

Final actions from July 1, 2007, through September 30, 2007, by the Committee on Professional Conduct.**Summaries prepared by the Office of Professional Conduct.****Full text documents are available on-line at <http://courts.state.ar.us/courts/cpc.html>.****[Note: "Model" Rules refers to the Rules of Professional Conduct as they existed in Arkansas prior to May 1, 2005.****"Arkansas" Rules refers to the Rules as they exist in Arkansas from May 1, 2005.]****SUSPENSION:**

WILLIAM SCOTT DAVIDSON, Bar No. 81044, of Jonesboro, Arkansas, was suspended for one (1) month, effective November 1, 2007, by Committee Consent Findings & Order filed August 20, 2007, in Case No. 2006-155, on a complaint filed by Ms. Jessie King (formerly Vinson), for violation of Rules 1.2(a), 1.3, and 1.4(b). This matter was originally brought to the attention of the Office of Professional Conduct (OPC) on January 9, 2006, when Ms. King filed a grievance against Mr. Davidson for failing to take action in her behalf on her pending joint Chapter 13 bankruptcy case, No. 01-bk-32360, with her former husband Terry Vinson. OPC had multiple contacts with Ms. King and Mr. Davidson and monitored the matter until a complaint was received from Judge Evans.

Using another attorney, Mr. and Mrs. Vinson filed a joint Chapter 13 petition on November 29, 2001, as No. 01-bk-32360. Their plan was confirmed and payments were made on it for several years. After they divorced, Ms. Vinson moved to Mississippi and remarried. Mr. Vinson remained in Arkansas and continued to make their plan payments. The Vinson's original attorney was permitted to withdraw from their case on October 19, 2005.

After her divorce, Ms. King desired to convert her Chapter 13 case to a Chapter 7 liquidation case. She employed Mr. Davidson for that purpose and paid him his requested fee of \$350.00 on September 29, 2005, but he took no action for her. On January 24, 2006, OPC wrote Mr. Davidson, copying Ms. King, informing him of the filing of Ms. King's grievance against him. He took no action in her matter that she knows of from September 29, 2005, until January 30, 2006, when he filed a Notice to Convert to Chapter 7 for her in the original case, No. 01-bk-32360.

Major changes in the bankruptcy laws became effective on October 17, 2005, complicating and restricting the ability of

debtors to make such conversions, according to Judge Evans's comments in the August 30, 2006, hearing. Unable to obtain satisfactory action from him, and after he asked her for another \$150 to convert her case from Chapter 13 to Chapter 7, on March 5, 2006, Ms. King wrote Mr. Davidson and asked him to refund her \$350 if he did not want to be her attorney, and asked for a reply within ten days. On May 16, 2006, Ms. King e-mailed Mr. Davidson and directed him to discontinue any actions that might currently be in process. Eight days later, and against her specific instructions, on May 24, 2006, Mr. Davidson filed a Motion to Deconsolidate Chapter 13 case for Ms. King in No. 01-bk-32360. The Motion was granted May 25, 2006, and Ms. King's now-separated Chapter 13 case continued under a new number, 06-bk-12088. Mr. Davidson failed to file a corrected mailing address for Ms. King, so all court documents were being sent to her old Jonesboro address, burdening her ability to receive these documents and track activity in her file.

By letter dated August 15, 2006, to Mr. Davidson, the Chapter 13 trustee informed him that Terry Vinson's Chapter 13 Plan, in No. 01-bk-32360, had a major problem, in that his plan would not pay out in the allowable sixty months. His plan had to be modified by September 14, 2006, to meet the "sixty month" requirement of bankruptcy law or be dismissed. Mr. Vinson then obtained new counsel, Joe Barrett, in early September 2006, to represent him in the needed Plan modification. On September 12, 2006, Mr. Barrett filed a Notice of Conversion to Chapter 7 for Mr. Vinson and filed an amendment to add creditors on October 9, 2006. Mr. Vinson's meeting with creditors was conducted on October 27, 2006, and he received his Chapter 7 discharge on January 5, 2007.

In her new separate case, No. 06-bk-12088, an Order Regarding Deconsolidation Deficiencies was entered May 26, 2006, directing Mr. Davidson to take the actions noted thereon, including filing Ms. King's

schedules and statement of financial affairs, or her new case would be dismissed. The Certificate of Service for the Order shows Ms. Vinson's old Jonesboro address still listed as her address of record with the court. A clerk's docket sheet for the period May 26 - June 26, 2006, made available for this case, notes contacts between members of the clerk's office and Mr. Davidson that add detail and insight into what was being communicated at the time.

Ms. King's case was dismissed by Order filed June 26, 2006, for failure to timely file her schedules and statement of financial affairs. On August 10, 2006, Ms. King filed her pro se Motion to Set Aside Order Dismissing Case, with six exhibits attached. Her Motion outlines and documents her efforts to deal with Mr. Davidson on this matter since she paid him the \$350 in September 2005. An earlier version of this Motion had been filed on July 27, 2006. At the August 30, 2006, hearing, at which both Ms. King and Mr. Davidson testified, the Court granted her motion and reinstated her separate Chapter 13 case, No. 06-bk-12088, to active status, filing its Order to that effect on September 15, 2006. Thereafter, Mr. Davidson again failed to file the required schedules and statement of affairs for Ms. King, and the case was dismissed again on October 10, 2006, the status in which it remains. Mr. Davidson entered into a thirty (30) day license suspension from another Committee case on November 1, 2006, so he was unable to perform any legal services for Ms. King after that date and until he was reinstated to good standing by the Committee on December 7, 2006.

Mr. Vinson has received a Chapter 7 discharge. Ms. King is left out of that case and her new, separate case is now twice-dismissed due to Mr. Davidson's failure to perform for her. Mr. Davidson made a \$350 refund to Ms. King at the August 30, 2006, hearing.

BARBARA A. KETRING-BEUCH, Bar No. 97074, of North Little Rock,

Arkansas, was suspended for six (6) months by Committee Findings & Order filed August 1, 2007, in Case No. 2006-170, on information provided to the Committee by Circuit Judge Alice Gray, for violation of Rules 1.1, 1.3, 3.4(c), 4.4(a), and 8.4(d). Ms. Ketring-Beuch represented Jakeeta Young in a divorce proceeding, Pulaski Circuit No. DR-2005-3584, styled Jakeeta L. Young v. David C. Young, before Judge Alice Gray. Mr. Young was represented by James W. Stanley. At a final hearing on May 11, 2006, which Ms. Ketring-Beuch attended with her client, Judge Gray granted a divorce to Defendant/Counter-Plaintiff David Young and made certain rulings regarding property issues. Mr. Stanley promptly prepared a proposed Decree of Divorce and mailed it to Ms. Ketring-Beuch on May 11, 2006, for her approval, along with an enclosed Quitclaim Deed for her client to execute and his trust check #4213 for \$11,395.33 from Mr. Young, payable to Jakeeta Young and Ms. Ketring-Beuch, for Ms. Young's share of the equity in the Young home. Ms. Ketring-Beuch failed to approve and return the Decree of Divorce and the properly executed Quitclaim Deed. The check was endorsed by Ms. Young, Ms. Ketring-Beuch, and Leonard Boyle, Ms. Young's brother, and was given by Ms. Ketring-Beuch to Ms. Young to be negotiated, which she did, receiving all the funds represented by the check. On June 6, 2006, Ms. Ketring-Beuch acknowledged the signature of Ms. Young on the Quitclaim Deed and then stuck the deed in her office file, where it remained until December 7, 2006, when she discovered the deed and delivered it to Stark Ligon at the Office of Professional Conduct, after he contacted Ms. Ketring-Beuch about the Young matter. Mr. Ligon then forwarded the original deed to Mr. Stanley for his client's use. On May 30, 2006, Mr. Stanley sent the proposed Decree of Divorce to Judge Gray, with copy to Ms. Ketring-Beuch, under the "five days to object" rule. On August 29, 2006, Mr. Stanley wrote Ms. Ketring-Beuch requesting approval and return of the Decree and Deed immediately, after a hearing on the non-entry of the Decree. Faced with no response from Ms. Ketring-Beuch, with the approval of Ms. Young, on October 10, 2006, Judge Gray appointed attorney Carrol Ann Hicks to represent Jakeeta Young for the purpose of getting a decree approved and entered. Ms.

Hicks conferred with Ms. Young, approved the proposed Decree earlier prepared by Mr. Stanley, and submitted the Decree to Judge Gray by letter dated October 26, 2006. Judge Gray approved the Decree of Divorce on November 20, 2006, and caused it to be filed that same day. On November 22, 2006, Judge Gray referred the matter and Ms. Ketring-Beuch to the Committee for action, based on her failure to represent her client to the completion of the divorce matter.

DAVID F. MOREHEAD, Bar No. 89143, of Pine Bluff, Arkansas, was suspended for two (2) months, fined \$1,500.00, and ordered to pay \$410.00 restitution by Committee Findings & Order filed September 28, 2007, in Case No. 2007-046, on a complaint from John Franks, III, for violation of Rules 1.1, 1.3, 1.4(a)(3), 1.4(a)(4), 1.16(d), 3.4(c), 5.5(a), 8.4(c), and 8.4(d). Mr. Franks employed Mr. Morehead to file a Chapter 7 bankruptcy, and paid \$210.00 for the filing fee and \$200.00 for the attorney's fee on August 1 and September 12, 2005, respectively. The Petition was filed, as No. 05-bk-24533, on October 6, 2005, and an Order was sought and obtained allowing Franks to pay his filing fee in installments, even though Morehead already had received the filing fee funds. In filings with the court, Morehead also certified that he had received "\$0.00" funds from his client as of that date, a false statement. The first meeting of creditors ("341 meeting") was set for November 17, 2005. Morehead failed to timely pay a filing fee for Franks. On November 25, 2005, an order was entered dismissing Franks's case, the file was closed, and there has been no action on his behalf in bankruptcy court since then. His filing fee was never paid. He contacted Morehead's office several times thereafter, unsuccessfully attempting to obtain information about the status of his case. Failing to obtain relief and protection from bankruptcy, GMAC auctioned off his truck and is now pursuing him for a deficiency judgment of \$16,265.00. Morehead has not refunded Franks's unexpended \$210 filing fee Morehead has held since November 2005, or any unearned portion of the attorney fee he was paid to handle this matter to completion.

Morehead failed to pay his 2006 Arkansas Supreme Court attorney's license fee, due by March 1, 2006, until June 6, 2006. He failed

to pay his 2007 Arkansas Supreme Court attorney's license fee, due by March 1, 2007. As a result of these actions, his Arkansas law license was in automatic suspension status from March 2 - June 6, 2006, and since March 2007. He practiced law in bankruptcy court during these periods. [Mr. Morehead has a motion for reconsideration on his three cases pending before the Committee at publication time.]

DAVID F. MOREHEAD, Bar No. 89143, of Pine Bluff, Arkansas, was suspended for two (2) months, fined \$1,500.00, and ordered to pay \$209.00 restitution by Committee Findings & Order filed September 28, 2007, in Case No. 2007-048, on a complaint from Jillian Parker for violation of Rules 1.1, 1.3, 1.4(a)(3), 1.4(a)(4), 1.16(d), 3.4(c), 5.5(a), 8.4(c), and 8.4(d). Jillian Parker and her mother, Cheryl Parker, went to Mr. Morehead in September 2005, seeking representation for their financial situation. He advised both to file for Chapter 7 bankruptcy protection and seek a discharge order. He told them that he required a \$208 or \$209 filing fee from each of them and would only charge \$250 for legal services to each, for a total fee of \$500. Cheryl Parker paid \$209 cash then for Jillian's case filing fee. At another meeting a short time later, Cheryl paid \$208 for her filing fee.

On October 15, 2005, Morehead filed for Jillian as No. 05-bk-28354. On October 16, 2005, he filed for Cheryl as No. 05-bk-28486. Cheryl later paid the \$250 for her legal fee. Cheryl's case proceeded without incident. Morehead paid Cheryl's \$209 filing fee to the clerk on January 12, 2006. She received her discharge order on January 24, 2006.

Morehead failed to pay Jillian's filing fee and her case was dismissed by order filed November 25, 2005, for failure to pay the filing fee. Thereafter there is no record in Jillian's case of his having taken any action to reopen her case or refile for her, or having paid any filing fee for Jillian. Jillian and Cheryl contacted his office several times for information about the status of Jillian's case, but they received no report, other than it was being worked on. Morehead was contacted by letter dated December 20, 2006, by the Office of Professional Conduct about Jillian's case, and others. In early January 2007, he contacted Jillian and told her he

was working on her case, would get it refiled, and she would owe him no more money for the matter. There has been no activity in her bankruptcy file since December 6, 2005. By not taking any action in Jillian's case since December 6, 2005, he abandoned her as his client and effectively terminated the attorney-client relationship. He failed to refund any unused part of the \$209 filing fee he received, but did not pay to the clerk, for Jillian's case.

Morehead failed to pay his 2006 Arkansas Supreme Court attorney's license fee, due by March 1, 2006, until June 6, 2006. He failed to pay his 2007 Arkansas Supreme Court attorney's license fee, due by March 1, 2007. As a result of these actions, his Arkansas law license was in automatic suspension status from March 2 - June 6, 2006, and from at least March 2 - April 9, 2007. He practiced law in court during these periods.

DAVID F. MOREHEAD, Bar No. 89143, of Pine Bluff, Arkansas, was suspended for two (2) months, fined \$1,500.00, and ordered to pay \$209.00 restitution by Committee Findings & Order filed September 28, 2007, in Case No. 2007-058, on a complaint from Evelyn Crow for violation of Rules 1.1, 1.3, 1.4(a)(3), 1.4(a)(4), 1.16(d), 3.3(a)(1), 3.4(c), 5.5(a), 8.4(c), and 8.4(d). Ms. Crow went to Mr. Morehead about filing a Chapter 7 bankruptcy case. She was told the filing fee would be \$209.00. She paid \$100.00 on October 12, 2005, and the balance of \$109.00 on January 3, 2006. She gave him all the personal and financial information he requested. On October 13, 2005, in time to be under the old bankruptcy law which was expiring on October 17, 2005, he filed her petition and schedules as No. 05-bk-26197. She was notified of two court dates for her meeting of creditors. Morehead or his office told her to disregard the first date and to go on the second date. When she went to court on that date, believed to be December 15, 2005, she was told her case had been dismissed. She went to his office on January 13, 2006, and paid the \$109 balance she owed on her filing fee. She understood he was going to refile her case.

She went to his office several times up to mid-2006 checking on her case. She was usually told he was working on it. He re-entered her information in the computer on the case, but she never received any letter

about going to court. She called his office a number of times about her case, but received no return calls. She went to his office on February 15, 2007, but was told he was not in and she was not provided any information about her case. The same thing happened to her on February 26, 2007. At this time, Morehead still has her papers and her \$209 for the filing fee, which he never expended for her case, and Ms. Crow has no case.

Mr. Morehead failed to pay his 2006 Arkansas Supreme Court attorney's license fee, due by March 1, 2006, until June 6, 2006. He failed to pay his 2007 Arkansas Supreme Court attorney's license fee, due by March 1, 2007, until May 16, 2007. As a result of these actions, his Arkansas law license was in automatic suspension status from March 2 - June 6, 2006, and from March 2 - May 16, 2007. He practiced law in bankruptcy court during these periods.

PETER E. MORGAN, Bar No. 87121, of Denver, Colorado, was reciprocally suspended for six (6) months by Committee Findings & Order filed July 20, 2007, in Case No. 2007-071, for violation of Colorado Rule 8.4(b) (engaging in criminal acts) and Rule 8.4(h) (engaging in conduct that directly, intentionally, and wrongfully harms others and that adversely reflects on a lawyer's fitness to practice law). In his proceeding in Colorado, Mr. Morgan stipulated that he was admitted in CO in 1973, that he was a recovering alcoholic between 1977 and 1998, when he began drinking again during his divorce, and that he drank almost daily from 1998 to June 2005, when he became alcohol-free. On June 11, 2005, he was involved in a motor vehicle accident at a time when he had been drinking. On September 29, 2005, he was charged with hit-and-run injury, failure to give notice of an accident, failure to report an accident, and careless driving in this incident. On February 16, 2006, he pled guilty to careless driving, was fined \$177.00, and the charges were dismissed.

Also on June 11, he was involved in an altercation with a motorist at a McDonald's drive-through, after he "rammed" his vehicle into the forward vehicle. Morgan then used very bad words to the female driver, and she called for 911 and the police. Morgan grabbed her hair and hit her in the face. A female bystander who tried to assist the other driver was hit and knocked to the ground.

Morgan then left the scene and awoke later on a grassy median strip surrounded by officers and paramedic. Morgan was charged and tried. He was convicted on April 17, 2006, of assault and disturbing the peace and sentenced to 365 days in jail, with 305 days suspended, 50 days of electronic monitoring, fined \$1,266, and placed on two years supervised probation. It also came out that Morgan had received a one year deferred judgment upon his conviction of misdemeanor assault and disturbing the peace in 2001 and that he had failed to report that conviction as required by law.

REPRIMAND:

J.F. ATKINSON, JR., Bar No. 76003, of Fort Smith, Arkansas, was reprimanded and fined \$750.00 by Committee Consent Findings & Order filed July 20, 2007, on a Complaint filed by James Kelly Haynes in Case No. 2007-030, for violation of Rules 1.1, 1.2(a), 1.3, 1.4(a)(3), 1.4(a)(4), and 3.4(c). During June 2005, Mr. Atkinson was appointed by the Circuit Court to represent Mr. Haynes in his Rule 37 Petition proceedings. The Rule 37 Petition was denied by the Circuit Judge. Following the hearing on August 11, 2005, Mr. Haynes asked Mr. Atkinson if he was going to appeal for him. Mr. Atkinson advised that he would not do so. However, on August 25, 2005, the Circuit Judge appointed Mr. Atkinson to pursue the appeal to the Arkansas Supreme Court. Mr. Haynes heard nothing about the appeal for several weeks after that appointment. On October 18, 2005, Mr. Atkinson wrote Mr. Haynes and provided him the office address. That was the last communication Mr. Haynes had with Mr. Atkinson. The Court Reporter requested an Extension of Time to prepare the transcript in December 2005. The Court granted the request. A Second Order was entered on December 20, 2005.

On January 11, 2006, Mr. Haynes wrote a letter to Sue Newbery, Criminal Justice Coordinator, concerning Mr. Atkinson and his failure to respond to the letters Mr. Haynes had sent. The following day, Mr. Haynes wrote a letter to the Circuit Judge in Fort Smith and requested new counsel. Judge Marschewski denied the request.

Mr. Haynes sent Mr. Atkinson an Inmate Phone Call system sheet for Mr. Atkinson

to complete, but he never sent it back. On February 7, 2006, Mr. Haynes wrote Mr. Atkinson again but he did not respond to the letter. Ms. Newbery wrote Mr. Haynes on May 5, 2006, and advised that no transcript had been lodged pertaining to the denial of the Rule 37 Petition. Mr. Haynes wrote Mr. Atkinson again on September 8, 2006, but he did not respond to that letter either. Ms. Newbery sent other letters to Mr. Haynes on October 26, 2006, and on November 17, 2006, confirming that there was no appeal pending on the denial of the Rule 37 Petition.

On February 2, 2007, the Sebastian County Circuit Clerk sent a letter to Mr. Haynes advising that a transcript had been filed and that the matter was now before the Arkansas Supreme Court. After receipt of the letter Mr. Haynes again wrote Ms. Newbery. In her letter of response, she advised that there was no record of the trial court record being tendered to the Clerk of the Arkansas Supreme Court. After the Court Reporter filed the transcript with the Circuit Clerk's office, Mr. Atkinson took no action to perfect the appeal even though he had been appointed to do so, until he filed a motion for belated appeal on April 20, 2007.

Mr. Atkinson admitted the conduct as set forth in the formal disciplinary complaint. He also admitted that he had experienced previous problems in handling post-conviction proceedings such as this one involving Mr. Haynes. There was also an admission by Mr. Atkinson that he did not keep Mr. Haynes informed of the status of the matter nor did he inform him that no appeal had been pursued. Following the filing of the formal disciplinary complaint, Mr. Atkinson's Motion for Belated Appeal in the Haynes' matter was granted by the Arkansas Supreme Court. As a result, Mr. Haynes is allowed the appellate review he requested.

WILLIAM SCOTT DAVIDSON, Bar No. 81044, of Jonesboro, Arkansas, was reprimanded and fined \$500.00 by Committee Findings & Order filed August 17, 2007, in Case No. 2006-157, on a complaint filed by United States Chief Bankruptcy Judge Audrey Evans, for violation of Rule 8.4(d). Mr. Davidson represented Larry Gene Hawkins in a Chapter 7 bankruptcy case filed October 16, 2005, as

No. 05-28385. One of Hawkins' creditors, Daedong-USA, Inc., represented by attorney John Peel, filed an adversary proceeding (the "AP") on January 11, 2006, as No. 06-ap-01025. The cases were assigned to Judge Evans. On February 22, 2006, the AP case was set for trial before Judge Evans on May 31, 2006. On May 12, 2006, Judge Evans entered her Order continuing the trial of the AP case to November 8, 2006. On October 31, 2006, Mr. Davidson filed a motion for continuance, stating as the reason that his Arkansas law license was to be suspended for a month beginning the next day, November 1, 2006, as a result of a sanction against him in Committee Case No. CPC 2005-085. Mr. Peel filed a response. The Court granted the motion by Order entered November 9, 2006, and referred the matter to the Committee.

CPC 2005-085 was a complaint by Glenda Tippitt against Mr. Davidson. At a public hearing conducted on August 18, 2006, the Panel announced that it would impose a one month suspension of license on Mr. Davidson, to only become effective almost two and one half months later, on November 1, 2006, as a courtesy to him and his clients, to give him time to get his practice affairs in order and to protect the interests of his clients who had matters that might have hearings or trials in the few months after August 18, 2006. Mr. Davidson apparently failed to notify either Mr. Peel or the Court prior to October 31, 2006, that his law license was to go into suspended status the next day.

TIMOTHY MARK HALL, Bar No. 96043, of Huntsville, Arkansas, was reprimanded and fined \$1,000.00 by Committee Findings & Order filed September 10, 2007, in Case No. 2007-041, on a complaint by Kenneth Braswell, for violation of Rules 1.1, 1.2(a), 1.3, 1.4(a)(3), 1.4(a)(4), 1.5(b), 8.4(c), and 8.4(d). Mr. Braswell hired Mr. Hall to help him with a matter involving his former employer, who had not paid Mr. Braswell the funds he believed were due him. Mr. Hall met with Mr. Braswell and discussed the matter and then advised Braswell that he owed no funds for the meeting and that he should try to handle the matter on his own. Mr. Braswell set up a meeting with his former employer. Mr. Hall advised that he would go as a friend. Mr. Braswell's former employer refused to meet with Mr. Hall in the room, so Hall left the meeting. Mr.

Braswell then contacted Mr. Hall after the meeting to let him know that he would need representation. Mr. Hall agreed to send a letter to the former employer and to handle all other matters involved up to the point of filing a lawsuit for a fee of \$750. There was no written fee agreement presented to Mr. Braswell, and there was no explanation of the rate or basis of the fee to be charged. Mr. Hall did not send the letter to the former employer as agreed upon with Mr. Braswell. He did not return telephone calls or messages left for him. After he was terminated, he told Mr. Braswell that he had a lot of time in the matter and that he charged \$125 per hour for his work. He also stated that he had prepared the letter, but he did not give Mr. Braswell a copy of it. Mr. Hall failed to file a response to the Complaint.

ROY C. "BILL" LEWELLEN, Bar No. 82093, of Marianna, Arkansas, was reprimanded and fined \$5,000 by Committee Findings & Order filed September 24, 2007, in Case No. 2007-056, on a complaint filed by Marsha Warren, for violation of Arkansas Model Rules 1.1, 1.3, 1.4(a), 1.5(c), 1.16(d), and 8.4(d). In September 2002, Ms. Warren of North Little Rock employed Mr. Lewellen to represent her in her claim for injuries received when bitten by a dog owned by Matthew Holder on August 1, 2002, in south Texas. She did not recall ever signing a contract or agreement for legal services and has no copy of one, but recalled that Mr. Lewellen told her his fee would be 25% of any recovery. Thereafter she had contacts from time-to-time on her matter with Mr. Lewellen and with Gary Austin, an attorney who worked with him. She had increasing difficulty contacting Mr. Lewellen about her matter and obtaining information about its status. Her available long distance telephone records from November 2002 - August 2004 reflect at least 121 calls to Mr. Lewellen's numbers in Marianna. Most of these were very short calls in which she left a call back. In frustration, Ms. Warren sent Mr. Lewellen a letter on May 11, 2004, terminating his services as her attorney and requesting the return of all her documents. The letter was sent certified mail and returned undelivered.

On September 23, 2004, Mr. Lewellen and Mr. Austin filed suit for her in the United States District Court in Helena, as No. 04-CV-173, against Matthew Holder, described

as a resident of Texas. Service by mail was obtained on Mr. Holder. On October 29, 2004, Mr. Holder's attorneys filed a Motion to Dismiss and Brief, alleging lack of jurisdiction over him in Arkansas. On November 22, 2004, Ms. Warren's attorneys filed a Response to the Motion to Dismiss. She had always lived in North Little Rock, and did not live in any place that could be considered as in the Helena Division of the Eastern District of Arkansas, which is where Mr. Lewellen filed her lawsuit.

On November 27, 2004, she wrote Mr. Lewellen again, informing him she was terminating his services and to send her the file. The "green card" for certified mail was signed for on November 29, 2004. In spite of being terminated by her earlier, on December 7, 2004, her attorneys filed a Motion to Transfer her case to the United States District Court in the Southern District of Texas, Galveston Division. She was not consulted about this before they filed it. On December 21, 2004, her attorneys filed a Motion to Voluntarily Non-Suit her Arkansas case. She was not consulted about this move before they filed it. That Motion was granted by the Court's Order filed December 29, 2004. Ms. Warren only learned about this Order some time later.

After she learned of the "non-suit," and that it meant she had one year from December 29, 2004, within which to refile her case somewhere, and that it did not appear Mr. Lewellen was going to refile it in Arkansas or Texas, she sought a new attorney. No attorney she consulted would take her case without a letter from Mr. Lewellen that he was no longer involved in it and that he would not claim a fee from her claim if a recovery was obtained. Ms. Warren requested Mr. Lewellen return her file. To date she has not received the file or a copy. She requested that Mr. Lewellen write a letter for her use that he no longer represented her and would claim no fee from her case, so she could try to engage another lawyer to handle this matter. To date she has received no such letter.

In late October 2005, she filed a complaint against Mr. Lewellen with the Committee on Professional Conduct. On November 15, 2005, the Office of Professional Conduct wrote Mr. Lewellen about her complaint and situation. Mr. Lewellen did not respond to the letter. In late 2005, Ms. Warren tried to contact the insurance carrier for the dog

owner about settlement of her claim. By then they would not talk with her, probably because they knew her case was "dead," not having been refiled within one year after the non-suit.

Mr. Lewellen responded that the Warren file was handled by his associate, Gary Austin, who supposedly misled Lewellen into thinking the Warren matter was being properly handled. Lewellen claims he was not aware of the suit filed for Ms. Warren and did not sign same. In rebuttal, Mr. Austin vigorously disagrees with Mr. Lewellen's version of what happened in the Warren matter.

JIM ROSE, III, Bar No. 79247, of Fayetteville, Arkansas, was reprimanded by Committee Findings & Order filed August 17, 2007, in Case No. 2007-049, on a complaint filed by Pamela E. Fischer, for violation of Rules 1.1, 1.3, and 8.4(d). On April 3, 2002, Mr. and Mrs. Fischer hired Jim Rose, III, an attorney practicing primarily in Fayetteville, to represent them concerning an investigation being pursued by the Internal Revenue Service and any appeals arising out of any criminal charges which might be filed. Mr. Rose and another attorney, Rick E. Woods of Fayetteville, were paid a total of \$30,000. The check cleared the Fischers's bank the day after it was written. The Fischers were referred to Mr. Rose and Mr. Woods by Harry McDermott, another attorney practicing in Fayetteville.

When Mr. and Mrs. Fischer first met with Mr. Rose and Mr. Wood to discuss their situation, the attorneys contacted the IRS. The Fischers were informed that the \$30,000 covered investigation, trial and appeals. There was one meeting with the IRS and both Mr. Rose and Mr. Woods attended. During December 2003, Mr. Fischer was charged with income tax fraud. Mrs. Fischer was never charged.

In early May 2004, Mrs. Fischer's husband was advised to take a plea deal because the case was so huge and blatant that, if he did not take the deal, the government would file the charge of obstruction of justice against Mrs. Fischer. Charges were not filed against Mrs. Fischer. The sentence imposed after entry of the plea was harsher and not what had been explained to Mr. and Mrs. Fischer, and they were extremely upset. As such, Mr. Fischer wanted an appeal of the sentence to

be pursued by Mr. Rose.

Mr. Fischer filed a post-conviction proceeding after being sentenced to a much greater amount of time than he was informed by his attorneys, Mr. Rose and Mr. Woods. The hearing on the post-conviction pleading was held on November 15, 2005. Following the filing of the post-hearing briefs by both sides, Magistrate Judge Beverly Stites Jones sent a request that both sides submit briefs on the issue of a requested appeal. Magistrate Judge Stites denied the Section 2255 motion filed by Mr. Fischer. Judge Jimm Larry Hendren filed his Order in the matter on October 11, 2006. Judge Hendren specifically found that Mr. Fischer clearly conveyed his desire to appeal and that his attorneys (Rose and Woods) did not file a timely Notice of Appeal. Based upon this, the Court found that Mr. Fischer received ineffective assistance of counsel. Based upon his findings, Judge Hendren set a re-sentencing. Following the re-sentencing, Mr. Fischer's time of incarceration was reduced from 46 months to 35 months. The fine and the restitution remained the same.

In responding to the formal disciplinary complaint, Mr. Rose denied that he failed to file a timely Notice of Appeal and explained that his client, Mr. Fischer, never clearly conveyed his desire to appeal. According to Mr. Rose, the only time the word "appeal" was used was when his client asked immediately following sentencing "can we appeal this." Mr. Rose replied that "yes," Mr. Fischer could, but that then was not the time to discuss it. Mr. Rose offered that he explained the futility of an appeal to Mr. Fischer and then suggested that he come to his office to discuss it further. Mr. Rose advised the Committee that Mr. Fischer never came to his office or called him to discuss an appeal after they left the sentencing. Mr. Rose averred that he would have filed a Notice of Appeal if Mr. Fischer had ever requested him to do so.

Mr. Rose disputed the information provided that Mr. Fischer contacted his office three times following the sentencing. Mr. Rose said that, if that had occurred, he would have returned the telephone call. Mr. Rose also explained that he did not remember making the statement that Mr. Fischer "no doubt wanted to appeal" during an interview with the Federal Public Defender and their investigator, as testified to by Mr. Woods

and the investigator during the evidentiary hearing in November 2006. Mr. Rose stated that if he did make the statement, he was only to say it was evident two (2) years after that sentencing hearing that Mr. Fischer had wanted to appeal.

In concluding his response, Mr. Rose offered that Mr. Fischer is actually better off than he would have been if an appeal had been filed. There is no doubt in Mr. Rose's mind that had Judge Hendren's decision not to accept the plea bargain and to go with the new higher loss been appealed, it would have been affirmed because there was nothing faulty in the reasoning or decision. However, because Mr. Fischer filed the pleading he filed and was able to get back before Judge Hendren, he was granted a new sentencing hearing and Judge Hendren reduced Mr. Fischer's time of incarceration. While remaining respectful of Judge Hendren's decision, Mr. Rose did not agree with it, and continued to maintain that Mr. Fischer did not convey his desire to appeal.

ROY EDWARD THOMAS, Bar No. 73122, of Batesville, Arkansas, was reprimanded and ordered to pay \$1,200.00 in restitution by Committee Findings & Order filed August 24, 2007, in Case No. 2007-025, on a complaint filed by Fred Jones, for violation of Rules 1.2(a), 1.3, 1.4(a), 1.16(d), 3.4(c), and 5.5(a). Mr. Jones of Batesville, who was the President of The Electric Company, Incorporated, consulted with Mr. Thomas in March 2004 about filing a business bankruptcy. Mr. Jones paid Mr. Thomas his requested fee of \$1,200.00 for the bankruptcy service on May 13, 2004. Thereafter, Mr. Jones did not hear from Mr. Thomas directly about the status of this matter, although he did attempt to obtain information from Mr. Thomas and his office. A search of bankruptcy records for the Eastern District of Arkansas via PACER reveals no bankruptcy case filed for either Fred D. Jones or The Electric Company, Incorporated, by Mr. Thomas or anyone else. Mr. Thomas did not communicate with Mr. Jones after May 2004 that Thomas would not represent Jones in this matter, nor has Thomas refunded to Jones the unearned fee. In mid-2004, Sanders Plumbing Supply, Inc. a major creditor of the company, filed suit against Mr. Jones and The Electric Company, Inc., on a business debt that Mr.

Jones intended to have discharged in the bankruptcy that Mr. Thomas was employed to file. On August 13, 2004, the creditor obtained a default judgment against Mr. Jones and the corporation for over \$65,000, which Mr. Jones was unable to satisfy.

CAUTION:

Q. BYRUM HURST, JR., Bar No. 74082, of Hot Springs, Arkansas, was cautioned, fined \$500.00, and ordered to pay restitution of \$2,212.36 by Committee Findings & Order filed September 24, 2007, in Case No. 2007-070, on a complaint filed by Lee Jablonski, for violation of Arkansas Model Rule 1.16(d). Mr. Jablonski was a party in a divorce in *Jablonski v. Jablonski*, Faulkner County Circuit Case No. E-97-73, which became final in July 1998. His appeal to the Arkansas Court of Appeals, as No. CA-99-1089, was affirmed as modified and reversed in part on September 6, 2000. Since September 2000, there have been numerous Petitions for Contempt filed against him and Citations for Contempt entered against him. In July 2003, he employed Mr. Hurst to sue his ex-wife for the harassment of the numerous Petitions for Contempt. Jablonski and Hurst entered into an agreement for representation on July 22, 2003, for a retainer of \$10,000, against which Hurst would bill at the rate of \$200 per hour. The engagement letter also stated the \$10,000 retainer was "nonrefundable." Jablonski paid Hurst the \$10,000.

After July 2003, Mr. Jablonski waited for Mr. Hurst to file suit for him. On August 31, 2005, Jablonski signed a Complaint prepared by Mr. Hurst. No suit was filed. Mr. Jablonski made telephone calls to Mr. Hurst at his office to find out about the status of his case, but he received no real substantive communication from Mr. Hurst. By July 2006, Mr. Jablonski, despairing of Mr. Hurst's inaction, contacted Hot Springs attorney Byron C. Rhodes about taking the matter. Mr. Jablonski signed a Fee Agreement with Mr. Rhodes on July 10, 2006, and paid Mr. Rhodes a \$10,000 retainer. On August 16, 2006, Mr. Jablonski mailed a grievance against Mr. Hurst to the Office of Professional Conduct.

Letters and documents were exchanged between the Office and Mr. Hurst from November 28, 2006, through April 2007. In

February 2007, Mr. Hurst provided a copy of his Jablonski file to Mr. Rhodes for his use in representing Mr. Jablonski. On April 24, 2007, Mr. Hurst provided Mr. Jablonski his first accounting for the \$10,000, which showed \$2,212.36 to be unearned. Mr. Jablonski has received no refund from Mr. Hurst. Mr. Hurst claimed Mr. Jablonski clearly agreed to a \$10,000 "nonrefundable" retainer for the representation. The written agreement between them is unclear on its face, and under the circumstances present, upon Mr. Jablonski's termination of Mr. Hurst's services, a refund of the unearned fee paid is required pursuant to Model Rule 1.16(d).

CHARLES DWAIN OLIVER, Bar No. 2001009, of Hampton, Arkansas, was cautioned and fined \$1,000 by Committee Findings & Order filed September 19, 2007, in Case No. 2007-027, on a complaint filed by Wilson McCrackin, Jr., for violation of Rules 1.2(a), 1.3, 1.4(a)(3), 1.4(a)(4), 3.4(c), and 8.4(d). In December 2006, Mr. Oliver was appointed to represent Mr. McCrackin in his appeal to the Arkansas Court of Appeals. Mr. McCrackin's first appellate attorney filed a Motion to Withdraw and for Substitution of Counsel in November 2006, specifically requesting that Oliver be appointed, and Mr. Oliver was mailed a copy of the Motion. When the Court of Appeals granted the Motion, the Per Curiam Order was mailed to Mr. Oliver and it included the January 15, 2007, due date for Mr. McCrackin's brief. Oliver did not file a brief by that date, nor did he request an extension of time to file a brief. He took no action. Mr. McCrackin wrote to the Supreme Court's Criminal Justice Coordinator and asked about the brief. In her response explaining that no brief had been filed, she copied Oliver so that he would contact his client. He did not do so. Mr. McCrackin's prison records demonstrate that he was allowed to call Oliver and leave a message. Mr. Oliver did not return the message. The State filed a Motion to Dismiss the appeal. Mr. Oliver did not respond despite being served. McCrackin filed a response and let the Court of Appeals know that Oliver had not been in touch with him. The Court of Appeals denied the Motion to Dismiss, removed Mr. Oliver as counsel of record and appointed other counsel for Mr. McCrackin.

THOMAS A. YOUNG, Bar No. 92236, of Marion, Arkansas, was cautioned and fined \$300.00 by Committee Findings & Order filed September 28, 2007, in Case No. 2007-066, on a complaint filed by Terry J. Nichols, for violation of Rules 1.1, 1.2(a), 1.3, 1.4(a)(1), 1.4(a)(3), 1.4(a)(4), 3.2, and 8.4(d). In July 2003, Mr. Nichols contacted Mr. Young to represent him in claims for injuries from an auto accident in which he was rear-ended. Young agreed to represent Nichols on a contingent fee basis. The accident occurred on July 18, 2003. The litigation to be filed involved a case of obvious liability because Nichols was rear-ended by another vehicle whose driver and passenger were illegally attempting to repossess Nichols' vehicle. Nichols' vehicle was totaled and he sustained injuries as a result of the accident.

Young filed Nichols' Complaint on November 28, 2005, against Defendants Christy Miller, Jerry Carter d/b/a J&C Repo, AAA Cash Fast, and Tennessee Title Loans. According to Young, he tried numerous searches as well as other resources to locate the defendants to serve them with the Complaint.

After being served with the Complaint, Practical Ventures, LLC, d/b/a AAA Cash Fast filed an Answer on December 27, 2005, denying that proper service had been accomplished. However, its Answer also contained an admission that it had retained J&C Repo (J&C are the initials of the first named defendants) which appeared to effectively admit that the driver was an agent of that company. Young explained that he was on vacation when the Answer was filed by Practical Ventures LLC and one of his secretaries filed it without showing it to him.

On January 25, 2006, Young obtained an Order of Voluntary Dismissal without Prejudice of Defendant AAA Cash Fast. He never took any action to amend the complaint to name Practical Ventures, LLC as a defendant after dismissing AAA Cash Fast. Young never discussed the nonsuit with Nichols, nor what effect it might have on recovery for his claims for injuries. Tennessee Title Loans had apparently previously made a loan on the vehicle and been paid in full and was inappropriately named as a defendant in the lawsuit. Young allowed the statute of limitation to expire as to one of the proper parties, leaving Nichols

with no legal recourse against a party who could be held accountable and liable for his injuries and property damage.

On March 8, 2006, Young filed a Motion for Extension of Time to Obtain Service on Christy Miller and Jerry Carter. Young stated that Nichols fired him on March 13, 2006. There was no Motion or other pleading in the file demonstrating, that based on his belief that he had been fired, Young took any action to be relieved from representation. He remained as counsel of record for Nichols on the matter throughout the entire time the matter was pending.

On March 14, 2006, Tennessee Title Loans filed its Answer to the Complaint. Young filed no other pleadings in the case file nor sought any discovery. On July 24, 2006, Young filed another Motion for Extension of Time to serve Christy Miller and Jerry Carter. Young asked for and received until November 23, 2006, to perfect service on Christy Miller and Jerry Carter.

Young presumably was unable to locate the driver and her business partner. Carter is a convicted child rapist. Attached to the formal disciplinary complaint was the printout from two different web sites listing information from the Tennessee Sexual Offender Registry with information including an address for Mr. Carter. Some law enforcement agency or the information contained in these online registries could have assisted Young in locating Carter, had Young followed through with requesting information.

Young took no action to file a Warning Order in order to perfect service after he was unable to obtain service through mail or personal service. The time for obtaining service expired before Young took any other action. On January 19, 2007, without discussing the matter with Nichols, Young filed a Motion to Nonsuit the cause of action. The Order was entered that date as well. Nichols learned all of this by going to the Crittenden County Circuit Clerk's office and reviewing the file.

During the period of time after Young filed the Complaint and he finally dismissed the matter, Nichols did not have communication with him. Young did not return telephone calls. On two occasions when Nichols visited the office he was unable to speak with Young. On March 8, 2006, Nichols wrote Young and delivered the letter to him, asking Young to release the file to him. Young did

not do so, nor did he contact Nichols after receiving the letter.

Nichols again wrote Young in January 2007, requesting that Young release the file, without lien. Nichols offered to pay Young \$500 to cover his out of pocket expenses. Nichols included his cell phone number along with his address so Young would be able to reach him. It was after Young received the letter that he filed the Motion to Nonsuit and obtained the Order granting the same. Nichols was greatly concerned that Young's actions and inaction have caused him to lose any opportunity he may have had to recover for his injuries.

Young denied that he was responsible for any prejudice to Nichols because he did not believe he had any obligation to Nichols after March 13, 2006. He placed the blame for the matter being barred with Nichols for not picking up his file in a timely manner in March 2006. ■