

## Lawyer Disciplinary Actions

Professional Conduct that ANN DOROVAN, Arkansas Bar ID #78043, be, and hereby is, REPRIMANDED for her conduct in this matter.

### DAVIS HENRY LOFTIN

West Memphis, AR  
May 3, 2001

The formal charges of misconduct upon which this Order is premised arose from the Contempt Order of the Arkansas Supreme Court, on December 14, 2000, in the matter of *Clyde Johnson v. State of Arkansas*, CR 00-815. In the Contempt Order, the Arkansas Supreme Court set out that Davis Henry Loftin, an attorney practicing primarily in West Memphis, appeared before them and entered a plea of guilty to a Show Cause Order. Mr. Loftin appeared before the Court on December 7, 2000. The conduct to which Mr. Loftin entered a plea of guilty was the failure to pursue an appeal for Clyde Johnson after filing a Notice of Appeal for Mr. Johnson in 1991. In his response to the Committee, Mr. Loftin admitted that he did file a Notice of Appeal for Mr. Johnson but that he did not proceed with the appeal because he believed that Mr. Johnson did not wish for him to do so.

Upon consideration of the formal complaint, the response herein, and the Arkansas Model Rules of Professional Conduct, the Committee on Professional Conduct finds:

1. That Mr. Loftin's conduct violated Model Rule 3.4(c) since his conduct in failing to pursue an appeal for Clyde Johnson was determined to be contempt of the Arkansas Supreme Court. Model Rule 3.4(c) requires that a lawyer 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.

2. That Mr. Loftin's conduct violated Model Rule 8.4(d), to wit: (i) His failure to pursue an appeal on behalf of Clyde Johnson led to a substantial delay in the administration and resolution of his appellate proceeding; and, (ii) Based upon his failure to timely pursue Mr. Johnson's appeal of his 1991 conviction, the Supreme Court was required to conduct a show cause hearing which would not have been necessary otherwise. Model Rule 8.4(d) requires that a lawyer 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 that DAVIS HENRY LOFTIN, Arkansas Bar ID #79196 be, and hereby is, REPRIMANDED for his conduct in this matter.

### DOYLE L. WEBB, II

Benton, AR  
May 31, 2001

The formal charges of misconduct upon which this Order is premised arose from information coming to the attention of the Committee on June 28, 2000, by way of a Judicial Referral made by Honorable Robert Garrett, Honorable Gary Arnold

and Honorable Grisham Phillips, Circuit and Chancery Judges for Saline County. The information related to certain of Doyle L. Webb's conduct in his relationship with Merle S. Salberg, prior to her death, and later as Executor of her estate. Mr. Webb is an attorney primarily practicing law in Benton, Saline County. In addition, information was provided in the form of an affidavit executed by Kathryn LaNelle Wilson Mazander, niece of Ms. Salberg, and her sole heir at law.

The information provided demonstrated that Mrs. Merle Salberg, a long-time widow, died on December 18, 1996, at the age of eighty-six years. On January 8, 1997, Mr. Webb, as the executor nominated in her 1993 Will, filed a Petition for Probate of Will and Appointment of Personal Representative in the Estate of Merle S. Salberg, deceased, Saline Probate No. 97-007-3. On the same day that Mr. Webb filed the Petition, he also filed the 1993 Last Will and Testament of Mrs. Salberg, along with the 1996 Codicil thereto. The 1993 Will indicated, on its face, that it was prepared by Mr. Webb of "Webb Doerpinghaus Brown, Attorneys at Law." The 1996 Codicil indicated, on its face, that it was prepared by Charles J. Doerpinghaus, Jr. of "Webb & Doerpinghaus, Attorneys at Law." The 1993 Will left Mrs. Salberg's residuary estate, including her house, automobile, personal effects, jewelry, furnishings in the house, and stocks in my (her) name, to her niece, LaNelle Mazander. The Codicil, which was executed on January 3, 1996, left the residuary estate, including her house, automobile, personal effects, jewelry, and furnishings in the house (but omitting "and stocks in my name"), to Webb. Mr. Webb got all of her estate except for certain joint survivorship bank accounts left to Richard Salberg, Jr., to LaNelle Mazander, and to her son Alan Mazander. After filing the Petition, Mr. Webb sent the three a document entitled Waiver of Inventory, Accounting and Notice. Each of the three signed their own individual Waivers, which were thereafter filed of record by Mr. Webb. The only distributions from the Salberg estate were made to Webb. The Order authorizing final distribution and closure of Mrs. Salberg's Estate was entered of record on August 7, 1997, by Mr. Webb.

According to the Judges who reported Mr. Webb, rumors persisted in Saline County for some time about Mr. Webb's involvement in Mrs. Salberg's estate. Mr. Webb explained that he was unaware of any such rumors. When the Judges initially heard the rumors, they did not report the conduct because they did not believe the rumors themselves constituted a "substantial likelihood that a lawyer has committed a violation of the rules" as contemplated by the provision of the Arkansas Code of Judicial Conduct requiring the reporting of an attorney's conduct. However, after being contacted by a law enforcement official on June 14, 2000, a decision was made by the Judges that further inquiry was required. On June 19, 2000, the Judges took Mr. Webb's statement concerning Mrs. Salberg's estate. During the meeting, Mr. Webb explained that he had known Mrs. Salberg for

approximately twenty-five (25) years and that he had been her lawyer for a number of years prior to her death. In his response to the Committee, Mr. Webb explained that Mrs. Salberg had been a friend to his parents. Mr. Webb also offered his explanation concerning the circumstances leading to the changing of the residuary clause in Mrs. Salberg's Will. According to Mr. Webb, Mrs. Salberg first approached him on December 15, 1995, about changing the clause to make him its beneficiary. The discussion took place in Mrs. Salberg's home. Mr. Webb recalled that after discussion of Mrs. Salberg's physical condition and the location of certain important papers in her home, Mrs. Salberg told Mr. Webb that she would like for him to become the residuary beneficiary of her estate. Mr. Webb advised the judges that he informed Mrs. Salberg that he could not prepare an instrument in which he was a beneficiary. According to Mr. Webb, Mrs. Salberg then inquired of Webb whether Charles Doerpinghaus could do it for her. At the time, Mr. Doerpinghaus was renting space from Mr. Webb and his name appeared with Mr. Webb's as "Webb & Doerpinghaus, Attorneys at Law." According to Mr. Webb, Mr. Doerpinghaus also reimbursed him for a portion of Cheryl Nuno's services as a receptionist and other expenses. Mr. Webb denied that he and Mr. Doerpinghaus ever shared fees. He also stated that he did not believe the use of joint letterhead indicated that he and Mr. Doerpinghaus were partners. Further, Mr. Webb explained to the Judges that he believed Mrs. Salberg wished to leave property to him because of work he had done for her or was going to do for her. Mr. Webb also asserted that he did not believe the residuary clause would convey very much property. After Mrs. Salberg's death, Mr. Webb opened up her home to the heirs and advised that he would disavow any interest in the estate if any heir had an objection to the bequest made to him. No such objection was presented to Mr. Webb. It was Mr. Webb's statement to the Judges that it was only when he was going through Mrs. Salberg's personal belongings that he found some stock certificates. Mr. Webb was unable to say exactly how much he inherited from Mrs. Salberg's estate but it was approximately two to three hundred thousand dollars. Mr. Webb admitted that he never informed Mrs. Salberg's family the size of the residual estate. He also advised that he was never asked to disclose that information. At the hearing Webb stated he did not inform Nell Mazander or the other two relatives of the stock Webb found, because they had signed waivers shortly after the meeting with him at his office and because Ms. Salberg's Will did not require him to file an inventory of estate assets. Mr. Webb informed the Judges that he could repay the money if he had to do so, but that it would take him awhile to get the money together. Mr. Webb admitted that Mr. Doerpinghaus shared office space with him and also shared letterhead. Mr. Webb acknowledged that there was an apparent conflict of interest in having Mr. Doerpinghaus prepare the Codicil but since Mrs. Salberg was aware of the shared office

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space, Mr. Webb believed that she had waived any conflict. Although Mr. Webb was requested to provide the Judges with his own memorandum confirming the discussion at the meeting, he did not do so. According to Mr. Webb, he intended to provide a statement concerning the meeting. When Mr. Webb learned the Judges intended to report the matter to the Committee, he decided to present his statement to the Committee. Following Mr. Webb's statement, the Judges took the statements of three other potential witnesses, Tim Jenders, Cheryl Nuno and Charles Doerpinghaus.

At the hearing Webb conceded at least a technical violation of Model Rule 7.5(d) on the firm name and letterhead, and accepted responsibility for being in violation, saying it was not his intent to mislead the public. He acknowledged that there is no outward difference between the firm name and letterhead forms of his present, admitted "partnership" with George Ellis in "Ellis & Webb" and in "Webb & Doerpinghaus," which he claims was never a partnership.

On June 20, 2000, Mr. Jenders, former long-time paralegal to Mr. Doerpinghaus, provided a sworn statement to the Judges. According to Mr. Jenders when he, Mr. Doerpinghaus, Ms. Nuno and Ms. Ronae Hunt, a Webb employee, drove to Mrs. Salberg's home for execution of the Codicil, Mr. Doerpinghaus said that he was standing in for Mr. Webb. Mr. Jenders recalled that Mrs. Salberg mentioned that she trusted Mr. Webb, that Mr. Webb was in her church and that she believed Mr. Webb would do the right thing with the money. Mr. Jenders had no recollection of preparing the Codicil for Mr. Doerpinghaus or at his request, which would have been the norm if it was a document being prepared for Mr. Doerpinghaus or at his request. Mr. Jenders reported that Mr. Doerpinghaus gave him the clear impression that he was doing all of this for Mr. Webb.

On June 21, 2000, the Judges took the statement of Cheryl (Best) Nuno. According to Ms. Nuno, she prepared the Codicil at the request of Mr. Webb. She explained that she prepared it at Mr. Webb's instruction after he met with Mrs. Salberg. Ms. Nuno also related that her recollection was that there was discussion in the office that it would not be proper for Mr. Webb to be present at Mrs. Salberg's when the Codicil was executed. According to Ms. Nuno, Mr. Webb requested that she get the Codicil signed while he was out of town. Ms. Nuno confirmed this event in her September 21, 2000, affidavit, and again at the hearing. Mr. Webb acknowledged at the hearing that he made this request of Ms. Nuno during a casual conversation when he saw the Codicil on her desk. Ms. Nuno also advised that she had no recollection of ever preparing any pleadings or other legal documents for Mr. Doerpinghaus. On behalf of Mr. Webb, Ms. Nuno submitted an Affidavit to the Committee dated September 21, 2000. According to Ms. Nuno's affidavit, she does not believe that Mr. Webb was involved in the preparation of the Codicil for Mrs. Salberg. Her recollection in the Affidavit is that Mr. Webb, Mr. Doerpinghaus and she talked

about the Codicil. Ms. Nuno explained that she believed her Affidavit more accurately reflected what happened, instead of the statement to the Judges which was given over the telephone without the opportunity to reflect upon the events which occurred over four (4) years ago. At the hearing Ms. Nuno said the only change from her sworn statement to the judges that her affidavit was offered to correct was that Mr. Webb had instructed her in the preparation of the Codicil. At the hearing she stated she had prepared the Codicil at the request of Mr. Doerpinghaus.

On June 23, 2000, the Judges took the sworn statement of Charles Doerpinghaus. Mr. Doerpinghaus asserted that he spent between 30 and 45 minutes at a private meeting with Mrs. Salberg and that she explained to him what she wanted to be done in the Codicil. It was Mr. Doerpinghaus' recollection that he also explained the possible conflict of interest he had through his relationship with Webb to Mrs. Salberg at both this meeting and again prior to execution of the Codicil. At the hearing Doerpinghaus indicated there may have been some situations where Webb and he shared fees, or adjusted accounts between them for rent and other shared expenses, when Doerpinghaus handled some cases for Webb when Webb could not attend court.

Mr. Webb steadfastly denied that he prepared the Codicil or that he caused the Codicil to be prepared in violation of Arkansas Model Rule 1.8(c). He also denied that there was a violation of Arkansas Model Rule 1.10(a), because neither he nor Mr. Doerpinghaus considered themselves part of a firm. Mr. Webb did admit that the letterhead utilized at the time complained of herein carried the names of "Webb and Doerpinghaus," but he did not believe that represented to anyone that Mr. Doerpinghaus and he were partners.

At the hearing the evidence developed that Webb may have received as little as \$300,000 and as much as \$320,909 (gross) from the Salberg Estate. He affirmed that he found the Salberg stocks in her house between the family conference at his law office on December 23, 1996, and January 20, 1997, when he tendered the stocks to the local office of Edward Jones & Company, where they were valued at \$198,325 as of January 31, 1997. Webb also stated that he never told anyone, other than Edward Jones & Company, of the existence of the stocks or their value until his interview with the judges in June 2000. Other assets Webb received through the Salberg estate were: her house (sold for \$80,000 gross in June 1998); her automobile (sold for \$7,000 to Richard Salberg, Jr. in May 1997); personal effects and furnishings (sold at auction August 1997 for \$2,746 net); stock dividends on the Edward Jones account through August 1997 of \$1,928; Union Bank savings account No. 29977 of \$8,421; Union Bank checking account No. 105400 with an estimated net of \$21,149 after paying home health care bills; and Ms. Salberg's 1996 federal income tax refund of \$1,340. At the hearing Webb claimed unitemized expenses as executor against the assets he received.

Upon consideration of the formal complaint, the response thereto, evidence produced at the hearing May 17 18, 2001, and the Arkansas Model Rules of Professional Conduct, the Committee on Professional Conduct finds:

1. That the conduct of Doyle L. Webb, II, violated Model Rule 7.5(d) when he and Mr. Doerpinghaus held themselves out to be in the partnership of "Webb and Doerpinghaus" on letterhead, the Salberg 1996 Codicil, and other documents even though they assert that they were not actually partners in 1995-1996, or at any other time. Model Rule 7.5(d) requires that lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.

2. That the conduct of Doyle L. Webb, II, violated Model Rule 5.3(c). Cheryl Best (now Nuno) and Ronae Hunt (now Hamby) were employed at all times relevant hereto by Doyle Webb's law firm as his legal secretary/receptionist and his paralegal, respectively. Hunt was one of two witnesses to the January 3, 1996, execution of her Codicil by Merle S. Salberg, and Best notarized the signatures to that instrument of Mrs. Salberg and her two witnesses. The acts performed by Best and Hunt were acts that could not have been performed by Doyle Webb without violating the Model Rules under the facts of this case. Webb ratified the conduct of these two employees of his law firm and he is responsible for their conduct, which would be a violation of the Model Rules if engaged in by Mr. Webb. Model Rule 5.3(c) provides that with respect to a non-lawyer employed or retained by or associated with a lawyer, a lawyer shall be responsible for the conduct of such a person that would be a violation of the rules of professional conduct if engaged in by a lawyer, if the lawyer orders, or with the knowledge of the specific conduct, ratifies the conduct involved.

3. That the conduct of Doyle L. Webb, II, violated Model Rule 8.4(a). Knowing the Model Rules prohibit him, or his law firm, from preparing a Codicil for Mrs. Salberg to execute that would leave Webb a substantial testamentary gift, through his acts and those of his law firm secretary Cheryl Best and his paralegal Ronae Hunt, Webb assisted Charles Doerpinghaus, a lawyer associated with Webb, in preparation and execution of the Salberg Codicil. Cheryl Best prepared the Codicil, and probably from a previous Codicil prepared in 1994 for Salberg by Webb. According to her affidavit, Best, at Webb's suggestion, told Doerpinghaus it was time to get the Salberg Codicil executed while Webb was out-of-town in early January 1996, which action was thereafter promptly accomplished. Model Rule 8.4(a) provides it is lawyer misconduct for a lawyer to 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.

4. That the conduct of Doyle L. Webb, II, technically violated Model Rule 1.10(a), but the Committee assesses no sanction for this violation. Charles Doerpinghaus, a lawyer associated with Doyle Webb, had the Codicil prepared and

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presented to Merle Salberg, and executed by her on January 3, 1996. Doyle Webb was prohibited from doing these acts himself by Model Rule 1.8(c). As an attorney associated with Webb, Doerpinghaus also was prohibited from doing these acts, unless the conflict of interest was waived by Mrs. Salberg. The Committee finds Doerpinghaus explained to Mrs. Salberg the relationship between Webb and he sufficiently and that she waived any conflict of interest in Doerpinghaus handling her Codicil. Model Rule 1.10(a) requires, in pertinent part, that while lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7, 1.8(c), 1.9, 2.2, or 3.7.

5. By a vote of 4-3, that the conduct of Doyle L. Webb, II, did not violate Model Rule 8.4(c), when Webb, as executor of the Merle Salberg Estate, failed to disclose to Kathryn LaNelle Mazander, the sole heir at law of Merle Salberg and the former residuary beneficiary under her 1993 Will, the existence of stocks valued at \$198,325.00 in the name of Merle Salberg that Webb found in Mrs. Salberg's house on or before January 20, 1997 after her death. Mr. Webb had provided Ms. Mazander a waiver of inventory, accounting and notice of probate proceedings in the Salberg Estate, which she executed and which he filed for her on January 21, 1997. Model Rule 8.4(c) provides a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

6. That the conduct of Doyle L. Webb, II, did not violate Model Rule 1.8(c), when the 1996 Codicil to Mrs. Merle Salberg's 1993 Will was prepared by Charles Doerpinghaus, an attorney associated with Mr. Webb. The Codicil resulted in Mr. Webb receiving at least \$300,000 in assets from Mrs. Salberg's estate. Model Rule 1.8(c) requires, in pertinent part, that a lawyer not prepare an instrument giving the lawyer any substantial gift from a client, including a testamentary gift, except where the client is related to the donee.

7. That the conduct of Doyle L. Webb, II, did not violate Model Rule 1.7(d). Mr. Webb while acting as executor, attorney, and sole beneficiary of the estate of Merle Salberg, learned an assets of the estate was stocks valued at \$198,325.00, a fact which he disclosed to no one, including Kathryn LaNelle Mazander, the sole heir at law of Mrs. Salberg and the former sole beneficiary under her 1993 Will. Model Rule 1.7(b) provides a lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless (1) the lawyer reasonably believes the representation will not be adversely affected; and (2) the client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct that DOYLE L. WEBB, II,

Arkansas Bar ID #82175, be, and hereby is, REPRIMANDED and fined \$1,000.00 for his conduct in this matter. The request for restitution made by the Office of Professional Conduct is denied. Any petition filed under Section 8 of the Committee's Procedures by the Office of Professional Conduct seeking payment by Webb of the costs of investigation and any other costs in this case shall be heard at the July 2001 Committee meeting.

### CAUTION

#### JOHN LEE MARTIN

Springdale, AR  
May 25, 2001

The formal charges of misconduct upon which this Order is based arose from the complaint of Fred N. Paine. John Lee Martin, an attorney practicing in Springdale, Washington County, Arkansas was the attorney for Mr. Paine in the case styled, Katrina Paine v. Fred Paine, Washington County Chancery Court No. E 98-439.

On May 17, 2000, a Temporary Order was consented to and entered in the above styled action. Mr. Paine received temporary custody of his child and agreed not to seek child support from Ms. Paine at that time. A trial date was ultimately set for August 8, 2000. On August 7, 2000, Mr. Paine called Mr. Martin's office to inquire as to the status of the August 8, 2000 trial date. He was informed that the trial date was "bumped." On August 8, 2000, Dana Dean Watson, Ms. Paine's counsel sent an Agreed Order to Mr. Martin. On August 9, 2000, Mr. Paine again called Mr. Martin's office to inquire as to the new trial date. Mr. Paine was told that Mr. Martin had received a proposed Agreed Order. Mr. Paine requested that the proposed Agreed Order be faxed to him. Mr. Paine received the faxed Agreed Order on August 11, 2000. Mr. Martin consented to the Agreed Order and allowed it to be entered on August 10, 2000, without consulting and obtaining the agreement of Mr. Paine. The Agreed Order allowed Ms. Paine to continue not to pay child support. On August 11, 2000, when Mr. Paine received his copy of the Agreed Order by fax, he called Mr. Martin's office and informed the office that he objected to the Agreed Order, especially regarding the child support issue. Subsequently, Mr. Paine terminated Mr. Martin's representation of him. A Motion to Set Aside the Order was filed by Mr. Paine's new counsel. The Motion was denied by the Washington County Chancery Court on November 28, 2000.

Mr. Martin admitted that he signed and allowed the Agreed Order to be filed in this case without reviewing the Agreed Order with Mr. Paine. Mr. Martin admitted that it was his incorrect recollection of what Mr. Paine wanted that caused Mr. Martin to execute and return the Agreed Order. When Mr. Martin learned of his error, Mr. Martin contacted opposing counsel on August 14, 2000.