BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL B

FILED
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LESLIE W. STEEN
CLERK

IN RE: BRANDY MELLISSA McSHANE
ARKANSAS BAR ID No. 95042
CPC DOCKET NO. 2009-052

## FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee from a referral of the Office of Chief Disciplinary Counsel of the Supreme Court of Missouri. The information related to representation in three separate matters: (1) Belenda Cook in a guardianship matter in Greene County (Missouri) Circuit Court, Probate Division; (2) Tim and Sandy Freiburger in an estate planning matter; and (3) Gabriel Ondetti in an estate planning matter.

In July, 2002, Belenda Cook employed Ms. McShane to represent her in a guardianship proceeding involving her father, Robert I. Gott. Ms. Cook received Letters of Guardianship and Conservatorship on April 1, 2003. Mr. Gott died in April, 2004, and the matter became an estate file. The Greene County Probate Court sent Ms. McShane, as attorney of record for the Robert Gott Estate, a Notice to File Settlement and Status Report which was due on April 1, 2004; a notice that settlement needed to be filed an order continuing the Final Settlement/Death of Ward to July 22, 2004; a Notice of Delinquent Settlement letter; a notice that settlement remained unapproved; a notice of the failure to comply with the auditor's request, and ordered a hearing. Ms. McShane failed to notify Ms. Cook of the requests from the Court and did not comply with the requests from the Court. Ms. Cook made several attempts to contact Ms. McShane about the status of her father's estate but Ms. McShane failed to respond to the messages left.

In November, 2006, Tim and Sandy Freiburger employed Ms. McShane to prepare estate planning documents on their behalf. The Freiburgers paid $375.00, half of the $750.00 agreed fee, on November 21, 2006. On April 30, 2007, Ms. Freiburger mailed a letter by certified mail to Ms. McShane. In the letter Ms. Freiburger stated that she had left telephone messages that were not returned, requested a status of the legal work, and a refund if the work was not to be completed. Ms. McShane failed to respond to the letter. On June 1, 2007, Ms. Freiburger sent a second letter to Ms. McShane requesting a refund of the $375.00 paid. Again, Ms. McShane failed to respond to the request.

Gabriel Ondetti and his wife met with Ms. McShane on February 2, 2007 to discuss their estate planning. Mr. Ondetti paid $325.00, half of the agreed fee, to Ms. McShane on that day. On February 26, 2007, Ms. McShane mailed drafts of the estate planning documents to Mr. Ondetti. Mr. Ondetti sent an email with a list of questions to Ms. McShane in March, 2007, about the documents but Ms. McShane did not respond to the questions. In June, 2007, Mr. Ondetti requested a refund as Ms. McShane had not provided answers to questions about the estate planning documents she prepared.

On September 28, 2007, an Information was filed with the Missouri Supreme Court Advisory Committee alleging that Ms. McShane violated Missouri Supreme Court Rule 4-1.3 when she failed to use reasonable diligence on behalf of her client; Missouri Supreme Court Rule 4-1.4 when she failed to keep her client reasonably informed about the status of a matter; and Missouri Supreme Court Rule 4-8.1 when she knowingly failed to respond to a lawful demand for information from a disciplinary authority. The allegations contained in the September 28, 2007, Information dealt only with the representation of Belenda Cook and the Estate of Robert I.

Gott.

On June 30, 2008, an Amended Information was filed with the Missouri Supreme Court Advisory Committee. The Amended Information included the allegations made in the September 28, 2007, Information and new allegations related to the representation of Tim and Sandy Freiburger and the representation of Gabriel Ondetti. Ms. McShane was alleged to have violated Missouri Supreme Court Rule 4-1.3 when she failed to use reasonable diligence on behalf of her clients, Tim and Sandy Freiburger, and Missouri Supreme Court Rule 4-1.4 when she failed to keep her clients, Tim and Sandy Freiburger, reasonably informed about the status of their legal matter. Ms. McShane was alleged to have violated Missouri Supreme Court Rule 4-1.3 when she failed to use reasonable diligence on behalf of her client, Gabriel Ondetti, and Missouri Supreme Court Rule 4-1.4 when she failed to keep her client, Gabriel Ondetti, reasonably informed about the status of his legal matter.

On October 3, 2008, a Joint Stipulation of Facts, Joint Proposed Conclusions of Law, and Joint Recommended Discipline was entered into and sent to the Missouri Disciplinary Hearing Panel. In the Joint Stipulation, Ms. McShane admitted that in the Belenda Cook matter she violated Missouri Supreme Court Rule 4-1.3 when she failed to use reasonable diligence on behalf of her client; Missouri Supreme Court Rule 4-1.4 when she failed to keep her client reasonably informed about the status of a matter; and Missouri Supreme Court Rule 4-8.1 when she knowingly failed to respond to a lawful demand for information from a disciplinary authority. Ms. McShane admitted that she violated Missouri Supreme Court Rule 4-1.3 when she failed to use reasonable diligence on behalf of her clients, Tim and Sandy Freiburger and Missouri Supreme Court Rule 4-1.4 when she failed to keep her clients, Tim and Sandy Freiburger,

reasonably informed about the status of their legal matter. Ms. McShane admitted that she violated Missouri Supreme Court Rule 4-1.3 when she failed to use reasonable diligence on behalf of her client, Gabriel Ondetti, and Missouri Supreme Court Rule 4-1.4 when she failed to keep her client, Gabriel Ondetti, reasonably informed about the status of his legal matter. Ms. McShane and the Region XV Disciplinary Committee agreed that the recommended discipline to be imposed should be a suspension from the practice of law for a period of six months, all of which was to be stayed, and Ms. McShane was to be placed on probation for a period of one year.

On October 14, 2008, the Missouri Disciplinary Hearing Panel accepted the Joint Stipulation of Facts, Proposed Conclusions of Law, and Recommended Discipline. The matter was then submitted to the Supreme Court of Missouri and the Court entered an Order on November 25, 2008, wherein Ms. McShane was suspended from the practice of law for a period of six months with the suspension being stayed and Ms. McShane being placed on probation for a period of one year. Ms. McShane was assessed a fee in the amount of One Thousand Dollars ($1000.00).

An annual license fee is required of every attorney actively licensed to practice law in the State of Arkansas. The license fee is to be paid annually to the Clerk of the Arkansas Supreme Court and is to be paid no later than March 1 of each year. Ms. McShane had not paid her license fees for the calendar years 2005, 2006, 2007, 2008, and 2009. Ms. McShane was administratively suspended from the practice of law in Arkansas since March 2, 2005.

On July 24, 2009, Brandy Mellisa McShane was served with a formal compliant along with a copy of all exhibits, by U.S. Postal Service, certified, restricted delivery, return receipt

requested. Ms. McShane failed to file a response to the complaint and the failure to timely respond, pursuant to Section 9.C(4) of the Procedures, constituted an admission of the factual allegations of the formal complaint and extinguished his right to a public hearing.

Upon consideration of the formal complaint and attached exhibit materials, the failure to respond and the deemed admission to the factual allegations, and the Arkansas Rules of Professional Conduct, Panel B of the Arkansas Supreme Court Committee on Professional Conduct finds:

1. Brandy Mellissa McShane's conduct violated Rule 1.3 when she failed to notify her client, Belenda Cook, of notices from the Greene County (Missouri) Probate Court in the matter of Robert I. Gott; failed to prepare estate planning documents on behalf of her clients, Tim and Sandy Greiburger, in a timely manner; and, failed to complete estate planning documents on behalf of her client, Gabriel Ondetti. Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

2. Brandy Mellissa McShane's conduct violated Rule 1.4(a)(3) when she failed to respond to requests from her client, Belenda Cook, concerning her father's estate; failed to respond to requests from her clients, Tim and Sandy Freiburger, for information about their estate planning documents; and, when she failed to respond to requests from her client, Gabriel Ondetti, for information about his estate planning documents. Rule 1.4(a)(3) requires that a lawyer keep the client reasonably informed about the status of a matter.

3. Brandy Mellissa McShane's conduct violated Rule 3.4(c) when she failed to respond to requests of the Greene County (Missouri) Probate Court; when she failed to pay her 2005 Arkansas license fee as required by Rule VII of the Arkansas Rules Governing Admission to the

Bar; when she failed to pay her 2006 Arkansas license fee as required by Rule VII of the Arkansas Rules Governing Admission to the Bar; when she failed to pay her 2007 Arkansas license fee as required by Rule VII of the Arkansas Rules Governing Admission to the Bar; when she failed to pay her 2008 Arkansas license fee as required by Rule VII of the Arkansas Rules Governing Admission to the Bar; and, when she failed to pay her 2009 Arkansas license fee as required by Rule VII of the Arkansas Rules Governing Admission to the Bar. 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.

4. Brandy Mellissa McShane's conduct violated Rule 8.1(b) when she failed to respond to a June 6, 2006, demand from the Office of the Chief Disciplinary Counsel for a written response to the complaint of Belenda Cook and when she failed to respond to a June 13, 2006, request from the Missouri Regional Disciplinary Committee to provide a response to the complaint of Belenda Cook. Rule 8.1(b) requires, in part, that a lawyer in connection with a disciplinary matter not knowingly fail to respond to a lawful demand for information from a disciplinary authority.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel B, that BRANDY MELLISSA MCSHANE, Arkansas Bar No. 95042, be, and hereby is, REPRIMANDED and assessed costs in the amount of FIFTY DOLLARS ($50.00) for her conduct in this matter. For her failure to respond to the formal complaint, a separate sanction is imposed pursuant to Section 9.C(3) of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Arkansas of Attorneys at Law. BRANDY MELLISSA MCSHANE, Arkansas Bar No. 95042, is hereby

CAUTIONED for her failure to respond and fined the sum of TWO HUNDRED FIFYY ($250.00) for her conduct in that matter. All fines and costs assessed herein shall be payable by cashier's check or money order payable to the "Clerk, Arkansas Supreme Court" delivered to the Office of Professional Conduct within thirty (30) days of the date this Findings and Order is filedof record with the Clerk of the Arkansas Supreme Court.

ARKANSAS SUPREME COURT COMMITTEE
ON PROFESSIONAL CONDUCT - PANEL B

By: Valerie Z. Kelly
Valerie Kelly, Chair, Panel B

Date: October 30, 2009