

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

**PANEL A**

IN RE: E. Leon Nicholson, Respondent  
Arkansas Bar ID # 83134  
CPC Docket No. 2005-059

**FINDINGS AND ORDER**

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Kevin Gardner on January 24, 2005. The information related to property purchased by Kevin and Karen Gardner, where the transaction was handled by Ozark Title Services, Inc., and Respondent served as the closing attorney.

On April 12, 2005, Respondent was served with a formal complaint, supported by an affidavit from Kevin Gardner. Mr. Nicholson filed a timely response.

The facts giving rise to the formal complaint were that Kevin and Karen Gardner purchased a vacation home in Edgemont, Arkansas, from Tim and Ruby Marshall. The Gardner's realtor, Jo Ann Gladden, referred them to a local title company in Greers Ferry Arkansas, Ozark Title Services, Inc., which was recommended by the Marshalls. The closing attorney present during the closing was E. Leon Nicholson. Ms. Gladden informed the Gardners that there was an easement granted to the Kinderhook Community Boat Dock Association to permit lake access for a boat dock across the rear of the property. The Gardners informed Ms. Gladden that because they have young children they did not want the property if the easement existed. Ms. Gladden suggested they speak with the closing attorney regarding the easement. Mr. Gardner discussed the issue on the phone with Mr. Nicholson and Mr. Nicholson told Mr. Gardner it was not a valid easement and he had no need to worry.

The closing was held with the Gardners, the buyers, on December 12, 2003, and Mr. Nicholson explained the closing documents and had the Gardners to sign the papers. At one point during this meeting the Gardners questioned Mr. Nicholson again about the easement and he advised them that the easement was not

any good and that it was not going to be an issue. A separate meeting was held that same day for the sellers to sign the closing document. Almost a year later Mr. Gardner received a phone call from a Mr. Benton who stated he held an easement on their property and he wanted to work with them to place a twenty-stall boat dock behind their home. Mr. Gardner later discovered in the closing documents that there was a second easement present, made out to Joe T. Benton, III, President of the Clayton Reeves Community Boat Dock, granted by Tim and Ruby Marshall. The Gardners had never been informed of this second easement. Mr. Gardner made several phone calls to Mr. Nicholson's office attempting to get an explanation. Mr. Nicholson kept refusing to speak with him, but eventually did talk to Mr. Gardner to tell him that he was not his attorney, that he did not provide legal advice to him, and that he was merely a neutral agent. Mr. Nicholson later explained to Mr. Gardner that he had made several notes to the closing of how he had explained to the Gardners that the easement was legal and that it would probably have to go before a judge to determine if it was enforceable by the holder, Mr. Benton.

Upon further investigation the Gardners learned that Mr. Nicholson and Mr. Benton are business partners and that Mr. Nicholson had prepared a document for Mr. Benton that represented a contract between the Marshalls and Mr. Benton. They learned that Mr. Nicholson owns Ozark Title Services, that Mr. Benton was the corporate vice president of Ozark Title Services, and Mr. Benton's brother, Russell Benton, was also listed as an officer of the corporation. Mr. Gardner further discovered a third easement was created by Mr. Nicholson in favor of Mr. Benton the day of the closing and signed by the sellers after the buyers had already closed. The Gardners are in the process of trying to have the easements removed from their property.

Mr. Nicholson denied any wrongdoing in his response, stated he was merely the closing agent, and that he did not prepare an easement at the direction of Mr. Benton. He states he did not represent Mr. Benton in any capacity and said Mr. Gardner was aware of the easements. Mr. Nicholson also said "the third easement was only an amendment to the first easement modifying said easement in a manner that did not expand or enlarge the easement in any way or otherwise cause the easement to be any more of a limitation on the real property being purchased by Mr. Gardner."

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

1. That Mr. Nicholson's conduct violated Model Rule 4.1(a), when while representing Mr. Benton's interests at the closing he told the Gardner's that the easement was not any good and that they did not have to worry about it, he failed to reveal the other easements to them, and he produced a third easement without the Gardner's knowledge and had the Marshalls to sign it, even though the Gardner's had informed him they did not want the property if there were easements involved. Model Rule 4.1(a), provides that in the course of representing a client, a lawyer shall not knowingly make a false statement or material fact of law to a third person.

2. That Mr. Nicholson's conduct violated Model Rule 4.1(b), when while representing Mr. Benton and the Marshalls he failed to disclose the three easements to the Gardners even though he knew they did not want to purchase the property with easements attached. Model Rule 4.1(b), provides that, in the course of representing a client, a lawyer shall not knowingly fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

3. That Mr. Nicholson's conduct violated Model Rule 4.3, when he handled the closing for Ozark Title Services, Inc., wherein the Gardners purchased property from the Marshalls and he never informed the Gardners that he was not a neutral party, even when they relied on his advice regarding the easements. Model Rule 4.3, provides that in dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding.

4. That Mr. Nicholson's conduct violated Model Rule 8.4(a), when he failed to disclose the easements to the Gardners which he had executed to benefit his business partner, Mr. Benton, even though the Gardners

had informed him they did not want the property if easements were attached and Mr. Nicholson told them the easement was not any good. Model Rule 8.4(a), provides that a lawyer shall not violate or attempt to violate the rules of professional conduct, knowingly assist or induce another to do so, or do so through the acts of another.

5. That Mr. Nicholson's conduct violated Model Rule 8.4(c), when he told the Gardners the easement was not any good, referring to the one easement he knew they were aware of, and when he failed to tell them about the second easement, and when he produced and had executed a third easement without their knowledge. Model Rule 8.4(c), provides that a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

6. That Mr. Nicholson's conduct violated Model Rule 8.4(d), in that his actions in this matter have resulted in the Gardners being faced with the possibility of a twenty-stall boat dock being built on their property or possibly face litigation to prevent it. Model Rule 8.4(d), provides that a lawyer shall not 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 A, that E. Leon Nicholson, Arkansas Bar ID# 83134, be, and hereby is, **SUSPENDED** for three (3) months for his conduct in this matter and Ordered to pay \$50 in costs. The suspension shall become effective on the date this Findings and Order is filed of record with the Clerk of the Arkansas Supreme Court. The costs 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 within thirty (30) days of the date this Findings and Order is filed of record with the Clerk of the Arkansas Supreme Court.

ARKANSAS SUPREME COURT COMMITTEE ON  
PROFESSIONAL CONDUCT - PANEL A

By: \_\_\_\_\_  
Bart F. Virden, Chair, Panel A

Date: \_\_\_\_\_