

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

PANEL B

IN RE: REGINALD SHELTON MCCULLOUGH

ARKANSAS BAR ID #85102

CPC DOCKET NO. 2002-027

FINDINGS AND ORDER

The formal charges of misconduct upon which this Order is premised arose from the Complaint of John R. Beck. Reginald Shelton McCullough, an attorney practicing in Little Rock, Pulaski County, Arkansas, was retained during November 1996 to represent Mr. Beck in a lawsuit against Saline County Sheriff Judy Pridgen and Saline County. On February 21, 2003, the matter was set for *de novo* hearing at the request of Mr. McCullough following a ballot vote taken by Panel A of the Committee. The matter was called for hearing by Panel B at 10:00 a.m. After the record was opened, Mr. McCullough, through his counsel, Darrell F. Brown, of Little Rock, made a plea to the Committee. In exchange for admission of all rules as set out in the formal disciplinary complaint, Mr. McCullough would accept a sanction as set out in the Order below. The Office of Professional Conduct did not object to the plea nor did the Office agree to it inasmuch as the time limitations for presenting such a consent offer were not met and this was merely a plea to the Panel and not a consent as that term is contemplated by the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law.

The record which the Panel had before them for consideration revealed that after the initial consultation, Mr. McCullough agreed to represent Mr. Beck for a fee of 40% of any amount received from settlement or judgment. Mr. McCullough pointed out in his response to the Committee that the contract also required that Mr. Beck provide payment for costs or reimbursement for costs advanced. Since Mr. Beck was out of work when the lawsuit was filed, Mr. McCullough advanced the initial costs but he was never reimbursed.

On March 5, 1997, Mr. McCullough filed a complaint on Mr. Beck's behalf in the United States District Court, Eastern District of Arkansas, Western Division. Initially, Mr. McCullough kept Mr. Beck informed of the status of the lawsuit and the actions occurring therein.

When the defendants' counsel wished to take Mr. Beck's deposition, Mr. McCullough attempted to have the date changed and advised Mr. Beck of this fact. However, the date was not rescheduled and Mr. McCullough did not advise Mr. Beck to make himself available for the taking of the deposition. As a result of the failure to appear for the deposition, a Motion was filed seeking sanctions. Mr. McCullough did not file a response to the Motion. Based on the failure to respond, Judge Wilson, the presiding Judge, granted sanctions in the amount of \$750. In the Order awarding sanctions, Judge Wilson ordered Mr. McCullough to contact the defendants' counsel within five (5) days and let him know a date that Mr. Beck was available for depositions. Mr. McCullough failed to do so and was ordered to appear before Judge Wilson and show cause why he should not be held in contempt. At the second scheduled hearing on the Motion to Show Cause, Mr. McCullough appeared. At the conclusion of the show cause hearing, Judge Wilson ordered that Mr. Beck should appear for deposition on August 8, 1997.

Mr. Beck learned of all of these activities after he received a copy of Mr. McCullough's response to the Motion to Show Cause from Amelia Russell, Judge Wilson's law clerk. After Judge Wilson reviewed Mr. McCullough's responsive letter, he entered an Order cautioning Mr. McCullough from making other unfounded accusations. He also encouraged Mr. McCullough to be more prompt in responding to letter and telephone calls.

On October 15, 1997, Judge Wilson amended the scheduling order in Mr. Beck's lawsuit and granted an extension of the discovery deadline until October 24, 1997. Mr. McCullough did not comply with this deadline either. As a result, a Motion was filed seeking to prohibit Mr. Beck from calling any witnesses. Mr. McCullough responded to the Motion on October 31, 1997. Then, five days later, he filed the Pretrial Information Sheet and at or around the same time, he submitted a packet of jury instructions. After he received the jury instructions, Judge Wilson ordered Mr. McCullough to submit a pared down packet. In addition, Judge Wilson entered an Order directing Mr. McCullough to file a pleading setting out why Mr. Beck's lawsuit should not be dismissed without prejudice. One week later, Mr. McCullough filed a Motion to Voluntary Non-suit. Judge Wilson denied the Motion and dismissed the complaint with prejudice. The dismissal was entered, in part, because of Mr. McCullough's failure to comply with Court orders.

Mr. McCullough did advise Mr. Beck of the dismissal. When he did so, he told Mr. Beck that the case was dismissed because Mr. McCullough did not respond to a notice the Judge sent. According to Mr. McCullough, the notice dealt only with Mr. McCullough's limitation of Mr. McCullough's right to cross-examine the defense witnesses. In addition, Mr. McCullough explained to Mr. Beck that he had one year to refile the case and that he intended to do so on Mr. Beck's behalf.

Finally, after persistent prodding by Mr. Beck, Mr. McCullough did refile the lawsuit. He did so on last day before the one year time frame expired. From that time on, Mr. Beck did not hear anything from Mr. McCullough unless he initiated contact. Then the only information provided was that they were waiting on the court to set a date for trial. According to Mr. McCullough, Mr. Beck was made aware of his continuing health problems. He also asserted that he advised Mr. Beck that he might want to seek other counsel but Mr. Beck declined to do so.

When Mr. Beck happened to see Mr. McCullough one day in front of the Pulaski County Courthouse during May 1999, he asked Mr. McCullough about the lawsuit. Mr. McCullough falsely told Mr. Beck that there had been a computer problem in the federal court system and that was the reason for them not having received a trial date. Mr. Beck received Mr. McCullough's assurance that he was handling the situation and that they should have a trial date soon. Since that time, Mr. Beck has only been able to speak with Mr. McCullough on two occasions.

Since his messages went unanswered by Mr. McCullough, Mr. Beck called the Federal Clerk's office. At that time, he learned that the lawsuit had been dismissed because Mr. McCullough had not served the defendants. When confronted with this fact, Mr. McCullough had no answer for Mr. Beck. He merely told Mr. Beck that he would need to locate the file and get back in touch with him. Mr. McCullough has never contacted Mr. Beck since that conversation. It is Mr. McCullough's recollection that after the lawsuit was filed, his office staff attempted to obtain the costs for service and other costs from Mr. Beck in order to move the matter forward but Mr. Beck never complied or responded to those requests.

In providing mitigating information to the Committee, Mr. McCullough explained that during the pendency of Mr. Beck's matter, his health began to decline. According to Mr. McCullough due to numerous ailments of which he suffers, his health is never good but during this time period, it was worse. Mr. McCullough offered that he did all in his power to address the issues in Mr. Beck's lawsuit. Further, Mr. McCullough explained that Mr. Beck never asked for his file, never paid for the out of pocket costs and did not respond when Mr. McCullough or his office staff contacted him about these matters.

Upon consideration of the formal complaint, the response herein, and the Arkansas Model Rules of Professional Conduct, the Committee on Professional Conduct finds:

1. That Mr. McCullough's conduct violated Model Rule 1.1 when he failed to be thorough enough in his representation of Mr. Beck to be certain that court imposed deadlines were met. Model Rule 1.1 requires, in pertinent part, that a lawyer provide competent representation to a client, including the thoroughness reasonably necessary for the representation.
2. That Mr. McCullough's conduct violated Model Rule 1.3 when he failed to file a pleading setting out why Mr. Beck's cause of action should not be dismissed without prejudice despite being directed to do so by Judge Wilson and when he failed to timely serve the defendants after he re-filed the lawsuit on Mr. Beck's behalf. Model Rule 1.3 requires that a lawyer shall act with reasonable diligence and promptness in representing a client.
3. That Mr. McCullough's conduct violated Model Rule 1.4(a) when he failed to keep Mr. Beck informed of the status of either of the causes of action he filed on his behalf; when he failed to inform Mr. Beck when the second lawsuit was dismissed as a result of the failure to serve the defendants; and, when he did not respond to numerous requests for information which Mr. Beck made to him. 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.
4. That Mr. McCullough's conduct violated Model Rule 1.4(b) since he failed to explain to Mr. Beck when his first lawsuit was dismissed that it was dismissed with prejudice and therefore barred from being re-filed. 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 regarding the representation.
5. That Mr. McCullough's conduct violated Model Rule 1.16(d) when he failed to return Mr. Beck's file to him after his representation of Mr. Beck was terminated. 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.
6. That Mr. McCullough's conduct violated Model Rule 3.4(c) because during his representation of Mr. Beck, he failed to comply with rules of the federal court and also with Judge Wilson's orders concerning time deadlines. 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.
7. That Mr. McCullough's conduct violated Model Rule 8.4(d) because his acts of omission in the representation of Mr. Beck resulted in his claims against Judy Pridgen and the other defendants being time-barred from being pursued. 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, through Panel B, that REGINALD SHELTON MCCULLOUGH, Arkansas Bar ID #85102 be, and hereby is, SUSPENDED FOR A PERIOD OF THIRTY (30) DAYS for his conduct in this matter. The suspension shall become effective Friday, April 18, 2003. In addition, Mr. McCullough is placed on twenty-four (24) months probation. The probationary period shall begin at the conclusion of the period of suspension. The requirements of probation shall be addressed in a separate probationary document. Mr. McCullough is also required during the continuing legal education period beginning July 1, 2003, to obtain an additional six(6) hours above the twelve (12) hours he is required to obtain during that twelve month period. The additional six (6) hours shall be in the area of law office management and/or ethics. Mr. McCullough is also ordered to pay a fine in the amount of \$1000. The fine was imposed pursuant to Section 18.B. of the Procedures. The fine shall be due and payable in the Office of Professional Conduct within thirty (30) days of the filing of the Findings and Orders with the Clerk of the Arkansas Supreme Court. The cashier's check or money order shall be made payable to the Office of Professional Conduct. In addition, Mr. McCullough is ordered to pay costs in this formal matter in the amount of \$88.15. The sanctions imposed in this matter were imposed in combination with two (2) other formal matters set to be heard on Friday, February 21, 2003, before Panel B. As such, there is one period of suspension, one period of probation, one order for additional CLE and one fine imposed for all three matters pursuant to the plea to the Panel and the Panel's acceptance of the same.

ARKANSAS SUPREME COURT COMMITTEE

ON PROFESSIONAL CONDUCT

By:

John Rush, Chairman, Panel B

Date:

