ARKANSAS SUPREME COURT
COMMITTEE ON PROFESSIONAL CONDUCT

NOTICE OF SUSPENSION OF ATTORNEY'S PRIVILEGE TO PRACTICE LAW

IN RE: **TERRY LYNN SMITH**
ARKANSAS BAR ID #92035
CPC Docket No. 2008-044

Attorney Terry Lynn Smith, an attorney practicing law primarily in Umpire, Arkansas, Bar ID # 92035, has been suspended from the practice of law within the jurisdiction of this State.

The Committee on Professional Conduct with the approval of the Arkansas Supreme Court suspended Arkansas Attorney Terry Lynn Smith's License for a period of three (3) years effective September 18, 2008.

Please be advised that a suspended attorney shall not be reinstated to the practice of law in this State until the Arkansas Supreme Court has received an affirmative vote by a majority of the Committee. If, and at such time as the Committee may reinstate the attorney, you will be provided notice of the reinstatement and the effective date thereof.

If you have any questions in this regard or you have information evincing the attorney's continued practice contrary to the status of his license, please contact this office.

09-18-08
Date

Stark Ligon

Stark Ligon, Executive Director
Office of Professional Conduct
625 Marshall Street, Room 110
Little Rock, AR 72201
(501) 376-0313

Received
SEP 18 2008
Arkansas Supreme Court
Committee on Professional Conduct

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL B

FILED
SEP 17 2008
LESLIE W. STEEN
CLERK

IN RE: **TERRY LYNN SMITH**
Arkansas Bar ID # 92035
CPC Docket No. 2008-044

CONSENT 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 Wannell Bradshaw. In November 1999, the firm of Wyatt, Wyatt, and Cowley recovered for Wannell and Bob Bradshaw a $4,000,000 settlement against Ford Motor Company, resulting from an August 18, 1996, farm accident in Lockesburg, Arkansas, that left Mrs. Bradshaw partially paralyzed. After legal fees, expenses, and liens, the Bradshaws netted $1,943,373.75. In 2000, the Bradshaws put their settlement funds in several certificates of deposit, but after their renewal, they decided to seek financial advice.

In March 2001, the Bradshaws sought Attorney Terry L. Smith for his assistance with tax preparation, estate planning, and investment management advice. The Bradshaws went to Mr. Smith because he was an attorney, certified public accountant, and certified financial planner who came highly recommended by Mr. Bradshaw's co-worker. The Bradshaws gave Mr. Smith $394,016.44 to invest. There was no contract of employment; however, the agreement for the money investment services was that Mr. Smith would receive one (1 %) percent of the income from the Bradshaw investments for his handling of their legal work. The parties also agreed that the Bradshaws would receive $2,000 per month from the investments unless a request for more was made. Further, in addition to investment services, Mr. Smith performed, prepared, and filed the Bradshaw's taxes; prepared wills; and established a family trust.

A search of the Secretary of State's website by the Office of Professional Conduct indicates

that Mr. Smith formed TLS Investment Advisory Services, Inc, a for-profit corporation filed on May 30, 2001. Mr. Smith and his wife were the officers of this corporation which has since been dissolved.

In July 2001, Mr. Bradshaw was diagnosed with cancer. During this time, the Bradshaws gave Mr. Smith another $200,000 to invest. They did not ask, nor did they receive, accountings. Mr. Bradshaw died in July 2002. Mrs. Bradshaw admits that her husband was the one who mainly took care of their financial business, especially with Mr. Smith. Mrs. Bradshaw continued to receive the monthly allowance checks from Mr. Smith following her husband's death. Mr. Smith also successfully recovered Mr. Bradshaw's contested life insurance benefits of $285,000. Once those benefits were received, Mr. Smith signed the entire check over to Mrs. Bradshaw. For most of 2003, Mrs. Bradshaw received $4,000 per month from Mr. Smith, and at one point, she purchased some land for over $400,000 based on Mr. Smith's assurance to her that she had the money. Mrs. Bradshaw further allowed Mr. Smith to borrow $100,000 from her to build a home for his mother. Mrs. Bradshaw made the loan using a certificate of deposit as collateral. Her interest rate for the loan was one (1%) percent over the interest rate received for the certificate of deposit, but Mr. Smith agreed to pay Mrs. Bradshaw two percent (2%) over the certificate of deposit interest rate. Mrs. Bradshaw contends that Mr. Smith paid only $800.00 toward that loan. Mr. Smith refutes this, claiming that Mrs. Bradshaw was suppose to apply $51,000 of his $95,000 one-third legal fee on the life insurance recovery toward the outstanding loan balance.

In November 2003, Mr. Smith requested that Mrs. Bradshaw meet with him. During that meeting, Mr. Smith read Mrs. Bradshaw a letter which outlined that all of her money was gone. He offered to repay the money, and Mrs. Bradshaw accepted that offer. Mr. Smith forwarded to Mrs.

Bradshaw two promissory notes, one for the house loan and one for $429,454.44. The $429,454.44 represented the amount Mr. Smith arrived at after deducting the monthly draws, the income taxes paid, his fees, and stock losses. Mr. Smith paid nothing toward these promissory notes.

Mrs. Bradshaw requested that Mr. Smith provide her with any documents he could produce to evidence that he ever invested the $594,016.44 given to him. Mr. Smith never produced such documents. In 2007, Mrs. Bradshaw hired an attorney and sued Mr. Smith. She obtained a $554,130.55, default judgment against Mr. Smith, plus interest, and $50,000 for attorney fees, in Sevier County Circuit Court Case No. CV-07-001-1, *Wannell Bradshaw v. Terry Smith.*

Following his receipt of the formal complaint, Mr. Smith entered into discussion with the Executive Director which has resulted in an agreement to discipline by consent pursuant to Section 20.B of the Arkansas Supreme Court Procedures Regulating Professional Conduct of Attorneys at Law (2002). Upon consideration of the formal complaint and attached exhibits, admissions made by Mr. Smith, the terms of the written consent, the Arkansas Rules of Professional Conduct and with the approval of the Arkansas Supreme Court, the Committee on Professional Conduct finds:

A. Mr. Smith violated Rule 1.1 in that he was not thorough enough in his representation of the Bradshaws to properly manage the money they entrusted to him for investment purposes. 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. Smith violated Rule 1.3 in that he failed to act with reasonable diligence and promptness in advising his clients that he had lost all of their money. Arkansas Rule 1.3 requires that a lawyer shall act with reasonable diligence and promptness in representing a client.

C. Mr. Smith violated Rule 1.4(a)(3) in that he failed, at the first opportunity, to inform Mrs. Bradshaw that he no longer had her investment funds. Arkansas Rule 1.4(a)(3) requires that a lawyer shall keep the client reasonably informed about the status of the matter.

D. Mr. Smith violated Rule 1.4(a)(4) in that he failed failed to provide Mrs. Bradshaw with the documentation she requested to evidence his investment of her money. Arkansas Rule 1.4(a)(4) requires that a lawyer shall promptly comply with reasonable requests for information.

E. Mr. Smith violated Rule 1.5(c) in that his agreement to represent the Bradshaws in all of their investment dealings for one percent of their investments should have been in writing. Arkansas Rule 1.5(c) requires that a fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

F. Mr. Smith violated Rule 1.8(a) in that he entered into a business transaction with the Bradshaws to invest over $594,000 for them and receive one percent of their investment income. He did not memorialize this agreement in writing nor advise them to seek independent legal counsel. Arkansas Rule 1.8(a) requires that a lawyer shall not enter into a business transaction with a client or

knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless: (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client; (2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in the transaction; and (3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

G. Mr. Smith violated Rule 1.8(b) in that he used information gathered from the Bradshaws for financial planning purposes for his own benefit by seeking a $100,000 loan from them. Arkansas Rule 1.8(b) requires that a lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, in a writing signed by the client, except as permitted or required by these Rules.

H. Mr. Smith violated Rule 1.15(a)(4) in that he failed to maintain funds belonging to the Bradshaws on a current basis books and records in accordance with generally accepted accounting practice and comply with any record keeping rules established by law, rule, or court order. Arkansas Rule 1.15(a)(4) requires that a lawyer shall maintain on a current basis books and records in accordance with generally accepted accounting practice and comply with any record keeping rules established by law, rule, or court order.

I. Mr. Smith violated Rule 8.4(c) in that, when he lost the Bradshaws' money, he failed to notify them of the loss until November 2003 when he could no longer personally afford to pay the monthly draws. Arkansas Rule 8.4(c) provides that it is professional misconduct for a lawyer to

engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

J. Mr. Smith violated Rule 8.4(d) in that his mishandling of the funds entrusted to him by the Bradshaws has cost them a great deal financially and has resulted in a default judgment against him in excess of $550,000.00. 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 and with the approval of the Arkansas Supreme Court, that **TERRY LYNN SMITH**, Arkansas Bar ID# 92035, be, and hereby is, **SUSPENDED FOR THREE YEARS** for his conduct in this matter. He is ordered to pay $50.00 Committee case costs, payable by cashier's check or money order to the "Clerk, Arkansas Supreme Court" and 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. Further, Mr. Smith must show his good-faith effort to satisfy the $554,130.55, plus interest, default judgment against him in favor of Wannell Bradshaw prior to any reinstatement. The Office of Professional Conduct is directed to refer this matter to the appropriate prosecuting authorities.

ARKANSAS SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT - PANEL B

By: Valerie L. Kelly

Valerie L. Kelly, Chairperson

Date: September 17, 2008

SUPREME COURT OF ARKANSAS
JUSTICE BUILDING
625 MARSHALL STREET, SUITE 240
LITTLE ROCK, AR 72201

DONALD L. CORBIN
ASSOCIATE JUSTICE

AREA CODE 501
682-6838
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September 11, 2008

Mr. Stark Ligon, Executive Director
Office of Professional Conduct
625 Marshall Street, Room 110
Little Rock, AR 72201-1054

Re: "Discipline by Consent" Proposal on Terry Smith, #92035
Committee Case No. 2008-044

Dear Mr. Ligon:

The court has reviewed and accepts the Committee's recommendation of the entry of a consent judgment in the above-referenced matter by a vote of five to two. Justices Glaze and Danielson would not accept the proposed consent judgment. Justice Glaze is writing a dissent that will follow.

Sincerely,

Donald L. Corbin

DLC/mc
c:\data\ligon.com

cc: Chief Justice Hannah
Justice Glaze
Justice Brown
Justice Imber
Justice Gunter
Justice Danielson

Received
SEP 11 2008
Arkansas Supreme Court
Committee on Professional Conduct

SUPREME COURT OF ARKANSAS

IN RE: TERRY L. SMITH,	Opinion Delivered September 18, 2008
SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT DOCKET NO. 2008-044	DISSENTING OPINION FROM SUPREME COURT'S APPROVAL OF PROPOSED DISCIPLINE BY CONSENT.

TOM GLAZE, Associate Justice

Wannell and Bob Bradshaw received (netted) $1,943,373.75 in November 1999 in a settlement from Ford Motor Company as a result of a farm accident which caused Wannell to be partially paralyzed. In March 2001, the Bradshaws were referred to and sought assistance from Terry L. Smith because Smith was an attorney, certified public accountant, and certified financial planner. On May 30, 2001, Smith formed an Arkansas corporation named TLS Investment Advisory Services; he and his wife, Cathy, were the sole officers of the corporation. At some time after that date, the proposed consent order submitted in this case reflects that the Bradshaws gave Smith $394,016 to invest. Later, in July 2001, the Bradshaws gave Smith another $200,000 to invest.

In July 2001, Mr. Bradshaw was diagnosed with cancer, and he died in July 2002. Mrs. Bradshaw received $285,000 from a life insurance policy on Mr. Bradshaw, which Smith signed over to Mrs. Bradshaw and was not given to him to invest. While Smith has since claimed that he intended to tell the Bradshaws as early as March 2002 that he was forced to

liquidate their stocks at depressed prices to raise cash, he states that he did not do so out of concern for Mr. Bradshaw's illness.

For most of 2003, Smith submitted that Mrs. Bradshaw received $4,000 in monthly withdrawals from the money he "invested" for her. In 2003, based on Smith's assurance that she had the money, Mrs. Bradshaw purchased some land for over $400,000. Additionally, Mrs. Bradshaw loaned Smith $100,000 to build a house for his mother.[1] These amounts of monies totaled $1,094,000. Without the necessary documents, however, it is not possible to make much sense of these tranactions, and those documents have not been give to this court.

In November 2003, Smith asked Mrs. Bradshaw to meet with him. At that meeting, he read her a letter telling her that "all her money was gone" and offering to repay the money. Mrs. Bradshaw agreed, and Smith then prepared two promissory notes: one promissory note was to cover the house loan of $100,000, and the second note was for a sum of $429,454, which he claimed represented Mrs. Bradshaw's investments, less taxes, monthly payment, his fees, and stock losses. Smith has never paid anything on either of the two notes. Although Mrs. Bradshaw requested that Smith furnish documents showing he had invested her money given to him, Smith never produced any documentation. In 2007, Mrs. Bradshaw engaged an attorney and obtained a default judgment against Smith in the amount of $554,130.55, plus interest and $50,000 in attorney fees.

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[1]To date, Smith has repaid only $800 of this $100,000 loan.

Based on the above facts and admissions, Smith agrees he violated Rules 1.1, 1.3, 1.4(a)(3), 1.4(a)(4), 1.5(c), 1.8(a), 1.8(b), 1.15(a), 8.4(c) and 8.4(d). In sum, and under the parties' consent order, Smith was incompetent in his management of the funds that Mrs. Bradshaw entrusted to him for investment purposes; he failed to act with reasonable diligence and promptness; he failed to inform Mrs. Bradshaw at his first opportunity that he no longer had her money; he failed to provide Mrs. Bradshaw any documentation to prove that he had invested her money; Smith failed to enter in writing a proper contingent fee agreement; and he entered into a business transaction with Mrs. Bradshaw without showing the transaction was fair and reasonable and demonstrating that she was advised in writing of the desirability of seeking an attorney and had given informed consent of the attorney's role in the transaction.

Following the foregoing admission and agreements, Smith further agreed that, because he wanted to tell the Bradshaws of their financial situation as early as March 2002 but waited until November 2003 to do so, his conduct was, at the very least, "dishonest." Moreover, Smith also admitted that his payment of monthly draws and reassurances to Mrs. Bradshaw that she was financially sound — resulting in her purchase of land for over $400,000 in 2003 — was "not truthful conduct." Because of these additional findings, the Office of Professional Conduct, citing *Ligon v. Dunklin*, 368 Ark 443, ___ S.W.3d ___ (2007), required Smith to serve a three-year suspension of his law license and also make a "good faith effort" to comply with the terms and conditions of the consent order.

How or why the majority court approved the consent order now before it, I do not understand. First, the *Dunklin* case mentioned above was a disbarment action tried before a special judge, not a discipline-by-consent matter. When consent involves allegations of serious misconduct, the supreme court shall approve (or disapprove) any agreed proposal and any sanction. *See* Ark. Sup. Ct. Prof. Conduct R. §20(E). Second, here, Smith admitted that he committed serious misconduct as defined in Rule 8.4(c) and (d). Put simply, neither Smith nor the Office of Professional Conduct has made a case under which the supreme court should approve the proposed consent order that has been submitted.

In short, Smith failed to make any meritorious reason for this court to approve the consent order in its current form. Nevertheless, the Office of Professional Conduct suggests that Smith should make a "good faith effort" to pay on the $554,130.55 default judgment plus interest and attorney's fees. I remind the reader that Smith has repeatedly been asked to pay that indebtedness, but to no avail; additionally, he has failed to surrender any documents to prove that he even invested Mrs. Bradshaw's money. Acknowledging his own misconduct, even Smith wrote Mrs. Bradshaw a letter suggesting he could possibly be prosecuted for fraud and serve time. In sum, this matter warrants disbarment, not suspension or leniency.

In addition, this court needs to put more energy into increasing the amounts recoverable by clients when their money is lost due to an attorneys' mishandling or conversion of those funds. Presently, those victims are limited to $40,000. *See* Rules of the Client Sec. Fund Comm. Rule 4.F. Here, although Mrs. Bradshaw has a judgment that she can enforce *if* Smith obtains assets, she is limited to recovering only a tiny fraction of what

she has lost if he does not. She gains little or nothing under the consent order that our court has approved. Moreover, even if Smith were to pay some small sum (which he claims he cannot do), who will protect the other victims who hire him in the near future, since he is still a CPA and Certified Financial Planner in good standing?

I strongly disagree with the majority court that approved this. It is dangerous precedent!

Supreme Court of Arkansas

PAUL E. DANIELSON
ASSOCIATE JUSTICE

JUSTICE BUILDING
625 MARSHALL STREET
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September 17, 2008

Mr. Stark Ligon, Executive Director
Office of Professional Conduct
625 Marshall Street, Room 110
Little Rock, Arkansas 72201-1054

RE: "Discipline by Consent" Proposal on Terry Smith, # 92035
Committee Case No. 2008-044

Dear Mr. Ligon:

I respectfully dissent from the majority's acceptance of the Committee's recommendation of the entry of a consent judgment.

Sincerely,

Paul Danielson

Paul E. Danielson

cc: Chief Justice Hannah
Justice Glaze
Justice Corbin
Justice Brown
Justice Imber
Justice Gunter