

IN DISCIPLINARY DISTRICT VI OF THE
BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE SUPREME COURT OF TENNESSEE

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BOARD OF PROFESSIONAL
RESPONSIBILITY

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EXEC. SEC.

IN RE:
MICHAEL SCOTT COLLINS,
BPR # 019065, Respondent
An Attorney Licensed to
Practice Law in Tennessee
(Sumner County)

Docket No: 2012-2098-6-KB

ORDER AND JUDGMENT OF HEARING PANEL

This cause came before the hearing panel on the 20th day of August, 2012, for a final hearing on the Board's Petition for Discipline. At the hearing, the panel heard and considered the testimony of Tommy Thompson, Terri Thompson and the Respondent, Michael Scott Collins, considered 7 (seven) exhibits, being the legal services agreement, invoice one dated August 9, 2010, invoice two dated August 9, 2010, private reprimand filed January 15, 2002, private reprimand filed January 20, 2010, bank statement of International Corporate Security, Inc. and letter dated January 31, 2011 from Tommy Thompson and Terri Thompson to the Board of Professional Responsibility, along with argument of counsel. After hearing proof and considering the evidence presented, the panel makes the following findings, order and judgment:

1. The panel finds, by a preponderance of the evidence, that the Respondent violated Rules of Professional Conduct 1.2 (Scope of Representation and Allocation of Authority Between Client and Lawyer), 1.5 (Fees), and 8.4 (Misconduct). The panel finds that the Board failed to meet its burden of proof on allegations of violation of 1.3 (Diligence), 1.4 (Communication) and 1.16 (Declining or Terminating Representation).

2. The panel finds from the evidence presented that Mr. and Mrs. Thompson engaged attorney Michael Scott Collins to represent them on June 24, 2010 in a civil action after

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their previous attorney passed away. It is undisputed that Mr. Collins was assisting the Thompson's previous counsel before he passed away and that this was one of the reasons the Thompsons retained Mr. Collins to continue to represent them in the matter.

3. A representation agreement was entered into between Mr. Collins and Tommy Thompson on June 24, 2010 and a copy of this representation agreement was made Exhibit 1 at the final hearing. The representation agreement indicates that the attorney would represent Mr. Thompson in the case of Thompson v. Clementine. The agreement further states that the attorney "may select" other attorneys or paralegals to be used "in the best exercise of my professional judgment." The fees for the representation were to be \$10,000.00 to be paid as follows: \$5,000.00 on June 24, 2010 and \$5,000.00 to be paid within sixty (60) days. While the proof indicates the funds were not paid when required, the funds were paid and representation began. The contract goes on to state that "client paid expenses" would be incurred only after client approval. The contract references MAGman Inner Circle Membership but does not set forth what is entailed in the MAGman Inner Circle Membership.

4. It is undisputed that when Mr. Collins took over the representation of Mr. and Mrs. Thompson he informed the opposing counsel that the Defendant did not have to answer the written discovery previously sent by the Thompson's prior attorney. Mr. Collins indicated that this was a strategy decision due to the fact that he did not agree with the questions asked and would be sending amended written discovery. Mr. Collins filed an appearance, had meetings with the Thompsons, met with opposing counsel, reviewed the case file, had an average of one call per week with the clients, filed a motion to strike and argued the same, traveled to a hospital on two occasions to have an affidavit signed, reviewed and responded to a motion for summary

judgment and traveled to a prison to meet with a witness in the course of his two to three month representation of the Thompsons.

5. During Mr. Collins' representation of the Thompsons, the Defendant filed a motion for summary judgment, the Court granted the motion for summary judgment and after the motion was granted the Thompsons informed Mr. Collins that they did not wish for him to represent them any longer and they retained new counsel. It appears that Mr. Collins cooperated with the new counsel and answered her questions regarding the case after he was terminated as the Plaintiffs' attorney and after he entered into an agreed order substituting counsel. The Thompsons testified that they believed that Mr. Collins' representation to them ended with his termination, but Mr. Collins indicated that he believed he was still an attorney advising the Plaintiffs and assisting their new attorney of record.

6. Mrs. Thompson indicated that she understood that the \$10,000.00 paid to Mr. Collins was a flat fee for Mr. Collins to represent the Thompsons in the one particular lawsuit pending when he was retained. Mrs. Thompson believed that this fee would be inclusive of all legal work performed by Mr. Collins and both Mr. and Mrs. Thompson were surprised when Mr. Collins sent them two invoices totaling \$1,593.75, reflecting work performed by a paralegal in the case, at or close to the end of his representation of them. These invoices were exhibited at trial as Exhibits 2 and 3. It is not disputed that Mr. and Mrs. Thompson paid these invoices.

7. Mr. Collins testified that with the payment of the \$10,000.00 by the Thompsons, he agreed to act as a "supervising attorney" on the pending case and Mr. Collins further testified that he informed the Thompsons that he would be retaining other counsel, at the Thompsons' expense, to appear at trial and to assist in other aspects of the representation. Mr. Collins further testified that the \$10,000.00 allowed the Thompsons to become his "friend or family," and thus a

become members of the MAGman Inner Circle, which provided the Thompsons lifetime legal services of an unknown nature and extent. Mr. and Mrs. Thompson testified that while “something” was explained regarding the MAGman Inner Circle, that was of little interest to them and they believed they were paying Mr. Collins to represent them fully in this matter.

8. It is undisputed that the motion for summary judgment was granted approximately three (3) months after Mr. Collins began representing the Claimants and that no refund of fees was provided to the Thompsons by Mr. Collins resulting in a complaint being filed with the Board of Professional Responsibility.

9. The panel finds that the representation agreement (Exhibit 1) was entered into between Mr. Collins and Tommy Thompson was vague, ambiguous and without sufficient clarity for Mr. Thompson to understand the scope of Mr. Collins’ representation. This fact was acknowledged by Mr. Collins, candidly, at the final hearing of this cause. The vague representation agreement signed by the parties and prepared by Mr. Collins is a violation of Rule 1.2 (Scope of Representation and Allocation of Authority Between Client and Lawyer).

10. The Board alleged that Mr. Collins violated Rule 1.3 (Diligence). However, there was insufficient evidence presented at trial to indicate that this violation occurred. There was no evidence suggesting that the actions of Mr. Collins led to the ultimate dismissal of the Plaintiffs’ case or that there were other actions that Mr. Collins was required to undertake within the short time he represented the claimants that he did not undertake. While the Claimants indicated that Mr. Collins stated that he would hire a “team of lawyers” there was no indication that this was to be done in the first three months of representation nor was there any indication that the failure to hire the “team of lawyers” in any way resulted in the dismissal of the claimants’ case.

11. The panel further finds that the Board failed to meet its burden of proof that the Defendant violated Rule of Professional Conduct 1.4 (Communication). There is insufficient evidence to prove that Mr. Collins failed to either communicate with his clients, failed to provide information within a reasonable period of time, or failed to provide sufficient information for the client to make informed decisions regarding the representation.

12. The panel finds that the conduct of Mr. Collins in billing the Thompsons for work performed by a paralegal without first obtaining the consent of the claimants violates Rules of Professional Conduct 1.5 (Fees). While the specific representation agreement indicates that other attorneys and paralegals may be retained it does not state that the attorneys and paralegals will be retained at an additional fee. Further, to the extent additional expenses were to be incurred, the representation agreement specifically states that the lawyer will obtain the prior consent of the clients before incurring such expenses and this was not done. Finally, Mr. Collins testified his expertise included the field of discovery and it would be anticipated by the claimants that Mr. Collins, and not a third party paralegal at an additional cost, would prepare the discovery responses in the underlying case.

13. The panel was presented with insufficient information to determine whether the fee charged by Mr. Collins was reasonable or unreasonable. No evidence was presented regarding the specific hours worked by Mr. Collins, and therefore the Board did not meet its burden of proof that Mr. Collins charged an unreasonable fee to represent the Claimants. The panel further believes it is important to point out that Mr. Collins' idea to charge clients a fee to become a "MAGman Inner Circle" member or to become his "friend or family" so they could receive lifetime unspecified legal benefits, resulted in confusion, misunderstanding, and the same has no place in a contract for legal services. The idea of charging a client a fee to act,

essentially, a general contractor for legal services may be a novel idea, but the same led to some of the problems that resulted in charges being filed against Mr. Collins.

14. The panel finds that there was insufficient evidence presented by the Board that Mr. Collins violated Rule of Professional Conduct 1.16 (Declining or Terminating Representation). For the reasons set forth above, there was insufficient proof regarding what fees, if any, were unearned at the time of the termination of Mr. Collins' representation and therefore the panel cannot find that there is a violation of Rules of Professional Conduct 1.16.

15. The panel finds that Mr. Collins violated Rule 8.4 (Misconduct) which states that a violation of any rule of professional conduct is professional misconduct.

16. Having found the above violations, the panel next determines the appropriate lawyer sanctions by reviewing the ABA Standard for Imposing Lawyer Sanctions and determines that the violations proven by the Board of Professional Responsibility should result in sanctions pursuant to ABA Standard for Imposing Lawyer's Sanctions §4.63 and, as it relates to the violation of Rule of Professional Conduct 8.4 (Misconduct), ABA Standard for Imposing Lawyer's Sanctions §7.3, both of which call for a public censure of the Defendant.

17. The panel has considered the aggravating and mitigating factors set forth in ABA Standard for Imposing Lawyer's Sanctions §9 and the panel finds that both exist. The following aggravating factors exist:

- a. 9.22 (a)(prior disciplinary offenses)
- b. 9.22(d)(multiple offenses)
- c. 9.22(i)(substantial experience in the practice of law)

However, these factors due not, in the opinion of the panel, justify an increase in the degree of discipline to be imposed.

18. The panel finds that the following mitigating factor exists:

§9.32(1)(remorse)

However, this factor does not, in the opinion of the panel, justify a decrease in the degree of discipline to be imposed.

19. Based upon the above findings it is the ruling of the panel that the appropriate sanctions for the Respondent for his violations of Rules of Professional Conduct 1.2, 1.5 and 8.4 are as follows:

- a. Respondent shall receive a public censure;
- b. Respondent shall pay restitution to the Claimants, Tommy and Terri Thompson, in the amount of \$1,593.75, reflecting the funds paid by the Thompsons for the additional billing sent to them by Mr. Collins above the funds required in the initial representation agreement; and,
- c. The Respondent shall be taxed with all costs of this preceding.

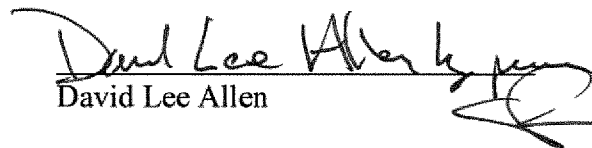
20. This judgment may be appealed pursuant to Section 1.3 of Supreme Court Rule 9 by filing a petition for writ of certiorari, which petition shall be made under oath or affirmation and shall state that it is the first application for the writ. See: Tenn. Code Ann. §27-8-104 (a) and §27-8-108.

SO ENTERED, this the 27 day of April, 2012.

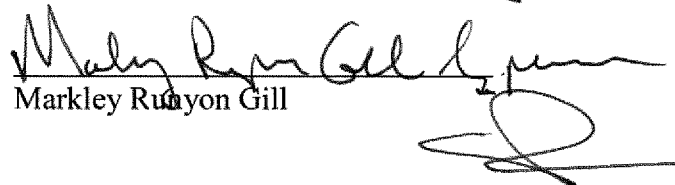
HEARING PANEL:



Christopher J. Pittman



David Lee Allen



Markley Ruyon Gill

CERTIFICATE OF SERVICE

I hereby certify that an accurate copy of the foregoing Order has been mailed or delivered to Kevin Balkwill, Disciplinary Counsel, 10 Cadillac Drive, Suite 220, Brentwood, TN 37027 and Michael Scott Collins, Respondent, 562 Indian Lake Road, Hendersonville, TN 37075, by United States mail on the 27 day of August, 2012.



Christopher J. Pittman