

**BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL C**

IN RE: Reginald Shelton McCullough, Respondent

Arkansas Bar ID#85102

CPC Docket No. 2001-111

CONSENT FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order document is based arose from information provided to the Committee by Vandora Demery on February 14, 2001. The information related to the representation of Ms. Demery by the Respondent in 1999 and 2000.

On November 20, 2001, the Respondent was served with a formal complaint, supported by an affidavit from Ms. Demery. A response was filed. The Respondent and the Executive Director negotiated a discipline-by-consent proposal which was submitted to this Panel.

The facts contained in Ms. Demery's affidavit and in Mr. McCullough's response reflect that Mr. McCullough, an attorney practicing in Little Rock, Pulaski County, Arkansas, was retained during July 1999 to represent Ms. Demery in grievance hearings against the Department of Community Punishment and to pursue her civil remedies with respect to the termination of her employment. A fee contract was entered into by Ms. Demery and Mr. McCullough at the time he was hired. The day after he was hired, Mr. McCullough sent notice to the Department of Community Punishment of Ms. Demery's request to appeal her termination. At the beginning of the representation, Mr. McCullough kept Ms. Demery informed of the actions and efforts he undertook on her behalf.

After receipt of an adverse decision from the grievance appeal, Mr. McCullough filed a federal lawsuit on Ms. Demery's behalf. The lawsuit was filed in a timely manner on January 25, 2000. On February 28, 2000, Mr. McCullough provided copies of Interrogatories to Ms. Demery. She was required to complete responses to them and return them to Mr. McCullough. Ms. Demery did so. However, Mr. McCullough neither filed the responses with the Court nor served them on the opposing parties to the lawsuit. Mr. McCullough denied that Ms. Demery returned the responses to him. He also asserted that she did not provide any assistance to his office. According to Mr. McCullough, Ms. Demery stopped cooperating and appearing after the federal lawsuit which she was reluctant to pursue was filed.

On May 10, 2000, an employee for Mr. McCullough sent Ms. Demery a letter advising her that her account with the law firm was delinquent. Ms. Demery was aware of the fact that she owed Mr. McCullough some money on her account per the fee agreement. She wrote to Mr. McCullough and explained her situation to him.

A Scheduling Order was filed in Ms. Demery's lawsuit on June 7, 2000. Approximately two weeks after it was entered, Mr. McCullough sent Ms. Demery a copy. In the transmittal letter, Mr. McCullough advised Ms. Demery that the only date with which she needed to be concerned was the trial date. Then, during August 2000, another letter was sent to Ms. Demery about her delinquent account. Ms. Demery remained unemployed, and Mr. McCullough was aware of that.

The next correspondence Ms. Demery received from Mr. McCullough was dated September 11, 2000. Included with the correspondence was a Motion that Mr. McCullough was filing in order to receive additional time to respond to any matters on the scheduling order. This was the last piece of correspondence that Ms. Demery received from Mr. McCullough. After Ms. Demery received the Motion, she called the office several times, but no one returned her messages.

Finally, during February 2001, Ms. Demery contacted the Clerk of the federal court and learned that her lawsuit had been dismissed. Mr. McCullough had not made Ms. Demery aware of this fact. The Order demonstrated that the lawsuit had been dismissed for failure to comply with the discovery time limitations in the Scheduling Order. To date, Ms. Demery has had no further communication from Mr. McCullough.

Upon consideration of the formal complaint and attached exhibit materials, the response, the consent proposal, and other matters before it, and the Arkansas Model Rules of Professional Conduct, Panel C of the Arkansas Supreme Court Committee on Professional Conduct finds:

1. That Mr. McCullough's conduct violated Model Rule 1.3 when he failed to file timely responses to the discovery requests served on him in the matter of Vandora Demery v. Arkansas Department of Community Punishment, State of Arkansas, Robert Brazzel, on behalf of his client, Vandora Demery. Model Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.
2. That Mr. McCullough's conduct violated Model Rule 1.4(a) when he failed to inform Ms. Demery that her cause of action had been dismissed with prejudice and when, despite numerous telephone messages from Ms. Demery, he failed to respond to her requests for information about her lawsuit or the return of her file. Model Rule 1.4(a) requires that a lawyer keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.
3. That Mr. McCullough's conduct violated Model Rule 1.4(b) when, after receiving the final extension date from Judge Susan Weber Wright, he failed to explain to Ms. Demery that his health might prohibit him from complying, thereby depriving Ms. Demery of the opportunity to seek other counsel before her matter was dismissed with prejudice. Model Rule 1.4(b) requires that a lawyer explain a matter to the extent reasonably necessary to permit the client to make informed decisions with respect to the representation.
 - That Mr. McCullough's conduct violated Model Rule 1.16(d) since, although Ms.

Demery has requested that he provide her a copy of her file contents, he continues to fail to provide the information and documents to her. Model Rule 1.16(d) requires, in pertinent part that upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as surrendering papers and property to which the client is entitled.

- That Mr. McCullough's conduct violated Model Rule 3.4(c) when he failed to

comply with the Order entered by Judge Wright on August 7, 2000 and when he did not comply with the Court's Order dated September 19, 2000, and such non-compliance led to the dismissal of Ms. Demery's cause of action. Model 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.

- That Mr. McCullough's conduct violated Model Rule 8.4(d) because his failure

to respond to the discovery requests, and the Court's Orders requiring him to do so, caused the dismissal of his client's interests. Model Rule 8.4(d) requires that a lawyer not 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 C, that REGINALD SHELTON MCCULLOUGH, Arkansas Bar ID# 85102, be, and hereby is, REPRIMANDED for his conduct in this matter. In addition, pursuant to Section 18B of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law, Panel C imposes a fine of \$500, pursuant to the consent agreement presented by the Respondent and the Executive Director. The fine assessed herein shall be payable by cashier's check or money order payable to the "Clerk, Arkansas Supreme Court" and delivered to the Office of Professional Conduct with thirty (30) days of the date this Findings and Order document is filed of record with the Clerk of the Arkansas Supreme Court.

ARKANSAS SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT - PANEL C

By: _____

David Newbern, Chair, Panel C

Date: _____