

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT  
PANEL B

IN RE: **SCOTT DOUGLAS FLETCHER**  
Arkansas Bar ID #91236  
CPC Docket No. 2010-028

**FILED**

SEP 29 2011

**LEOLIE W. STERN  
CLERK**

**HEARING FINDINGS AND ORDER**

The formal charges of misconduct upon which this Hearing Findings and Order is based were developed from information provided to the Committee by Sam Perroni in December 2008. The information related to the representation of Jewell Rapier, generally in her capacities as Executrix of the Estate of Mildred Buck, Trustee of the Mildred Buck Revocable Living Trust ("Buck Trust"), and General Partner of the Buck Properties I, LLLP ("Buck LP"), in Saline County from 2000 through mid-2003 by Respondent Scott Douglas Fletcher, an attorney practicing primarily in Little Rock, Arkansas. On April 21, 2010, a formal Complaint was filed, supported by depositions, testimony, or sworn statements from Keith Moser (2), Randall Ives, Bruce Chavis, Jewell Rapier (3), Scott Fletcher (3), Randy Prickett (2), Robert Maertens, Robert J. Standard, Donald Spears, Stephen Curry, and Floyd Pederson, Jr., along with a Master List of eighty-one (81) exhibits.

Respondent Fletcher filed his Response on June 29, 2010, supported by exhibits and affidavits from Travis Yingling, Jewell Rapier, Rufus Wolff, Stephen Curry, Donald Spears, Carole Stanyar, and Donald Campbell, III. In July 2010, the Office of Professional Conduct filed rebuttal affidavits from Jim Martin, Donald Spears, Brenda Watts, Sharrock Dermott, Stephen Curry, Randy Prickett, and Jewell Rapier. In late August 2010, the ballot vote panel chair permitted the filing of additional affidavits from Travis Yingling and Jim Martin.

The case went through the ballot vote process with Panel A, and Respondent was notified

of that result. He then requested a *de novo* hearing, which was set for and conducted on May 4-5, 2011, by Panel B. Members participating in the hearing were: Chair James Dunham, Steve Crane, Henry Hodges, Sylvia Orton and Carolyn Morris from Panel B, and Michael Mayton (Panel C attorney) substituting for Barry Deacon who was not available, and James Ross (Panel D attorney) substituting for Valerie Kelly who recused.

## **I. SUMMARY OF COMPLAINT**

1. Mr. Fletcher was licensed in 1991, and worked from then at the law firm called Jewell & Moser, P.A., later known as Jewell, Moser, Fletcher & Holleman (JMFH), until he left by August 1, 2002. By 1997, Fletcher was the president of the legal corporation and a one-third shareholder. After August 1, 2002, Fletcher practiced as Fletcher Law Firm, P.A.

2. Mildred Buck of Saline County, an elderly widow with no children, died testate on April 13, 2001, at age eighty-eight (88) years. Her god-daughter, Jewell Rapier, no kin, had provided care and companionship to Ms. Buck in her later years. Ms. Rapier knew Scott Fletcher through her employment. Rapier and Fletcher worked together in 2000 to provide Ms. Buck with estate planning services, including a will, revocable living trust, and a limited partnership. After Ms. Buck died in April 2001, Rapier exercised complete legal control over the Buck Estate, the Buck Trust, and the Buck limited partnership (Buck LP). Rapier had no legal education, legal training, legal experience, or advanced or sophisticated legal, real property, probate, or tax law knowledge at any time. Scott Fletcher was Rapier's sole legal adviser in her various fiduciary capacities until March 2003.

3. The Buck LP owned slightly over 1,000 acres of undeveloped rural land in Saline County. Ms. Rapier was the sole general partner of the Buck LP, and was given 1% of the ownership units. The Buck Trust, of which Ms. Rapier was the sole Trustee, was the sole limited partner of the Buck

LP, and owned 99% of the ownership units. In March 2001, Ms. Rapier engaged Travis Yingling of Benton to perform an appraisal of the Buck properties. Mr. Yingling was state-licensed as a Certified Residential (“CR”) appraiser, but not as a Certified General (“CG”) appraiser. His appraisal valued the tract containing a certain 561 acres at \$500 per acre, for use as hunting property. In an appraisal dated April 1, 2002, Roger Parker, a CG certified appraiser, valued the 561 acre tract at \$1,450 per acre for the use of Mr. Ives in obtaining his bank loan to purchase the tract from the Buck LP.

4. Acting as Trustee or sole general partner of the Buck LP, in December 2001-August 2002, Ms. Rapier sold Buck Trust or Buck LP lands to (1) herself and her husband, (2) to a retirement trust for a corporation they controlled, (3) to her brother and his wife, (4) to friends, and (5) to neighboring landowners. Mr. and Mrs. Rapier, or entities they owned or controlled, purchased about 216 of the 1,000+ acres. Ms. Rapier also sold a 561 acre Buck LP tract to Ives & Associates (Ives) through a “strawman” entity, Maumelle Properties, Inc. (“Maumelle” or “MPI”), controlled by Fletcher’s law firm, Jewell, Moser, Fletcher & Holleman, P.A. (JMFH). As general partner of the Buck LP, Rapier first negotiated a price of \$350,000 with Ives for the 561 acres, or \$625 per acre versus the Yingling \$500 per acre appraisal. Then, acting on advice from Fletcher and JMFH, Rapier first sold the 561 acres to Maumelle for \$280,650, the Yingling \$500 per acre appraised value, and Maumelle then promptly resold the same land to Ives for the agreed \$350,000, or about \$65,716 more. The beneficiaries of the Buck Trust were not provided information about the existence of or their interests in the Buck Trust or the activities of Rapier as Trustee and as general manager of the Buck LP until late 2002, and then only grudgingly by Fletcher, acting as counsel for Ms. Rapier, when Robert Maertens began asking questions of Rapier and Fletcher. In early 2002, Rapier and Fletcher turned down an offer from a local realtor to list the Buck properties to the public. Ms.

Rapier turned down Mr. Ives' request to purchase more Buck lands, stating to Ives that the lands had been spoken for.

5. The signature "Robert J. Standard" appeared on documents in the Buck LP-Maumelle Properties - Ives 561 acre transactions in 2002, and particularly on the offer & acceptance, \$280,650 promissory note, and mortgage from Maumelle to the Buck LP. The "Robert Standard" signatures were notarized in several places by Desha Kyzer, Mr. Fletcher's secretary from 1994 to present date. Mr. Fletcher and Ms. Kyzer have not explained how the "Standard" signatures got on these documents. There are intimations that the signatures may have been forged. Mr. Fletcher describes Mr. Standard as a long-time best friend from Illinois and that each served as a member of the wedding party in each other's wedding. Mr. Standard has not appeared in this case by affidavit or testimony, on the subject of the 2002 execution of the "Maumelle" land sale documents. Mr. Fletcher testified at hearing that he did not become aware of the "Robert Standard" name being on the Maumelle transaction documents until the Maertens v. Rapier suit was filed in October 2002, or maybe even later.

6. The "net" seller's proceeds of approximately \$65,716 from the Maumelle-Ives sale closing in April 2002, funds that all agreed belonged to the Buck LP, were unaccounted for to anyone outside Jewell Rapier and Scott Fletcher until late July 2003, when Keith Moser, a former member of JMFH, provided the information in the Maertens v. Rapier lawsuit as to the distribution or whereabouts of the funds. Neither Rapier or Fletcher disclosed to the Buck Trust beneficiaries, as Buck LP participants that \$31,878.94 of these funds had been disbursed on May 14, 2002, from the JMFH client trust account to Jewell Rapier's new hunting club by trust check #6066, signed by Scott Fletcher, and that \$32,832.73 was disbursed by JMFH client trust account check #6067, signed by

Scott Fletcher, to JMFH as “earned fees” and expenses in payment of the May 14, 2002, JMFH billing to the “strawman,” Maumelle Properties, Inc., in connection with its sale of the 561 acres to Ives in early April 2002.

7. The financial records of Jewell & Moser, PA/JMFH and of the Jewell & Moser, PA, (also the JMFH) Client Trust Account show the firm accounted for the \$32,832.73 disbursed by trust account check #6067, made payable to the firm, on May 14, 2002, as “fee income” to the law firm. This \$32,832.73 could not have been residing in any JMFH trust account from then until August 22, 2003, when Keith Moser produced a check for \$33,832.73 drawn on his newer and separate Moser firm trust account to deposit these disputed funds into the court registry in the Maertens lawsuit. The disbursements on May 14, 2002, of the \$31,883.94 to Rapier Ridge Hunting Club and the \$32,832.73 to JMFH left a balance of \$1,000.00 of “Maumelle-to-Ives” seller’s funds that should have been thereafter held for the Buck LP in the JMFH client trust account, or accounted-for to the Buck LP.

8. Mr. Fletcher left the JMFH firm by August 1, 2002, and the other principals, left soon thereafter. The former JMFH law firm was judicially dissolved in a later court case. By early July 2002, Fletcher was aware of a federal criminal investigation of his partner Keith Moser in Michigan, which eventually led to Moser’s guilty pleas in Arkansas in late 2004 and a lengthy prison sentence for fraud involving theft of client funds. Learning of the Moser investigation caused Fletcher to leave the JMFH firm within days. If any of the Buck LP “\$65,000” was left by Fletcher at JMFH, or with Moser, when Fletcher left JMFH, Fletcher failed to take appropriate steps to obtain and safeguard those funds belonging to his client Buck LP, knowing what he did at the time about Moser.

9. In a letter dated November 3, 2002, Fletcher made a material false statement to Steve Curry, by then Jewell Rapier’s new personal attorney, about the status of the \$65,000 from the

Maumelle-Ives sale. On May 14, 2002, Fletcher signed two JMFH trust checks totaling about \$64,716 and disbursed those Buck LP funds from the trust account. In the letter to Curry, Fletcher merely repeated information he attributed to Moser, without disclosing to Curry that Fletcher had personally disbursed the \$64,716 months earlier, information Fletcher later stated he knew was false at the time of his letter to Curry.

10. Robert Maertens, a Buck Trust beneficiary, filed the initial state court civil suit against Ms. Rapier in October 2002. Based on Maertens' limited knowledge and information at the time, he raised only the fact that the 561 acre tract had been sold twice in March-April 2002, once for \$280,650 to MPI, with 100% seller financing, and then again for \$350,000 to Ives. Maertens did not have a reason at that time to question what happened to the difference of over \$65,000. The suit did ask for an inventory and accounting by Jewell Rapier of the Buck Trust and the Buck LP. Shortly thereafter, Fletcher arranged for Steve Curry to represent Jewell Rapier, individually and as Buck Trustee, in the suit, while Scott Fletcher continued to represent the Buck LP and Rapier as general partner of the Buck LP. Steve Bauman, a Maertens attorney, wrote Curry on October 24, 2002, requesting an accounting of the Buck Trust.

11. On or about November 1, 2002, Fletcher filed an Answer for Buck Properties I, LLLP, (Buck LP), but did not mention anything about assets, make any accounting, or mention the status of the approximately \$65,000 that belonged to the Buck LP from the Maumelle-Ives sale. On about the same day, Curry filed an Answer for Jewell Rapier, Individually, as Executrix of the Buck Estate, and as Trustee of the Buck Living Revocable Trust, but never mentioned anything about assets, made no accounting, and did not mention the status of the approximately \$65,000 that belonged to the Buck LP from the Maumelle-Ives sale.

12. On November 3, 2002, Fletcher wrote Curry that Keith Moser had informed Fletcher on “Friday” (11-1-02) that the \$63,216.67 and the Ives \$2,500 earnest money are “credited in the JMFH client trust account still and that he [Moser] will testify as the corporate designee of Maumelle Properties, Inc. I guess the \$65,716.67 can be moved from the JMFH client trust account ASAP, if necessary.” Fletcher never mentioned that he personally signed JMFH trust checks #6066 and #6067 on May 14, 2002, that disbursed about \$64,716 of the Buck LP funds.

13. On November 12, 2002, Keith Moser was deposed in the Maertens suit. He stated that the two Ives closing checks, \$2,500.00 and \$63,216.67, were “deposited into our trust account,” “Those funds are still in our trust account,” and “those funds right there belong to Buck Properties I, LLLP.” Moser also testified that Fletcher handled all this, Moser did not prepare the federal estate tax return for the Buck Estate, Rapier was Fletcher’s client, the proceeds of the Maumelle sale to Ives were still in Moser’s trust account, and had not been distributed to the Buck LP because Moser was waiting for a Buck federal estate tax “closing letter.”

14. In early January 2003, the Maertens parties engaged Dwight Pattison, a CG certified appraiser, to appraise all Buck properties. He valued the 561 acre tract at \$1,500 per acre.

15. On July 21, 2004, Fletcher was deposed in the Rapier v. Fletcher third party suit. He stated that the Maumelle-Ives net seller’s proceeds check [\$63,216.67] was deposited into the JMFH trust account and a check of about \$34,000, or a few thousand dollars more than the check to Jewell Rapier, was written off those funds, which he stated belonged to Buck Properties, to JMFH for legal fees and costs that had accrued as of that date, on a firm statement to Maumelle Properties. He stated that, after the disbursements to (1) Jewell Rapier, characterized as for her fees for her services as executor, trustee, and general partner of the partnership, and (2) to JMFH, about \$1,000 remained

reserved for expenses that had not been billed. This was the first disclosure by Fletcher as to what happened to the Buck LP seller's proceeds from the MPI-Ives sale in April 2002.

16. Fletcher stated that as of that [deposition] date, July 21, 2004, he did not know if either Ms. Rapier (\$31,878) or the law firm or Keith Moser (\$33,832) had paid back these funds to the JMFH trust account. Fletcher stated that as of July 29, 2003, he understood the trust account balance at JMFH to have been about \$40.

17. Fletcher discussed his handwritten letter of November 3, 2002, to "Steve" Curry, (Exhibit 34), admitting he knowingly told Curry a falsehood about the statement Fletcher attributed to Moser about the \$65,000 still being in the firm trust account. Fletcher explained his false statement by saying he wrote Curry to talk to Moser about it. Fletcher stated this was his way of "signaling" Curry that Curry should somehow not accept Fletcher's knowing false statement about the whereabouts of the Buck LP funds but should go himself to Moser to get the truth about the funds.

18. On February 11, 2003, the expanded number of Maertens plaintiffs filed their First Amended and Substituted Complaint, naming additional Defendants, including Ives & Associates, Maumelle Properties, Keith Moser and Moser's separate law firm client trust account. In §13(d), the Amended Complaint sets out that the \$65,000, more or less, the cash difference in the Buck to Maumelle sale and the Maumelle to Ives sale, on information and belief, was then being held by Moser in the Moser & Associates, P.A. client trust account, the funds were property of the Buck Trust, and should be delivered to the Trust. On or about March 3, 2003, Fletcher filed the Answer for Buck Properties I Limited Partnership (Buck LP) to the Amended Complaint, denying that the approximately \$65,000 from the Maumelle-Ives transaction was being held in the Moser & Associates, P.A. client trust account. Fletcher further stated that the approximately \$65,000 was an

asset of Buck LP, that there was an oral agreement requiring that Moser & Associates, P.A. client trust account deliver the approximately \$65,000 to Buck LP once the Internal Revenue Service has issued an Estate Tax Closing Letter to the [Buck] Estate accepting the Form 706 as filed and without adjustment. The IRS Closing Letter for the Buck Estate, without adjustment, is dated March 20, 2003, and addressed to Jewell Rapier at her home address.

19. No delivery of any funds from the Maumelle-Ives closing was made to the Buck Trust or Buck LP until August 22, 2003, when Keith Moser interplead into the Court \$33,832.73 he stated was "currently" in the Moser & Associates, P.A. client trust account and that belonged to Buck Properties ILP (Buck LP). Moser stated the \$65,716.67 deposit was made into the JMFH client trust account on May 14, 2002. Moser then disclosed the \$31,883.94 check from the JMFH trust account used to purchase the \$31,878.94 cashier's check to Rapier Ridge Hunting Club. He stated that the balance of these [Buck LP] funds was transferred, at some unstated date, to the new Moser & Associates, P.A. client trust account. Mr. Moser never mentioned any agreement that he was to hold these funds, or any funds, until the Buck Estate IRS estate tax closing letter was received and then deliver the funds to the Buck LP, as Fletcher had stated was their oral agreement.

20. On July 23, 2003, Don Spears, now Jewell Rapier's counsel, replacing Curry, wrote Moser and Fletcher, informing them of the receipt of the IRS estate tax closing letter, and asking for the Buck LP money from whoever has it. An exchange of letters among Spears, Moser, and Fletcher followed in late July 2003, but Fletcher did not disclose to Spears the information Fletcher personally had about his disbursement of the \$64,716 by the two checks in May 2002.

21. In October 2002, Buck Trust beneficiary Robert Maertens sued Jewell Rapier, alleging self-dealing by her in her various fiduciary capacities and her sales of Buck LP lands at prices well

below fair market value. Rapier was first represented in this suit by Steve Curry, and then from February 2003 on by Donald Spears. By July 2003, negotiations between the Maertens plaintiffs and Jewell Rapier had progressed to the point where she executed a Memorandum of Understanding (MOU), making certain admissions and agreeing to entry of a large money judgment, calculated in the MOU at almost \$1,000,000, against her if certain future events did not work out as stated. Rapier agreed to assist the plaintiffs by personally suing Scott Fletcher for legal malpractice in connection with his earlier representation of her in her various fiduciary capacities. Tim Dudley filed her suit against Fletcher in September 2003, in which Rapier admitted that she had committed breaches of her fiduciary duties, relying upon legal advice she received from Mr. Fletcher. The suit was settled in September 2004, in a confidential agreement, the terms of which have not been revealed, but within Fletcher's \$1,000,000 professional liability CNA policy limit. In settling, Mr. Fletcher did not admit any wrong-doing. From this settlement a contingent attorney's fee of one-third was to be paid to Ms. Rapier's new attorney, Mr. Dudley.

22. In May 2005, CNA gave notice to Mr. Fletcher that, due to "unfavorable underwriting factors," CNA was not going to renew his liability policy on August 1, 2005. He purchased a six year "tail," or extended coverage, policy by August 1, 2005. Thereafter, Mr. Dudley filed at least six malpractice suits against Mr. Fletcher in state and federal courts, and five settled with payments made by or for Mr. Fletcher through late 2010.

23. Starting in late 2003, the new co-trustees and co-general partnerships of the Buck entities, Randy Prickett and Mark Riley, were able to "reverse" most of the Rapier land sales and recover those properties for the Buck LP. The 561 acre tract could not be legally recovered or "reversed." In late 2004, Prickett estimated the overall net after-tax loss to the Buck beneficiaries as a result of

mishandling of Buck financial affairs by Rapier and Fletcher, after all credits from the litigation settlement with Fletcher and other sources, to be about \$482,531.

## **II. SUMMARY OF FLETCHER RESPONSE**

1. Fletcher believes he provided competent counsel to Jewell Rapier.
2. The sales by Rapier as general partner of Buck, LP were authorized by the partnership agreement and the law.
3. No property was purchased below the fair market value, since the value was determined by the 2001 independent appraisal of Travis Yingling. The later appraisals by Pattison and Parker used inappropriate comparables and had other issues. There was no reason for either Rapier or Fletcher to believe that the Yingling appraisal did not validly establish the fair market value of the Buck property.
4. The Buck LP property that is the focus of the complaint, the 561 acres, was sold to Ives for above the Yingling appraisal amount.
5. Based on advice given him by Keith Moser, a more experienced attorney, at the time of the “straw man” transaction and the sale of the Buck LP land, Fletcher believed that the use of a “straw man” was legal.
6. With regard to any duty Rapier had as a trustee of the Buck Trust, that matter was researched by Sharrock Dermott, as he was primarily responsible for matters concerning the trust and estate. Dermott also communicated with Rapier. Dermott was a senior associate with an LLM in tax. Dermott’s work was supervised in this research by Moser. Fletcher relied on their findings as to Rapier’s duty as a trustee to the Buck Trust.

7. The roles of Ms. Rapier as executor, trustee, owner and general partner must be treated separately with regard to Rapier's fiduciary obligations and the advice Fletcher gave her, because the fiduciary duties for each role differs depending on the law and the relevant documents, *e.g.*, the will, trust, or partnership agreement.

8. Ms. Rapier, in her many capacities, legitimately earned the funds that she received. JMFH did issue a check to Rapier Ridge Hunting Club, Inc. for \$31,878.94 for the benefit of Rapier, for her fees earned as 1% owner of the partnership, as executrix of the estate, as general partner of the Buck LP, and as trustee of the trust. We were authorized to do so by Rapier.

9. The fee charged by the JMFH law firm was reasonable. JMFH performed many services for Rapier over a several-year period as she acted in her various capacities as executor, trustee, owner and general partner. Rapier authorized payment of these legal fees.

10. At no time did I know Maumelle Properties, Inc. ("MPI") to be a client of JMFH.

11. I did not knowingly make a false statement to Steve Curry in my November 2002 letter. I related to him the truth. I purposely used the words "Moser told me". It was the exact truth that Moser told me that he was holding the approximately \$65,000 in the Moser & Associates trust account. At the time I wrote the letter, Curry and Moser were good friends who had done quite a bit of legal work together for mutual clients. Curry represented Moser in his divorce and later they officed together. Rapier was referred to Curry for representation in the lawsuit filed against her by the Buck estate beneficiaries because of Curry's association with JMFH. Because of Curry's relationship with Moser, I did not want to explicitly tell Curry that Moser, his friend, was lying to both of us about the approximately \$65,000.00. Moreover, I did not know what had happened to the \$32,832.73 after I left the firm on July 5, 2002, but I was

sure that Moser maintained control over it. I was trying to signal Curry that he should inquire further about the funds from his friend Moser and trace their whereabouts. Significantly, in neither of his first two affidavits, obtained by the Executive Director and then for me, does Curry ever state that I deceived him. At the time I wrote the letter to Curry, his client Rapier already had approximately \$32,000 as payment for her fiduciary fees and ownership interest in the LP. Therefore, he knew or should have known where that portion of the \$65,000 was located.

12. In my [July 30, 2003, Ex. 59] letter to Donald Spears, I did not give any false information. As evidenced by his [second] affidavit, Spears does not think that I lied, was dishonest, or misrepresented facts to him. I told Spears that I thought it would be best that Moser & Associates tender \$33,847.73 into the registry of the court. I made this statement for two reasons: first, I believed that Moser, as he had testified in his deposition had moved this money to the Moser & Associates client trust account when he formed his separate law firm. Second, I did not have the \$33,847.73 because I was no longer associated with JMFH after July 5, 2002, and was not affiliated with Moser & Associates. In fact, I never had access to these monies. Therefore, I thought that if Spears wanted that money to be refunded to the court, then he would have to get Moser to tender it into the registry of the court, which Moser did. Rapier had received approximately \$31,000 before she retained Spears to represent her. Thus, Spears should have known about that portion of the proceeds of the \$65,000.

13. I did not know of MPI before Moser suggested it be used as a "straw person" in the Buck LP-MPI-Ives transaction. I did not know at the time of the Ives transaction (and only learned after the FBI began investigating Moser and Barry Jewell) that Rob Standard's name had been used without his authorization on deeds, mortgages, and other documents. I did not suspect that

Standard's signature on MPI documents was not his or that he had not consented to become an officer or director of MPI. As established in the trial of *U.S. v. Jewell*, Moser was a very good forger of others' signatures and was not reluctant to do so.

### III. HEARING EVIDENCE

At the hearing, the Executive Director presented live testimony from adverse party Scott Fletcher, Desha Kyzer, Travis Yingling, and Randy Prickett. Respondent presented testimony from himself and Jennifer Mitchell. The "pleadings packet," consisting of the Complaint, Response, rebuttal materials, sur-rebuttal affidavits of Yingling and Martin, new Exhibits 100-105, 127, 129, 132-137, and replacement (redacted) Exhibit R were admitted into the record. Exhibit 121 was proffered by the Executive Director, and placed under seal by the Panel Chair at the request of Respondent's counsel.

Witness Kyzer generally testified that she did not know the circumstances under which the signature of "Robert J. Standard" got on the 2002 MPI sale documents she notarized, or just who actually prepared those documents. She stated that at times a photocopy of a person's driver's license was kept in a firm file and was compared against to verify a signature on a document purportedly signed by that person that was to be notarized.

Witness Yingling generally testified about the circumstances surrounding his 2001 appraisal of the Buck properties for Ms. Rapier. He stated that his full file, containing his "comparables" information on the Buck appraisal had long ago been destroyed.

Witness Mitchell generally testified about the contents of her affidavit; that the appraisals done by Parker and Pattison were not appropriate to rely on for the Buck properties; that Yingling's appraisal was the most valid, in her opinion; that Yingling and she had discussed the

Buck lands matter in the past; that she was engaged by Maertens and his attorney to appraise the Buck properties in late 2002 but declined to continue the assignment after Maertens approached her with “comparables” information; and that she had co-produced appraisals with Yingling for about seven years with about 5-15% of her annual appraisal income being derived from fees she split with Yingling. She also testified that she gave her executed Affidavit on April 15, 2011, and was not told of the 2003 Pattison appraisal until several days later, at a meeting with Respondent’s counsel. She did not thereafter revise her affidavit.

Witness Prickett generally testified about the contents of his two affidavits; that appraiser Pattison was presented additional comparables in early 2003 by Bob Maertens and Prickett and adjusted his final appraisal values about ten percent (10%) to \$1,500 per acre on the 562 acre tract; that after gaining control of the Buck Trust and Buck LP in August 2003, Mark Riley and he, as co-general partners, had listed the Buck LP properties with an area realtor, done a small bit of land swapping with a timber company to improve road frontage, subdivided eighty (80) acres Mr. and Mrs. Rapier had personally purchased into eight, ten acre lots, and sold them for a gross price of about \$5,500 per acre, before the realtor’s commission was deducted.

Respondent Fletcher testified at length, covering many areas in the Complaint, his Response, and in rebuttal materials and newly-offered hearing exhibits. He also stated he had had no communication with his old friend Robert Standard about the subject matter of this case since it was filed or about the hearing, and did not know why Standard had not submitted any affidavit or was not present as a witness. He also stated that the Rapier v. Fletcher malpractice lawsuit was settled in August or September 2004 because (1) of the “strawman” transaction and (2) because of the adverse publicity since February 2004 surrounding Keith Moser’s criminal charges, his

flight, and his stealing client funds. He also agreed that CNA notified him in May 2005 that it would not renew his professional liability coverage on August 1, 2005, and that the only malpractice suit that had been filed against him at the time was the Rapier suit, settled by September 2004. He testified that all subsequent malpractice suits against him were based on events that arose or documents originating during his time at JMFH.

#### IV. RULE VIOLATIONS

Upon consideration of the formal Complaint and attached exhibit materials, the Response, all Rebuttal materials, testimony of witnesses, exhibits received at the hearing, and other matters before it, and the Arkansas Model Rules of Professional Conduct, Panel B of the Arkansas Supreme Court Committee on Professional Conduct finds:

A.1 - By a vote of five (Crane, Hodges, Morris, Mayton and Ross) to two (Dunham and Orton), the panel found the conduct of Scott D. Fletcher violated Model Rule 1.1, in that based on legal advice from Fletcher, Jewell Rapier and her spouse purchased several tracts of real estate from the Buck LP at prices far below the fair market values for the lands at the time.

A.2 - By a vote of five (Dunham, Crane, Orton, Morris and Ross) to two (Hodges and Mayton) that Mr. Fletcher did not violate Model Rule 1.1 on this charge.

A.3. - By a vote of six (Crane, Orton, Hodges, Morris, Mayton and Ross) to one (Dunham), the panel found a violation of Model Rule 1.1, where Mr. Fletcher failed to advise Jewell Rapier that Rapier, as general partner for the Buck LP, should expose the Buck LP land assets to the market and other potential buyers than just herself and her spouse, her relatives, and her friends, to determine the most advantageous prices at which the Buck LP lands could be sold

for the benefit of the Buck LP and the Buck Trust, which was the sole limited partner of the Buck LP.

A.4 - By a vote of six (Crane, Orton, Hodges, Morris, Mayton and Ross) to one (Dunham), the panel found a violation of Model Rule 1.1 where, acting on legal advice from Mr. Fletcher, Jewell Rapier, as general partner of the Buck LP, in March-May 2002 sold 561 acres of Buck LP lands to Maumelle Properties, Inc., as a “straw man,” for \$280,650 while knowing that Ives & Associates, Inc. had offered the Buck LP \$350,000 for the same property. On the advice of Fletcher, and without exposing this large tract to the market, Rapier sold it for far less than its fair market value, even the \$350,000 price paid by Ives, as shown by the substantial appraisal differences between the Yingling and the Pattison appraisals and the offer price by Ives and the Ives “Parker” appraisal (Exhibit A-25) once Ives obtained ownership of the 561 acres.

Model 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.1 - By a vote of six (Crane, Orton, Hodges, Morris, Mayton and Ross) to one (Dunham), the panel found a violation of Model Rule 1.2(d) where Mr. Fletcher assisted his client Jewell Rapier, in one or more of her various fiduciary capacities with Buck entities, to receive and take control of the funds represented by a cashier’s check payable to Rapier Ridge Hunting Club, Inc. for \$31,878.94 on or about May 14, 2002, from the proceeds of the sale of Buck LP real property to Maumelle Properties, Inc., and then to Ives, funds that were purportedly paid to Rapier for her services as one or some combination of Executrix of the Mildred Buck Estate, services as trustee of the Mildred Buck Trust, and services as the general partner of the

Buck LP, a payment made by Fletcher's law firm to Rapier without proper documentation, and without court approval where required by probate and possibly other laws. Fletcher should have known that such undocumented and disguised payments, under the circumstances, were fraudulent conduct by Rapier toward the Buck entities to which she owed fiduciary duties, conduct in which she was materially assisted by Fletcher. Model Rule 1.2(d) provides that a lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

C.1 - The panel unanimously found no violation by Mr. Fletcher on this charge of violating Model Rule 1.2(e).

C.2 - The panel unanimously found no violation by Mr. Fletcher on this charge of violating Model Rule 1.2(e).

C.3 - The panel unanimously found no violation by Mr. Fletcher on this charge of violating Model Rule 1.2(e).

D.1 - The panel unanimously found the conduct of Mr. Fletcher violated Model Rule 1.4(b), in that Jewell Rapier relied entirely on Mr. Fletcher for legal advice as to how she could and should execute her duties as executrix, trustee, and general partner of the various Buck entities, and the facts now demonstrate that Fletcher did not explain her duties and limitations in those fiduciary capacities to the extent reasonably necessary to permit the client to make informed decisions regarding the representation. Model Rule 1.4(b) requires that a lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed

decisions regarding the representation.

E.1 - The panel unanimously found no violation by Mr. Fletcher on this charge of violating Model Rule 1.5.

F.1 - The panel unanimously found no violation by Mr. Fletcher on this charge of violating Model Rule 1.7(b).

G.1 - By a vote of five (Dunham, Crane, Orton, Morris and Ross) to two (Hodges and Mayton) the panel found that Mr. Fletcher did not violate Model Rule 1.15(a) on this charge.

H.1 - By a vote of five (Crane, Hodges, Morris, Mayton and Ross) to two (Dunham and Orton), the panel found the conduct of Mr. Fletcher did violate Model Rule 1.15(b), in that after receiving the approximately \$65,000 from the Maumelle to Ives sale in mid-April 2002, funds in which the Buck LP and the Buck Trust, as the 99% interest limited partner in the Buck LP, had an interest, Fletcher failed to promptly deliver to the Buck LP or the Buck Trust, both of whom he represented, their share of these funds.

H.2. The panel unanimously found the conduct of Mr. Fletcher did violate Model Rule 1.15(b), in that after receiving the approximately \$65,000 from the Maumelle to Ives sale in mid-April 2002, funds in which the Buck LP and the Buck Trust, as the 99% interest limited partner in the Buck LP, had an interest, Fletcher failed to promptly render a full accounting as to these funds to the beneficiaries of the Buck Trust, after a request to Fletcher for such an accounting was made in September 2002 by Robert Maertens, as a beneficiary of the Buck Trust.

Model Rule 1.15(b) requires that upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer

shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

I. By a unanimous vote, the panel found no violation of Model Rule 3.3(a)(4).

J. By a unanimous vote, the panel found Mr. Fletcher violated Model Rule 4.1(a), when, in his letter to “Steve” [Steve Curry] on November 3, 2002, Fletcher knowingly made a false statement to Curry, by then the counsel for Jewell Rapier individually in the Maertens v. Rapier lawsuit, that Fletcher knew to be false, when Fletcher informed Curry that Keith Moser had told Fletcher that Moser was at that time holding the approximately \$65,000 sellers proceeds from the April 2002 Maumelle Properties to Ives land sale in Moser’s separate client trust account. Fletcher personally knew this was a false statement to Curry because Fletcher had signed JMFH trust check #6066 on May 14, 2002, for \$31,883.94 to purchase a cashier’s check to Jewell Rapier’s Rapier Ridge Hunting Club. Fletcher further knew at the time he wrote Curry that JMFH trust check #6067 had been issued on May 14, 2002, for \$32,832.73 to JMFH for “fee income” in payment of the JMFH billing of that amount to Maumelle Properties, a bill Fletcher had generated. At the time Fletcher made this false statement to Curry, Jewell Rapier, in her individual capacity, was not Fletcher’s client, but a third person. Model Rule 4.1(a) requires that in the course of representing a client, a lawyer shall not knowingly make a false statement of material fact or law to a third person.

K.1 - By a unanimous vote, the panel found Mr. Fletcher violated Model Rule 8.4(c) when, on November 3, 2002, Fletcher knowingly gave false information to “Steve” [Steve Curry], attorney for Jewell Rapier, by means of a letter authored by Fletcher, (Exhibit 34), about

the then-current status of the approximately \$65,000 in net seller's proceeds from the Maumelle Properties sale to Ives & Associates, conduct involving dishonesty, fraud, deceit or misrepresentation by Fletcher.

K.2 - By a unanimous vote, the panel found Mr. Fletcher violated Model Rule 8.4(c) when he knowingly gave false information to Donald Spears, attorney for Jewell Rapier, by means of a letter authored by Fletcher, (Exhibit 59), about the then-current status of the approximately \$65,000 in net seller's proceeds from the Maumelle Properties sale to Ives & Associates, conduct involving dishonesty, fraud, deceit or misrepresentation by Fletcher.

3. By unanimous vote, the panel found no violation by Mr. Fletcher of Model Rule 8.4(c) on Charge K.3 of the Complaint, relating to his filing of a pleading that was Exhibit 43.

4. By unanimous vote, the panel found no violation by Mr. Fletcher of Model Rule 8.4(c) on Charge K.4 of the Complaint, relating to disbursing, without adequate and appropriate supporting documentation, on May 14, 2002, \$31,878.94 to Rapier Ridge Hunting Club, Inc for the ultimate benefit of Jewell Rapier.

Model Rule 8.4(c) requires that a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

L.1 - By unanimous vote, the panel found no violation of by Mr. Fletcher of Model Rule 8.4(d), alleging conduct that is prejudicial to the administration of justice.

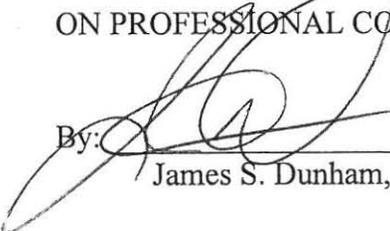
M. The Panel specifically found that the conduct found proven here is "serious misconduct," as defined in Section 17.B of the Court's Procedures Regulating Professional Conduct of Attorneys at Law.

## V. SANCTION

**WHEREFORE**, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel B, after a *de novo* hearing, that the Arkansas law license of **SCOTT DOUGLAS FLETCHER**, Arkansas Bar ID# 91236, be, and hereby is, **SUSPENDED FOR SIXTY (60) MONTHS**, he is **FINED \$10,000.00**, and he is **ASSESSED COSTS OF \$2,046.00** (\$976.00 for the April 5, 2011, deposition of Mr. Fletcher, two witness subpoenas at \$35.00 each issued by the OPC for the hearing, and \$1,000.00 for the hearing reporter's fee) for his conduct in this matter. If either party orders a transcript of the hearing for appeal use, Mr. Fletcher's costs shall be reduced by \$500.00.

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 fine and costs assessed herein, totaling \$2,046.00, 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.

ARKANSAS SUPREME COURT COMMITTEE  
ON PROFESSIONAL CONDUCT - PANEL B

By: 

James S. Dunham, Chair, Panel B

Date: September 29, 2011