



**IN DISCIPLINARY DISTRICT IX
OF THE
BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE**

**IN RE: REBECCA C. ARNOLD, BOPR #006349,
Respondent. An Attorney Licensed
to Practice Law in Tennessee
(Shelby County)**

FILE NO. 26951-9-JJ

PUBLIC CENSURE

A complaint alleging ethical misconduct was filed against the respondent by Cathy A. Toledo of Memphis. The Board of Professional Responsibility considered the matter pursuant to Tenn. R. Sup. Ct. 9 at its June, 2004 meeting and determined that issuance of a Public Censure was appropriate.

The respondent was retained by Ms. Toledo to file and handle a Chapter 13 Bankruptcy in early October, 2001 and respondent filed the petition for this client on October 16 of that year. In June of 2003, Ms. Toledo notified respondent of her desire to surrender her automobile and to have said payment removed from the Chapter 13 plan, whereupon respondent advised she did not know how to handle this particular request and would need "to check with a colleague" and get back with Ms. Toledo.

This complainant continually phoned respondent for several weeks without success, finally reaching respondent in August of last year, and in this brief phone conversation, respondent

falsely told this client she had "filed a motion" with the court requesting the relief complainant sought. This purported motion was never mailed to Ms. Toledo as she continually requested, and in September of last year Ms. Toledo checked with the Clerk's office and was told by late September that no such motion had been filed.

At the end of September, 2003, complainant directly contacted the finance company holding the lien on her vehicle and had this company repossess it. Due to the lack of communication with, and lack of legal advice from respondent on this urgent matter, Ms. Toledo filed her own *pro se* voluntary dismissal of her Chapter 13 case on October 1, 2003. However, had she received prompt and proper counsel and assistance, complainant desired to remain under Chapter 13 protection; but respondent did nothing to assist her.

Respondent did not respond to the first four (4) notices and summaries of complaint she was mailed by this office (final two by certified, return receipt requested), until 2 days remained before a petition for temporary suspension was to be filed against her; however, she put forth no excuses for her lengthy failure to respond to the Board and never called or corresponded with Disciplinary Counsel seeking an extension of time. We note respondent has a pattern of being dilatory in her responses to the Board in prior matters resulting in discipline. On March 26, 2004, after receiving respondent's initial response to the instant complaint, Disciplinary Counsel faxed correspondence to her requesting her responses to specific inquiries and for copies of certain documents - - including "a draft of the motion" respondent alleges she "was ready to file" for Ms. Toledo before she received notice of the Chapter 13 voluntary dismissal - - but respondent never sent the Board anything in response to this March 26, 2004 request.

The respondent has a demonstrated pattern of dilatoriness, of failure to properly

communicate with clients, and an exaggeration of her efforts to provide diligent representation. She has not provided competent representation as to the complainant's request, and has as a whole acted in a dilatory fashion without properly communicating with Ms. Toledo as to the status of her matter. She has deceived her former client as to having filed the requested motion.

We also note respondent offered excuses of "chronic depression" in 2001 relative to a prior disciplinary matter resulting in a Private Reprimand in February, 2002 - - where this 2002 disposition required her to enter into a contract for peer assistance with the Tennessee Lawyers' Assistance Program (TLAP) to address this condition. TLAP officials have informed the Board that there was no TLAP approved contract entered into by respondent for peer assistance in 2002, and that the Memphis Bar Association form contract respondent signed which was provided by Steven Watts was never received or processed by TLAP. Therefore, respondent has not obtained the peer assistance she was ordered to obtain through TLAP in 2002.

Had respondent acted expeditiously and obtained the competency which she lacked from other attorneys, complainant may have been able to voluntarily dismiss, and immediately refile her Chapter 13 and have the automobile creditor's claims treated as under or unsecured; she may have chosen to convert to a Chapter 7; or to remain in her then-current plan and address the automotive creditor's claim after discharge in 2005 or 2006. Unfortunately, Ms. Toledo did not have from respondent the timely and competent legal advice to intelligently make such a choice.

Based thereon, we find that respondent Rebecca C. Arnold has violated RPC 1.1, 1.3, 1.4, and 8.4(a)(c)(d). Accordingly, she is hereby **PUBLICLY CENSURED** and is ordered to enter into a written contract for peer assistance directly with the Tennessee Lawyers' Assistance Program (TLAP), through Robert Albury, Jr., Executive Director, to address her depression for a duration to

be determined by TLAP.

Respondent is further required as a condition of this Censure to provide Disciplinary Counsel with a copy of her executed contract with TLAP within thirty (30) days after the filing date of this Censure, and is to ensure that her quarterly progress reports from TLAP are delivered to Disciplinary Counsel with the first such report being due ninety (90) days after the filing date of this Censure.

FOR THE BOARD:

Charles E. Carpenter

Charles E. Carpenter, Chairman
Board of Professional Responsibility
of the Supreme Court of Tennessee

DATED: *August 25, 2004*