

Final actions from July 1, 2008, through September 30, 2008, by the Committee on Professional Conduct.

Summaries prepared by the Office of Professional Conduct.

Full text documents are available on-line at <http://courts.arkansas.gov> and by entering the attorney's name in the attorney locator feature under the "Attorney" link on the home page.

[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.]

SURRENDER:

ERIC DEAN ARCHER, Bar No. 2001190, formerly of Rogers, Arkansas, and currently in federal prison, petitioned the Court to accept the surrender of his law license after his plea of guilty and conviction filed April 30, 2008 in Case No. 07-CR-50075 in the United States District Court, Western District of Arkansas, of the felony offense of interstate transportation of stolen funds. In his plea, Archer acknowledged conversion of funds from nine clients totaling approximately \$93,000. The Court accepted his surrender on September 11, 2008, in Case No. 08-944, barring him hereafter from practicing law on his Arkansas license.

LARRY GENE DUNKLIN, Bar No. 81051, of Little Rock, petitioned the Court to accept the surrender of his law license based on his acknowledged serious misconduct involving at least two instances where his attorney trust account failed to contain funds due to his clients. After early 2006, Dunklin's trust account failed to contain \$8,333.33 in settlement funds which he was to pay to either his client McBride or a firm, Ingenix, that had paid her medical bills in that amount following her accident. This sum remains unpaid and unaccounted-for.

After March 2007, his trust account failed to contain approximately \$10,000 he was to distribute to his Rodgers clients from their settlement. In late June 2007, he was able to obtain sufficient funds from a friend to pay these clients. Formal disciplinary complaints had been filed against Dunklin arising from each of these situations. Rather than resist these charges, he offered his surrender. The Court accepted his surrender on September 18, 2008, in Case No. 08-1055, barring him hereafter from practicing law on his Arkansas license.

FRANK B. WHITBECK, Bar No. 76010, of Little Rock, while awaiting sentencing, petitioned the Court to accept the surrender of his law license after his plea and adjudication of guilt on May 8, 2008, in Case No. 07-CR-010 in the United States District Court, Eastern District of Arkansas, to a felony offense involving his submission of false financial reports for 2001-2002-2003 to the Arkansas Insurance Department for Signature Life Insurance Company of America, which was owned and controlled by Whitbeck. The Court accepted his surrender on September 4, 2008, in Case No. 08-980, barring him hereafter from practicing law on his Arkansas license.

SUSPENSION:

GAIL L. ANDERSON, Bar No. 95224, of Little Rock, Arkansas, had her Arkansas law license suspended for two (2) months, effective August 19, 2008, and was ordered to pay \$604.42 in restitution on a complaint filed by Christine Scott in Case No. CPC 2006-152 in the Findings and Order filed August 19, 2008, for violation of Rules 1.1, 1.3, 1.4, 1.16(d), and 8.4(d). Anderson was employed to represent Scott in a divorce action. Anderson failed to enter an appearance on behalf of her client; did nothing to assist her client in the legal matter; failed to communicate with her client; and, failed to return any unearned fee following termination of the employment. For failing to file a timely response to the Committee's Complaint, Anderson was also cautioned and fined \$250.

ALVIN D. CLAY, Bar No. 96075, of Little Rock, Arkansas, was placed on Interim Suspension by Committee Order filed August 7, 2008, in Case No. 2008-060. Clay was found guilty by a jury in the United States District Court, Eastern District of Arkansas, in Case No. 04-CR-274, styled *USA v. Alvin Clay*, on June 4, 2008, of five felony criminal offenses, conspiracy to commit wire fraud

**Business Valuation
Forensic Accounting
Economic Loss
Divorce Accounting, Tracing, Appraisal
Commercial Damages, Agricultural Damages**



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(Count 1) and four Counts of engaging in a monetary transaction in property derived from wire fraud (Counts 2-5). Any felony is a "serious crime" as defined in Procedures. Clay is awaiting sentencing. By Order entered June 10, 2008, Chief United States District Judge Leon Holmes suspended Clay's right to practice in the federal courts of Arkansas.

ALICE WARD GREENE, Bar No. 95197, of Little Rock, Arkansas, was suspended for twelve (12) months and ordered to pay \$975.00 in restitution. She was also reprimanded and fined \$500.00 for her failure to respond to the Complaint by Committee Findings & Order filed July 9, 2008, on a Complaint filed by Larry McCarty in Case No. 2008-20, for violation of Rules 1.3, 1.4(a)(3), 1.4(a)(4), 1.4(b), 3.4(c), 8.4(c) and 8.4(d). McCarty hired Greene in February 2007 to represent him in a divorce proceeding. Greene's license to practice law was suspended for CLE Deficiency at the time of hire. Greene's license also became suspended for failure to pay annual license fee in March 2007, but she continued to represent McCarty. Greene failed to return telephone calls or keep McCarty informed about the status of his divorce proceeding. Greene appeared in Court on two occasions when her license to practice law was suspended. Greene never told her client, opposing counsel or the Court that she was suspended. Greene continued to accept fees at all times when her license to practice law in Arkansas was suspended.

TERRY LYNN SMITH, Bar No. 92035, formerly of Texarkana and now of Umpire, Arkansas, had his Arkansas law license suspended for thirty-six (36) months, by Committee Consent Findings and Order filed and effective September 18, 2008, on a complaint filed by Wannell Bradshaw in Case No. CPC 2008-044, for violation of Rules 1.1, 1.3, 1.4(a)(3), 1.4(a)(4), 1.5(c), 1.8(a), 1.8(b), 1.15(a)(4), 8.4(c), and 8.4(d). In November 1999, Wannell and Bob Bradshaw recovered a \$4,000,000 settlement against Ford Motor Company, resulting from an August 18, 1996, farm accident in Lockesburg, Arkansas, that left Mr. Bradshaw completely paralyzed. After legal fees, expenses, and liens, the Bradshaws netted \$1,943,373.75. In 2000, the Bradshaws put their settlement in certificates of deposit. At renewal time, they decided to seek financial advice. In March 2001, the Bradshaws went

to Smith, a C.P.A., for his assistance with tax preparation, estate planning, and investment management advice. The Bradshaws went to Smith because he was both an attorney and certified public accountant who came highly recommended by Bob Bradshaw's co-worker. The Bradshaws gave Smith \$394,016.44 to invest. There was no contract of employment; however, the oral agreement was that Smith would receive one percent of the income from the Bradshaw investments for his handling of their legal work. Smith prepared and filed the Bradshaw tax returns, prepared wills, and established a family trust. The parties agreed that the Bradshaws would receive \$2,000 per month from the investments handled by Smith unless a request for more was made. In July 2001, Mr. Bradshaw was diagnosed with cancer. During this time, the Bradshaws gave Smith another \$200,000 to invest. They did not ask for, nor did they receive, accountings. Mr. Bradshaw died in July 2002. Mrs. Bradshaw admits that her husband was the one who mainly took care of their financial business, especially with Smith. Mrs. Bradshaw continued to receive the monthly allowance checks from Smith following her husband's death. For most of 2003, she received \$4,000 per month from Smith, and at one point, she purchased land for over \$400,000 based on Smith's statement to her that she had over \$400,000. In 2003, Smith borrowed \$100,000 from Mrs. Bradshaw to build a home for his mother. Mrs. Bradshaw made the loan using a certificate of deposit as collateral. Her interest rate for the loan to Smith was one percent over the interest rate she received for the certificate of deposit, but Smith agreed to pay Mrs. Bradshaw two percent over the certificate of deposit interest rate. To date, Smith has paid only \$800.00 on that loan. In November 2003, Smith requested that Mrs. Bradshaw meet with him. During that meeting, Mr. Smith read Mrs. Bradshaw a letter that outlined that all of her money was gone, primarily due to poor stock market performance. He offered to repay that money, and Mrs. Bradshaw accepted that offer. Smith forwarded to Mrs. Bradshaw two promissory notes, one for the \$100,000 loan and one for \$429,454.44. The latter number was the amount Smith arrived at after deducting the monthly draws, the income tax paid, his fees, and stock losses from the funds entrusted to him for investment. To date, Smith has paid nothing toward these promissory notes. Mrs. Bradshaw requested that Smith

provide her with any documents he could produce to evidence that he ever invested the money given to him. Smith never produced such documents. In 2007, Mrs. Bradshaw hired an attorney and sued Smith. She has obtained a \$554,130.55 default judgment against him, plus interest, and \$50,000 for attorney fees, in Sevier County Circuit Court Case No. CV-07-001-1, *Wannell Bradshaw v. Terry Smith*. Nothing has been paid on this obligation. A search of the Secretary of State's website by the Office of Professional Conduct indicates that Smith owned TLS Investment Advisory Services, Inc., a for-profit corporation filed on May 30, 2001. Mr. Smith and his wife were the officers of this corporation which has since been dissolved. A search of the Arkansas Board of Public Accountants website shows that Mr. Smith is a certified public accountant as well. As a condition of any future reinstatement, Smith is ordered to show a good faith effort toward satisfying a default judgment of \$554,130.55, plus interest, against him and in favor of Bradshaw. The Arkansas Supreme Court approved the consent disposition, with Justices Glaze and Danielson dissenting. Justice Glaze filed a written dissent, stating Smith should be disbarred for his conduct.

JAMES F. VALLEY, Bar No. 96052, of Helena-West Helena, Arkansas, was suspended for a period of thirty (30) days by Committee Findings & Order filed July 31, 2008, on a Complaint filed by Zederick Jackson in Case No. 2007-120, for violation of Rules 1.3, 1.4(a)(3), and 1.4(a)(4). Valley was employed to represent Jackson in a child support collection matter. Valley failed to file anything on Jackson's behalf from October 1999, to November 2000; failed to inform Jackson about the status of the legal matter; and failed to respond to requests about the status of the matter from Jackson and the Office of Professional Conduct.

REPRIMAND:

GAIL L. ANDERSON, Bar No. 95224, of Little Rock, Arkansas, was reprimanded and ordered to pay \$608.47 in restitution on a complaint filed by Felicia Delph in Committee Case No. CPC 2006-140 in the Findings and Order filed August 19, 2008, for violation of Rules 1.3, 1.4(a)(3), 5.3(b), 5.5(a), 8.4(c), and 8.4(d). Anderson was employed to represent Delph in a divorce action. Anderson failed to pursue any legal

action on Delph's behalf; failed to respond to requests for information from Delph; employed a nonlawyer who engaged in the unauthorized practice of law; allowed a nonlawyer complete access to the law office without supervision; allowed a nonlawyer to draft legal documents and to misrepresent who prepared the documents; and failed to properly supervise the nonlawyer, creating unnecessary delays in the divorce matter. For failing to file a timely response to the Committee's Complaint, Anderson was also cautioned and fined \$250.

J. F. ATKINSON, JR., Bar No. 76003, of Fort Smith, Arkansas, was reprimanded by Committee Consent Findings and Order filed September 19, 2008, on a complaint filed by Linda Cooper in Case No. CPC 2008-058, for violation of Rules 1.1, 1.2(a), 1.3, 1.4(a)(3), and 1.4(a)(4). Atkinson was hired by Cooper during September 2007 to represent her in a bankruptcy. Cooper's husband had passed away in June 2007 and she was having difficulty making all the bill payments. Atkinson was paid \$1,099 for fees and costs. \$299 of the total payment was for the filing fee for the bankruptcy. Cooper had great difficulty in contacting Atkinson and having him communicate with her. No bankruptcy petition was filed for Cooper prior to the time she terminated his services. He simply took no action to handle the matter for which he was hired. At the time Cooper signed her Affidavit for this complaint, Atkinson had not refunded any of the funds paid to him. Prior to entry of the Consent Order, Atkinson made full restitution to Cooper.

MICHAEL WILLIAM FREY, Bar No. 96022, of Camden, Arkansas, was reprimanded, fined \$1,500.00, and ordered to pay restitution in the amount of \$1,150.00. For his failure to respond to the Formal Complaint, he was cautioned and fined \$500.00 by Committee Findings & Order filed July 29, 2008, on a Complaint filed by Travis E. Johnson in Case No. 2008-032, for violation of Rules 1.1, 1.3, 8.4(d). Frey was employed to represent Johnson in a bankruptcy matter in 2007. Frey filed the bankruptcy petition on behalf of Johnson when he knew or should have known that the filing was prohibited under the current bankruptcy code as Johnson had previously filed for bankruptcy in 2000. Once the petition was filed, Frey failed to

file all required supporting documents for his client. The failure to file the required documents and the prohibition against filing subsequent bankruptcy petitions within a set period of time resulted in the bankruptcy petition being dismissed.

THOMAS LEWIS TRAVIS, Bar No. 95029, of Little Rock, Arkansas, was reprimanded and fined \$1,000.00 following a public hearing by Committee Findings & Order filed July 29, 2008, on a Complaint filed by Matilde Martinez & Misty W. Borkowski, Esq., in Case No. 2008-004, for violation of Rule 1.16(d). (A Notice of Appeal to the Supreme Court of Arkansas has been filed by Travis in the matter.) Travis was retained to represent Matilde Martinez in March 2001. He was hired to assist with immigration matters and other general legal matters. Travis no longer represents Martinez. Martinez and his new counsel, Borkowski, requested on numerous occasions that Travis provide Borkowski with the Martinez files. Travis did not do so. He maintained throughout the proceedings that the files are his and not his former client's.

CAUTION:

DONALD W. COLSON, Bar No. 2005166, of Benton, Arkansas, was cautioned by Committee Consent Findings & Order filed September 23, 2008, on a complaint filed by Jeffrey Ouellette in Case No. CPC 2008-055, for violation of Rules 1.1, 1.2(a), 1.3, 1.4(a)(1), 1.4(a)(3), and 1.4(a)(4). Colson was hired and paid \$500.00 during October 2006, to investigate a legal matter for Ouellette. Colson advised Ouellette that he had little or no experience in the type of matter about which Ouellette contacted him, but he would contact someone to check into the matter and perform an investigation as requested. Colson then contacted two individuals to perform the investigation. Neither was able to do so. The second of the two individuals advised Colson in December 2006 that he would not be able to assist. Colson did not contact anyone else to assist from then until he responded to a letter from the Office of Professional Conduct in March 2008. Colson did not contact Ouellette either to report any of this information. After being contacted by the Office of Professional Conduct, Colson still did not contact Ouellette by the date of the signing of the Affidavit in the disciplinary

proceeding. After being served with the formal disciplinary complaint, Colson made full restitution to Ouellette and agreed to continue to look into the matter for him.

STEPHEN FISHER, Bar No. 91073, of Little Rock, Arkansas, was cautioned and ordered to pay \$300 in restitution on a complaint filed by Yolanda Amaya in Committee Case No. CPC 2008-048 in the Findings and Order filed August 15, 2008, for violation of Rules 1.1, 1.3 and 1.4(a)(3). Amaya hired Fisher in 2005 and paid him \$1,000.00 to represent her in a divorce proceeding. Fisher represented Amaya through entry of the Decree of Divorce. Thereafter, she experienced problems with her ex-husband because of his failure to comply with the terms of the Decree. Fisher agreed to represent Amaya in the post-Decree matters. Amaya paid Fisher a \$300.00 retainer for the post-Decree matters. Fisher was not diligent in his representation of Amaya in her post-Decree matters. He delayed in filing pleadings after they were signed and verified by Amaya. Fisher also failed to obtain service of process and failed to obtain timely Orders extending the time for service of process. Fisher failed to keep Amaya informed of the status of her legal matter and failed to respond to her requests for information about her legal matter. ■