IN THE SUPREME COURT OF ARKANSAS

L. Lynn Hogue, Individually,
and the People of the State of
Arkansas, Upon the Relation of
L. Lynn Hogue,

Petitioners

w.

Case No.

James Neal, in His Capacity as
Executive Director of the
Arkansas Supreme Court
Committee On Professional
Conduct; and Carlton Bailey,
Sue Winter, Dr. Patricia
Youngdahl, Richard A. Reid,
Kenneth Reeves, Bart Virden,
and Win A. Trafford, in Their
Capacity as Members of the
Arkansas Supreme Court
Committee On Professional
Conduct,

Respondents

PETITION FOR WRIT OF MANDAMUS

COME NOW L. Lynn Hogue, individually and as a member in good standing of the
Arkansas Bar Association, and the People of The State Of Arkansas, upon the relation of L.
Lynn Hogue (collectively “Petitioners”), and petition this Court for a writ of mandamus directed
to Respondents James Neal, in his capacity as Executive Director of the Arkansas Supreme
Court Committee On Professional Conduct (“the Committee”); and, Carlton Bailey, Sue Winter,
Dr. Patricia Youngdahl, Richard A. Reid, Kenneth Reeves, Bart Virden, and Win A. Trafford, in
their capacities as Members of the Committee (collectively “Respondents”).
PARTIES

1. Petitioner L. Lynn Hogue ("Professor Hogue") is a professor of constitutional law at Georgia State University and, at all times relevant to the allegations of this petition, was General Counsel to Southeastern Legal Foundation, Inc., and a member in good standing of the Arkansas Bar Association, Arkansas Bar No. 79165. Professor Hogue is subject to the obligations and duties imposed upon members of the Arkansas Bar of the ABA Model Rules of Professional Conduct ("the Model Rules") (adopted as governing authority by In re Arkansas Bar Ass'n, 287 Ark. 495, 702 S.W.2d 326 (1985) (per curiam)).

2. The Arkansas Supreme Court Committee on Professional Conduct ("the Committee") is a state agency established by this Court in satisfaction of Ark. Const. amend. 28 to regulate the professional conduct of attorneys at law, and is subject to the supervision of this Court.

3. James Neal ("Neal") is Executive Director of the Committee and is charged with the duties of that office set forth in the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law ("the Disciplinary Procedures").

4. Carlton Bailey, Sue Winter, Dr. Patricia Youngdahl, Richard A. Reid, Kenneth Reeves, Bart Virden, and Win A. Trafford are all of the current members of the Committee, and are all charged with the duties of that office set forth in the Disciplinary Procedures.

JURISDICTION AND VENUE

5. Jurisdiction and venue are proper in this Court pursuant to this Court's power and duty to regulate the practice of law in the State of Arkansas and in aid of its supervisory jurisdiction, appellate or original, to adjudicate petitions for writs of mandamus. Ark. Const. art. VII, § 4;
Ark. Const. amend. 28; S.Ct. R. 1-2(5). (See also Jurisdictional Statement filed contemporaneously herewith.)

FACTUAL BACKGROUND

6. On or about September 15, 1998, Professor Hogue filed a verified complaint against Arkansas attorney William Jefferson Clinton, Arkansas Bar No. 73019. A true and accurate copy of the complaint with its exhibits is attached hereto as Exhibit 1.

7. Professor Hogue’s complaint alleged violations of the Model Rules by Mr. Clinton, including claims that Mr. Clinton had engaged in conduct inimical to and destructive of the administration of justice, such as lying, deceit, perjury, fraud, dishonesty, untrustworthiness, obstruction of justice, subornation of perjury, and witness tampering. Ex. 1, ¶¶ 6, 16.

8. Professor Hogue’s complaint was supported by evidence of Mr. Clinton’s misconduct, including a copy of the Referral to the United States House of Representatives from the Office of Independent Counsel; a copy of the Affidavit of Monica Lewinsky, dated January 7, 1998; an excerpt from the transcript of Mr. Clinton’s deposition testimony in Jones v. Clinton dated January 17, 1998; and an exhibit to that deposition, containing the court’s definition of “sexual relations.” True and accurate copies of the referenced exhibits are attached to Exhibit 1, Professor Hogue’s complaint, as Exhibits A through D, respectively.

10. On February 18, 1999, five months after filing his complaint, Professor Hogue sent a letter to Neal demanding that Neal and the Committee take action on Professor Hogue’s complaint. A true and accurate copy of the Letter from L. Lynn Hogue to James Neal, dated February 18, 1999, is attached hereto as Exhibit 3.

11. In addition, on April 12, 1999, Judge Wright of the United States District Court for the Eastern District of Arkansas issued an order in *Jones v. Clinton*, 36 F. Supp.2d 1118, holding Mr. Clinton in contempt of court for willful failure to obey the court’s discovery orders. In particular, Judge Wright determined that Mr. Clinton had willfully lied under oath in his deposition and in his sworn interrogatory responses in that case. Judge Wright held: “It simply is not acceptable” for anyone, but especially an attorney, to “employ deceptions and falsehoods in an attempt to obstruct the judicial process.” She concluded that:

> the President’s contumacious conduct in this case, coming as it did from a member of the Bar and the chief law enforcement officer of this Nation, was without justification and undermined the integrity of the judicial system. . . . Sanctions must be imposed, not only to redress the misconduct of the President in this case, but to deter others who, having observed the President’s televised address to the Nation in which his defiance of this Court’s discovery Orders was revealed, might themselves consider emulating the President of the United States by willfully violating the discovery orders of this and other courts, thereby engaging in conduct that undermines the integrity of the judicial system.

*Id.* at 1131. A true and accurate copy of the Memorandum Opinion and Order in *Jones v. Clinton*, 36 F. Supp.2d 1118 (E.D. Ark. 1999), is attached hereto as Exhibit 4.

12. The District Court mailed a copy of its Order holding Mr. Clinton in contempt to the Committee “for review and any action it deems appropriate.” *See* 36 F. Supp.2d 1118, 1132,
1135; see also Letter of Barry Ward to Stephen Gilmartin, dated November 22, 1999, a true and accurate copy of which is attached hereto as Exhibit 5.

13. On November 16, 1999, the Southeastern Legal Foundation ("the Foundation"), on behalf of Professor Hogue, forwarded a copy of Judge Wright's signed opinion to the Committee for acceptance. A true and accurate copy of the Letter from Stephen Gilmartin to the Committee, dated November 16, 1999, is attached hereto as Exhibit 6.

14. In the same November 16, 1999 letter, the Foundation, on behalf of Professor Hogue, again inquired as to the status of Petitioner Hogue's complaint. Id.

15. On December 9, 1999, Neal sent a letter to the Foundation stating that the Committee "does accept and treat as formal complaints such court referred writings" as Judge Wright's Order, but declining to inform the Foundation of the status or existence of such a formal complaint, and completely ignoring the Foundation's inquiry regarding the status of Professor Hogue's complaint. A true and accurate copy of the Letter from James A. Neal to Stephen P. Gilmartin, dated December 9, 1999, is attached hereto as Exhibit 7.

16. To date, Neal and the Committee have taken no action whatsoever on Professor Hogue's complaint other than to acknowledge receiving it.

17. To date, Neal and the Committee have refused to provide Professor Hogue with any information regarding the status of his complaint.

18. To date, Neal and the Committee have not assigned a docket control number to a case against Mr. Clinton initiated by Professor Hogue's complaint.
19. To date, Neal and the Committee have not assigned a docket control number to a case against Mr. Clinton initiated by Judge Wright’s Order in Jones v. Clinton.

20. To date, Neal and the Committee have not served a formal complaint upon Mr. Clinton.

21. To date, Neal has not granted Mr. Clinton an extension of time to respond to a formal complaint served upon him.

22. To date, neither Neal nor the Committee has reported the disposition of a formal complaint against Mr. Clinton by docket number in any monthly report as a public record in the office of the Clerk.

23. To date, neither Neal nor the Committee has filed the findings and decision of the Committee regarding a formal complaint against Mr. Clinton as a public record in the office of the Clerk.

COUNT I

MANDAMUS

(Complaint of Professor Hogue)


25. Professor Hogue is an aggrieved party because Neal’s failure to act prevents Professor Hogue from fulfilling his duties as a member of the Arkansas Bar to ensure that members who engage in misconduct are subjected to disciplinary proceedings. Further, by refusing to act, Neal has deprived Professor Hogue of the further remedy of referring his complaint to the Alternate Committee, as provided for in the Disciplinary Procedures. In addition, Professor Hogue’s professional credibility and integrity are damaged by the continuing,
unaddressed inclusion of Mr. Clinton within the membership of the Arkansas Bar Association.

26. Neal is a state official and/or judicial officer and/or ministerial officer of the state and is subject to both the duties of his office and the supervisory authority of this Court.

27. Neal has failed to fulfill obligations mandated or enjoined by sections 3(A) and 3(B)(2) of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law ("Disciplinary Procedures") which require him to act on complaints by members of the bar about other members of the bar.

28. Neal and the Committee's failure to act on Professor Hogue's complaint injures Professor Hogue because such dereliction of duty undermines the language and purposes of the Model Rules, which expressly require Professor Hogue to participate in the governance of the Arkansas Bar by filing a complaint with the Committee against Mr. Clinton or any other attorney engaging in misconduct.

29. Neal and the Committee's failure to act on Professor Hogue's complaint by failing to conduct timely and efficient disciplinary proceedings against Mr. Clinton damages Professor Hogue's professional credibility and the integrity of the Arkansas Bar as a whole. The continuing, unaddressed inclusion of Mr. Clinton within the ranks of the Arkansas Bar despite national attention and public knowledge that Mr. Clinton engaged in perjury and other misconduct is an affront to Professor Hogue and all members of the Arkansas Bar who have an interest in preserving not only its public image but also its internal regard for its own governing principles.
30. Based on the foregoing, Professor Hogue is entitled to a writ of mandamus compelling timely performance by Neal and the Committee of the duties required by the *Disciplinary Procedures*.

COUNT II

MANDAMUS

(Order in *Jones v. Clinton*)


32. The People of the State of Arkansas are aggrieved because Neal and the Committee have failed to enforce or abide by the *Disciplinary Procedures* and *Model Rules* governing the conduct of the members of the Arkansas Bar.

33. Proper governance of the Arkansas Bar is a duty affecting a public right common to the whole community because the public has a right to prompt and efficient governance of the legal profession in the State of Arkansas and swift disciplinary action against attorney misconduct to repair the public trust and to deter further violation of the *Disciplinary Procedures* and *Model Rules*.

34. The Committee is an agency of the State and Respondents are state officials and/or judicial officers.

35. With respect to Judge Wright’s Order in *Jones v. Clinton*, Neal is a ministerial officer.
36. Neal and the Committee have failed to execute their duties enjoined by Section 5(A) of the Disciplinary Rules which requires them to accept Judge Wright’s Order in Jones v. Clinton and treat it as a formal complaint.

37. The Committee’s failure to act on Judge Wright’s Order injures the People of the State of Arkansas because all citizens of the state have an interest in the proper redress of Respondents’ and Mr. Clinton’s dereliction of duty. As public officials and officers of the legal system, Neal, the Committee, and Mr. Clinton bear special responsibility for the quality of justice because they and those whom they govern play a vital role in the preservation of society. As a result, their dereliction of duty compromises the public interest in preserving the integrity of the justice system that every citizen shares.

38. Based on the foregoing, Petitioners are entitled to a writ of mandamus compelling timely performance by Neal and the Committee of the duties required by the Disciplinary Procedures.

WHEREFORE Petitioners respectfully pray that this Court award the following relief.


2. That this Court issue an Order requiring Neal to act on Professor Hogue’s complaint within ten days of the issuance of that Order, or within some other time certain in the
judgement of the Court, by processing a formal complaint or by notifying Professor Hogue of the determination of a lack of a basis for filing a formal complaint; and

3. That this Court issue an Order requiring the Committee to accept Judge Wright’s order in *Jones v. Clinton*, 36 F.Supp.2d 1118, 1120 (E.D. Ark. 1999) and commence proceedings for service upon Mr. Clinton of a formal complaint within ten days of the issuance of that Order, or within some other time certain in the judgement of the Court;

4. That this Court grant such other and further relief as this Court may deem just and proper under the circumstances.

This _______ day of December, 1999.

Respectfully Submitted,

[Signature]

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Georgia Bar No. 295227
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