

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

PANEL C

IN RE: **BOBBY D. McCALLISTER**

Arkansas Bar ID #91103

CPC Docket No. 2002-115

FINDINGS & CONSENT ORDER OF DISCIPLINE

The formal charges of misconduct upon which this Consent Order is premised, involving respondent attorney Bobby D. McCallister of Benton, Saline County, Arkansas, arose from information brought to the attention of the Committee on Professional Conduct by Raymond Johnson of Homer, Louisiana, and attorney Theodor Stricker of Jonesboro, Arkansas.

Following Respondent Attorney's receipt of the formal complaint, the attorney entered into discussion with the Executive Director which has resulted in an agreement to discipline by consent pursuant to Section 20.B of the Arkansas Supreme Court Procedures Regulating Professional Conduct of Attorneys at Law (2002). Upon consideration of the formal complaint and attached exhibits, admissions made by the respondent attorney, the terms of the written consent, the approval of Panel C of the Committee on Professional Conduct, and the Arkansas Model Rules of Professional Conduct, the Committee on Professional Conduct finds:

On May 2, 1995, Raymond Johnson was involved in a truck-train collision in Little River County, Arkansas. He was referred to Respondent attorney, who timely filed a lawsuit for Johnson in the United States District Court for the Eastern District of Arkansas on May 4, 1998, against certain defendants, including "KCS Train-General Motors, Inc" and "John Doe" defendants. Service was not obtained on the proper defendant(s), even after the court gave Respondent additional time to try to get them served. On February 1, 1999, an Order was entered dismissing the suit without prejudice. In December 1999, another Arkansas attorney, Mr. Stricker, who was representing Johnson for other purposes, wrote Respondent inquiring for Johnson about the status of the KCS Railroad suit and a mentioning a potential malpractice claim against Respondent, after Stricker was unable to find evidence of Respondent having filed suit for Johnson. Respondent never replied. Mr. Stricker suggested Johnson contact other Arkansas attorneys who handled legal malpractice cases, but Johnson apparently did not do so. The Executive Director contacted Respondent in late July 2002 inquiring about this matter. Respondent cooperated thereafter in providing requested information and admitting the basic allegations.

1. That Mr. McCallister's conduct violated Model Rule 1.3 when he:

a. Failed to obtain service on what should have been an easily-identifiable

railroad defendant, even with an extension of time from the court.

b. Failed to advise his client his case had been dismissed on February 1, 1999,

and that the client may have had one year from that date to refile his action.

c. Failed to respond to an inquiry from another attorney, Mr. Stricker, who wrote Respondent on December 21, 1999, on behalf of the client inquiring as to the status of his action Mr. McCallister was handling, when a timely response could have alerted the client to his possible February 1, 2000, deadline to refile his dismissed action.

Model Rule 1.3 requires that a lawyer shall act with reasonable diligence and promptness in

representing a client.

2. That Mr. McCallister's conduct violated Model Rule 1.4(a) when he:

a. Failed to obtain service on what should have been an easily-identifiable

railroad defendant, even with an extension of time from the court.

b. Failed to advise his client his case had been dismissed on February 1, 1999,

and that the client may have had one year from that date to refile his action.

c. Failed to respond to an inquiry from another attorney, Mr. Stricker, who wrote Respondent on December 21, 1999, on behalf of the client inquiring as to the status of his action Mr. McCallister was handling, when a timely response could have alerted the client to his possible February 1, 2000, deadline to refile his dismissed action.

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. McCallister's conduct violated Model Rule 3.2 when he:

a. Failed to obtain service on a what should have been an easily-identifiable

railroad defendant, even with an extension of time from the court.

b. Failed to advise the client his action had been dismissed on February 1, 1999,

and that the client still possibly had one year from that date to refile his action.

c. Failed to refile his client's dismissed contingency fee action within the one

year period.

Model Rule 3.2 requires that a lawyer shall make reasonable efforts to expedite litigation

consistent with the interests of the client.

WHEREFORE, in accordance with the consent to discipline presented by Respondent and the Executive Director, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct that Respondent Bobby D. McCallister, Arkansas Bar No. 91103, be, and he hereby is, CAUTIONED for his conduct in this matter, and he is ordered to pay \$50.00 in investigative costs and a fine of \$200.00. The fine 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 with thirty (30) days of the date this Findings and Consent Order is filed of record with the Clerk of the Arkansas Supreme Court.

ARKANSAS SUPREME COURT COMMITTEE

ON PROFESSIONAL CONDUCT - PANEL C

By _____

David Newbern, Chairperson

Date _____