

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

PANEL B

IN RE: Scott M. McElveen, Respondent

Arkansas Bar ID#99086

CPC Docket No. 2002-168

CONSENT FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Tom Clowers on August 19, 2002. The information related to the representation of Mr. Clowers by Respondent in 2001 and 2002.

On or about December 9, 2002, Respondent was served with a formal complaint, supported by affidavit from Tom Clowers. A response was filed. The Respondent and the Executive Director negotiated a discipline by consent proposal, which was submitted to this Panel.

The information made the basis of this Complaint reveals that on April 13, 2001, Mr. Clowers hired Scott M. McElveen, an attorney practicing in Fayetteville, Arkansas, to represent him in a divorce proceeding. Following the conclusion of the divorce proceeding, Mr. Clowers sued Mr. McElveen for what he perceived to be errors in Mr. McElveen's representation of him. At no time during the representation did Mr. McElveen explain the law on COBRA to Mr. Clowers. Mr. Clowers was not aware of COBRA or his ability to obtain insurance pursuant thereto. The lawsuit was not solely filed about the COBRA issue but also because of the errors that Mr. Clowers perceived in the divorce decree that could have been fixed if Mr. McElveen had told him of that possibility. Mr. Clowers was also not pleased with the final divorce decree and asserted that he did not see anything with regard thereto until the final divorce decree itself.

Mr. Clowers filed his lawsuit against Mr. McElveen during July 2002. Mr. McElveen was defended in the lawsuit by W.H. Taylor of Fayetteville. A Motion to Dismiss was filed by Mr. Taylor on Mr. McElveen's behalf. Thereafter, Mr. Clowers filed a Response thereto. Judge Ludwig, the presiding Judge, issued his letter opinion during August 2002. The opinion was filed of record on August 9, 2002. Judge Ludwig ruled in Mr. Clowers' favor with regard to the COBRA issue. Specifically, Judge Ludwig held that "It is my judgment that some minimal knowledge concerning COBRA should be possessed by any attorney handling domestic relations cases. Either Mr. McElveen did not possess that minimal knowledge or failed to convey it to his client, Mr. Clowers. Had he done so, I expect Mr. Clowers would have opted to avail himself of his rights hereunder." Judge Ludwig did not rule in Mr. Clowers' favor with regard to any of the other issues raised by him. Mr. McElveen was offered the opportunity by Judge Ludwig to request a hearing but did not do so and allowed the ruling to be entered of record. Thereafter, Mr. McElveen paid Mr. Clowers \$409.62 as ordered by Judge Ludwig.

Mr. McElveen admitted that he was not thorough enough in his representation of Mr. Clowers and was negligent in failing to familiarize himself with the law on COBRA. In addition, Mr. McElveen admitted that he negligently failed to explain to Mr. Clowers his rights under the laws dealing with COBRA. Mr. McElveen also explained that he has undertaken to educate himself regarding the area of law involving COBRA, particularly as it relates to health insurance issues in the context of domestic relations cases. As such, Mr. McElveen explained that it is unlikely the misconduct as set forth in the formal disciplinary complaint would be repeated.

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 B of the Arkansas Supreme Court Committee on Professional Conduct finds:

That Mr. McElveen's conduct violated Model Rule 1.1 since he failed to be thorough enough in his representation of Mr. Clowers to familiarize himself with the law on COBRA and when he failed to be thorough enough in his representation of Mr. Clowers to ensure that Mr. Clowers was advised of his rights under the laws dealing with COBRA. Model Rule 1.1 requires that a lawyer shall provide competent representation to a client, including the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

That Mr. McElveen's conduct violated Model Rule 1.4(b) when he failed to explain to Mr. Clowers his rights under the laws dealing with COBRA thereby depriving him of the opportunity to avail himself to his rights thereunder. 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.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel B, that Scott M. McElveen, Arkansas Bar ID# 99086, be, and hereby is, CAUTIONED for his conduct in this matter. Further, pursuant to Section 18.A. of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law (2002), Mr. McElveen is ordered to pay costs in the amount of \$75.00. The costs assessed herein shall be payable by cashier's check or money order payable to the "Office of Professional Conduct" and delivered to the Office of Professional Conduct within thirty (30) days of the date this Findings and Order is filed of record with the Clerk of the Arkansas Supreme Court.

ARKANSAS SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT - PANEL B

By: _____

John L. Rush, Chair, Panel B

Date: _____

