

**BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL B**

IN RE: **ROY C. "BILL" LEWELLEN**
Arkansas Bar ID #82093
CPC Docket No. 2009-094

FILED

MAR 10 2011

**LESLIE W. STEEN
CLERK**

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based were developed from information provided to the Committee by United States Bankruptcy Judge James Mixon on September 4, 2007, and thereafter by Bill Thompson and Boyd Rothwell. The information related to the representation of Tommy Robinson and others in and after December 2006 by Respondent Lewellen, an attorney practicing primarily in Marianna, Lee County, Arkansas. On October 5, 2009, Respondent was served with a formal complaint, and he filed a timely response. The matter was submitted to Panel B for ballot vote on February 19, 2010.

The attorney discipline aspects of this matter arise from Mr. Lewellen's participation in filing a state court Complaint for Tommy Robinson and others in Monroe County Circuit Court on December 18, 2006, usually referred to by Judge Mixon as "the state court action," and Lewellen's participation, with attorney Sheila Campbell, in filing a frivolous and improperly filed Motion For Relief From Stay and associated Brief on January 9, 2007, in Robinson's bankruptcy case, No. 05-bk-13915. Some background is necessary to understand the posture of the matter as of December 2006.

1. In March 2002, with a borrowed \$1,890,623, Ag-Pro Farms of Arkansas, Inc. ("Ag-Pro Farms") acquired title to a 2,415 acre farm in Monroe County, Arkansas. Tommy Robinson and his family members and Bill Thompson owned Ag-Pro Farms, with Thompson owning a 52% interest in the corporation. In June 2002, Wildlife Farms II, LLC ("Wildlife") was formed

with the Robinsons' interest being one-third of Wildlife. Wildlife then borrowed \$2,950,000 so that Wildlife could purchase the 2,415 acre farm from Ag Pro Farms plus an additional 120 acres from a third party. As part of the transaction, the Robinsons became the 100% owners of Ag Pro Farms and Wildlife Farms thereafter was owned one-third each by Bill Thompson's entity, Boyd Rothwell's entity, and Ag Pro Farms, the Robinson entity. The purpose of Wildlife was to develop an upscale commercial hunting lodge on the farm property.

2. Problems arose which led to foreclosure litigation in state court in Monroe County among the Wildlife owners in November 2002, over a \$175,000 loan by Wildlife to the now-100% Robinson owned corporation, Ag-Pro Farms, secured by the Robinson Ag Pro Farm's one-third interest in Wildlife. Mr. Lewellen represented Robinson in this earlier state court foreclosure suit litigation instituted in 2002 by Wildlife against Mr. Robinson which resulted in the assertion of counterclaims against the Robinsons, their sons and business entities. Stuart Hankins represented the other owners of Wildlife, Thompson and Rothwell, in the 2002 state court case.

3. On August 9, 2004, while the state court litigation was still pending, Wildlife Farms negotiated an option contract with the United States of America (USA) that would allow the USA to impose a wildlife easement on the Wildlife Farms real property in consideration of payment to Wildlife of a substantial sum of money. The option could only be exercised by the USA, and the option subsequently expired without being exercised by the USA. The existence of this option was not disclosed at the time to the state court or to the Robinsons.

4. On September 3, 2004, before final judgment in the state court litigation involving Wildlife Farms was entered, the Robinsons filed a voluntary Chapter 11 bankruptcy for Ag Pro

Farms, No. 04-bk-20447. In October 2004, they converted this case to a Chapter 7 liquidation case.

5. In November 2004, the Monroe County Circuit Court, in a case in which Mr. Lewellen represented the Robinson parties, issued a letter order finding that Robinson's Ag-Pro Farms, by then a Chapter 7 debtor in bankruptcy, was in default on its note owed to Wildlife Farms. The bankruptcy court then approved a consent order on December 13, 2004, that granted relief from the automatic stay in bankruptcy and abandonment of Ag-Pro's one-third interest in Wildlife Farms. Lewellen did not represent the Robinson interests in the Ag-Pro bankruptcy case. With the relief from stay in the bankruptcy case, in December 2004, in the state court case a Final Judgment was entered granting foreclosure against the "Robinson" interest in the Wildlife farm and awarding money judgments against the Robinsons and their sons on the counterclaims. The Ag-Pro interest in Wildlife Farms was sold to Wildlife Farms on January 27, 2005, for \$233,774.26. In January 2005, Wildlife (now consisting of only Rothwell and Thompson) bought the Ag Pro Farms' former membership/Robinson interest in Wildlife at the public foreclosure auction. The state court entered its order on February 4, 2005, approving the commissioner's sale to Wildlife of the Ag-Pro Farms' membership / Robinson interest in the farm/Wildlife to Wildlife, which then became 100% owned by the Rothwell and Thompson entities.

6. In March 2005, Robinson and his wife were placed into involuntary bankruptcy (Case No. 05-bk-13915) by two of their creditors, Thompson and Rothwell. The Robinsons were represented in their bankruptcy by Little Rock attorney Sheila Campbell. The bankruptcy court eventually denied the Robinsons a discharge in bankruptcy in May 2007, for knowingly and fraudulently making false oaths and accounts in their case. The Robinsons appealed and that

adverse ruling was eventually affirmed in a consolidated appeal of Nos. 08-2003, 08-2004, and 08-2005 by the United States Court of Appeals for the Eighth Circuit on August 25, 2009.

7. On May 17, 2005, after acquiring the Robinson Ag Pro Farms' membership interest in Wildlife/the farm, Wildlife negotiated a new easement option with the USA. USA exercised the new option on August 9, 2005, paying Wildlife the net sum of \$1,635,074.00.

None of these proceeds from the easement payment went to any of the individual partners / owners of Wildlife, including Thompson and Rothwell, except as reimbursement for monies the individuals had lent to Wildlife to cover its operating expenses and to pay the secured creditors of Wildlife.

8. On or shortly after October 7, 2005, Tommy Robinson was made aware of the second USA easement option with Wildlife Farms, for a price of \$1,730,484.00, when he received a letter of that date from the USDA/NRCS office in Little Rock to him, issued pursuant to Robinson's FOIA request. The "fax header" on the USDA/NRCS letter to Robinson indicates a copy was either faxed to or from Mr. Lewellen's office on December 14, 2006, four days before he filed the new state court case, CV-2006-120. In March or April 2006, Tommy Robinson and his attorney Campbell, met with the Trustee in the Robinson bankruptcy and informed the Trustee of the \$1.6 million paid to Wildlife for the easement to the USA. They inquired as to whether the Trustee might have a cause of action against Thompson, Rothwell, Wildlife Farms, and others for failing to disclose the existence of the [first] option easement to the state court during the foreclosure proceedings. After investigating the matter, on behalf of the Robinson debtor's estates, the Trustee settled with Thompson, Rothwell, and Wildlife Farms all claims that could be raised related to the easement in a compromise settlement. After a hearing on June 1, 2006, at which the debtor Robinson objected to the settlement, claiming his bankruptcy estate

was entitled to one-third of the easement proceeds to Wildlife, the bankruptcy court approved the settlement by Order filed June 9, 2006. The Order approving the trustee's settlement was not appealed by the Robinson interests. By Order entered by Judge Mixon on July 28, 2006, in their bankruptcy cases, the Robinsons and all persons acting for them were enjoined and restrained from interfering in any way with the administration of their bankruptcy estates and the sale of any assets from those estates. On August 16, 2006, Greg and Jeff Robinson, with David Bowden as their attorney, executed and delivered to the attorney for Wildlife a full release of all their claims in CIV 2005-88-3. This release was given in consideration of Wildlife, Thompson, and Rothwell satisfying a judgment in excess of \$78,000 they held against Greg and Jeff Robinson. On September 9, 2006, in CV-2005-88-3, an Agreed Order of Dismissal With Prejudice of Portions of Complaint was executed by David Bowden for his clients Greg and Jeff Robinson and filed. This is the same matter that was covered by the full release executed by these Robinsons on August 16, 2006.

9. Wildlife's 2,500+ acre farm was listed with a national auction company which advertised the farm nationally and set it for sale at public auction on December 19, 2006. On Monday, December 18, 2006, at 1:10 p.m., Mr. Lewellen, engaged for the specific purpose by Tommy Robinson on Saturday, December 16, 2006, filed a new lawsuit he had prepared over the weekend, the "Complaint for Extraordinary Equitable Relief as an Independent Action at Equity," in state court in Monroe County Circuit as No. CIV-2006-120-3, alleging Thompson and Rothwell had committed fraud on the Robinsons by failing to earlier disclose a \$1,635,074 easement option contract between the United States of America. that closed and was funded in August 2005. Lewellen also filed a notice of lis pendens against the Wildlife real property, putting a "cloud" on the title to the lands. The new Complaint does not appear to mention any

bankruptcy case or cases involving Lewellen's clients, the Robinsons, or that Wildlife and the easement issue have been before a bankruptcy court. The new Complaint does reference the earlier and concluded Monroe County Circuit case , No. CV-2002-103, involving Tommy Robinson vs. Wildlife Farms, including reference to a final judgment entered in that earlier case on December 27, 2004.

10. The USA easement issue had been settled earlier in 2006, as part of what Judge Mixon later referred to as a "global settlement," by the Robinsons's bankruptcy trustee in his Motion for Compromise Settlement of all pre-petition claims that were or could have been raised by the bankruptcy trustee (for the Robinsons) against Wildlife, Thompson, Rothwell, and others, including the issue of the alleged fraudulent concealment of the sale of the easement, as shown by the Trustee's Settlement Motion dated May 2006, and approved by bankruptcy court Order filed June 8, 2006, in No. 05-bk-13915, and a Release. There was no appeal by the Robinson parties from the June 8, 2006 bankruptcy court Order.

11. In the February 26, 2007, hearing on the Wildlife Motion for Order of Contempt, Lewellen admitted he never talked to Carolyn, Greg, or Jeff Robinson, or to the Robinsons' bankruptcy Trustee, Frederick Wetzel, or to David Bowden, attorney for Greg and Jeff Robinson in Monroe County Circuit No. CV-2005-88-3, Robinson et al. v. Thompson et al. (the "RICO" case), prior to filing the December 18, 2006, state court Complaint naming these three Robinsons as his client plaintiffs. By Order filed July 28, 2006, Judge Mixon enjoined and restrained Tommy Robinson and anyone acting for him from interfering with the administration of the bankruptcy or the sale of assets from the bankruptcy estate by the Trustee.

12. There was a hearing on December 19, 2006, in the new state court case on the Robinsons' request for a temporary restraining order ("TRO") to stop the Wildlife sale set for

that date at 1:00 p.m. At the hearing, Mr, Lewellen withdrew the request to stop the sale and asked the state court to direct that the proceeds of the sale not be distributed until the merits of the new state court action could be adjudicated. At the TRO hearing on December 19, 2006, the attorney for Wildlife introduced documents showing the bankruptcy court had already approved the Trustee's settlement of the cause of action being advanced by Robinson related to the easement. At the conclusion of the TRO hearing, the state court suggested that the Robinson plaintiffs apply to the bankruptcy court for permission to proceed on the merits of the new state court action.

13. As a result of the last-minute state court suit filed in December 2006, the title insurance company would not issue a title policy for Wildlife and the farm auction was cancelled, leaving Wildlife responsible for auction expenses ultimately determined to be \$102,817.81. Wildlife, Thompson and Rothwell then pursued the Robinsons, their sons, Lewellen and Campbell for the auction expenses, attorneys fees, and contempt.

14. Collateral to these events, on March 3, 2006, Wildlife, Thompson and Rothwell filed an adversary proceeding, No. 06-ap-111, in the Robinson bankruptcy, No. 05-bk-13915, objecting to any discharge in bankruptcy for Tommy and Carolyn Robinson on the basis of false statements, non-disclosure of material financial matters, etc. After a trial on January 10, 2007, Judge Mixon filed his Memorandum Opinion on May 17, 2007, granting the relief and denying either Robinson a discharge in bankruptcy.

15. In the suit filed for the Robinsons in Monroe County on December 18, 2006, Lewellen claimed that knowledge of the existence of the easement agreement with the United States for at least \$1,700,000 had been earlier fraudulently kept concealed by the other shareholders in Wildlife, namely Thompson and Rothwell from the state court (in Robinson v.

Wildlife, Monroe Circuit CV 2002-103) and the Robinsons by the other shareholders in Wildlife, namely Thompson and Rothwell. Lewellen's Complaint in the new December 18, 2006, state court version of Robinson v. Wildlife failed to mention the actions in the Robinson bankruptcy case earlier in 2006 that dealt with and resolved the USA easement issue. Sheila Campbell, the Robinsons' bankruptcy counsel at the time, was not counsel with Lewellen on the new December 18, 2006, state court complaint, and was not consulted by Lewellen before he filed this new state court action.

16. On January 9, 2007, Lewellen and Campbell filed for the Robinsons in their bankruptcy case No. 05-bk-13915 a "Motion For Relief From Stay" (Docket #244) and a supporting Brief (Docket #245), for the purpose of seeking bankruptcy court approval to allow the state court action filed December 18, 2006, to go forward and for a ruling on the merits to be obtained there. In this pleading, Lewellen and Campbell alleged that the Wildlife plaintiffs (Thompson and Rothwell by then) had committed fraud against the Robinson debtors and the Monroe County Circuit Court by failing to disclose to the debtors and the state court the existence of the Wildlife easement contract between Wildlife and the USA prior to entry of the final judgment in the state court case No. CV-2002-103 on December 2, 2004. On January 16, 2007, Lewellen, by Campbell, caused to be filed as Docket item #255 in the Robinson bankruptcy case, a pleading entitled "Response of Counsel for Debtor in State Court Action Who Has Sought Relief From Stay in This Proceeding Only for Limited Purposes," in which Lewellen states that when Tommy Robinson came to Lewellen's home on Saturday, December 16, 2006, and employed Lewellen to file the new state court action in Monroe County to stop the December 19, 2006, auction sale of the Wildlife farm, Robinson failed to disclose to Lewellen that "any issue relating to the sale of the environmental easement by Wildlife Farms, II, LLC,

had, in any way, been presented, litigated, or determined in this then pending Chapter 7 proceeding.”

17. On February 20, 2007, the Wildlife parties filed their Motion for Rule 11 Sanctions against Lewellen in the Monroe County state court case, alleging that Lewellen was asserting in his January 16, 2007, bankruptcy court “Response” that prior to Lewellen filing the new state court Complaint on December 18, 2006, Tommy Robinson had withheld from Lewellen information that Robinson knew about the USA easement with Wildlife long prior to December 18, 2006, and that with reasonable investigation or inquiry by Lewellen prior to filing the new state court Complaint, Lewellen could have discovered this material falsehood or omission by Robinson prior to filing the new state court case. After the hearing in Helena on February 26, 2007, Judge Mixon entered his Order of Contempt on April 17, 2007, finding Robinson and Lewellen in civil contempt and assessing expenses and fees. Robinson and Lewellen were jailed for one night, until they dismissed the state court action and released the lis pendens notice. Robinson was also found to be in criminal contempt of the bankruptcy court for filing the new state court case in December 2006. The transcript of Judge Mixon’s stated findings on February 26, 2007, is clear about the facts, history, legal findings, and orders of this matter in the run-up to the auction sale in December 2006. Wildlife and its owners, Thompson and Rothwell, filed a Motion for Sanctions and a Motion for Award of Attorney’s Fees, Costs, and Auction Expenses against Lewellen and Campbell on March 15, 2007, seeking in excess of \$135,000 in specific costs, and Campbell and Lewellen filed responses.

18. Wildlife filed another Motion for Sanctions on April 13, 2007, seeking monetary sanctions against Campbell and Lewellen for, among other claims, making or adopting in a bankruptcy pleading (January 16, 2007, Response to Contempt Motion) a false statement made

by Robinson to Lewellen that the sale of the environmental easement on the Wildlife farm had never been disclosed to Tommy Robinson or reviewed by any court. A Stipulation was executed on August 22, 2006, by Campbell for counter-claimants Tommy and Carolyn Robinson, in AP No. 06-ap-1111, a part of their consolidated bankruptcy in No. 05-bk-13915, by which document the Robinsons dismissed their counterclaim, which alleged the fraudulent concealment by Wildlife and its owners of the \$1.7 million U.S. environmental easement on the Wildlife Farm. A further hearing was conducted on April 20, 2007, and resulted in Judge Mixon's Order filed August 29, 2007. At the hearing on April 20, 2007, Mr. Lewellen stated he represented Robinson in the 2002 state court case in Monroe County (CV-002-103) to its conclusion in late 2004.

19. Mr. Lewellen then elected to file his appeals of the sanctions order against him from Bankruptcy Court to the United States District Court and the Eighth Circuit Court of Appeals.

20. According to the September 10, 2009, Joint Affidavit of Thompson and Rothwell, they now own 100% of Wildlife, have endured the time and expense of repeated frivolous litigation over Wildlife with the Robinsons since November 2002, lost \$102,817.81 in expenses on the cancelled farm auction sale in December 2006, and have been unable to attract any written offers since then for sale of the farm. Wildlife, Thompson and Rothwell have unsatisfied judgments against Mr. Lewellen totaling \$29,329.53 from the bankruptcy proceeding. Wildlife, Thompson and Rothwell also have an unsatisfied judgment against Mr. Lewellen for \$1,920.32 for attorneys' fees in the state court case.

21. After a hearing on January 18, 2008, Judge Mixon entered an Order of Contempt against Tommy Robinson on February 1, 2008, in Robinson's bankruptcy case. The court sentenced Robinson to two months incarceration for criminal contempt. On April 10, 2008, Judge James Moody issued his Order in the eight (8) consolidated Robinson-Lewellen-Campbell

federal district court appeals, setting out the factual history of the case, and affirming the sanctions assessed against Lewellen by Judge Mixon. Judge Moody affirmed the bankruptcy court award of a judgment for sanctions against Robinson and Lewellen, jointly and severally, for \$18,829.53 for fees and costs and to Thompson and Rothwell another \$10,000 against each of Lewellen and Campbell, jointly and severally, to compensate them for the ongoing monetary injury of having to defray the deficit generated by Wildlife Farms.

22. Mr. Lewellen appealed, as No. 08-2046. The Court of Appeals for the Eighth Circuit affirmed Judge Moody by Order filed February 19, 2009, holding that Mr. Lewellen had to pay the \$10,000 monetary sanctions and attorneys fees imposed on him by Judge Mixon for filing the Motion for Relief From Stay, which both the bankruptcy court and the district court found to be legally baseless and filed for the improper purpose of hindering the sale of land and harassing opposing parties. Mr. Lewellen filed a petition for rehearing *en banc*, which was denied on March 25, 2009.

23. Wildlife, Thompson and Rothwell have unsatisfied counterclaim judgments against Mr. and Mrs. Robinson from the state court case in Monroe County. On March 31, 2009, Wildlife, Thompson and Rothwell filed writs of garnishment in Monroe Circuit Court against the Robinsons and attempted to collect on the state court judgments. On April 10, 2009, the Robinsons filed a *pro se* Motion to Squash [sic] Writ of Garnishment and for Injunctive Relief, asserting that any judgment arising from the foreclosure on the Robinsons' interest in Wildlife should be deemed to have been satisfied by the Robinsons' share of the large equity Wildlife had in proceeds from Wildlife's sale of the conservation easement on the farm property (alleged to be in the \$6-8 million range).

24. On May 19, 2009, Lewellen entered his appearance as the Robinsons' attorney and

filed an Amended Motion to Squash [sic] Writ of Garnishment, Request for Injunctive Relief, etc., subsequently supported with Brief, for the Robinsons. The basis for both motions was a matter already ruled on or settled adversely to the Robinsons by unappealed orders - the Wildlife foreclosure, acts by the bankruptcy trustee that were approved by that court, and the Robinsons having no claim on the funds from the USA easement on the Wildlife farm.

25. On June 3, 2009, counsel for Wildlife wrote Mr. Lewellen, asking him to delete certain portions of his Amended Motion and certain claims in it or be faced with a motion for Rule 11 sanctions in the state court case and a motion for contempt in the Robinson bankruptcy case. On July 6, 2009, Wildlife (now "Mallard Pointe Lodge"), Rothwell, and Thompson filed their Motion for Order of Contempt in the Robinson bankruptcy case. The motion was set for hearing on September 17, 2009. By agreement of the attorney for Wildlife, Thompson and Rothwell and the attorney for Lewellen, in late July, Mr. Lewellen filed a Motion to Withdraw as Counsel for Writ of Garnishment. On August 3, 2009, an Order Relieving Counsel [Lewellen] and Withdrawal of Pleadings was filed. In return for the withdrawal of the representation and withdrawal of pleadings, Wildlife, Thompson and Rothwell agreed not to pursue state court sanctions or a bankruptcy contempt order against Mr. Lewellen, but did not release him from any other claims based on such conduct.

26. As of September 10, 2009, Wildlife, Thompson, and Rothwell had unpaid judgments against Mr. Lewellen of \$29,329.53 for sanctions and attorneys fees, plus \$1,920.32 on attorneys fees and costs awarded in the state court case.

Upon consideration of the formal complaint and attached exhibit materials, the response to it, and other matters before it, and the Arkansas Rules of Professional Conduct, Panel B of the Arkansas Supreme Court Committee on Professional Conduct finds:

A. Mr. Lewellen's conduct violated Rule 1.1, to wit, (1) when, before filing the new Monroe County case of Robinson et al. v. Wildlife et al., No. CV-2006-120-3 on December 18, 2006, for his clients Tommy Robinson et al., Mr. Lewellen failed to communicate with Robinson's bankruptcy counsel, Sheila Campbell, about the status of and issues involved in bankruptcy cases involving Mr. Robinson, cases of which Lewellen had knowledge at the time. If Lewellen had timely communicated with Ms. Campbell, he would have learned Tommy Robinson's Trustee in bankruptcy had settled and compromised in earlier court proceedings the very claims Lewellen filed for Robinson in the new Complaint filed December 18, 2006, conduct by Lewellen demonstrating a lack of legal knowledge, skill, thoroughness, and preparation reasonably necessary for his representation of Tommy Robinson; (2) when, before filing the new Monroe County case of Robinson et al. v. Wildlife et al., No. CV-2006-120-3 on December 18, 2006, for his clients Greg and Jeff Robinson, Mr. Lewellen failed to communicate with those clients, and if he had, he would have learned they had finally settled and compromised in other and earlier court proceedings the very claims Lewellen filed for them in the new Complaint filed December 18, 2006. conduct by Lewellen demonstrating a lack of legal knowledge, skill, thoroughness, and preparation reasonably necessary for his representation of Greg and Jeff Robinson; and (3) when, before filing the new Monroe County case of Robinson et al. v. Wildlife et al., No. CV-2006-120-3 on December 18, 2006, for his clients Tommy and Carolyn Robinson, Mr. Lewellen failed to communicate with any bankruptcy trustee in cases involving those clients, and if he had, he would have learned the Robinsons' bankruptcy Trustee had settled and compromised in earlier court proceedings the very claims Lewellen filed for them in the new Complaint filed December 18, 2006,, conduct by Lewellen demonstrating a lack of legal knowledge, skill, thoroughness, and preparation reasonably necessary for his

representation of Tommy and Carolyn Robinson. Arkansas Rule 1.1 requires that a lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

B. Mr. Lewellen's conduct violated Rule 3.1, to wit, before filing the new Monroe County case of Robinson et al. v. Wildlife et al., No. CV-2006-103 on December 18, 2006, for his client Tommy Robinson, Mr. Lewellen failed to communicate with any of the following: Robinson's bankruptcy counsel, Sheila Campbell, other Robinson family members such as Carolyn, Greg or Jeff Robinson, bankruptcy Trustee Frederick Wetzel, David Bowden, attorney for Greg and Jeff Robinson, or Stuart Hankins, attorney for Thompson, Rothwell and Wildlife Farms, about the status of and issues involved in bankruptcy cases involving Lewellen's new Robinson plaintiffs. If Lewellen had timely communicated with any of these persons, he would have learned Tommy, Carolyn, Greg, and Jeff Robinson had settled and compromised in other and earlier court proceedings the very claims Lewellen filed for the Robinsons in the new Complaint filed December 18, 2006, and thus learned there was no basis in law and fact for seeking the relief Lewellen sought in the December 18, 2006, Complaint, that was not frivolous, or which could have reasonably included a good faith argument for an extension, modification or reversal of existing law. Arkansas Rule 3.1 requires that a lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law.

C. Mr. Lewellen's conduct violated Rule 3.3(a)(1) to wit, when at a hearing on April 20, 2007, before Judge Mixon in Case No. 05-bk-13915, Judge Mixon found that Lewellen testified that he was not to blame for the cancellation of the sale at auction on December 19, 2006, of

Wildlife Farms because Lewellen had withdrawn the notice of lis pendens and his objections to the sale in open court during the December 18, 2006, TRO hearing in state court, yet his statement to the court was false as he did not formally release the notice lis pendens until January 2, 2007, long after the auction was cancelled for want of a title insurance policy. Arkansas Rule 3.3(a) requires that a lawyer shall not knowingly: (1) make a false statement of fact or law to a tribunal; or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.

D. Mr. Lewellen's conduct violated Rule 3.4(c), to wit, (1) he knowingly disobeyed the bankruptcy court's order of July 28, 2006, that clearly gave Lewellen's client Tommy Robinson notice that Robinson was not to interfere with the administration of Robinson's bankruptcy estate, by assisting Robinson in the preparation and filing of the new state court action on December 18, 2006, (called "state court II" by Judge Moody), and when Lewellen filed in bankruptcy court for permission for Robinson to sue Thompson, Rothwell, and their attorney Hankins; (2) he disregarded or violated Federal Rule of Bankruptcy Procedure 9011, a prohibition against filing a baseless or frivolous claim, or filing a claim for an improper purpose, such as delay, harassment, or increasing litigation costs. The bankruptcy court found that Lewellen knew the Robinsons were debtors in bankruptcy before he filed the new state case on December 18, 2006, and that he either knew or, with the exercise of reasonable diligence, should have learned that his new state court cause of action has previously been settled by the Robinsons' bankruptcy Trustee and he knew of such claims settlement by December 19, 2006, by virtue of the exhibits received into evidence that day at the TRO hearing in state court. Lewellen should have known the new state court action he filed was barred under principles of res judicata; and (3) he disregarded or violated Federal Rule of Bankruptcy Procedure 9011, a

prohibition against filing a baseless or frivolous claim, or filing a claim for an improper purpose, such as delay, harassment, or increasing litigation costs. The bankruptcy court found that Lewellen knew the Robinsons were debtors in bankruptcy before he filed the new state case on December 18, 2006, and that he either knew or, with the exercise of reasonable diligence, should have learned that his new state court cause of action has previously been settled by the Robinsons' bankruptcy Trustee and he knew of such claims settlement by December 19, 2006, by virtue of the exhibits received into evidence that day at the TRO hearing in state court. Lewellen should have known his Robinson debtor clients had no standing to bring the new state court action he filed for them, when all the debtors' causes of action, including state law claims, became property of the bankruptcy estate upon their being placed in bankruptcy by the filing of the bankruptcy petition in No. 05-bk-13915 on March 2005. Arkansas Rule 3.4(c) requires that a lawyer shall not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists.

E. Mr. Lewellen's conduct violated Rule 4.4(a), to wit, (1) Judge Mixon found that Lewellen filed the new state court Complaint on December 18, 2006, for the improper purposes, under Bankruptcy Rule 9011, of harassing the Wildlife parties, indefinitely delaying the sale of the Wildlife Farms real property, and causing the Wildlife parties to incur enormous and unnecessary expenses associated with the cancellation of the auction sale and the ongoing costs of the Wildlife Farms operation; (2) Judge Mixon found that Lewellen filed the Motion and Brief in the Robinson bankruptcy case on January 9, 2007, in violation of both the frivolous and improper purposes of Bankruptcy Rule 9011, for the purpose of harassing the Wildlife parties and causing the Wildlife parties to incur enormous and unnecessary expenses; and (3) by filing his

Amended Motion to Squash [sic] Writ of Garnishment, Request for Injunctive Relief, etc. on May 19, 2009, in Monroe Circuit CV-2002-103, and rearguing the wildlife easement issue that had been long-settled in federal bankruptcy court among the parties, was done for the purposes of delaying and burdening Rothwell and Thompson in their efforts to collect on valid judgments they held against Tommy Robinson, and Lewellen's conduct and caused Rothwell, Thompson, and Wildlife Farms to incur unnecessary legal expenses. Arkansas Rule 4.4(a) requires that, in representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

F. Mr. Lewellen's conduct violated Rule 8.4(d), to wit, (1) Judge Mixon found that Lewellen had very seriously abused the bankruptcy process in his filings and actions in the Robinson bankruptcy proceedings in 2007; (2) by filing a new, frivolous, and improper state court lawsuit and related lis pendens against the Wildlife Farm property on December 18, 2006, the day before the scheduled, nationally-advertised auction of the farm, without properly and adequately investigating the circumstances and legal history of the client's matter, Lewellen caused the cancellation of the sale and the owners of Wildlife to incur auction-related expenses of about \$102,000 for an auction that did not take place through no fault of the Wildlife Farms owners, an expense which those parties had to pay; (3) when on January 9, 2007, he, along with attorney Campbell, filed in the Robinson bankruptcy case a Motion for Relief From Stay and Brief in Support for improper purposes in violation of Bankruptcy Rule 9011; Lewellen did not act on the "safe harbor" request of counsel for Wildlife to withdraw the Motion for Stay and Brief; and thereafter Lewellen asserted at the contempt hearing on April 20, 2007, to the bankruptcy court that he could not withdraw these pleadings because Campbell, and not

Lewellen, was “lead counsel” in the Robinson bankruptcy case. Judge Mixon found that at the time they filed the Motion for Stay and Brief, Campbell and Lewellen knew about the trustee’s previous settlement of the Robinson debtors’ cause of action against Rothwell, Thompson, and Wildlife Farms related to the wildlife easement with the USA. Judge Mixon sanctioned Mr. Lewellen for this misconduct by assessing attorney’s fees and costs against Lewellen and Mr. Robinson of approximately \$19,000 for Wildlife having to defend the Motion for Stay and Brief. This sanction against Lewellen, along with one for \$10,000 against him to partially compensate the Wildlife owners for ongoing monetary injury if having to defray the deficit generated by Wildlife Farms, was affirmed by Judge James Moody on appeal by Lewellen in United States District Court. The \$10,000 sanction was affirmed by the Eighth Circuit Court of Appeals on December 12, 2008; and (4) after the Robinsons filed a *pro se* Motion to Squash (sic) Writ of Garnishment on April 10, 2009, in a state case involving the Wildlife Farms parties, on May 19, 2009, Lewellen entered his appearance as the Robinsons' attorney and filed an Amended Motion to Squash [sic] Writ of Garnishment, Request for Injunctive Relief, etc., subsequently supported with Brief, for the Robinsons. The basis for both motions was a matter already ruled on or settled adversely to the Robinsons by unappealed orders - the Wildlife foreclosure, acts by the bankruptcy trustee that were approved by that court, and the Robinsons having no claim on the funds from the USA easement on the Wildlife farm. On June 3, 2009, counsel for Wildlife wrote Mr. Lewellen, asking him to delete certain portions of his Amended Motion and certain claims in it or be faced with a motion for Rule 11 sanctions in the state court case and a motion for contempt in the Robinson bankruptcy case. On July 6, 2009, Wildlife (now “Mallard Pointe Lodge”), Rothwell, and Thompson filed their Motion for Order of Contempt in the Robinson bankruptcy case. The motion was set for hearing on September 17, 2009. By agreement of the

attorney for Wildlife, Thompson and Rothwell and the attorney for Lewellen, in late July, Mr. Lewellen filed a Motion to Withdraw as Counsel for Writ of Garnishment. On August 3, 2009, an Order Relieving Counsel [Lewellen] and Withdrawal of Pleadings was filed. In return for the withdrawal of the representation and withdrawal of pleadings, Wildlife, Thompson and Rothwell agreed not to pursue state court sanctions or a bankruptcy contempt order against Mr. Lewellen, but did not release him from any other claims based on such conduct. By filing the Amended Motion to Squash [sic] Writ of Garnishment, Request for Injunctive Relief, etc., and Brief, for the Robinsons in 2009, Lewellen filed frivolous pleadings, attempted to relitigate matters settled by previous litigation, orders, and appeals, and caused additional and unnecessary legal expense for the Wildlife Farms owners, all conduct that is prejudicial to the administration of justice. Arkansas Rule 8.4(d) provides that it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel B, that **ROY C. LEWELLEN**, Arkansas Bar ID# 82093, be, and hereby is, **REPRIMANDED** for his conduct in this matter, **FINED \$10,000.00**, and assessed \$50.00 costs. The fine and costs, totaling \$10,050.00, assessed herein shall be payable by cashier's check or money order payable to the "Clerk, Arkansas Supreme Court" delivered to the Office of Professional Conduct with thirty (30) days of the date this Findings and Order is filed of record with the Clerk of the Arkansas Supreme Court.

In assessing the sanction in this case, the Respondent's prior disciplinary record was a material factor considered by the Panel.

ARKANSAS SUPREME COURT COMMITTEE
ON PROFESSIONAL CONDUCT - PANEL B

By: Steve R. Crane
Steve R. Crane, Chair, Panel B

Date: March 5, 2010