

Final actions from July 1, 2006, through September 30, 2006, 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.]

DISBARMENT

PAUL E. REVELS, Bar No. 91110, formerly of DeQueen, was disbarred by Per Curiam Order of the Arkansas Supreme Court on September 7, 2006, in No. 05-1408. The Order of Disbarment was based on a Petition for Default filed by the Office of Professional Conduct. Mr. Revels was served with the Petition for Disbarment, indicated his desire to surrender his law license but failed to submit the appropriate pleadings to do so and failed to file an Answer to the Petition for Disbarment. The disbarment was based upon violation of Model Rules 1.15(a), 1.15(a)(1), 3.4(c), 8.4(b), and 8.4(c) of the Arkansas Model Rules of Professional Conduct. The Petition and attached exhibits on file with the Clerk of the Arkansas Supreme Court demonstrate that Mr. Revels converted funds of the Estate of Jamilyn Goode for his own use, rather than maintaining them in his trust account as directed by the Probate Court of Sevier County, Arkansas. Ms. Goode, a minor, was killed in an automobile accident. Mr. Revels represented her estate. The settlement funds were deposited in his trust account. Payments were made to the mother of the minor child and to Mr. Revels for attorneys fees, in accordance with orders of the probate court. Over \$38,000 was to be held until the father of the deceased minor could be located. At about the time of his suspension from the practice of law on December 28, 2004, in another Committee case, Mr. Revels removed all of the funds in

his trust account, including the funds belonging to the Estate of Jamilyn Goode, and relocated to Texas. There were no orders of the Probate Court allowing him to remove the funds.

SURRENDER

STEPHEN GREGORY HOUGH, Bar No. 84077, of Fort Smith, petitioned to surrender his Arkansas law license. The Supreme Court, in No. 06-1012, by Per Curiam Order filed September 28, 2006, accepted the surrender and removed him from the registry of licensed Arkansas attorneys, in lieu of Committee disciplinary proceedings that have been, or would be, filed arising from multiple client complaints.

JERRY HUDSON SHEPARD, Bar No. 97094, of Harrison, petitioned to surrender his Arkansas law license. The Supreme Court, in No. 06-1084, by Per Curiam Order filed September 28, 2006, accepted the surrender and removed him from the registry of licensed Arkansas attorneys, in lieu of Committee disciplinary proceedings that would arise from his involvement in a criminal matter.

SUSPENSION

WILLIAM SCOTT DAVIDSON, Bar No. 81044, of Jonesboro, had his law license and privilege to practice law suspended for one (1) month, effective November 1, 2006, and was fined \$1,500 and ordered to pay \$709 restitution by Committee Findings and Order filed August 29, 2006, in Case No. CPC 2005-085, after a public hearing, on a complaint filed by Glenda Tippitt for violations of Model Rules 1.2(a), 1.3, 1.4(a), 1.4(b), 1.16(d), 3.4(c), 5.5(a), and 8.4(d). On August 10, 2004, Ms. Tippitt of Jonesboro hired Mr. Davidson to file a Chapter 7 bankruptcy action for her and paid him the full \$709.00 legal fee and filing fee he requested for the representation. She filled out the forms he offered her at his office. He never filed any bankruptcy for her. She contacted his office repeatedly ask-

ing for status reports but got no information. She wrote him August 12, 2005, asking him for the return of her \$709.00 so she could employ another attorney to file her bankruptcy. She did not hear from him and received no refund. She employed Jeanette Robertson of Jonesboro on August 23, 2005, and paid her only the \$230 filing fee. On the same day Ms. Robertson filed her Chapter 7 as No. 05-bk-20916. Ms. Tippitt was granted a discharge by order filed November 23, 2005. Ms. Robertson did not charge Ms. Tippitt a fee for her legal services in view of the experience Ms. Tippitt had earlier.

On September 19, 2005, Ms. Tippitt filed a complaint against Mr. Davidson with the Committee. On October 24, 2005, the Office of Professional Conduct (OPC) wrote him about the complaint. He did not respond to OPC or Ms. Tippitt as a result of that letter. He had not paid his annual Supreme Court law license fees since February 28, 2002. He practiced law in the years 2003, 2004 and 2005 without paying his required law license fee, conduct constituting the unauthorized practice of law in Arkansas. His Arkansas law license was automatically administratively suspended March 2, 2003, for failure to pay his 2003 license fee and remained so suspended until at least November 29, 2005, the date of Ms. Parks' affidavit. Mr. Davidson made a \$709 refund to Ms. Tippitt before the Committee's decision.

LORI A. MOSBY, Bar No. 94016, of Little Rock, had her law license and privilege to practice law suspended for twelve (12) months by Committee Findings and Order filed August 18, 2006, in Case No. CPC 2005-085, on a complaint filed by Kenny Woods for violations of Model Rules 1.2(a), 1.3, 1.4(c), 1.5(c), 1.15(a), 1.15(b), 1.15(c), and 8.4(c). Mr. Woods contacted Ms. Mosby after his first attorney decided to no longer represent him in his pending matter. Mr. Woods saw Ms. Mosby's ad in the Yellow Pages and selected her law firm because of the Christian symbol in her advertisement. The original fee agreement

was for Ms. Mosby to receive 40% of the total recovery she was able to secure. According to the contract, Ms. Mosby would be responsible for the costs until such time as she would receive them back when the matter was settled or recovery received. On May 12, 2003, Ms. Mosby filed a lawsuit for Mr. Woods against Tonya A. Harvey and William D. Powell. During April 2004, Ms. Mosby settled with Tonya Harvey for \$2,000. At the time of settlement, Ms. Mosby advised Mr. Woods that the check should be at her office within a few days. Ms. Mosby never sent Mr. Woods written notice that the check had been received by her in her office. Despite the fee being contingent in nature, there was never a settlement sheet provided to Mr. Woods demonstrating where the \$2000 was paid or to whom.

In June 2004, Ms. Mosby advised Mr. Woods that she needed to change their original fee agreement. She told Mr. Woods that she needed to hire another attorney to assist her with the matter. Based on this need, she convinced Mr. Woods that she needed to increase her percentage of recovery from 40% to 45%.

The decision at the jury trial on the claim against Mr. Powell was a defendant's verdict. During November 2004 when Ms. Mosby and Mr. Woods were discussing an extension of time for an appeal of the unfavorable jury decision, Mr. Woods questioned her about the \$2,000 check. Ms. Mosby told Mr. Woods that she had not cashed a check with his name on it. On September 24, 2004, Ms. Mosby wrote to Beth Kremers, the Court Reporter, and advised Ms. Kremers that she, Ms. Mosby, would be responsible for all costs associated with the appeal. Almost a month later, Ms. Mosby sent Mr. Woods a letter advising him that he needed to send \$2,200 to the Court Reporter for the cost of the transcript.

Mr. Woods ultimately contacted AIG Claims, the insurance company for Tonya Harvey, on December 1, 2004, and learned that the \$2,000 check had been issued in April 2004 and was sent directly to the Mosby Law Firm. Mr. Woods then request-

ed and received a copy of the check. The check was endorsed with Mr. Woods's name on it. Mr. Woods advised that he did not authorize Ms. Mosby or anyone else to sign his name to the check. When Mr. Woods called Ms. Mosby to check on the status of the appeal, he was informed that the request for extension of time to pursue the appeal had been denied and that he would not be afforded the opportunity of an appeal of the adverse decision. Ms. Mosby also indicated that she used the \$2,000 toward the thousands of dollars she had spent on Mr. Woods's legal matter. The problem with the appeal was the failure to pay for the transcript. According to Mr. Woods, the fee contract originally had Ms. Mosby paying the costs and then recovering them after settlement or judgment. Ms. Mosby later prepared a document for Mr. Woods to sign which required that he pay for 50% of the costs.

MARK E. VELASQUEZ, Bar No. 98149, of Fayetteville, had his law license and privilege to practice law suspended for thirty (30) days, effective September 30, 2006, agreed to and was ordered to pay \$5,547.27 restitution (since paid), and was assessed \$400 in costs by Committee Consent Findings and Order filed September 29, 2006, in Case No. CPC 2006-054, on a complaint filed by Carolyn Young for violations of Model Rules 1.15(a) and 1.15(a)(1).

On December 2, 2004, Farmers Insurance sent Mr. Velasquez a \$15,000 check in settlement of Ms. Young's claim. The payees listed on the check were Surratt Therapy Services, Scott Van Wilpe, D.C., Medicaid, Carol Young and Mr. Velasquez. Mr. Velasquez deposited the check on December 9, 2004, into his IOLTA trust account. On that same date, he wrote a check payable for the arbitration costs, which check was paid by his bank on January 4, 2005. Mr. Velasquez wrote a check to Dr. Scott Van Wilpe on December 22, 2004, which was paid by his bank on December 24, 2004. These checks are reflected on a settlement statement provided to the Office of Professional Conduct upon request of the Executive Director in

November 2005. There are no checks from Mr. Velasquez' trust account during that period of time for the specific amounts shown on the settlement sheet as owing for attorney's fees and costs. The monthly bank statement for the period November 30, 2004, through December 30, 2004, confirms the deposit of the \$15,000 check.

Pursuant to the settlement statement Mr. Velasquez created for the Office of Professional Conduct in late 2005, there should have been remaining in his trust account a balance of at least \$5,547.27 until he disbursed the remaining funds to Ms. Young. The monthly statements for his IOLTA account for the period December 31, 2004, through December 31, 2005, demonstrate that this minimum balance was not maintained from January 25, 2005, through December 31, 2005. Mr. Velasquez admitted this fact to the Committee and tendered \$5,547.27 for delivery to Ms. Young as part of the consent to discipline proposal. The shortfall in his trust account was the subject of a prior case and a reprimand filed December 9, 2005, in CPC 2005-127, in which errors by Mr. Velasquez, in the same time frame and resulting from another client case, led to shortfalls which he similarly corrected when they were brought to his attention by that complaint.

REPRIMAND

DAVID JOHN WOOD, Bar No. 81169, of Little Rock, was reprimanded by Committee Consent Findings and Order filed July 14, 2006, in Case No. CPC 2005-128, on a complaint filed by Jeanne Murphy, M.D., for violations of Model Rules 1.2(a), 1.7(a), and 1.7(b). In early 1993 Mr. Wood was both an attorney and a C.P.A., and had been designated a tax specialist by the Arkansas Board of Specialization. Since 1983 he had provided legal and tax services and advice to spouses Dr. Bruce Murphy and Dr. Jeanne Murphy and to their various business entities.

Marital difficulties arose between the Murphys in early 1993. Thereafter, Dr. Bruce Murphy approached Wood about

assisting Dr. Murphy in alleged real estate investment plans in the Destin, Florida, area. As a part of the plan, Wood allowed Dr. Murphy to place large amounts of his income into or through Wood's attorney trust account over a several year period. Wood also opened a bank account for Dr. Bruce Murphy in a Florida bank and had the account statements mailed to Wood's law office. These actions were taken without the knowledge of Dr. Jeanne Murphy.

Dr. Bruce Murphy filed for divorce on July 23, 1997. On July 29, 1997, Dr. Jeanne Murphy had a telephone conversation with Wood in which she asked Wood if Dr. Bruce Murphy had assets that were hidden from her in off-shore accounts or secret bank accounts. In that conversation, Wood provided Dr. Jeanne Murphy, also then his client, no information about Dr. Bruce Murphy's separate financial dealings through Wood. In a discovery deposition in October 1997 in the Murphy divorce case, Dr. Bruce Murphy denied the existence of any off-shore accounts. In November 1997, Wood prepared amended joint personal tax returns for the Murphys for the years 1994, 1995, and 1996, which reflected previously undisclosed interest income from a Murphy business entity. The substantial assets Dr. Bruce Murphy had hidden from his wife were eventually discovered in the divorce case and equitably distributed there. Dr. Jeanne Murphy sued Wood and his law firm for negligence, conflict of interest, constructive fraud, and fraud. At a jury trial in March 2003, a general verdict was returned in her favor and against Wood and his law firm for \$38,000 in compensatory damages and \$175,000 in punitive damages. Mr. Wood did not appeal. The \$213,000 judgment was paid in full, with Mr. Wood personally paying \$123,000.

BENJAMIN D. HOOTEN, Bar No. 2001265, of Hot Springs, was reprimanded by Committee Consent Findings and Order filed July 25, 2006, in Case No. CPC 2006-049, on a complaint brought by the Committee after Mr. Hooten self-referred, on three violations of Model Rule 8.4(c).

Mr. Hooten received an undivided interest (along with his brother) in real property from his mother in 1993. Mr. Hooten was the subject of a personal civil judgment for \$110,000 in favor of Phyllis Nash (now Dunning) in 1996. In 2001, he was licensed as an attorney. Before becoming an attorney he had worked in the real estate business. In 2003, he quit-claimed his interest in the realty to his brother and the deed was recorded June 2, 2003. Respondent Hooten prepared and executed a "disclaimer" of interest in the realty and recorded it February 18, 2004.

He filed a personal bankruptcy petition on June 4, 2004. His bankruptcy case documents show he engaged in an effort to exempt an interest in the realty through his bankruptcy case. Ms. Dunning objected to the discharge of his large judgment debt to her. The court conducted a hearing and denied Hooten a discharge in bankruptcy on the basis of what the judge found to be false statements and false schedules he had filed. Judge Mixon informed the Office of Professional Conduct that he would not be making a "judicial referral" to the Committee on this matter, having taken what he thought was sufficient punitive action against Mr. Hooten by denying him a discharge in bankruptcy, which left in place a judgment that now may approach \$200,000, with ten years' interest included.

Mr. Hooten responded that he had not intentionally made false statements in bankruptcy pleadings or his testimony there. He claimed his execution of the disclaimer was based on his reading of case law. He stated he knew little about bankruptcy or real estate law, having only been licensed a short time when these events occurred, and he was the only victim of his conduct.

Mr. Hooten has no prior disciplinary complaints or sanctions.

CAUTION

THOMAS W. BYARLAY, Bar No. 86029, of Little Rock, was cautioned by Committee Consent Findings and Order filed August 1, 2006, in Case No. CPC 2006-052, on a

complaint filed by United States Bankruptcy Judge Audrey Evans, for violations of Arkansas Rules 1.1, 3.2, and 3.4(c). Mr. Byarlay represented debtor Donald Wayne Hamilton in a Chapter 13 Bankruptcy Petition filed on September 29, 2005. An application to pay filing fee in installments was filed.

Mr. Byarlay was notified that the filing fee must be paid in full by the date first set for the meeting of creditors, which was November 2. The filing fee was paid by the client to Mr. Byarlay prior to November 2, 2005, but was not forwarded to the bankruptcy court by Mr. Byarlay. The case was dismissed for failure to pay the filing fee. Mr. Byarlay then filed a second bankruptcy petition on Mr. Hamilton's behalf on November 17, 2005. Between the filing of the first and second bankruptcy petitions, changes in the bankruptcy law took effect. One of the changes was that the automatic stay in bankruptcy was good for only thirty (30) days, unless a motion for stay is filed and an order is entered. On November 17, 2005, a Motion to Extend Automatic Stay was filed but it failed to list the case number, stated the wrong chapter of bankruptcy, failed to state the reason the pleading was filed, failed to state that the filing was made in good faith and failed to have a certificate of service attached. On November 29, 2005, the Court entered an Order striking the Motion to Extend the Automatic Stay. On December 9, 2005, Attorney filed a second Motion to Extend the Automatic Stay and Notice of Opportunity to Object. No hearing was requested and the thirty (30) day period for having an order extending the Automatic Stay expired. On January 5, 2006, a routine motions hearing day was held and the Court granted the Motion. On February 22, 2006, the Court issued an Order withdrawing its January 5 Order, and vacated the Order of Dismissal in the first bankruptcy case, thereby permitting Mr. Hamilton to proceed under the old bankruptcy code provisions.

JOHN FRANK GIBSON, JR., Bar No. 66021, of Monticello, was cautioned and

fined \$1,000 by Committee Consent Findings and Order filed August 2, 2006, in Case No. CPC 2005-147, on a complaint filed by Cindy Forrest, for violation of Arkansas Rule 8.4(d). Ms. Forrest, on behalf of Monticello Pools, a recreational association of subdivision property owners, was a defendant in a matter involving Mr. Gibson's clients' attempt to obtain a road easement through property owned in the subdivision by the business of Ms. Forrest and her husband.

Court-appointed viewers were sent to the property to make an independent report of the best location for the easement. Mr. Gibson had contact with one of the initial viewers in an *ex parte* nature and also provided information to the viewer without notice to Mrs. Forrest's attorney.

Due to the contact, new viewers had to be appointed to re-view the property and further proceedings had to be had before the Judge of the County Court. The Committee specifically found that Mr. Gibson's conduct in communicating with the court-appointed viewer in an *ex parte* manner about the subject matter of the proceeding he brought on behalf of his clients created the need for additional pleadings, hearings, and appointment of new viewers before the tribunal where the proceeding was being pursued. Such actions would not have become necessary but for his *ex parte* communication with the court appointed viewer.

MARK J. FREEMAN, Bar No. 57009, of Fayetteville, was cautioned by Committee Consent Findings and Order filed August 18, 2006, in Case No. CPC 2006-060, on information obtained from the Arkansas Court of Appeals in No. CA05-543, *Richard Watson v. Cargill, Inc.*, for violations of Arkansas Rules 1.3 and 8.4(d). Mr. Freeman entered his appearance to pursue a pro se appeal filed in the Court of Appeals by Richard Watson in a worker's compensation case. Mr. Freeman took no action in the appellate matter after filing his entry of appearance. The appellee filed a Motion to Dismiss and in response Mr. Freeman filed a

Motion to File Belated Brief, which was granted. Mr. Freeman then tendered a brief, which was rejected for failure to comply with the appellate court rules. Mr. Freeman was advised to file a Motion for Time to file a corrected brief. Mr. Freeman did not file the Motion, nor did he file a corrected brief, before the appellee filed a Motion to Dismiss. Mr. Freeman did not respond to the Motion to Dismiss, which was granted, dismissing the appeal. Mr. Freeman filed a Motion for Reconsideration of Order of Dismissal, Motion to Reopen Case, and Motion for Extension of Time to Make Corrections. The Motions were denied by the Court on July 26, 2006, and Mr. Watson got no appeal.

W. Q. HALL, Bar No. 57009, of Huntsville, was cautioned and fined \$750 by Committee Findings and Order filed September 21, 2006, in Case No. CPC 2006-003, on a complaint filed by Paul Prater, for violations of Arkansas Rules 5.5(a) and 8.4(d). Mr. Hall was separately cautioned for failing to file a response to the complaint. On April 30, 2003, at his request, Mr. Hall was transferred to "voluntary inactive status," by the Arkansas Supreme Court Clerk, and without any petition by Mr. Hall to or any action by the Committee on Professional Conduct.

He did not thereafter pay the annual law license fees required by the Arkansas Supreme Court for 2004 and 2005 until December 20, 2005.

On September 9, 2005, Mr. Hall wrote Joel Boyd (who practices with Mr. Prater), on Hall Law Offices letterhead, on behalf of Juanita Collier, a litigant in a pending circuit court case in Madison County. On that date Mr. Hall filed a Motion to Dismiss for Ms. Collier and signed it as her attorney. On November 1, 2005, Mr. Hall filed an Amended Motion to Dismiss for Ms. Collier, and signed it as her attorney. On November 2, 2005, Mr. Hall wrote Mr. Boyd, on Hall Law Offices letterhead as Ms. Collier's attorney, and forwarded to him the Amended Motion to Dismiss and Ms. Collier's Response to Interrogatories and

Requests for Production. By these acts, Mr. Hall engaged in the practice of law while his law license was in inactive or administratively suspended status. Mr. Hall was never placed in any form of inactive status by the Committee on Professional Conduct. On December 20, 2005, Mr. Hall was reinstated to active status by the Arkansas Supreme Court Clerk's office by his payment to that office that date of his 2004, 2005, and 2006 law license fee requirements.

JEANETTE HEIMBAUGH, Bar No. 97040, of Conway, was cautioned by Committee Findings and Order filed August 11, 2006, in Case No. CPC 2006-009, on a complaint filed by John David Elliott, for violations of Model Rules 1.2(a), 1.3, 1.4(a), 3.4(c) and 8.4(d). In August 2003, Mr. Elliott hired Ms. Heimbaugh to represent him in a post-Decree custody and visitation matter involving his ex-wife and their children. At the conclusion of the hearing on July 1, 2004, Ms. Heimbaugh was directed by the judge to prepare the Order. As of the date of the formal disciplinary complaint in early 2006, Ms. Heimbaugh had not done so. Mr. Elliott attempted to contact Ms. Heimbaugh with no success in the months following the hearing. An objective of the representation was for Ms. Heimbaugh to complete the order setting out his rights and duties as directed by the Court at the conclusion of the hearing on July 1, 2004. As a result, Mr. Elliott did not have his legal matter completed and had no order to be able to enforce his visitation rights with his children. Ms. Heimbaugh failed to pay her annual law license fee in 2005 until May 20, 2005, in violation of Rule VII of the Rules Governing Admission to the Bar, which requires payment by March 1 of each calendar year. As such, she was administratively suspended from the practice of law from March 2, 2005, through May 20, 2005.

JOSH QUINCY HURST, Bar No. 2004016, of Hot Springs, was cautioned by Committee Consent Findings and Order filed September 15, 2006, in Case No. CPC

2006-036, on a complaint filed by Melvin Mayweather, for violations of Arkansas Model Rules 1.3, 3.4(c), and 8.4(d). Melvin Mayweather was represented in a criminal trial by Q. Byrum Hurst, Jr. On December 20, 2004, Josh Q. Hurst faxed in a notice of appeal and became attorney of record for the appeal. Mr. Hurst filed a Motion for Extension of Time with the trial court, and the motion was granted. A partial record was filed on March 17, 2005, and a briefing schedule was commenced. Mayweather's brief was due to be filed on April 26, 2005. No brief was filed, and no motion to extend time was ever filed. On April 27, 2005, Q. Byrum Hurst, Jr., sent a letter to Mr. Mayweather stating that everything was proceeding as normal. On June 13, 2005, the State filed a Motion to Dismiss as neither a brief had been filed nor a motion for extension of time had been granted. On June 15, 2005, another attorney filed a motion to be substituted as Mayweather's counsel and a Response to the Motion to Dismiss Appeal. The Court of Appeals granted the motions and remanded the matter to the trial court to settle the record within thirty (30) days. The record was timely filed and the matter then proceeded through the appellate process.

EUGENE G. SAYRE, Bar No. 75111, of Little Rock, was cautioned by Committee Findings and Order filed July 25, 2006, in Case No. CPC 2006-017, on a complaint filed by Hoa and Co Mac, for violations of Model Rules 1.3 and 1.4(a). Complainants Mac hired Mr. Sayre in May 1999 to assist them with state tax issues brought about by an audit conducted by the Department of Finance and Administration. Mr. Sayre failed to follow the guidelines set out by statute with regard to filing objections to claims of tax delinquencies. Mr. Sayre filed suit in 2003 but the case was dismissed. The Arkansas Supreme Court affirmed the dismissal and stated that the requirements for the timing of filing such a suit were clear in the statute. Mr. Sayre failed to communicate with the Macs after the Opinion of the Arkansas Supreme Court was delivered.

The Committee specifically found that, in the course of his representation of the Macs, Mr. Sayre failed to file an action on their behalf with regard to the audit of the Department of Finance and Administration prior to the expiration of the statute of limitation to do so. In addition, the Committee specifically found that, after he sent a letter of May 31, 2005, to the Department of Finance and Administration concerning the tax liability of the Macs, Mr. Sayre failed to communicate with his clients about what efforts, if any, he undertook on their behalf to assist them with regard to their tax matter, and he failed to respond to requests for information left for him by the Macs.

L. T. SIMES, II, Bar No. 75114, of West Helena, was cautioned and ordered to pay \$2,122.99 restitution by Committee Consent Findings and Order filed September 12, 2006, in Case No. CPC 2005-162, on a complaint filed by Arnold Chandler, for violations of Model Rules 1.3, 1.4(a), 1.15(a), 1.15(b), and 3.4(c). Mr. Simes opened probate administration of the Estate of Quincy Chandler, Deceased, in Phillips County Probate on January 14, 1976. On March 19, 1976, an Order was entered appointing him as administrator of the Chandler Estate. Thereafter he served the Estate as both administrator and attorney until relieved of those duties by order entered May 20, 2005. On July 18, 1986, an order was entered directing that all farm rental income of the Estate was to be paid to him, as administrator. Thereafter he received certain annual rental checks from the tenant on the Estate's farm land. Some of these checks he deposited into his attorney trust account. Some of these checks he did not deposit, and they were found years later by him in his file unnegotiated. He failed to account for these payments to the Estate.

In January 1997, Mr. Simes assumed duties as a full-time Circuit Judge, and was thereafter prohibited by the Arkansas Code of Judicial Conduct from engaging in the private practice of law. He took no action to remove himself as either the administrator

or the attorney for the Quincy Chandler Estate. He continued to receive annual rental checks, but he did not account for them to the Estate. By January 2003 an attorney had contacted Judge Simes on behalf of Chandler Estate heirs, asking for an accounting of the annual farm rental payments. The probate court ordered Judge Simes to file a final accounting for the Estate by October 29, 2004, covering the period from March 18, 1976, to date, but he did not timely file such a final accounting. The matter was later the subject of a court hearing September 29, 2005. At the hearing Judge Simes admitted that the same tenant, Mr. Young, had rented the Estate lands from 1989-2002 for an annual rental of \$1,440.00. Judge Simes agreed that he owed the Estate \$1,440.00 annual rent for each of 1989, 1992, 1993, 1994, and 1996. He denied that he owed the Estate rent for the years 1990, 1991, 1998, and 2001, stating he had no data for these years. These checks had voided and Mr. Young replaced them with new checks issued directly to the Estate. Judge Simes denied that he owed the estate interest for any of the years in question. The Court found Judge Simes knew Young was renting the estate lands each of the years in question, and that he had a duty to collect the rents for the Estate as they became due. The Court found he violated a state code section (ACA 28-52-101(c)) by breaching his duty to the Estate, and that he was therefore liable for the loss to the Estate due to his neglect and unreasonable delay in paying over to the Estate money which was in his hands. The Court found that Judge Simes owed the Estate the annual rent for the years 1989-1994, 1996, 1998, and 2001, plus interest thereon at 6% per annum. The Court also found he owed the Estate interest for the payments for the years 1995, 1997, 1999, 2000, and 2002, the years when he received the rent checks but had not applied them for the benefit of the Estate. In all, the Court found he owed the Estate rentals for nine (9) years totaling \$12,960.00, and interest totaling \$11,178.03, all totaling a judgment of \$24,138.03, which he was ordered to pay

within thirty (30) days. Judge Simes timely paid the full amount.

On October 10, 2005, Judge Simes filed a "Petition for Attorneys Fees and Executors Fees," seeking court approval of \$13,057.50 in legal fees, \$720.00 in Executor's fees, and \$163.27 in expenses, all totaling \$13,940.77, covering his claimed service to the Estate from January 1976, through March 1998. The Court denied him any legal fees, executor's fees, and expenses from the Chandler Estate. The Court specifically found that he had not complied with Rules 1.3 (diligence), 1.4(a) (keeping the client reasonably informed), and 1.4(c) (notifying the client of his receipt of funds to which the client is entitled) of the Arkansas Model Rules of Professional Conduct. It was also noted in the Order that he had failed to comply with Judge Bell's 2004 Order that he file an accounting for the Estate. Judge Simes did not appeal the court's decisions and orders. The restitution of \$2,122.99 ordered by the Committee was for attorney's fees expended by the Chandler heirs in pursuing recovery from Judge Simes of the unpaid farm rental payments.

MORRIS W. THOMPSON, Bar No. 80145, of Little Rock, was cautioned by Committee Findings and Order filed September 21, 2006, in Case No. CPC 2006-034, on a complaint filed by Gary Owens, for violations of Arkansas Rules 1.4(b), 1.16(d), 3.3(a)(1), and 8.4(c).

In May 2005, Mr. Owens employed Mr. Thompson to represent him in pending discrimination litigation. Mr. Thompson prepared a document titled "Civil Rights Contract of Employment," which Mr. Owens agreed to and signed. Pursuant to the agreement, Mr. Owens was to pay Mr. Thompson \$300.00 per month until \$2,000 was in the trust account, and then Mr. Thompson would enter the suit for Mr. Owens. Their agreement provided that, if Mr. Owens chose not to continue with the lawsuit, Mr. Thompson would be entitled to recover a reasonable attorney's fee from the account. On May 5, 2005, Mr. Owens provided Mr. Thompson with the \$2,000.00 in

cash, and Mr. Thompson provided him with a receipt noted as being for "advance against costs." On May 12, 2005, Mr. Owens wrote Mr. Thompson a check in the amount of \$1,500.00, followed by another check for \$300.00. Altogether, Owens paid \$3,800.00 to Mr. Thompson in this matter.

Mr. Thompson entered his appearance on May 10, 2005, in the case of *Owens v. Camden Fairview School District*, No. 05-01026 (Western District of Arkansas). The court then entered a scheduling order with a report deadline of August 29, 2005. Mr. Thompson stated that, during the course of his analysis of the case, his office prepared an entry of appearance to file in court, but that the entry was sent to the court inadvertently, as he had not decided at that point whether the case had merit. On September 12, 2005, Mr. Thompson sent a letter to Mr. Owens stating "after extensive review of the materials.....provided...and the facts as I understand them to be, I do not feel you have a meritorious claim or could prevail if this matter went to trial. Therefore I am withdrawing from representing you in this matter." The letter further stated that "I have not advised Allen Roberts that I have declined to enter my appearance but I will do so soon." Mr. Thompson enclosed a \$2,300.00 refund check. The letter stated that the check was a refund of costs advanced to date and that Mr. Thompson was waiving his entitlement to compensation for time spent and the very little costs incurred. Ten days later, on September 22, 2005, Mr. Thompson filed a Motion to Be Relieved as Counsel, stating that he had agreed to look into the matter to determine if he would, in fact, represent Mr. Owens. Mr. Thompson stated that he had researched and investigated the matter and decided that it was not a case he was willing to take. Mr. Thompson stated in the motion that he had refunded Mr. Owens "all monies advanced toward anticipated costs of the litigation and agreed arrangements have been made to return all file materials...." The court granted Mr. Thompson's motion on September 26, 2005.

MARK A. VELASQUEZ, Bar No. 98149, of Fayetteville, was cautioned by Committee Consent Findings and Order filed September 18, 2006, in Case No. CPC 2005-167, on a complaint filed by Juan Mendoza, for violations of Model Rules 1.2(a), 1.3, 1.4(a), 3.4(c) and 8.4(d). Mr. Mendoza received a Notice to Appear dated April 3, 2003, for violations of Section 212 of the Immigration and Nationality Act. He was an alien present in the United States without being admitted or paroled. Mr. Mendoza had been unlawfully present in the United States for an aggregate period of more than one year. One who enters or attempts to reenter the United States under such circumstances faces a lengthy, if not lifetime, bar to entry. Mr. Mendoza received A Notice of Removal Proceedings in May 2003, with a hearing set for September 9, 2003. Mr. Mendoza retained Mr. Velasquez to represent him in the immigration proceeding. A Notice of Entry of Appearance as Attorney or Representative was filed by Mr. Velasquez on August 19, 2003, and he submitted a Motion for Telephonic Appearance. The Immigration Judge conducted a hearing for September 9, 2003 and found that Mr. Mendoza was not eligible to adjust his status based on a "hardship" waiver, concluding the law carried no waiver. Mr. Velasquez filed a Notice of Appeal on October 6, 2003. A briefing schedule was sent to Mr. Velasquez, but he never filed a brief arguing the merits of the appeal. On February 3, 2005, the Board of Immigration Appeals dismissed the appeal.

Mr. Velasquez never informed Mr. Mendoza of the Board's decision or that he had thirty days from the date of the Board's order in which to depart from the United States. This omission increased the length of time before Mr. Mendoza could possibly legally re-enter the United States, since he did not voluntarily leave during the requisite period of time. Mr. Velasquez never communicated with Mr. Mendoza about any of his options, such as filing an appeal to the Federal Circuit Court. The time limit to file the appeal expired before Mr. Mendoza had an opportunity to take action. Mr. Mendoza

stated that, if he had known in time that the Board of Immigration Appeals had dismissed his appeal there, he would have pursued an appeal to the Federal Circuit Court of Appeals. He was advised by new counsel that such action, even if not ultimately successful, could possibly delay his deportation by up to one year and allow him additional time to pursue other options.

Mr. Velasquez responded that Mr. Mendoza moved and never gave the Velasquez office his new address or telephone number. When Mr. Velasquez received the BIA decision, his office called all numbers they had, but all were disconnected except a number for Mr. Mendoza's mother-in-law. A voice message was left there. However, according to Mr. Velasquez, Mr. Mendoza and his wife were estranged at the time, and the message apparently never reached Mr. Mendoza. ■