

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

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BOARD OF PROFESSIONAL
RESPONSIBILITY
RW EXEC. SEC.

**IN RE: MICHAEL SCOTT COLLINS
BPR # 19065, Respondent
An Attorney Licensed and
Admitted to the Practice of
Law in Tennessee
(Sumner County)**

DOCKET No. 2013-2192-6-AW

FINAL JUDGMENT OF HEARING PANEL

This matter came on for hearing at the Belmont School of Law on July 16, 2013, before a Hearing Panel consisting of Robert Bateman, Chris Pittman and Claudia Jack, Chair. The hearing was held with Ms. Jack attending by telephone conference. The Hearing Panel waited for Mr. Collins to appear before proceeding with the hearing in his absence. Based upon the proof at trial and the record as a whole, the Hearing Panel finds as follows:

FINDINGS OF FACT

1. Pursuant to the failure of Mr. Collins to file an Answer in this disciplinary matter, an Order for Default Judgment was entered by the Hearing Panel on June 6, 2013, and the final hearing proceeded on the issue of the imposition of the appropriate disciplinary sanction.
2. Frederick Scott Starr and Sarah Aldrich Starr were divorced by Decree of the Davidson County Circuit Court on August 18, 2009.
3. On or about August 10, 2010, Frederick Scott Starr retained Mr. Collins to represent him in a post-divorce criminal contempt proceeding filed by his ex-wife in the Eighth

Circuit Court for Davidson County, Tennessee, styled *Frederick Scott Starr v. Sarah Aldrich Starr*, Docket No. 08D-944.

4. Dr. Starr paid a retainer of \$20,000.00 to Mr. Collins; \$10,000 of which Mr. Collins required as a fee to become a member of Mr. Collins' professional "family," and was told by Mr. Collins there would be no record of the payment.

5. The retainer fee paid by Dr. Starr was deposited into Mr. Collins' operating account instead of his trust account.

6. After being retained, Mr. Collins attended the September 13, 2010, contempt hearing on behalf of Dr. Starr who chose not appear.

7. As a result of Dr. Starr's failure to appear, the Circuit Court for Davidson County, granted a ten-year extension of the Order of Protection against Dr. Starr and ordered the issuance of a body attachment.

8. Thereafter, Mr. Collins on behalf of Dr. Starr filed Motions to Recuse and to Set Aside which the Circuit Court refused to consider until Dr. Starr appeared in court.

9. In or about January of 2011, Joy Starr, mother of Dr. Starr, retained Mr. Collins to recover a Hyperbaric Chamber from her former daughter-in-law. Ms. Starr paid a retainer fee of \$2,103.00 to Mr. Collins on January 11, 2011. A true and correct copy of the PayPal receipt dated January 11, 2011, was received into evidence as Exhibit 1.

10. On or about January 31, 2011, Mr. Collins requested Ms. Starr pay an additional \$7,500.00 retainer to continue his representation of Dr. Starr and appeal the rulings of the trial court. A true and correct copy of the PayPal email request dated January 31, 2011, was received into evidence as Exhibit 2.

11. On February 3, 2011, Ms. Starr, on behalf of her son, forwarded \$7,500.00 to Mr. Collins. A true and correct copy of the PayPal receipt dated February 3, 2011, was received into evidence as Exhibit 3.

12. On May 25, 2011, a second Petition for Contempt was filed against Dr. Starr, and a show cause hearing was set for June 30, 2011.

13. On June 16, 2011, Mr. Collins represented to Dr. Starr that an Order would be entered shortly which would provide a basis for pursuing an interlocutory appeal of the case.

14. Mr. Collins attended the June 30, 2011, contempt hearing on behalf of Dr. Starr who chose not appear.

15. On August 8, 2011, the Trial Court entered an Order on the second Petition for Contempt and issued a body attachment for Dr. Starr.

16. Contrary to Dr Starr's instructions and Mr. Collins' own representations to Dr. Starr, Mr. Collins did not take any action to perfect an appeal of the various rulings issued by the Circuit Court against Dr. Starr.

17. Contrary to Ms. Starr's instructions and Mr. Collins' own representations to Ms. Starr, Mr. Collins did not take any action to seek recovery of the Hyperbaric Chamber from Ms. Starr's former daughter-in-law.

18. From June 16, 2011, to May 9, 2012, Mr. Collins took no action on behalf of Dr. Starr to appeal the rulings of the trial court or file an independent collateral action for redress.

19. From June 16, 2011, to May 9, 2012, Mr. Collins took no action on behalf of Ms. Starr to recover the Hyperbaric Chamber.

20. On May 9, 2012, Mr. Collins admitted in an email to Dr. Starr that he had acted unethically in his representation of Dr. Starr and Ms. Starr. A true and correct copy of the email dated May 9, 2012, was received into evidence as Exhibit 4.

21. Mr. Collins and Dr. Starr discussed the representation problems that existed and reached an understanding that Mr. Collins would continue to represent Dr. Starr. The understanding was memorialized in an email dated May 23, 2012. See Exhibit 4.

22. Although Mr. Collins agreed to continue representing Dr. Starr, Mr. Collins made no effort to appeal or collaterally attack the previous decisions of the trial court as instructed by Dr. Starr.

23. Despite the demands of Ms. Starr, Mr. Collins made no effort to recover her property or refund any of the retainer fee paid by Ms. Starr.

24. Michael Scott Collins is an attorney admitted by the Supreme Court of Tennessee to practice law in the State of Tennessee in 1998.

25. On July 2 and 8, 2012, the Board received complaints filed by Gwendolyn Joy Starr on behalf of herself and her son, Frederick Scott Starr and provided a copy of the same to Mr. Collins for his response.

26. On October 29, 2012, Dr. Fred Starr emailed the Board his complaint against Mr. Collins.

27. On October 30, 2012, Disciplinary Counsel provided Mr. Collins with a copy of the complaint from Dr. Starr and requested a response. Disciplinary Counsel also made a second request of Mr. Collins to provide certain additional information. A true and exact copy of the October 30, 2012 letter to Mr. Collins was received into evidence as Exhibit 5.

28. Although Mr. Collins provided a response to the complaint of Ms. Starr, he did not respond to the complaint of Dr. Starr or provide the information requested by Disciplinary Counsel.

CONCLUSIONS OF LAW

29. Pursuant to Tenn. Sup. Ct. R. 9, § 3, the license to practice law in this state is a privilege, and it is the duty of every recipient of that privilege to conduct himself or herself at all times in conformity with the standards imposed upon members of the bar as conditions for the privilege to practice law. Acts or omissions by an attorney which violate the Rules of Professional Conduct (RPC) of the State of Tennessee shall constitute misconduct and be grounds for discipline.

30. Mr. Collins failed to take appropriate action on behalf of Dr. Starr to appeal the rulings of the trial court or file an independent action to collaterally attack the judgment of the trial court. Mr. Collins failed to take any action on behalf of Ms. Starr to recover the Hyperbaric Chamber. The aforementioned acts and omissions of Mr. Collins constitute unethical conduct in violation of RPC 1.3 (Diligence) and 3.2 (Expediting Litigation).

31. Mr. Collins failed to keep Dr. Starr and Ms. Starr reasonably informed regarding the status of their respective legal matters or respond timely to requests for information. In his communications with his clients, Mr. Collins misled Dr. Starr and Ms. Starr regarding the status and progress of their respective cases. The aforementioned acts and omissions of Mr. Collins constitute unethical conduct in violation of RPC 1.4 (Communication) and 1.2 (Scope of Representation).

32. Mr. Collins failed to provide the legal services contracted for by Dr. Starr or Ms. Starr. As a result of his actions and omissions, Mr. Collins collected an unreasonable fee of

\$27,500.00 from Dr. Starr and \$2,103.00 from Ms. Starr. The Hearing Panel further finds that the \$10,000.00 fee-charge to become a member of Mr. Collins' "professional family" was unrelated to any legal services, inappropriate and clearly unreasonable in light of the factors set forth in RPC 1.5. The aforementioned acts and omissions of Mr. Collins constitute unethical conduct in violation of RPC 1.5 (Fees) and 1.15 (Safekeeping of Property and Funds).

33. Mr. Collins failed to respond to Disciplinary Counsel's lawful requests for additional information in violation of RPC 8.1 (Bar Admissions and Disciplinary Matters).

34. Finally, Mr. Collins' violation of the aforementioned Rules of Professional Conduct constitutes a violation of RPC 8.4 (a) and (d) (Misconduct).

35. The Board of Professional Responsibility has the burden of proving violations of the Rules of Professional Conduct by a preponderance of the evidence. Tenn. Sup. Ct. R. 9, § 8.2. The Hearing Panel finds the Board has carried its burden and proven the aforementioned violations of the RPC by a preponderance of the evidence.

ABA STANDARDS FOR IMPOSING LAWYER SANCTIONS

36. Upon review of the record and prior to consideration of any aggravating or mitigating circumstances, the Hearing Panel finds ABA Standards 4.42, 4.62, and 7.2 to be applicable.

37. The Hearing Panel finds that Mr. Collins' prior disciplinary violations, consisting of a Private Reprimand on January 15, 2002, a Private Reprimand on January 20, 2010, and a Public Censure on February 11, 2013, evidencing violations of RPC 1.2, 1.4, 1.5, 1.9, 1.16, and 8.4, are aggravating circumstances justifying an increase in sanctions to be imposed against Mr. Collins.

38. The Hearing Panel finds that Mr. Collins' dishonest or selfish motive is an aggravating circumstance justifying an increase in sanctions to be imposed.

39. The Hearing Panel finds that Mr. Collins' pattern of misconduct and multiple offenses are aggravating circumstances justifying an increase in sanctions to be imposed.

40. The Hearing Panel finds that Mr. Collins' bad faith failure to respond to the Board and its counsel is an aggravating circumstance justifying an increase in sanctions to be imposed.

41. The Hearing Panel finds that Mr. Collins' substantial experience in the practice of law is an aggravating circumstance justifying an increase in sanctions to be imposed.

42. The Hearing Panel finds that Mr. Collins' failure to refund unreasonable and unearned fees is an aggravating circumstance justifying an increase in sanctions to be imposed.

DISCIPLINE IMPOSED

43. Pursuant to Tenn. Sup. Ct. R. 9, § 8.4, and having considered the applicable provisions of the ABA Standards for Imposing Lawyer Sanctions, the Hearing Panel finds:

a. That Michael Scott Collins shall be suspended from the practice law for a period of three (3) years.

b. That Michael Scott Collins shall make restitution to Dr. Starr in the amount of \$27,500.00 or the Lawyers Fund for Client Protection, if applicable.

c. That Michael Scott Collins shall make restitution to Ms. Starr in the amount of \$2,103.00 or the Lawyers Fund for Client Protection, if applicable.

d. That Michael Scott Collins shall contact the Tennessee Lawyers Assistance Program ("TLAP") for evaluation. If TLAP determines that a monitoring agreement is appropriate, Mr. Collins shall comply with the terms and conditions of the TLAP monitoring agreement

e. That Michael Scott Collins' eligibility to petition for reinstatement to the practice of law shall be conditioned upon his having made restitution in full to Dr. Starr and Ms. Starr or the Lawyers Fund for Client Protection, if applicable; having timely contacted TLAP for an evaluation and full compliance with the terms and conditions of any monitoring agreement recommended by TLAP; and payment of all outstanding restitution previously ordered.

f. In the event Michael Scott Collins seeks reinstatement of his license to practice law, the Hearing Panel recommends that any reinstatement of Mr. Collins be conditioned upon his engaging a practice monitor approved by Disciplinary Counsel.

IT IS SO ORDERED.

August 23, 2013

Claudia S Jack
CLAUDIA JACK, CHAIR

Robert Bateman
ROBERT BATEMAN *by permission*
CSJ

Chris Pittman
CHRIS PITTMAN *by permission*
CSJ

NOTICE: This judgment may be appealed pursuant to Tenn. Sup. Ct. R. 9, § 1.3 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 27-8-106.