

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

PANEL B

IN RE: REGINALD SHELTON MCCULLOUGH

ARKANSAS BAR ID #85102

CPC DOCKET NO. 2002-058

FINDINGS AND ORDER

The formal charges of misconduct upon which this Order is premised arose from the Complaint of Shirley Williams. Reginald Shelton McCullough, an attorney practicing in Little Rock, Pulaski County, Arkansas, was retained during December 1996 to represent Ms. Williams in a lawsuit she wished to pursue against the City of Little Rock. 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 before Panel B reflected that Mr. McCullough agreed to represent Ms. Williams in the legal matter and filed a lawsuit on her behalf during 1999. Mr. McCullough explained that the lawsuit was filed because Ms. Williams wished to pursue a legal action against the City of Little Rock Police Department because of the death of her son. According to Mr. McCullough, Ms. Williams was angry throughout the whole proceeding and was advised on various occasions by him and his office staff to obtain professional counseling. Mr. McCullough advised that even though he agreed to represent Ms. Williams, he advised her immediately that the claim was doubtful but perhaps he would be able to receive an offer of some kind to settle the lawsuit once filed.

Communication with Mr. McCullough was difficult for Ms. Williams from the beginning of the representation. However, she never terminated the representation and continued with Mr. McCullough through the duration of her legal proceeding.

As matters progressed in the lawsuit, Ms. Williams was notified by Mr. McCullough that a court date was scheduled for March 12, 2001. Mr. McCullough did not contact Ms. Williams for several weeks prior to that date so Ms. Williams contacted him. During the conversation, Ms. Williams was advised by Mr. McCullough that the Judge had not yet advised him if they still needed to appear for Court on the 12th of March. Mr. McCullough assured Ms. Williams that he would let her know as soon as he heard something from the Court.

Since Mr. McCullough did not contact Ms. Williams, she contacted the Clerk's Office for the United States District Court where her legal matter was filed. Ms. Williams learned during that contact that her lawsuit had been dismissed with prejudice. The Clerk, with whom Ms. Williams spoke, sent her a copy of the Judgment dismissing her lawsuit along with the Order that accompanied the lawsuit. In the Order which accompanied the Judgment, Ms. Williams learned that Mr. McCullough had never filed responses to the Interrogatories and Requests for Production propounded by the defendants in the lawsuit. She also learned that after a Motion to Compel was filed, the Court ordered Mr. McCullough to comply with the discovery requests. Since he did not do so, the defendants filed a Motion for Sanctions. On the same date that the Motion for Sanctions was filed, Mr. McCullough filed a Motion for Extension of Time to Respond. In the Motion, Mr. McCullough set out such reasons for his non-compliance with the Court's previous Order as his health problems and the reduction in his staff. The Court granted the Motion filed by Mr. McCullough and set the date for compliance as October 5, 2000, which was the date Mr. McCullough requested. Mr. McCullough advised that the Motion to Extend was not filed solely for Ms. Williams' legal proceeding but for all cases he had pending because he was about to have a procedure completed to remove a growth from his knee to insure that the same was not cancerous. Further, Mr. McCullough explained that his illness had nothing to do with the progress or lack thereof with regard to Ms. Williams' lawsuit.

Mr. McCullough did not comply with that deadline either. One final extension was granted by the Court. Mr. McCullough was given until November 15, 2000, to comply. He did not do so and as a result the Court dismissed Ms. Williams' lawsuit with prejudice.

Mr. McCullough responded to the formal disciplinary complaint by explaining that he worked on the legal matter for Ms. Williams as best he could until she would not cooperate with regard to the discovery requests of the defendants. It was Mr. McCullough's recollection that Ms. Williams just shut down and would not relate to any of the discovery requests because she did not feel that she owed the police or the city anything including responses to the discovery requests. Mr. McCullough offered that the matter was moving until Ms. Williams' refusal to respond to the discovery demands of the opposing party. Mr. McCullough provided information to demonstrate that he and his office staff sent the discovery requests to Ms. Williams, called her and set up appointments and made repeated attempts for assistance with regard to the necessary responses, all to no avail. Mr. McCullough could not complete the responses without input from Ms. Williams. Upon consideration of the formal complaint, the response herein, and the Arkansas Model Rules of Professional Conduct, the Committee on Professional Conduct, Panel B, finds:

1. That Mr. McCullough's conduct violated Model Rule 1.3 when he failed to timely file responses to the discovery served on him in the matter of Williams, et al. v. Rowan, et al., on behalf of his client, Shirley Williams. Model Rule 1.3 requires that a lawyer shall 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. Williams that her cause of action had been dismissed with prejudice and when he failed to keep Ms. Williams informed of the status of the discovery issues and deadlines in her lawsuit. Model Rule 1.4(a) requires that a lawyer shall 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 3.4(c) when he failed to comply with the Orders of the Court with regard to responding to the discovery requests made by the defendants in the lawsuit filed on Ms. Williams' behalf and when he did not comply with the Court's Order dated November 1, 2000, and such non-compliance led to the dismissal of Ms. Williams' 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.

4. That Mr. McCullough's conduct violated Model Rule 8.4(c) since 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 lawsuit. 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, within thirty (30) days of the filing of this Findings and Order, Mr. McCullough shall pay costs in this formal matter in the amount of \$80. 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:
