

**BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL A**

FILED

INRE: Rhonda McCauley, Respondent
Arkansas Bar ID#2000024
CPC Docket No. 2011-033

JUN 08 2012

**LESLIE W. STEEN
CLERK**

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Ahmad Alhamwi and Barry Frager, Attorney at Law, during December 2009. The information related to the representation of Mr. Alhamwi by Respondent McCauley in immigration proceedings beginning in early 2004.

On May 6, 2011, Respondent was served with a formal complaint, supported by affidavit from Ahmad Alhamwi and documentation provided by Barry Frager, Mr. Alhamwi's new counsel. Respondent McCauley filed a timely response to the formal disciplinary complaint. Rebuttal was submitted by Mr. Alhamwi. Panel A of the Committee on Professional Conduct considered the matter at a ballot vote agenda in September, 2011. The vote of the Panel was to conduct an evidentiary hearing pursuant to Section 10 (C) of the Arkansas Supreme Court Procedures Regulating Professional Conduct of Attorneys at Law. The evidentiary hearing was conducted on Friday, March 16, 2012. Following the hearing, the Committee convened into a ballot vote executive session and completed ballot voting in the matter. It is from that ballot voting process that this Findings and Order is prepared.

During early 2004, Rhonda McCauley was hired to represent Mr. Alhamwi with regard to certain Immigration matters, including those related to the status of Mr. Alhamwi and his family and their presence in the United States. Although Mrs. McCauley had never previously

represented Mr. Alhamwi or his family, she did not present Mr. Alhamwi with a written contract or written explanation of what her fees would be for the representation. At different stages of her representation of Mr. Alhamwi and his family, Mrs. McCauley would make request for additional fees and she would be paid. Ultimately, Mr. Alhamwi paid Mrs. McCauley over \$17,000 in legal fees.

Mrs. McCauley explained that it was Gary King, an attorney in an office adjoining hers in 2004, who approached her about assisting with the Alhamwi matters. Mrs. McCauley offered that the fee arrangement had already been established between Mr. King and the Alhamwis' employer, Dr. Hassan Masri, before she became involved in the legal matters. She explained that she did charge a specific amount for specific items of representation and the hourly rate was \$150 per hour for legal services. According to Mrs. McCauley, Mr. King stayed in communication with Dr. Masri, the employer, and the Alhamwis even during her representation of the Alhamwis.

During the course of the representation, Mrs. McCauley failed to provide letters to Mr. Alhamwi to advise of the status of the immigration proceedings or to respond to any of her clients' concerns or inquiries. Mrs. McCauley denied this assertion and stated that she kept Dr. Masri and Mr. Alhamwi informed at every stage of representation. Mrs. McCauley further asserted that she worked diligently on behalf of her clients in seeking to meet their objectives.

During the course of Mrs. McCauley's representation of them, the Alhamwis were required to go to Memphis for removal hearings before an Immigration Judge. Mrs. McCauley was paid for both appearances. It is the information provided by the Alhamwis that they were not kept informed of court dates by Mrs. McCauley during the time she represented them. Instead, they learned of dates through their bond company.

During a court proceeding, the Judge explained to Mr. Alhamwi that he and his wife had three options: change their VISA, work for someone else, or file for asylum. Mrs. McCauley advised Mr. Alhamwi that their best option was to file for asylum. The Alhamwis believed Mrs. McCauley, so that is the route they hired her to pursue. In addressing this allegation, Mrs. McCauley explained that asylum was the only chance the Alhamwis had since they had been working outside the parameters of the HIB previously given them.

On January 24, 2006, Mrs. McCauley filed for asylum for Mr. Alhamwi and his wife. At her request, Mr. Alhamwi gathered information for the asylum proceeding. While Mrs. McCauley was working on the asylum proceeding, she had the Alhamwi family deposit money into her account every week. The Alhamwis expressed their opinion that it seemed that Mrs. McCauley's focus was always on obtaining more funds from the Alhamwis.

On October 24, 2006, Mr. Alhamwi and his wife were denied asylum. The Judge explained to them that they had to leave the U.S.A. within two (2) months or that they could file an appeal. Mrs. McCauley advised Mr. Alhamwi that she would file an appeal and that it would take a very long time, maybe even five or six years before there was a decision rendered in the appeal.

Mr. Alhamwi and his family paid Mrs. McCauley \$2,500 to handle the appeal. New counsel, Mr. Frager, hired by the Alhamwi family, learned that there was no proof that Mrs. McCauley filed a brief in the appeal she was hired to handle. There was no brief in the file finally obtained from Mrs. McCauley and no brief was received through a Freedom of Information request to the Executive Office of Immigration Review and Department of Homeland Security. In responding to the formal disciplinary complaint, Mrs. McCauley

explained that she did file the appeal and that the basis for the appeal was clear in the Notice of Appeal and other filing documents and that the BIA had everything it needed to review the lower Court's decision. She acknowledged that she requested and received several extensions for filing a brief in support on behalf of the Alhamwis. She also admitted that she did fail to file a brief because of her extremely heavy trial schedule. Mrs. McCauley also offered to the Panel that her failure to file a brief had zero impact on the final result.

The last communication that Mr. Alhamwi had with Mrs. McCauley about the appeal was in early 2007. He and his wife trusted that Mrs. McCauley would do as she said and notify them when she received any information about the appeal.

Neither Mr. Alhamwi nor his wife knew anything about the appeal until October 10, 2009. At that time, they received notice of an immigration bond breach. The information set forth that the appeal had been dismissed in July, 2008. Mr. Alhamwi and his wife were to have left the country by September, 2008. When the notice was received, they hired new counsel, Mr. Frager, to assist them with an attempt to re-open their immigration proceeding.

Although Mrs. McCauley relocated her office numerous times, the Alhamwis did not relocate during the time of Mrs. McCauley's representation of them. Mr. Alhamwi and his wife had the same telephone number and the same residential address the entire time Mrs. McCauley represented them. There was no reason for her to have not notified them in a timely fashion of the appellate decision. Mrs. McCauley stated that she did tell the Alhamwis about the denial of their appeal and that she did so by way of mail, telephone and in person.

When confronted about the failure to give notice of the BIA denial, Mrs. McCauley falsely stated that she advised Mr. Alhamwi and his wife in her office. She did not do so.

Mrs. McCauley also advised that Mr. Alhamwi and his family owed her more money. When she was informed that they had receipts demonstrating payments of over \$16,000, she accused the Alhamwi family of fabricating receipts.

In defending herself with regard to the allegations contained in the formal disciplinary complaint, Mrs. McCauley offered that Mr. Alhamwi does not speak any English, his wife speaks minimal broken English, that they both require an interpreter, but that their Affidavits contain no translation certificates. Mrs. McCauley also offered to the Panel that the Immigration Court and / or Immigration and Customs Enforcement provides all Respondents, Defendants and Petitioners with duplicate notices of removal and voluntary departure orders.

Mrs. McCauley continued with her defense to the allegations of Rule violations by stating that she repeatedly represented the Alhamwis in numerous matters and that there was never any complaint about the representation or her services until the Alhamwis were presented with a rather large bill for the work Mrs. McCauley asserted she fronted them. She also offered that the failure of their Petitions and their resulting deportation were a result of their own actions, not anything she did or did not do in the representation of them.

Upon consideration of the formal complaint and attached exhibit materials, the response to it, the rebuttal, the testimony offered at the evidentiary hearing, other matters before the Panel, and the Arkansas Rules of Professional Conduct, Panel A of the Arkansas Supreme Court Committee on Professional Conduct finds:

1. That Mrs. McCauley's conduct violated Rule 1.2(a), because she did not pursue the objectives of her clients, Ahmad Alhamwi and his wife, in actively pursuing the appeal of the denial of their request for asylum after being hired and paid to handle such an appeal. Rule 1.2(a)

requires, in pertinent part, that, subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation, and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued.

2. That Mrs. McCauley's conduct violated *Rule* 1.3, because Mrs. McCauley failed to give timely notice to Mr. Alhamwi and his wife that the appeal of the denial of their request for asylum had been dismissed and they had two (2) months to leave the country. Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

3. That Mrs. McCauley's conduct violated Rule 1.4(a)(3), because during the time Mrs. McCauley represented Mr. Alhamwi and his wife in their immigration matters, she failed to keep the Alhamwis reasonably informed of the actions she undertook on their behalf. Rule 1.4(a)(3) requires that a lawyer keep the client reasonably informed about the status of the matter.

4. That Mrs. McCauley's conduct violated Rule 8.4(d) because her failure to notify Mr. Alhamwi and his wife that the appeal had been dismissed caused them to be in violation of a Court order directing them to leave the country by a date certain. 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, acting through its authorized Panel A, that RHONDA MCCAULEY, Arkansas Bar ID# 2000024, be, and hereby is, CAUTIONED for her conduct in this matter. Mrs. McCauley's lack of prior disciplinary record was specifically considered in assessing the appropriate sanction by the members of Panel A in this matter. Pursuant to Section 18 (A) of the Procedures, Mrs. McCauley is assessed the standard costs in the disciplinary proceeding in the amount of FIFTY DOLLARS (\$50). The 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 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 A

By: Steven Shults
Steven Shults, Chair, Panel A

Date: April 30, 2012