his law license on April 21, 2003, when he dismissed his appeal in the Supreme Court, Case No. 03-86, of the Committee’s Order of Suspension filed June 27, 2002, in Committee No. 2001-088, a complaint by Lizabeth Lookadoo for State Farm Bureau Automobile Insurance Company, for violating Model Rules 1.4(a), 1.15(b) and 8.4(d). Without notice to State Farm, Walker settled a personal injury claim for his client Buckley in March 1998, after agreeing in writing in October 1997 to protect the \$4,132.07 subrogation interest State Farm had in payments to its insured Buckley. State Farm learned of the settlement in December 1998 from the carrier for the other party, and thereafter made repeated demand on Walker for its subrogation funds from the settlement. Walker’s settlement sheet reflected the State Farm claim, but there was no proof it was paid. State Farm finally sued Walker in November 2000, and got a default

judgment in March 2001, which was paid in March 2002, four years after the settlement and after Lookadoo filed her disciplinary complaint in 2001. Walker answered that the Buckley file was misplaced in an office move and he was trying to verify the obligation. He allowed the default to be taken against him on advice of counsel. Walker was also ordered to pay costs of \$858.64.

#### **REPRIMANDS:**

**ANN C. DONOVAN, #78043, Fayetteville, in No. 2002-152,** by Order filed May 28, 2003, on a complaint by Kara New, for violations of Model Rules 1.4(a) and 1.16(d), was reprimanded and ordered to pay costs of \$50. The News hired Donovan to represent them in a private adoption and paid her a partial fee of \$1,500. The birth mother was in prison. Communications problems arose between the News and Donovan. The Department of Human Services apparently got the new baby and the News became disillusioned with Donovan and demanded a refund of their fee. Donovan told them she would credit the fee on the next adoption, which the News declined. No fee refund was made.

**JOHN C. GOODSON, #90018, Texarkana, in No. 2002-104,** by Order filed April 7, 2003, on a complaint by David W. Fisher, M.D., now of McAllen, Texas, and formerly of Texarkana, for a violation of Model Rule 1.15(b), was reprimanded and ordered to pay costs of \$50. In a personal injury case, Goodson issued a “letter of protection” to Dr. Fisher for his two clients’ medical treatment totaling \$4,404; failed to deliver the appropriate settlement funds to Dr. Fisher, who had a medical lien filed; then claimed he was unable to locate Dr. Fisher, so distributed the balance of the settlement funds to his clients. Dr. Fisher contacted Goodson on Fisher’s new letterhead and was told the case settled for less than anticipated and Goodson had no funds left to pay Dr. Fisher.

**HEATHER P. HOGROBROOKS, #92029, Memphis, TN, in No. 2003-006,** by Order filed May 14, 2003, on a complaint by Robert Lee Davis, was reprimanded and ordered to pay costs of \$50 for violations of Model Rules 1.1 and 8.4(d). Ms. Hogrobrooks represented Davis in a criminal matter in 1995-96. He was tried and sentenced to thirty-three years in prison. She filed a notice of appeal and his abstract and brief, raising only the issue of “speedy trial.” In June 1996, the Supreme Court issued its opinion holding the abstract was so deficient that the conviction must be affirmed. Ms. Hogrobrooks responded to the Committee that everything the Court needed to fully consider the “speedy trial” issue was in her abstract, and that she had no control over the appellate court, having fulfilled her duty to her client.

**DANIEL J. KROHA, #75073, Hot Springs, in No. 96-112,** by Consent Order filed June 20, 2003, on a complaint by Theodore Smith, was reprimanded, fined \$250, and ordered to pay costs of \$50 for violations of Model Rules 1.3, 1.49a), 8.4(c) and 8.4(d). Mr. Kroha was hired and paid a \$500 retainer in 1994 to represent Mr. Smith in an age discrimination claim. Smith was advised to obtain a right-to-sue letter from the EEOC and then come see Kroha for Kroha to file a federal suit. After Kroha filed suit in March 1995, Smith had great difficulty communicating with Kroha. In January 1996 Smith contacted another lawyer whose office was across the hall from Kroha’s

office and requested assistance in contacting Kroha. In March 1996 Smith learned his suit had been dismissed. The other attorney advised Smith that Kroha was too embarrassed to tell Smith what had happened. The suit was dismissed in August 1995, several months before Kroha's personal assurances to Smith that everything was "OK," because of no service on the defendant. Kroha could not be located for service of the Committee's ballot vote order until early 2003. He then responded that he has essentially left private law practice in 1996 due to personal problems, and worked at other non-legal jobs.

**DANIEL J. KROHA, #75073, Hot Springs, in No. 97-047**, by Consent Order filed June 20, 2003, on a complaint by Mary Helen Ayers, was reprimanded, fined \$250, and ordered to pay costs of \$50 for violations of Model Rules 1.3, 1.4(a), 1.16(d) and 8.4(d). Mr. Kroha was hired to represent Ms. Ayers in a claim arising from a motor vehicle collision in 1993. Starting in 1996 she was unable to contact Kroha about her matter. Kroha filed suit for her in April 1996 and later got an extension of time to perfect service. In November 1996 Kroha filed an amended complaint and took no further action for her. Her claim is now time-barred. Kroha could not be located for service of the Committee's ballot vote order until early 2003. He then responded that he has essentially left private law practice in 1996 due to personal problems, and worked at other non-legal jobs.

**REGINALD SHELTON McCULLOUGH, #85102, Little Rock, in No. 2002-110**, by Order filed May 28, 2003, on a complaint by Sedrick and Kathy Mays, was reprimanded and ordered to pay costs of \$50 for violations of Model Rules 1.3, 1.4(a), 1.4(b), and 8.4(d). McCullough was hired and paid a retainer of \$1,850 in January 2001 to represent the Mays, previously his clients, in a suit against them by a builder arising out of construction work on their property. The final installment was alleged to be \$67,000, which the Mays were holding. McCullough filed an answer for them, but not the promised counter-claim for fraudulent or defective work. No more pleadings were filed for the Mays and judgment was entered against them in September 2001. Judgment was entered because the court struck the Mays' answer for failure to comply with orders to compel discovery, which orders McCullough had not provided to his clients. Eight days later McCullough filed a motion for the recusal of the trial judge, the timing of which puzzled his clients. Plaintiff then successfully garnished the Mays' bank account for over \$80,000. The Mays complained that McCullough did not respond to their frequent requests for information about their case and refused to speak with them after the garnishment. They claimed they got their information about the case from the clerk's office. McCullough said that Mrs. Mays told him not to take further action in the case on their last contact.

**GENE E. McKISSIC, #76075, Pine Bluff, in No. 2002-157**, by Order filed April 9, 2003, on a Per Curiam Order referral from the Supreme Court in a case involving Brian Gooden, Appellant, was reprimanded, fined \$150, and ordered to pay costs of \$50 for violations of Model Rules 1.3, 3.4(c) and 8.4(d). McKissic filed a notice of appeal for Gooden in 1995, but did not file the record until he was directed to do so by the Supreme Court in 2001. He failed to timely file Gooden's brief, and was found to be in contempt by the Court, fined \$250, and referred to the Committee.

**RONALD CAREY NICHOLS, #90009, Carlisle, in No. 2003-004**, by Order filed July 9, 2003, on a Per Curiam Order referral from the Supreme Court, was reprimanded, fined \$250, and ordered to pay costs of \$50 for violations of Model Rules 3.2 and 8.4(d) in a case involving Charles Dugger. Nichols filed a notice of appeal for Dugger in March 2001, but failed to perfect the appeal. Dugger filed a motion for belated appeal. Nichols had not been relieved as Dugger's counsel, and he failed to comply with the Court's Order of October 10, 2002, to lodge Dugger's appeal record. Nichols pled guilty to a contempt charge before the Court, which referred him to the Committee. Nichols responded that he went to the clerk's office to pick up the transcripts and was told they had already been picked up by a lady he was subsequently unable to identify. Nichols also stated that Dugger owed him over \$3,000.

**JAMES R. PATE, #70055, Russellville, in No. 2003-029**, by Consent Order filed May 28, 2003, on a complaint by Estalee Ford, for violations of Model Rules 1.1, 1.3, 1.4(a), 1.4(b), 8.4(a), 8.4(c), and 8.4(d), agreed to a reprimand, a fine of \$950, costs of \$50, and to make restitution to the client of \$2,500. In May 1991, Mr. Pate accepted representation of the Fords in a poultry grower action against a large poultry company for breach of contract, on a contingency fee plus a retainer of \$2,500. Suit was filed but never set for trial. The case was dismissed without prejudice in September 1994, but Mr. Pate did not notify his clients of this action. As late as 2002, Mr. Pate was advising Mrs. Ford (Mr. Ford had died) he was still working on the case and it could still go through. The Ford claim is now time-barred. Mr. Pate responded that he worked on many matters over the years for the Fords, trying to save first their poultry farm and later just their homestead for them when they were in bad financial shape. He said he did not know the Newton County suit had been dismissed until he received the Committee's complaint in 2003. He expressed remorse for the situation and promptly offered a consent resolution to try to mitigate some of the client's loss.

**RALPH M. PATTERSON, #68048, North Little Rock, in No. 2002-179**, by Order filed July 9, 2003, on a complaint by Terry Ezell, was reprimanded and ordered to pay costs of \$50 for violations of Model Rules 1.3, 1.4(a), 3.4(c) and 8.4(d). Mr. Patterson represented Mr. Ezell in an attempt to get his child support modified. Ezell's ex-wife defaulted at a hearing in April 2000, the judge ordered seven months of child support to be removed from Ezell's arrearage, and Patterson was to submit the order to the court, which he failed to do. Ezell did not hear from Patterson again after the hearing. The court wrote Patterson in June 2000, asking for an order. Ezell called Patterson from his out of state home in March 2002 asking about the matter. Patterson responded that he was out of the office during this period with major health problems, and admitted he had failed to obtain the favorable order from the 2000 hearing.

**PAUL E. REVELS, #91110, DeQueen, in No. 2002-056**, by Order filed April 9, 2003, on a complaint based on information obtained by the Office of Professional Conduct relating to the representation of Andrew Harvey Firm by Revels in 2000-2001 and a partial audit of Revels' trust account, for violations of Model Rules 1.3, 1.15(a)(1) and 8.4(c) was reprimanded, fined \$2,500 and ordered to pay costs of \$125. Mr. Revels represent Mr. Firm in a claim against an insurance company concerning damages to Firm's truck, which claim was settled by payments to

Mr. Revels which were not deposited immediately because Mr. Firm was not sure if he wanted to accept the amount. Mr. Firm thought Revels had filed a lawsuit for Firm because Revels presented him with a purported order from a court suit which had a case number on it. Revels prepared this false document and another one, which purported to be a judgment obtained for Firm, and on which Revels purported to have a garnishment issued. Revels later settled Firm's matter in a manner that Firm found satisfactory and Firm thereafter declined to cooperate with the Office of Professional Conduct in its investigation of his complaint. Revels' IOLTA trust account records were subpoenaed and revealed (1) the Firm settlement checks were held for four months before deposit, (2) the funds were not maintained in the trust account until paid over to Mr. Firm until June 3, 2001, eleven months after receipt by Revels, and (3) the account balance fell below the minimum amount that should have been in it for the Firm matter during three separate periods.

**CHARLES L. STUTTE, #83174, Fayetteville, in No. 2001-133, by Order filed July 2, 2003, on a complaint by Lendell Wilson, was reprimanded, fined \$1,000, and ordered to pay costs of \$50 for violations of Model Rules 4.2, 4.4, 1.15(a), 1.15(b), 1.15(c), 1.15(f), 8.4(a), 8.4(c) and 8.4(d).** Stutte represented Tammy Wilson in a personal injury claim. As part of their divorce, in 2001 Tammy Wilson assigned her interest in a settlement from the claim to her ex-husband, Lendell Wilson. Stutte communicated with Mr. Wilson even though he knew Mr. Wilson was represented in the matter by an attorney. In February 2001, Stutte received \$25,000 in settlement funds from the insurance company in two checks, and disbursed \$4,000 to his client, Ms. Wilson, whom he says he not seen or been able to contact since. Mr. Stutte paid Continental Casualty \$14,204 on it subrogation lien in Ms. Wilson's matter. Between February 9, when he deposited the settlement funds in his trust account and February 23, when he sent the check to Continental Casualty, the balance in Stutte's trust account fell several thousand dollars below the amount needed to pay Continental Casualty. No part of the settlement funds was ever paid to Mr. Wilson. Stutte deposited the insurance settlement check into an account that was not his approved IOLTA trust account.

**TONY THURMAN, #99037, Mountain View, in No. 2001-134, by Order filed April 23, 2003, on a complaint by Neil Deininger, was reprimanded on the misconduct, and also separately fined \$500 for failure to file a response to the Committee's complaint, for violations of Model Rules 1.2(a), 1.3, 1.4(a) and 3.2.** In 2001 the Nishiuchis hired Mr. Thurman to represent them in a Chapter 13 bankruptcy. They had tax liabilities. Mr. Nishiuchi had health problems, could not work, and they could not make required payments during the life of a Chapter 13 plan due to reduced income. The Trustee moved to dismiss their plan. The Nishiuchis consulted another attorney with substantial tax experience, who advised them to dismiss their bankruptcy and to file an Order of Compromise with the taxing authorities in an effort to deal with their tax liabilities, which were not dischargeable in their bankruptcy. The tax attorney so advised Mr. Thurman. Thurman thereafter filed a motion to convert their Chapter 13 plan to a Chapter 7 liquidation, without notifying his clients of this action. Communications ensued among the clients, the tax attorney and Mr. Thurman, to the effect that Thurman was pursuing a course of action the clients were not desiring or authorizing. Thurman failed to dismiss the bankruptcy even after receiving

written authorization from his clients to do so. The court dismissed the bankruptcy for failure to convert. Thurman's conduct delayed an Offer of Compromise for five months, as one could not be filed while a bankruptcy was pending.

**JAMES O. WYRE, II, #94056, Conway (formerly of Fayetteville),** in No. 2002-102, by Order filed April 9, 2003, on a complaint by Bankruptcy Judge Robert F. Fussell, was reprimanded, ordered to pay costs of \$50, and referred to the Arkansas Lawyer Assistance Program (ArLAP), and further action and possible sanctions deferred by the Committee for six months pending a review of his progress at ArLAP, for violations of Model Rules 1.16(d), 3.3(a)(1), 3.4(c), 8.4(c) and 8.4(d). Mr. Wyre represented a client in an adversarial proceeding in a bankruptcy. A notice of a new trial setting on December 18, 2001, was sent to Wyre at the firm where he practiced when he entered his appearance for the client in October 30, 2001. In November Wyre left the firm, stated he attempted to give the file back to another firm attorney, but the attorney refused to take it. Wyre filed an amended answer December 4, but failed to comply with a pre-trial order, which required filing a list of witnesses and exhibits. Wyre and his client failed to appear for trial, which took place without their presence. Wyre explained that during the week before the trial a number of personal problems hit him. He claimed he contacted the court clerk and advised he would not be at court on the trial date. The court issued a "show cause" order to Wyre and granted judgment to the other party for \$8,632.50 plus costs. At the contempt hearing, Wyre advised the court he was closing his law practice and would not be practicing law in the future, so the court did not sanction him, but instead referred him to the Committee. Thereafter Wyre shipped all his client files to the court with no return address and no indication he had contacted his clients to advise them of his situation, The court was required to attempt to contact his clients and explain the situation. A new attorney filed a motion for relief from judgment for Wyre's former client in the bankruptcy matter, a consent judgment for \$4,000 was entered, and Wyre paid \$1,000 toward satisfaction of the judgment. Wyre did return to the law practice.

#### **CAUTIONS:**

**TONYA MICHELLE ALEXANDER, #95099, West Memphis,** in No. 2002-171, by Order filed July 9, 2003, on a complaint by Jerry Dewayne Johnson, was cautioned and ordered to pay costs of \$50 for violations of Model Rules 1.1 and 8.4(d). Johnson paid \$900 to Ms. Alexander to represent him in an appeal from the denial of his request for post-conviction relief. Alexander failed to abstract the record of the revocation hearing, so the Court would not consider the issue involving ineffective assistance of counsel.

**ROBERT R. CORTINEZ, SR., #73022, Little Rock,** in No. 2001-058, on March 15, 2002, was cautioned by the Committee on a complaint by Carolyn Russell, for violating Model Rule 1.5(a). The facts of the case were printed in the Summer 2002 issue of the magazine. In Case No. 02-822, the Arkansas Supreme Court affirmed the Committee on appeal and cross-appeal in a decision issued May 1, 2003.

**N. DONALD JENKINS, JR., #94231, Alma, in No. 2002-183**, by Order filed July 2, 2003, on a complaint by Dierk Van Keppel, was cautioned, fined \$500, and ordered to pay costs of \$50 and restitution to Van Keppel of \$250 for violations of Model Rules 1.1, 1.2(a), 1.3, and 1.4(a). In March 2001 Van Keppel, a Kansas resident, hired and paid Jenkins to represent him in a debt collection matter. Jenkins filed suit in Crawford County. A motion for dismissal alleged wrong venue. Jenkins filed a response. Van Keppel thereafter had difficulty communicating with Jenkins concerning discovery matters. In June 2002, Van Keppel contacted another Arkansas attorney for assistance, and wrote terminating Jenkins' services. New counsel learned the suit had been dismissed in October 2001, which fact Jenkins had failed to inform Van Keppel.

**WILLIAM BRUCE LEASURE, #83109, Little Rock, in No. 2002-169**, by Consent Order filed May 28, 2003, on a complaint of solicitation, was cautioned, fined \$250 and ordered to pay costs of \$50 for a violation of Model Rule 7.3(d). In July 2001, following his involvement in a motor vehicle collision, Mr. Leasure sent to Henry Floyd a solicitation letter that did not disclose how the information contained therein was obtained.

**ROY C. "BILL" LEWELLEN, #82093, Marianna, in No. 2000-134**, on August 28, 2002, was cautioned on a referral from the Arkansas Supreme Court arising from his participation in the case of Terrance Robinson and Tamagum Robinson v. State, CR-99-112, for violating Model Rules 1.1 and 1.3. The facts of the case were printed in the Spring 2003 issue of this magazine. In Case No. 02-1199, the Arkansas Supreme Court affirmed the Committee in a decision issued June 12, 2003.

**SCOTT M. McELVEEN, #99086, Fayetteville, in No. 2002-168**, by Consent Order filed June 20, 2003, on a complaint by Tom Clowers, was cautioned and ordered to pay costs of \$75 for violations of Model Rules 1.1 and 1.4(b). Mr. McElveen represented Mr. Clowers in a divorce. McElveen failed to explain the law dealing with COBRA health insurance issues to his client. After the divorce, Clowers sued McElveen for professional negligence, including the COBRA matter. The court ruled in Clowers' favor on the COBRA issue, and McElveen paid Clowers the amount determined by the court. In his response, McElveen admitted he negligently failed to explain to Mr. Clowers his rights under COBRA, and explained he was educating himself in this area.

**HOLLY L. MEYER, #89094, Heber Springs, in No. 2002-153**, by Order filed May 2, 2003, on a complaint by Deanna Younger, was cautioned and ordered to pay costs of \$50 for violations of Model Rules 4.4 and 8.4(a). Ms. Meyer represented Ms. Younger's husband in divorce, and sent Ms. Younger's elderly grandmother a notice to vacate from the residence on the Younger's marital property the grandmother rented by contract through the White River Regional Housing Authority. There were no legal grounds for the grandmother's eviction. Ms. Younger later purchased the property at auction. Ms. Younger claimed the attempted eviction was only for the purpose of causing distress to Ms. Younger and her elderly grandmother. Ms. Meyer claimed that the basis for the notice was her attempt to establish, for property division purposes, that the difference between what would have been fair market rental of the property and the actual rent

being received was a squandered marital asset.

**LORI A. MOSBY, #94016, Little Rock**, in No. **2002-151**, by Order filed July 3, 2003, on a complaint by Brad Hendricks, was cautioned and ordered to pay costs of \$77.50 for a violation of Model Rule 7.3(d). In July 2002, following his involvement in a motor vehicle collision, Ms. Mosby sent to Gordon Henicke a solicitation letter that did not disclose how the information contained therein was obtained.

**DANA A. REECE, #87142, Little Rock**, in No. **2002-176**, by Order filed April 9, 2003, on a referral by the Supreme Court in Case No. CR-02-1071 (Albert Bell, Appellant), was cautioned and ordered to pay costs of \$50 for violations of Model Rules 1.3 and 8.4(d). Ms. Reece filed the appeal record late, failing to get an order extending the time for such filing. Upon her acceptance of responsibility, the Court granted her motion for rule on the clerk and allowed the record to be filed.

**LANE H. STROTHER, #79121, Mountain Home**, in No. **2003-032**, by Order filed May 19, 2003, on a complaint by Janet Bodoh, was cautioned and ordered to pay costs of \$50 for a violation of Model Rule 1.4(b). In November 2001 Strother was contacted by Mrs. Bodoh's lawyer in Ohio on an issue involving her late mother's estate, specifically about contesting a will and a trust and for an accounting of the mother's property. After exchanges of communications, Strother requested a retainer of \$2,500. After consultation with her Ohio counsel, Mrs. Bodoh made a decision to not proceed with court action until Mr. Strother had interviewed potential witnesses and specifically preserved the testimony of a Ms. Banning, a key witness suffering from cancer, who Strother was informed was growing more ill with time. Strother quoted a fee of \$1,000 to do this investigative work and was paid in mid-February 2002. Hearing nothing from Strother and becoming increasingly apprehensive about Ms. Banning's deteriorating condition, Ohio counsel faxed Strother a letter on April 15 with a renewed request to preserve Ms. Banning's testimony. Ms. Banning died April 24. No word was received from Strother until a letter dated April 26, 2002, in which Strother admitted he had not interviewed two witnesses and had not preserved the Banning testimony. In a letter dated May 16, 2002, Strother told Mrs. Bodoh he knew as early as March 2002 she did not have a valid cause of action, based on his conversation with another area attorney who had prepared the mother's trust documents. The Committee found Strother's action deprived his client of the timely opportunity to make informed decisions about the representation.

### **3. Final actions from July 12, 2003, through September 24, 2003.**

#### **SURRENDERS:**

**DONALD EUGENE PERVIS, #81213, of Sarasota, FL**, in **Supreme Court Case No. 03-1015**, on September 3, 2003, petitioned the Court to accept the surrender of his Arkansas law license, as a result of his disbarment in Florida by Order filed September 18, 2003. In Florida, Pervis faced disciplinary complaints arising out of claims that he failed to pay medical providers

sums ranging from \$3,000 to in excess of \$21,000 owed from at least four personal injury cases he handled that settled, and other types of complaints. On September 18, 2003, the Arkansas Supreme Court accepted Pervis' surrender and barred him from the practice of law in Arkansas.

#### **SUSPENSIONS:**

**J. F. ATKINSON, JR., #76003, of Paris and Fort Smith, in Committee No. 2003-061,** by Consent Order filed August 4, 2003, on a referral by the Arkansas Supreme Court, for violations of Model Rules 1.1, 1.2(a), 1.3, 1.4(a), 1.4(b), 3.4(c), and 8.4(d), had his license to practice suspended for sixty (60) days from August 4, 2003, subject to reinstatement thereafter. Atkinson represented Ms. Efrud in a Rule 37 post-conviction matter, which was denied by the trial court in August 1999. She had been convicted of first degree murder and sentenced to twenty years. An untimely notice of appeal was filed. Nothing else was done in the appeal until February 2003, when Atkinson filed a motion for belated appeal with the Supreme Court Clerk. He stated he lost or misplaced the transcript. The Court cited Atkinson for a "show cause" on contempt, he pled guilty and was fined \$500. The Court denied Ms. Efrud a belated appeal, as the rules require such an application to be made within eighteen months of the order denying same at the trial court, and hers was much later than that.

**DONNY G. GILLASPIE, #61010, of El Dorado, in Committee No. 2003-031,** by Committee ballot vote in May 2003, on a referral by the Arkansas Supreme Court, for violation of Model Rules 1.3 and 8.4(d), had his license to practice law suspended for three (3) months and was assessed \$50 costs. For failing to file a response to the formal complaint, the Panel suspended his license for six (6) months and fined him \$2,500. Gillaspie failed to timely file the notice of appeal for his criminal client, Mr. Gulley. His belated appeal was granted when Gillaspie accepted responsibility for failing to timely file the notice of appeal. His failure to file a response waived his right to a public hearing. Gillaspie filed a petition for reconsideration of the Panel's ballot vote decision. The Panel found Gillaspie failed to meet his burden on reconsideration of proving compelling and cogent evidence of unavoidable circumstances sufficient to excuse or justify his failure to timely respond, and denied reconsideration by Order filed September 2, 2003. Gillaspie appealed to the Supreme Court, No. 03-994, which, on September 8, stayed his suspension pending outcome of the appeal, conditioned on his posting a \$5,000 bond and not having any additional formal complaints filed against him during the stay.

**DAVID LEWIS CLARK, #95093, of Amity, AR, in Committee No. 2003-022,** by Order filed August 19, 2003, on a referral by the Arkansas Supreme Court, for violations of Model Rules 1.3 and 8.4(d), was reprimanded, fined \$500 and assessed \$50 costs. For failure to respond to the Committee Complaint, his license to practice was suspended for six (6) months from August 19, 2003, subject to reinstatement thereafter, and he was fined an additional \$500. Clark represented Whisenant on appeal in CACR 2001-1417, from a seventy-two month sentence. After receiving six extensions of time to file her brief, his motion for a seventh was filed fifteen minutes late with the Clerk. The Attorney General's motion to dismiss the appeal was granted. Whisenant's pro se motion for reinstatement was granted, Clark was relieved as her counsel and referred to

the Committee. He failed to file a response to the Committee's Complaint.

**DAVID LEWIS CLARK, #95093, of Amity, AR, in Committee No. 2003-023**, by Order filed August 19, 2003, on a referral by the Arkansas Supreme Court, for violations of Model Rules 1.3 and 8.4(d), was reprimanded, fined \$500 and assessed \$50 costs. For failure to respond to the Committee Complaint, his license to practice was suspended for six (6) months from August 19, 2003, subject to reinstatement thereafter, and he was fined an additional \$500. Clark represented Whisenant on appeal in CACR 2001-1418, from a seventy-two month sentence. After receiving six extensions of time to file her brief, his motion for a seventh was filed fifteen minutes late with the Clerk. The Attorney General's motion to dismiss the appeal was granted. Whisenant's pro se motion for reinstatement was granted, Clark was relieved as her counsel and referred to the Committee. He failed to file a response to the Committee's Complaint.

**CHARLES D. MATTHEWS, #64026, of Bentonville, in Committee No. 2002-170**, by Consent Order filed August 26, 2003, on a complaint by Harryetta Bailey, for violations of Model Rules 1.4(b), and 5.5(a), had his license to practice suspended for three (3) years from August 26, 2003, subject to reinstatement thereafter, was fined \$2,500, and assessed \$250 costs. (This suspension runs concurrent with his current five year suspension in Neal v. Matthews, 342 Ark. 566 (2000), Committee No. 94-132.) Matthews was suspended from law practice for five years on November 28, 2000. He hosted a retirement planning seminar in August 2002 and met Ms. Bailey. He offered free consultations to attendees, and Ms. Bailey met with him for that purpose after the seminar. She mentioned changes in various documents, but did not intend for him to make these changes. After second meeting, Matthews produced drafts of estate planning documents for her review. Later she received a packet of estate planning documents from Matthews with his bill for \$500 for consultation and document preparation. According to Bailey, at no time did Matthews inform her he was an attorney whose license was currently suspended. Matthews provided legal services at a time when his license to practice was suspended.

#### **REPRIMANDS:**

**REGINALD SHELTON McCULLOUGH, #85102, of Little Rock, in Committee No. 2002-130**, by Order filed July 15, 2003, on a complaint by Floyd Williams, for violations of Model Rules 1.2(a), 1.3, 1.4(a) and 1.16(d), was reprimanded and assessed \$50 costs. In mid-2001 Mr. McCullough was hired and paid to assess post-conviction relief that might be available for Williams, but failed to effectively do so for fourteen months thereafter. The client was not kept properly informed of the status of the representation. The file, transcript and unearned fee were not returned to the client when the attorney's services were terminated in August 2002. The attorney provided the transcript and partial refund check to the Office of Professional Conduct when he filed his response to the Formal Complaint, and they were tendered to the client's representative.

**DAVIS HENRY LOFTIN, #79196, of West Memphis, in Committee No. 2003-034**, by Consent Order filed August 26, 2003, on a complaint by Georgia Danielle Holmes, for violations

of Model Rules 1.1, 1.3, 1.8(e) and 8.4(d), was reprimanded, fined \$700, and assessed \$50 costs. Holmes hired Loftin in September 2000 to represent her in a bankruptcy, which was filed. She later lost her job and missed her plan payments for 4-5 months. The court gave her another chance, but required her to maintain insurance on the vehicle. She delivered proof of insurance to Loftin's office but he failed to timely provide it to the lienholder, and her car was repossessed. He repeatedly assured her he would take care of the matter before it happened. Thereafter, Loftin provided prohibited financial assistance to the client by renting a vehicle for Holmes to have a way to get to work. The court later ordered the vehicle returned to Holmes because the repossession was found to be due to Loftin's negligence. Loftin was ordered to pay \$315 in repossession costs and \$500 in attorney's fees.

**RICK SELLARS, #77122, of Little Rock, in Committee No. 2003-038,** by Consent Order filed August 26, 2003, on a complaint by James K. Katke, for violations of Model Rules 1.3 and 8.4(d), was reprimanded, fined \$500, and assessed \$50 costs. Sellars was hired in 1997 to represent Katke in a breach of contract action against a former employer. A demand letter was sent and suit was filed in March 1998. After some discovery, Katke claimed Sellars stopped contacting him. The suit was dismissed for lack of prosecution in April 2001, but Katke was not told of this by Sellars. Sellars responded that the first he knew of the dismissal was when he got the formal disciplinary complaint. He also stated that the defendant took Chapter 7 bankruptcy after the suit was dismissed, precluding any refiling.

**ROY C. "Bill" LEWELLEN, #82093, of Marianna, in Committee No. 2000-084,** by Order filed September 8, 2003, on a complaint by United States District Judge Richard A. Enslen of the Western District of Michigan, for violations of Model Rules 3.4(c), 5.5(a), and 8.4(d), was reprimanded, fined \$1,000, and assessed \$50 costs. In 1999 Lewellen represented a client in a criminal case in federal court in Michigan, where Lewellen was not admitted. Lewellen was directed by judges on several occasions to file admission papers but apparently failed to do so. He failed to correct the record when asked about his status by a judge. His client and he missed a court appearance for sentencing in February 2000, due to a snowstorm in Arkansas, Lewellen told the court, with Lewellen advising his client not to try to go to Michigan for court. The court had to reset the hearing and later issued a show cause order for Lewellen for what the court took to be an inaccurate statement to the court about Lewellen's admission status. After a hearing the court found Lewellen had violated Model Rules 1.3 and 3.3 and censured him. This finding was affirmed on appeal by the Sixth Circuit Court of Appeals. Immediately before his public hearing in Arkansas, Lewellen offered a plea to the Panel, which was accepted, for the sanctions stated herein.

**RALPH M. PATTERSON, JR., #68048, of North Little Rock, in Committee No. 2003-050,** by Consent Order filed September 19, 2003, on a complaint by Valerie Johnson (now Farlee), for violations of Model Rules 1.3, 1.4(a), and 1.15(a), was reprimanded, fined \$500, assessed \$50 costs, and ordered to pay restitution of \$2,500 to complainant. Patterson took over representation of Farlee from another attorney in a personal injury case in 1993. He settled the case for \$50,000 in January 1995, but did not distribute the bulk of the funds until later in 1995 and in early 1998.

He failed to pay a bill of \$4,000 from a surgeon for services to the client in 1991-92 arising out of her injuries, and failed to account to the client for the last \$2,446.81 of the settlement funds until 2002. He was unable to provide requested trust account records less than five years old and a contemporaneously produced settlement sheet. The physician was paid in full in April 2003. Patterson successfully defended Farlee in 1996, to the Supreme Court, against an attorney's lien claim of one-third of her settlement from her first attorney in the case.

#### **CAUTIONS:**

**MICHAEL L. ALLISON, #87003, of Morrilton, in Committee No. 2003-065,** by Consent Order filed July 24, 2003, on a referral by the Arkansas Supreme Court, for violations of Model Rules 1.3 and 8.4(d), was cautioned, fined \$100, and assessed \$50 costs. In a criminal appeal, Allison obtained an order extending time to file the record 98 days after filing the notice of appeal, an untimely order. His motion for rule on the clerk was granted, on his acceptance of responsibility for the mistake.

**CHARLES D. "SKIP" DAVIDSON, #73026, of Little Rock, in Committee No. 2003-043,** by Order filed August 5, 2003, on a complaint by Dane Arnell Blunt, for violations of Model Rules 1.8(e) and 8.4(a), was cautioned, fined \$1,000, and assessed \$50 costs. The attorney was hired in 1999 to represent Mr. Blunt in a paternity/wrongful death action arising out of an accident at Six Flags Over Texas. Blunt needed transportation so attorney arranged for him to buy an Acura for not more than \$30,000 and financed it through a bank in which attorney was a major owner, with the attorney making the \$535.80 monthly payments, totaling \$13,924.40. When Blunt's legal claim fell through, he heard nothing more from Davidson, Blunt wrecked the car in May 2002, and the insurance company paid off the bank. Davidson responded that Blunt, who had no credit, was to work on his farm and pay for the car through payroll deductions, but that plan did not work out, so Davidson paid the bank to protect his credibility there. He admitted involving himself in the client's purchase of the car was a mistake.

**TAMMY L. HARRIS, #91195, of Little Rock, in Committee No. 2003-052,** by Order filed September 24, 2003, on a complaint by United States District Judge George Howard, Jr., for violations of Model Rules 1.3, 3.4(c), and 8.4(d), was cautioned and assessed \$50 costs. While representing a criminal client in federal court, and after being given proper notice, Harris failed to appear for his sentencing on March 2003, with no explanation. The sentencing had to be reset, causing delay for the court.

**RICKEY H. HICKS, #89235, of Little Rock, in Committee No. 2002-139,** by Order filed July 18, 2003, on a complaint by Myrtle "Merle" Smith, for violations of Model Rules 1.4(a) and 1.4(b), was cautioned. Smith hired Hicks in January 2000 to represent her in an employment discrimination suit against the Arkansas Department of Human Services. Difficulties in communication ensued. Mr. Hicks failed to file discovery responses and failed to advise his client on her options of trial before the Federal Magistrate Judge and mediation, to try to move her matter toward resolution. Unable to obtain information about her case from Hicks, she

terminated his services in July 2001 and hired another attorney to pursue her litigation.

**LORI A. MOSBY, #94016, of Little Rock, in Committee No. 2003-008**, by Order filed July 30, 2003, on a complaint by Pamela Griffin, for violations of Model Rules 1.3, 1.4(a), 1.5(c), and 1.15(b), was cautioned and assessed \$50 costs. Mosby represented Griffin in a personal injury claim in 2000-2001 which settled for \$11,000 and was paid on July 20, 2001. The client's settlement check was short \$1,310.00 needed to pay the client's bill with a chiropractor. The client was contacted by the chiropractor about her unpaid bill. The Office of Professional Conduct wrote Mosby bringing this matter to her attention in September 2001 and December 2002. She finally discovered the missing \$1,310 in her trust account and paid the chiropractor on December 30, 2002, eighteen months after the case settled. The attorney failed to timely and accurately review her trust account and reconcile client accounts there.

**GAIL THORNTON SEGERS, #97233, of Fayetteville, in Committee No. 2003-045**, by Order filed September 3, 2003, on a complaint by Carrie May Hodges, for violations of Model Rules 1.1, 1.3, and 8.4(d), was cautioned and assessed \$50 costs. Segers was hired in September 2000 to represent Hodges in a divorce and custody case. Segers failed to timely answer interrogatories. An order compelling discovery was entered, but Segers failed to provide satisfactory responses, and the motion for sanctions was renewed by opposing counsel. The court excluded some of Hodges' witnesses and some proof due to counsel's failure to comply with discovery, and ordered Hodges to pay \$481.24 in attorney's fees, resulting in her paycheck being garnished. Segers responded that she reduced her bill by the amount her client had to pay in attorney fees to the other side, and she filed discovery responses as quickly as she could after she obtained responses from her client.

**BRUCE B. TIDWELL, #96115, of Little Rock, in Committee No. 2003-067**, by Order filed August 26, 2003, on a complaint by Bruce L. Safman, M.D., for violations of Model Rules 1.4(a) and 1.7(b), was cautioned and assessed \$50 costs. Tidwell was hired by Dr. Safman to deal with a flooding problem on the Doctor's residential property, attributed to the property owners association. Dr. Safman stated Tidwell told him one of the attorneys in the firm was a member of the POA, but did not explain the significance of the statement. Options were discussed, but Dr. Safman told Tidwell he had already hired engineers and landscapers who told him the problem was entirely that of the POA. Little progress was made and in July 2002 Dr. Safman instructed his attorney to file suit. According to the doctor, Tidwell then told him he had a conflict of interest due to his law partner being involved with the POA and Tidwell could not pursue the requested litigation. Dr. Safman had been billed almost \$1,500 by Tidwell. Tidwell failed to adequately and timely explain the conflict possibility to his client, and failed to terminate the representation when his representation became materially limited by his partner's involvement with the POA.

**RODERICK H. WEAVER, #74153, of Clarksville, in Committee No. 2002-143**, by Consent Order filed July 18, 2003, on a complaint by Joann Collins, for violations of Model Rules 1.3, 1.4(a), and 1.15(b), was cautioned, fined \$500, and assessed \$50 costs. Weaver presented Collins

in a divorce. He was to prepare a Qualified Domestic Relations Order (QDRO) after the final hearing April 16, 2001. In June 2001, he also received a quitclaim deed from her former husband as part of the property settlement agreement. He conditioned delivery of the deed to Ms. Collins upon her payment of the balance of \$975 in his attorney fees. She paid him in September 2001 but did not get the deed. As of July 2002 no QDRO had been accepted by her former husband's employer. After the formal complaint was served on Mr. Weaver, he sent the deed to Collins in November 2002, and finally got a second revised QDRO submitted to the plan administrator in February 2003.

#### **4. Final actions from September 25, 2003, through December 31, 2003.**

##### **SURRENDER OF LAW LICENSE:**

**KENNETH W. HAYNES, Bar No. 95178, West Helena, Arkansas**, in CPC No. 2003-147, petitioned the Supreme Court to accept surrender of his Arkansas law license based on his plea of guilty on September 16, 2003, to the felony criminal offense of conspiracy to possess a controlled substance in Phillips County Circuit No. CR-2002-182. The Arkansas Supreme Court accepted the surrender by Per Curiam issued December 11, 2003, and struck Haynes' name from the rolls of Arkansas attorneys.

##### **SUSPENSIONS:**

**CHARLES P. BOYD, JR., Bar No. 82023, Little Rock, Arkansas**, in CPC No. 2003-014, on a complaint by Roberta Turley, by Order filed October 21, 2003, had his law license suspended for three (3) months, was fined \$2,500, assessed \$50 costs, and ordered to deliver a copy of his client's complete file to her new attorney within three days, for violations of Model Rules 1.1, 1.3, 1.4(a), 1.4(b), 1.16(d), 3.2, and 8.4(d). Turley hired Boyd in March 2001 to represent her in a wrongful death medical negligence action from her husband's death. Suit was filed but problems arose from untimely service issues. Boyd failed to timely obtain letters of administration for Mrs. Turley following the expiration of her temporary letters. Boyd missed an extended deadline to respond to a motion to dismiss. Boyd also failed to timely file the statutory Affidavit concerning "John Doe" defendants. Dismissal orders were entered but Turley was not told of them by Boyd and learned of them from another source. Boyd did not respond to her request for a copy of her file, even when her new attorney requested it.

**DAVID LEWIS CLARK, Bar No. 95093, Amity, Arkansas**, in CPC No. 2003-053, on a complaint by Conway Leeper, by Order filed November 12, 2003, was reprimanded, fined \$500 and assessed \$50 costs for violations of Model Rules 1.3, 1.4(a), 1.4(b), 1.16(d), 3.2, 8.4(a), 8.4(c), and 8.4(d). For failure to respond to the Committee's Complaint, his law license was suspended for three (3) months and he was fined an additional \$500. Leeper hired Clark in August 2001 and paid him for representation in a boundary dispute. Leeper had difficulty contacting Clark to the point where, in August 2002, he found his office building vacant. Clark took no action for Leeper, abandoned him, failed to refund unearned fees, and engaged in

dishonest, deceitful conduct.

**OSCAR JEROME GREEN, Bar No. 85062, Maumelle, Arkansas,** in CPC No. 2003-054, on a complaint by John H. Robinson, by Order filed October 14, 2003, was reprimanded and ordered to pay \$500 restitution to his client for violations of Model Rules 1.4(a), 1.4(b), 1.16(d) and 8.4(d), and additionally had his law license suspended for thirty (30) days and was fined \$500 for his failure to respond to the Committee's Complaint, after an extension of time had been granted. The client had suffered an alleged parasitic infection from bites while staying at a Memphis hotel in October 2000, and he hired Green several days later to pursue his claim on a contingent fee basis and paid \$500 for expense money. On January 10, 2001, the client gave his telephonic statement to the insurance agent, and thereafter claimed he had frequent problems contacting Green. The client only learned of the insurance company's February 2, 2001, denial of his claim after he filed his complaint with the Committee, but not from Green. Green failed to return funds received from the client for lawsuit expenses for a suit that was never filed. Green's privilege to practice law was reinstated November 21, 2003.

**JOSEPH D. HUGHES, Bar No. 97021, Paragould, Arkansas,** in CPC No. 2003-039, on a complaint by Raymond Volner, by Consent Order filed November 24, 2003, had his law license suspended for sixty (60) days, was assessed \$50 costs, and was placed on probation with conditions for six (6) months commencing February 1, 2004, for violations of Model Rules 1.3, 5.3(b) and 5.5(b). Volner hired Hughes in March 2001 to represent him on criminal drug charges, on which Volner had bonded out. Volner's dealings were with Hughes' paralegal Forbs. Volner missed a court date, which he claimed the paralegal told him would be postponed. Months later Volner was arrested in another county on a failure to appear warrant from the missed court date and spent eight days in jail waiting for Hughes to do something for him. Hughes' paralegal told Mrs. Volner that Hughes needed to be paid \$1,000 to secure another court date and that Hughes would take care of obtaining Volner's release from jail. When nothing happened, Volner was taken back to court and had to post a new \$5,000 bond. Hughes finally took action after eight days, filing a motion to quash the warrant, but refusing to refund Volner's \$500 for the representation that did not occur previously. Volner hired a new lawyer. Hughes was found to have not acted with reasonable diligence and to have allowed his paralegal to give legal advice and to have assisted her in engaging in conduct that was the unauthorized practice of law.

**JOSEPH D. HUGHES, Bar No. 97021, Paragould, Arkansas,** in CPC No. 2003-075, on a complaint by Randy Price, by Consent Order filed November 24, 2003, had his law license suspended for sixty (60) days, was assessed \$50 costs, and was placed on probation with conditions for six (6) months commencing February 1, 2004, for violations of Model Rules 1.3, 1.4(a), 1.5(a), and 1.16(d). Price suffered injuries in a battery and hired Hughes, after speaking with Hughes' associate Griffin. Griffin left Hughes' firm several months later. Price had difficulty contacting Hughes. Hughes failed to return Price's file to him when requested to do so, and the statute of limitations expired on any claim Price had against his attacker. Hughes claimed he did not know of the Price file being in his office. Price claimed Griffin personally introduced Price to Hughes at the office. Hughes was found to have failed to act diligently, and upon

termination to have failed to take proper steps to protect the client's interests. Hughes' contingent fee contract stated he was to get one-third to 45% of any gross recovery plus any court awarded fees. This was found to be an unreasonable fee arrangement.

**TERENCE E. TATUM, Bar No. 96245, West Memphis, Arkansas**, in CPC No. 2003-105, on a Complaint Before the Committee, by Order of Reciprocal Suspension (with Tennessee) filed October 15, 2003, had his law license suspended for thirty (30) days. Tatum agreed to a 30 day suspension in Tennessee on July 11, 2003, for violations of the Tennessee rules for representing his client without sufficient knowledge of securities law, by communicating with investors, and for drafting documents for his client who was the subject of an investigation by the TN Department of Insurance and Commerce and was ultimately ordered to cease and desist the fraudulent sale of securities. Tatum was reciprocally suspended by Arkansas, commencing October 15, 2003, under Section 14.A of the Arkansas Procedures regulating attorney conduct. Tatum's Arkansas privilege to practice law was reinstated November 19, 2003.

**TOM LEWIS TRAVIS, Bar No. 95029, Little Rock, Arkansas**, in CPC No. 2003-027, on a complaint by Rhonda Hill Harrison, by Order filed November 12, 2003, had his law license suspended for three (3) months and was assessed \$50 costs for violations of Model Rules 1.1, 1.3, 1.4(a), and 1.4(b). For failure to respond to the Committee's Complaint, he was fined \$500. Travis was hired by the Arkansas Fair Housing Council to represent the Council and Ms. Harrison in a matter related to her rental of a mobile home. A bench trial June 5, 2001, resulted in a finding that the Council had no standing to sue, but Ms. Harrison and her minor son were each awarded \$2,000 in damages and judgment was filed in September 2001. Travis filed a notice of appeal from the part of the judgment that the Council lacked standing. He failed to follow through with the appeal. Harrison was thereafter unable to contact Travis for over a year and was never advised by him as to what steps she might take to try to collect the \$4,000 judgment. Travis did not advise her that conflicts might arise with him representing two clients in the matter.

#### **REPRIMANDS:**

**VANDELL BLAND, SR. , Bar No. 92062, West Helena and Forrest City, Arkansas**, in CPC No. 2003-118, on a Complaint Before the Committee, by Order filed December 3, 2003, was reprimanded, fined \$1,000, and assessed \$50 costs for violations of Model Rules 1.1, 1.2(a), 1.3, and 3.4(c). Bland took over the *Corliss Williamson* case for appeal, filed a timely but incorrect notice of appeal using the wrong party name as his appellant client, and failed by one day to timely file with the circuit clerk an order granting an extension for filing the appeal record. His motion for rule on the clerk was denied, depriving his client of her right to appeal. A petition for rehearing was denied. Bland refunded his client's funds paid for the appeal upon her request.

**CHARLES P. BOYD, JR., Bar No. 82023, Little Rock, Arkansas**, in CPC No. 2002-076, on a Supreme Court Per Curiam Complaint, by Order filed October 21, 2003, was reprimanded, fined \$500, and assessed \$50 costs, for violations of Model Rules 1.3, 3.4(c), 5.5(b), 8.2(a), 8.4(c) and

8.4(d). In *Davenport v. Lee*, Boyd prepared a *pro se* wrongful death complaint for his clients to sign and file as the personal representatives of the decedent. Boyd apparently declined to sign the original complaint because of his inability to verify the allegations in it. The Supreme Court held the personal representatives had engaged in the unauthorized practice of law and that the complaint was a nullity, even though Boyd filed an amended complaint which he signed. Boyd attempted to untimely file a petition for rehearing. The Court found the untimely Petition for Rehearing was devoid of any legal citation of authority supporting an allegation of either legal or factual error and that the tenor of the Petition was one of disrespect bordering on contempt toward the Court.

**JIMMY DOYLE, Bar No. 2000013, Searcy, Arkansas**, in CPC No. 2003-082, on a Supreme Court Per Curiam Complaint, by Order filed October 1, 2003, was reprimanded and assessed \$50 costs for violations of Model Rules 1.3, 3.4(c) and 8.4(d). In a criminal appeal for David Wayne Fulmer, Mr. Doyle twice failed to timely file his client's brief, including after the Court of Appeals directed him on December 18, 2002, to file a brief within 30 days. On April 9, 2003, the Court found Doyle in contempt for failure to file the brief, but found he had purged himself of the contempt by filing the brief one week later. Doyle offered as mitigation a heavy workload.

**Q. BYRUM HURST, JR., Bar No. 74082, Hot Springs, Arkansas**, in CPC No. 2003-138, on a complaint by Johnny Dodson, by Consent Order filed December 15, 2003, was reprimanded, fined \$500, and assessed \$50 costs for violations of Model Rule 1.3. Hurst failed to timely file his client's appellate brief after receiving four extensions of time to do so. His motion to file a belated brief was granted and his brief was filed. The State filed a motion to direct compliance with Rule 4-3(h), which was granted. Hurst filed a supplemental abstract and then was told by the clerk that the Court wanted a completely new brief. His motion for an extension of time was granted but he failed to file the new brief. Hurst failed to respond to the State's motion to dismiss the appeal, and the motion was granted in July 2003. Hurst admitted his error, offered that he was extremely busy in his practice and various community matters and that he had never previously failed to file a client's brief.

**LORI A. MOSBY, Bar No. 94016, Little Rock, Arkansas**, in CPC No. 2002-164, on a complaint by Circuit Judge Darrell Hickman of White County, by Order filed October 31, 2003, was reprimanded, fined \$2,500 and assessed \$50 costs, for violations of Model Rules 1.1, 1.4(b), 3.4(c), 8.4(c), and 8.4(d). Mosby advertised a service called "Legal Assisting Management," which she claimed prepared legal documents, in this instance for divorces, for persons for a reduced fee, and sent the people to court *pro se* to try to obtain a divorce. An additional fee was charged if the client wanted Mosby to appear in court. Judge Hickman advised her she could not do this in his court and required her to appear with the first client, Ms. Daniels. When it happened a second time, the judge asked a local attorney to stand in with the client, Ms. Fechter, and help her through the process. The judge then filed a complaint on Ms. Mosby. The only instruction for the hearing apparently given by Mosby to either client was to bring a witness to court. Ms. Mosby claimed that a litigant has the right to appear in court *pro se*, and that there is no Model Rule which prohibits her from offering "papers only" services to clients, if that was

their arrangement.

**CAUTIONS:**

**ANN C. DONOVAN, Bar No. 78043, Fayetteville, Arkansas,** in CPC No. 2002-181, on a complaint by Dennis Michael DeHart of Wisconsin, by Consent Order filed December 15, 2003, was cautioned, fined \$250, and assessed \$50 costs for violations of Model Rules 1.4(a), 1.15(b), and 1.16(d). DeHart hired Donovan in 1999 to represent him in establishing his paternity of a daughter then residing in Arkansas and to secure visitation rights with her. Donovan filed the petition in October 2000. After a hearing in January 2001, paternity was established, custody given to DeHart and the mother ordered to pay child support, which was to be paid through the court registry. Three support checks, totaling \$480, were sent directly to Ms. Donovan who did not notify her client she had his checks. When he later learned through the clerk's office what had happened to the checks, Ms. Donovan withheld them from her client, claiming he owed her money for her services. DeHart traveled to Arkansas in December 2001 to see Donovan and asked for his checks. Although he had already paid her \$1,900 for legal services, by paying her \$100, DeHart got her to release the three checks to him.

**ANN C. DONOVAN, Bar No. 78043, Fayetteville, Arkansas,** in CPC No. 2003-055, on a complaint by Circuit Judge Mark Lindsay of Washington County, by Order filed November 4, 2003, was cautioned and assessed \$50 costs for violations of Model Rules 1.1, 3.4(c), and 8.4(d). At a hearing before the court, in response to the court's question, Ms. Donovan identified the party, a school district, she was suing in her counterclaim. The trial court took this to be in conflict with a premise in her motion to dismiss the Complaint, that the school district lacked authority to enter into the contracts upon which the suit was based. She failed to timely respond to discovery and failed to respond to an amended Complaint. Her counterclaim was dismissed because she failed to comply with Rule 10(d), A. R. Civ. P.

**MICHAEL W. HAWKINS, Bar No. 87077, Fayetteville, Arkansas,** in CPC No. 2003-071, on a complaint by William Cobb, by Order filed November 4, 2003, was cautioned, fined \$250, and assessed \$50 costs for violations of Model Rules 1.1, 1.3, 1.4(a), 1.4(b), 3.4(c) and 8.4(d). Hawkins represented Cobb in a divorce. After the final hearing, the Court entered a decree, retained jurisdiction over certain property issues, and directed both counsel to submit briefs on these issues within 30 days. Hawkins did not file a brief, considering it unnecessary. An amended decree was filed, but Hawkins failed to tell his client of it, and failed to respond to the client's efforts to contact him and get information. The client failed to comply with the decree he did not know about and was later served with a contempt petition, after Hawkins failed to tell him of threats to do so by opposing counsel if the client did not comply. The client was garnished, but got a new lawyer and avoided being held in contempt although he was ordered to pay opposing counsel's attorney's fees.

**PETER A. MILLER, Bar No. 80103, Little Rock, Arkansas,** in CPC No. 2003-101, on a complaint by Todd Turner, by Consent Order filed October 2, 2003, was cautioned, fined \$1,000,

and assessed \$50 costs for violations of Model Rule 7.2(d). Miller placed an ad in the June 11, 1999, issue of the local newspaper in Arkadelphia announcing his office was accepting cases from the June 1, 1999, American Airlines plane crash in Little Rock. His ad failed to comply with the requirement of 7.2(d) to disclose the geographic location of the lawyer or firm offering the legal services. An ad with a similar omission was placed in the Arkansas Democrat Gazette on September 2, 2001.

**PHILLIP A. MOON, Bar No. 84109, Harrison, Arkansas,** in CPC No. 2003-137, on a self-referral by Mr. Moon based on his representation of John E. Patrick in a criminal appeal before the Arkansas Court of Appeals, by Consent Order filed November 24, 2003, was cautioned and assessed \$50 costs for violations of Model Rules 1.1, 1.3, and 8.4(d). Moon failed to timely file the record in his client's criminal appeal and was required to file a motion for rule on the clerk and admit responsibility for the error to preserve his client's right to the appeal.

**F. SCOTT STRAUB, Bar No. 98019, Shreveport, Louisiana,** in CPC No. 2003-042, on a complaint by Cookie C. Pierce, by Order filed December 22, 2003, was cautioned, assessed \$50 costs and ordered to pay \$375 restitution to Ms. Pierce for violations of Model Rules 1.1, 1.3, 1.4(a), 1.4(b), 1.16(d), 3.2, 4.1(a), 8.4(a), 8.4(c), and 8.4(d). Straub was hired to defend Pierce in a child custody and support modification matter from Arkansas. Pierce claimed he told her she did not need to respond to the summons and motion since she did not reside in Arkansas and the Arkansas court had no jurisdiction over her. She told him she wanted to pay the proper amount of child support and to file a entry of appearance for her, and that she did not want her paycheck garnished over the matter. She also told him what she wanted for visitation. Straub told her he would take care of it. Three months later her check was garnished. She learned a default judgment had been entered against her in Arkansas on December 11, 2001. Straub promised to take care of it. Straub wrote opposing counsel making a statement about an agreement he claimed they had made for a continuance, which opposing counsel claimed was a false statement. Pierce terminated Straub's representation. Straub responded that he informed Pierce at their initial meeting that he would be unable to take any action in her matter prior to January 2, 2002, due to his upcoming wedding and honeymoon. Pierce rebutted that she and her husband heard no such statement and would not have hired him if he had made such a statement.