

IN THE
SUPREME COURT OF TEXAS
IN THE MATTER OF
FLOYD D. MCGOUGH
MISC. DOCKET NO. 92- 0107

ORDER

On this day, the Court considered the Motion for Acceptance of Resignation as Attorney and Counselor at Law of Floyd D. McGough, together with the Concurring Motion of the Grievance Committee for State Bar District Number 8-C, State Bar of Texas, and the Certification of the General Counsel of the State Bar of Texas. The Court has reviewed said Motions and Certification and finds each to be legally sufficient. The Court, being advised that such resignation is tendered in lieu of disciplinary action, and being of the opinion that such resignation is in the public interest and will meet the ends of justice, hereby concludes that the following order is appropriate.

It is ORDERED that the Law License of Floyd D. McGough of Bell County, Texas, State Bar Card No. 13637700, heretofore issued by this Court, be cancelled and his name be dropped and deleted from the list of persons licensed to practice law in Texas, and that he shall hereafter exercise none of the privileges and prerogatives of the office of an attorney at law. Respondent, Floyd D. McGough, is hereby permanently prohibited, effective immediately, from practicing law in Texas, holding himself out as an attorney at law, performing any legal service for others, accepting any fee directly or indirectly for legal services, appearing as counsel or in any representative capacity in any proceeding in any Texas court or

before any Texas administrative body, or holding himself out to others or using his name, in any manner, in conjunction with the words "attorney," "counselor," or "lawyer."

It is further ORDERED that Respondent, Floyd D. McGough, not later than August 10, 1992, shall notify in writing each and every justice of the peace, judge, magistrate, and chief justice of each and every court in which the Respondent has any legal matter pending of his resignation in lieu of discipline, of the style and cause number of the pending matter(s), and of the name, address, and telephone number of the client(s) Respondent is representing in that court. Respondent is also ORDERED to mail copies of all such notification to the Office of the General Counsel, State Bar of Texas, P.O. Box 12487, Capitol Station, Austin, Texas 78711.

It is further ORDERED that Respondent, Floyd D. McGough, shall immediately notify each of his current clients, in writing, of his resignation in lieu of discipline. In addition, to such notification, Respondent is ORDERED to return all files, papers, unearned fees paid in advance, and all other monies and properties which are in his possession but which belong to current or former clients, to those respective clients or former clients not later than August 10, 1992. Respondent is further ORDERED to file with the Office of the General Counsel, State Bar of Texas, P.O. Box 12487, Austin, Texas 78711, not later than August 10, 1992, an affidavit stating that all current clients have been notified of his resignation in lieu of discipline and that all files, papers, unearned fees paid in advance, and all other monies and properties belonging to

clients and former clients have been returned as ordered herein. If Respondent should be unable to return any file, papers, money or other property to any client or former client, Respondent's affidavit shall state with particularity the efforts made by Respondent with respect to each particular client and the cause of his inability to return to said client any file, papers, money or other property. Respondent is also ORDERED to mail a copy of all notification letters to clients, in addition to said affidavits, to the Office of the General Counsel, State Bar of Texas, P.O. Box 12487, Capitol Station, Austin, Texas 78711.

It is further ORDERED that Respondent, Floyd D. McGough, shall pay as restitution to his former client Republic Insurance Company of Dallas, Texas, the sum of One Thousand Two Hundred Dollars (\$1,200.00), together with interest thereon to be calculated at the rate of 10% (ten percent) per annum from August 10, 1992 until paid. Said restitution shall be paid by delivering to the Office of the General Counsel of the State Bar of Texas, P.O. Box 12487, Capitol Station, Austin, Texas 78711, a certified check, money order, or other form of guaranteed payment in the proper amount, payable to the order of Republic Insurance Company, for transmittal to the said Republic Insurance Company.

It is further ORDERED that Respondent, Floyd D. McGough, shall pay as restitution to his former client Nationwide Insurance Company of San Antonio, Texas, the sum of Fifty Thousand Dollars (\$50,000.00), together with interest thereon to be calculated at the rate of 10% (ten percent) per annum from August 10, 1992 until

paid. Said restitution shall be paid by delivering to the Office of the General Counsel of the State Bar of Texas, P.O. Box 12487, Capitol Station, Austin, Texas 78711, a certified check, money order, or other form of guaranteed payment in the proper amount, payable to the order of Nationwide Insurance Company, for transmittal to the said Nationwide Insurance Company.

It is further ORDERED that Respondent, Floyd D. McGough, shall pay as restitution to his former client Central Insurance Companies of Irving, Texas, the sum of Six Hundred Dollars (\$600.00), together with interest thereon to be calculated at the rate of 10% (ten percent) per annum from August 10, 1992 until paid. Said restitution shall be paid by delivering to the Office of the General Counsel of the State Bar of Texas, P.O. Box 12487, Capitol Station, Austin, Texas 78711, a certified check, money order, or other form of guaranteed payment in the proper amount, payable to the order of Central Insurance Companies, for transmittal to the said Central Insurance Companies.

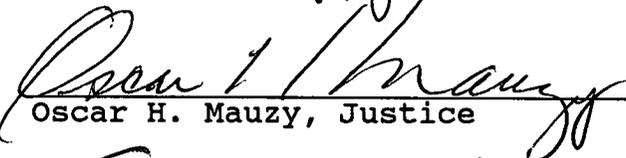
It is further ORDERED that Respondent, Floyd D. McGough, shall pay as restitution to his former client Progressive County Mutual Insurance Companies of Austin, Texas, the sum of \$1,250.00, together with interest thereon to be calculated at the rate of 10% (ten percent) per annum from August 10, 1992 until paid. Said restitution shall be paid by delivering to the Office of the General Counsel of the State Bar of Texas, P.O. Box 12487, Capitol Station, Austin, Texas 78711, a certified check, money order, or other form of guaranteed payment in the proper amount, payable to

the order of Progressive County Mutual Insurance Company, for transmittal to the said Progressive County Mutual Insurance Company.

By the Court, en banc, in chambers, on this 19th day of August, 1992.


Thomas R. Phillips, Chief Justice

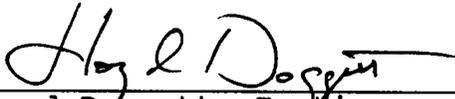

Raul A. Gonzalez, Justice

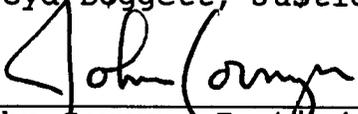

Oscar H. Mauzy, Justice

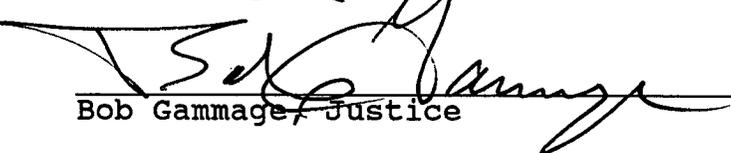

Eugene Cook, Justice


Jack Hightower, Justice


Nathan L. Hecht, Justice


Lloyd Doggett, Justice


John Cornyn, Justice


Bob Gammage, Justice

STATE BAR OF TEXAS



Office of the General Counsel

August 10, 1992

INTERAGENCY MAIL

Mr. John T. Adams, Clerk
Supreme Court of Texas
Price Daniel Sr. Building
Austin, TX 78711

Re: Resignation of attorney Floyd D. McGough
State Bar Card No. 13637700

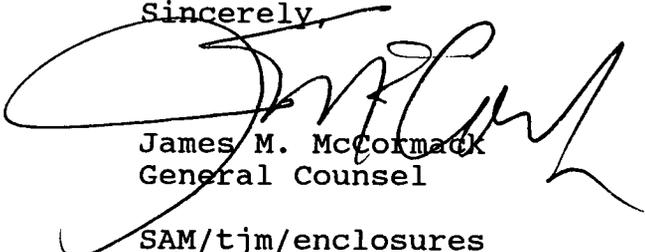
Dear Mr. Adams:

Enclosed for filing please find the following documents pertaining to the resignation of attorney Floyd D. McGough:

- * 2 copies of the Supreme Court Order
- * Motion for Acceptance of Resignation
- * Concurring Motion for Acceptance of Resignation from the 8-C Grievance Committee, State Bar of Texas
- * Certification of the General Counsel, State Bar of Texas

Please present this matter to the Court on the earliest possible date. Thank you for your attention to this matter.

Sincerely,



James M. McCormack
General Counsel

SAM/tjm/enclosures

xc: Mr. Richard J. Miller, 615 N. Eighth St., Suite C, Killeen,
Texas 76541

IN THE SUPREME COURT OF TEXAS
MOTION FOR ACCEPTANCE OF RESIGNATION AS
ATTORNEY AND COUNSELOR AT LAW
OF

FLOYD McGOUGH

TO THE HONORABLE SUPREME COURT OF TEXAS:

Movant, Floyd McGough, moves the Court to accept his resignation as an Attorney and Counselor at Law, showing the Court:

I.

Movant hereby resigns as an Attorney and Counselor at Law in lieu of disciplinary sanction for having committed professional misconduct.

II.

Movant attaches hereto and hereby surrenders his License and permanent State Bar Card issued by the Court on November 6, 1978.

III.

Movant's State Bar Card number is 13637700. Movant's current address is P.O. Box 5217, Temple, Texas 76505.

Movant prays that the Court accept his resignation as an Attorney and Counselor at Law and remove his name from the list of persons licensed to practice law in the State of Texas.

Respectfully submitted,



Floyd McGough
State Bar Card No. 13637700

MAY 11, 1992
Date

ACKNOWLEDGEMENT

STATE OF TEXAS

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§
§

COUNTY OF BELL

BEFORE ME the undersigned, a Notary Public in and for said County and State, on this day personally appeared Floyd McGough known to me to be the person whose name is subscribed to the foregoing Motion, and acknowledged to me that he executed the same for the purposes therein expressed and that all the facts stated are within his personal knowledge and are true and correct.

GIVEN UNDER my hand and seal of office this the 11th day of May, 1992.



Mayelle Carlisle
Notary Public in and for the
State of Texas

3-25-96
My Commission Expires

Mayelle Carlisle
Printed Name of Notary

IN THE SUPREME COURT OF THE STATE OF TEXAS
CONCURRING MOTION FOR ACCEPTANCE OF RESIGNATION AS
ATTORNEY AND COUNSELOR AT LAW
OF
FLOYD D. MCGOUGH

TO THE HONORABLE SUPREME COURT OF TEXAS:

The Grievance Committee for State Bar District No. 8-C, State Bar of Texas, moves the Court to accept the Resignation as Attorney and Counselor at Law of Floyd D. McGough, showing the Court:

I.

On May 11, 1992, Floyd D. McGough, State Bar Card No. 13637700, voluntarily executed a Motion for Acceptance of Resignation as Attorney and Counselor at Law. The Grievance Committee hereby concurs in such motion. Acceptance of such resignation in lieu of disciplinary action will protect the public.

II.

In connection with such resignation, the Grievance Committee makes the following findings of fact:

(1) Pursuant to an assignment letter of May 19, 1989, Respondent agreed to represent Republic Insurance Company in an automobile subrogation action against John Stolz. Respondent acknowledged receipt of the subrogation claim in a letter dated August 17, 1989, but thereafter failed to communicate with his client, file suit, or respond to reasonable requests for information until February 26, 1990. The lawsuit brought against John Stolz was settled in July, 1990, for the amount of \$1,200.00. Respondent received the \$1,200.00 settlement draft but thereafter

failed to either deposit the draft in a trust account or forward the settlement funds to his client. From a period of time from August 27, 1990 to January 17, 1991, a representative of Republic Insurance Company sent numerous letters and made repeated attempts by telephone to contact Respondent to request delivery of the settlement funds or an account of such funds. Respondent has thereby misappropriated funds belonging to his client, wholly failed to deliver the funds to which his client is entitled, failed to render a full accounting of the funds in his possession, and failed to respond to any of his client's requests for information.

(2) On or about May 21, 1991, the District 8-C Grievance Committee sent written notice of the Republic Insurance Complaint to Respondent, with a request that Respondent send a written response to the complaint. Respondent received the notice on or about May 28, 1991, but failed to respond or provide the information requested by the Grievance Committee. A second notice of the complaint was sent on June 25, 1991, and received on June 26, 1991. Respondent again failed to respond or provide the requested information. By letter of August 21, 1991, the Grievance Committee notified Respondent of an investigatory hearing to be held September 19, 1991, and directed Respondent to appear and furnish information to the Committee. Respondent failed to appear at such hearing.

(3) Kaye Bates is the litigation coordinator for the New Jersey law firm of Hubschman and Roman. This law firm has forwarded a number of insurance subrogation and retail collection cases to

Respondent for his legal representation on a contingency fee basis. In each instance where Respondent accepted representation in a matter he signed an acknowledgement and received a check for filing fees. Despite repeated attempts by Bates and/or other representatives of Hubschman and Roman to contact Respondent in order to determine the status of their cases, Respondent has failed and refused to respond to those reasonable requests for information. Respondent has further failed to file suit in a number of cases although he has kept and refused to refund previously paid filing fees. On at least three occasions Respondent allowed the statute of limitations to expire without filing suit; on at least two other occasions the Hubschman and Roman law firm refunded their clients' filing fees from the firm's own funds so that the clients could seek other counsel prior to limitations expiring.

(4) Respondent was retained by Mrs. Donna Wiechelt on or about March 1, 1991, to file and represent her in her divorce. Mrs. Wiechelt paid \$200.00 at that time and Respondent indicated that he would begin work on her case immediately. Since that time, although Mrs. Wiechelt made numerous and repeated attempts to contact Respondent to determine the status of her divorce, Respondent has failed and refused to communicate with her, return any of her phone calls, or provide any information regarding her case. Mrs. Wiechelt determined by contacting the District Clerk's office that Respondent never filed her divorce petition. Respondent has

failed, however, to refund the \$200.00 initially paid by Mrs. Wiechelt, or to provide an accounting of the expenditure of such funds.

(5) Respondent was employed by Nationwide Insurance to file suit on a subrogation collection claim in which there were two defendants. One of the defendants paid the sum of \$50,000.00 to Nationwide prior to trial in order to be removed from the suit. Respondent failed to deposit those funds into a separate, identifiable account into which no funds belonging to Respondent or his law firm were deposited. On at least two occasions, on November 17, 1989, and again on December 27, 1989, a representative of Nationwide Insurance requested payment of the \$50,000.00; Respondent, however, has failed and refused to deliver such funds to Nationwide. Since that time, because the funds were commingled with the personal and/or business funds of Respondent, they are now subject to a federal tax lien placed against Respondent's accounts, and are therefore uncollectible by Nationwide.

Respondent unsuccessfully represented Nationwide in the trial against the remaining defendant. Respondent failed to timely perfect appeal of the case, resulting in the Fifth Court of Appeals dismissing the appeal on February 22, 1990.

(6) On or about March 7, 1991, Central Insurance Companies forwarded a subrogation claim to Respondent, along with a \$275.00 check to cover filing fees. Respondent failed to acknowledge receipt of the file until June 25, 1991, after three written requests for information had been sent by Central. Respondent

failed to file the lawsuit on Central's behalf, allowing the statute of limitations to run. Respondent further failed to respond to any of three additional written requests from Central for a status report. Respondent further failed and refused to refund the \$275.00 advanced by Central for filing fees.

(7) On or about April 10, 1991, Central Insurance Companies forwarded a subrogation claim to Respondent, along with a \$325.00 check to cover filing fees. Respondent failed to acknowledge receipt of the file until June 25, 1991, after receiving a written request for the return of the file and filing fees. Respondent thereafter failed to either return the file or file a lawsuit on Central's behalf. In addition, Respondent failed and refused to respond to Central's written requests of August 2, 1991, August 29, 1991, October 7, 1991, and November 7, 1991, for information or return of the file. Respondent has also never returned the \$325.00 filing fees as demanded by Central.

(8) Respondent was acting as attorney on behalf of Central Insurance Companies on a subrogation claim from approximately February of 1989 through November, 1990. At that time Respondent ceased work on the matter and has performed no meaningful legal services since. Central has sent no fewer than five written requests for information to which Respondent has failed and refused to respond.

(9) Respondent was hired as Progressive Insurance Company's attorney in April, 1986, to pursue a lawsuit against an uninsured motorist at fault for damages to the Company's insured. Respondent

filed suit and obtained, in or around October, 1987, a default judgment. Respondent confirmed in August of 1990 that the judgment had been paid in full. Respondent has since failed and refused to deliver such payment to Progressive, despite written demands on October 24, 1990, January 11, 1991, and February 1, 1991. Respondent has failed and refused to return the numerous telephone calls placed to his office by Progressive's claims manager, and refused the personal visit to his office from a representative of Progressive.

(10) On or about March 20, 1992, the District 8-C Grievance Committee sent written notice of the Progressive Insurance Complaint to Respondent, with a request that Respondent provide a written response to the complaint. Respondent received the notice on or about March 23, 1992, but failed to respond or provide the information requested by the Grievance Committee.

(11) Respondent has been previously disciplined for the commission of professional misconduct in that by an agreed judgment of public reprimand before the Grievance Committee for State Bar District No. 8-C, State Bar of Texas, consented to by Respondent on or about May 6, 1991. Respondent was found to have failed to promptly withdraw from employment and return files after being discharged by his client, Aetna Life Insurance Company, and further to have failed to promptly pay funds he received to his client or to promptly and completely account for the funds.

III.

Based on the foregoing findings of fact, the Grievance Committee concludes as a matter of law that Floyd McGough committed professional misconduct by violating Rule 1.01(b)(2) and (2); Rule 1.03(a); Rule 1.14(a)(b) and (c); Rule 8.01(b) and Rule 8.04(a)(1)(3), of the Texas Disciplinary Rules of Professional Conduct, State Bar Rules, effective January 1, 1990, and Disciplinary Rules 9-102(A) and 9-102(B)(1) of the Texas Code of Professional Responsibility, State Bar Rules, revised September, 1988.

The Grievance Committee prays that the court accept the resignation as an Attorney and Counselor at Law of Floyd D. McGough and drop his name from the list of persons licensed to practice law in the State of Texas.

Respectfully submitted,



J. Patrick Quinn, Chairman
Grievance Committee for
State Bar District No. 8C
State Bar of Texas

A copy of this Concurring Motion for Acceptance of Resignation has been received by the Respondent and his attorney on the 7TH day of JULY, 1992.



Floyd D. McGough
RESPONDENT



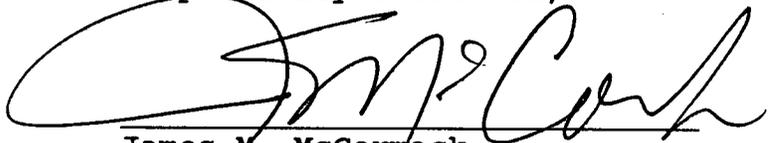
Richard J. Miller
ATTORNEY FOR RESPONDENT

IN THE SUPREME COURT OF TEXAS
CERTIFICATION OF THE GENERAL COUNSEL
OF THE
STATE BAR OF TEXAS
REGARDING
FLOYD D. MCGOUGH

TO THE HONORABLE SUPREME COURT OF TEXAS:

I, James M. McCormack, General Counsel of the State Bar of Texas, in accordance with the Rules Governing the State Bar of Texas, Art. X, §15, hereby certify that there is currently a disciplinary action against Floyd D. McGough, State Bar Card No. 13637700; styled The State Bar of Texas v. Floyd McGough, No. 136,441-C, 169th Judicial District Court, Bell County, Texas.

Respectfully submitted,



James M. McCormack
General Counsel
State Bar of Texas

August 11/92
Date