

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

PANEL A

IN RE: REGINALD SHELTON MCCULLOUGH

ARKANSAS BAR ID #85102

CPC DOCKET NO. 2002-130

**FINDINGS AND ORDER**

The formal charges of misconduct upon which this Order is premised arose from the Complaint of Floyd Williams. Mr. Williams' sister, Vernestine Oates, also provided a supporting affidavit in connection with the Complaint. Reginald Shelton McCullough, an attorney practicing in Little Rock, Pulaski County, Arkansas, was retained during July 2001 to assess Mr. Williams' legal matter and to advise whether his law firm could assist Mr. Williams with any additional post-conviction proceedings. Mr. Williams was convicted by a jury in 1975 of capital murder and was sentenced to life imprisonment without parole. The conviction was affirmed on appeal by the Arkansas Supreme Court during 1976. Since that time, Mr. Williams has filed three petitions for post-conviction relief. All of the requests for relief have been denied. During October 2000, the Supreme Court denied the last post-conviction pleading Mr. Williams filed *pro se*.

Mr. Williams first contacted Mr. McCullough during June 2001. Mr. McCullough responded promptly to the first contact and advised Mr. Williams that his fee would be \$750 to analyze the matter and provide an assessment of whether he could assist Mr. Williams. Based upon that response, Mr. Williams sent Mr. McCullough his trial transcript and all the court and appellate rulings. Mr. Williams' sister and niece paid the fee that Mr. McCullough stated was necessary for him to look into the matter. After payment had been made, Mr. McCullough corresponded with Mr. Williams in a letter dated July 20, 2001. In the letter, Mr. McCullough acknowledged receiving the documentation and the fee. Mr. McCullough advised Mr. Williams that the assessment was underway and when all the materials had been reviewed he would be in touch. The July 20, 2001, letter was the last correspondence Mr. Williams received from Mr. McCullough. Mr. Williams sent several letters thereafter to Mr. McCullough as did his sister, Ms. Oates. In addition, Ms. Oates attempted to reach Mr. McCullough by telephone to no avail.

Mr. Williams wished to have someone else assist him with any proceedings he might be able to pursue but was unable to do so because Mr. McCullough had his file contents. There were requests for return of the documents but Mr. McCullough did not send the papers as requested prior to the filing of the formal disciplinary complaint. Mr. McCullough denied that he ever received certain of the correspondence from Mr. Williams advising the need to have the file documents returned to him.

In his response to the formal complaint, Mr. McCullough explained that he reviewed all the file materials and also had conversations with family members of Mr. Williams about the legal matter. It was also explained by Mr. McCullough that he attempted to find a way to get Mr. Williams back into court but he was unable to do so. While he was attempting to do so, Mr. McCullough advised that he kept in touch with Ms. Oates and offered to her that these types of matters take time. Mr. McCullough attached to his complaint a copy of correspondence he sent to Ms. Oates during August 2002 which notified her that there was nothing that the law firm could do for Mr. Williams. In addition, the correspondence advised that the file contents were ready for pick up at Mr. McCullough's office, along with a partial refund of the retainer paid. The files were never picked up by any member of Mr. Williams family. The letter to Ms. Oates was never returned to Mr. McCullough as undeliverable or unclaimed. Mr. McCullough provided the transcript and court and appellate rulings along with a partial refund check to the Office of Professional Conduct when he filed his response to the formal complaint. Ms. Oates received them at the same time as she was provided a copy of Mr. McCullough's response to the formal complaint. Mr. Williams and Ms. Oates were both provided the opportunity to submit rebuttal information but neither did so.

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

1. That Mr. McCullough's conduct violated Model Rule 1.2(a) since he was hired by Mr. Williams to review his trial transcript and other documentation and provide an assessment concerning what avenues of post-conviction relief might be available he had failed to do so to Mr. Williams' knowledge. Model Rule 1.2(a) requires that a lawyer abide by a client's decisions concerning the objectives of representation, subject to paragraphs (c), (d), and (e), and consult with the client as to the means by which they are to be pursued.
2. That Mr. McCullough's conduct violated Model Rule 1.3 when he failed in the fourteen (14) months following his receipt of Mr. Williams' trial transcript and other documentation and the required fee payment, to take action to assess the matter for Mr. Williams or to advise him of the actions, if any, taken by Mr. McCullough. Model Rule 1.3 requires that a lawyer 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. Williams advised of the status of the assessment he was to undertake on Mr. Williams' behalf with regard to post-conviction relief; when he failed to respond to the correspondence sent to him by his client, Mr. Williams; when he failed to respond to the telephone messages left for him by Vernestine Oates, Mr. Williams' sister, about the legal matter with which he was entrusted to assess and evaluate; and, when he failed to respond to the letter sent to him by the Office of the Executive Director with regard to the legal matter he was to assess on behalf of Mr. Williams. 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 1.16(d) when he failed to return the trial transcript and other documentation to Mr. Williams despite notification that his services were terminated and when he failed to return the unused portion of the advanced retainer to Mr. Williams or his family despite requests that he do so. Model Rule 1.16(d) requires that upon termination of representation, a lawyer take steps to the extent reasonably practicable to protect a client's interests, such as surrendering paper and property to which the client is entitled and refunding any advance payment of fee that has not been earned.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, through Panel A, that REGINALD SHELTON MCCULLOUGH, Arkansas Bar ID #85102 be, and hereby is, REPRIMANDED his conduct in this matter. In addition, pursuant to Section 18.A. of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law (2002), Mr. McCullough is ordered to pay costs in the amount of \$50. The

costs shall be due and payable within thirty (30) days of the filing of this Findings and Order with the Clerk of the Arkansas Supreme Court. The costs shall be in the form of a cashier's check or money order payable to the "Clerk, Arkansas Supreme Court" and delivered to the Office of Professional Conduct within the time set out above.

ARKANSAS SUPREME COURT COMMITTEE

ON PROFESSIONAL CONDUCT

By:

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Gwendolyn Hodge, Chair, Panel A

Date:

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