

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL A

IN RE: MICHAEL DAVID COLLINS
ARKANSAS BAR ID No. 97078
CPC Docket No. 2012-025

FILED

JUL 20 2012

**LESLIE W. STEEN
CLERK**

CONSENT FINDINGS AND ORDER

Michael David Collins is an attorney licensed to practice law in the State of Arkansas in 1997 and assigned Arkansas Bar Number 97078. Mr. Collins is also licensed to practice law in states other than Arkansas including Illinois, Missouri and Oklahoma. Mr. Collins is not licensed to practice law in the State of Virginia.

Mr. Collins represented Hamby & Hamby Wellness Clinic, PLLC and Jeffrey D. Hamby, MD. Hamby & Hamby Wellness Clinic is an Arkansas corporation. Jeffrey Hamby is an Arkansas resident. Hamby and Hamby and Dr. Hamby were named defendants in a legal matter filed in state court in Bland County, Virginia, *General Injectables & Vaccines, Inc. V. Hamby & Hamby Family Wellness Clinic, PLLC and Jeffrey D. Hamby MD*, Bland County Circuit Court Case No. CL09-84. The lawsuit was filed on November 16, 2009. The Hamby defendants had until December 16, 2009, to file a response. They turned the matter over to Mr. Collins, who wrote counsel for Plaintiff on December 7, 2009. Mr. Collins failed to file a timely response in the Virginia lawsuit.

On December 28, 2009, Mr. Collins caused an Answer to the Complaint to be filed in the *General Injectables* lawsuit in Bland County, Virginia, Circuit Court. Mr. Collins did not apply a Motion for Pro Hac Vice status or receive permission from the Bland County Circuit Court to appear as an attorney for Hamby and Hamby or Dr. Hamby. The Answer filed by Mr. Collins was not filed within the time permitted in Virginia to file an answer. On March 8, 2010, a

default judgment was entered against Hamby & Hamby Family Wellness Clinic, PLLC, and Jeffrey D. Hamby, M.D. in the amount of \$163,388.33, plus interest and attorney's fees of \$40,847.08.

The Hamby defendants learned of the judgment entered against them when a deputy of the Crawford County Sheriff's Office appeared at the clinic and informed the Hambys that the clinic would be subject to an upcoming sale. To prevent the sale from occurring, Hamby and Hamby Family Wellness Clinic, PLLC, filed for Chapter 11 Bankruptcy protection on November 15, 2010, in Case No. 10-bk-75847, now Case No. 12-bk-70205.

Hamby and Hamby Wellness Clinic was also a party in another lawsuit, *Dwight Payne Homes, Inc. v. Hamby & Hamby Family Wellness Clinic, PLLC and Jeffery and Tamara Hamby and Liberty Bank*, Crawford County Circuit Court Case No. CV-2009-624. The lawsuit concerned enforcement of a materialman's lien and was filed on September 21, 2009.

Mr. Collins filed an answer on behalf of the defendants. Opposing counsel provided Mr. Collins with a set of Interrogatories and Requests for Production. On February 22, 2010, a Motion to Compel was filed by opposing counsel. Opposing counsel filed a Request for Admissions to Jeffrey Hamby, Tamara Hamby, and Hamby and Hamby Family Wellness Clinic and Mr. Collins received a copy of the Request. On April 12, 2010, the Crawford County Circuit Court directed that Hamby and Hamby Wellness Clinic, PLLC, respond to the Interrogatories and Production of Documents within 15 days of the Order. Mr. Collins filed a Response to the Request for Production on May 25, 2010, which was beyond the time permitted under Rule 36 of the Arkansas Rules of Civil Procedure and, pursuant to the Rule, the requests were deemed admitted.

On July 9, 2010, opposing counsel filed a Motion for Partial Summary Judgment as the Requests for Admission were deemed admitted, as no response was filed within the time permitted under the Arkansas Rules of Civil Procedure, and no genuine issue of material fact existed. Mr. Collins filed a Response to the Motion for Summary Judgment on behalf of the defendants and a hearing was held. On October 28, 2010, the Court issued a letter opinion stating that the defendants had admitted that there was an outstanding balance owed to the Plaintiff.

On November 15, 2010, the Hambys employed new counsel. On March 29, 2011, a hearing was held on the amount of damages. On April 18, 2011, the Court issued a letter opinion finding in favor of the Plaintiff Payne in the amount of \$30,947.25

Following service of the formal complaint, Mr. Collins entered into discussion with the Executive Director which resulted in an agreement to discipline by consent pursuant to Section 20.B of the Arkansas Supreme Court Procedures Regulating Professional Conduct of Attorneys at Law (2011). Mr. Collins conditionally admitted to violation of Rules 1.1, 1.3, and 5.5(a) and proposed a sanction of a reprimand.

Upon consideration of the formal complaint and attached exhibits, admissions made by the respondent attorney, the terms of the written consent to discipline proposal, the approval of Panel A of the Committee on Professional Conduct, and the Arkansas Rules of Professional Conduct, the Committee on Professional Conduct finds:

1. Michael David Collins violated Rule 1.1 when he filed an answer on behalf of his clients, Hamby & Hamby Family Wellness Clinic, and Jeffrey Hamby, M.D., in a legal matter filed in Bland County, Virginia, Circuit Court knowing that he was not licensed to practice law in

Virginia and when the answer filed was untimely under Virginia law. Rule 1.1 requires that a lawyer provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

2. Michael David Collins violated Rule 1.3 when he failed to file a timely answer in Bland County, Virginia, Circuit Court on behalf of his clients, Hamby and Hamby Family Wellness Clinic, and Jeffrey Hamby, M.D., and when he failed to file a timely response to Interrogatories and Requests for Production of Documents on behalf of his clients, Hamby and Hamby Family Wellness Clinic, Jeffrey Hamby and Tamara Hamby, in the legal matter pending in Crawford County Circuit Court. Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

3. Michael David Collins violated Rule 5.5(a) when he filed pleadings in Bland County, Virginia, Circuit Court, a jurisdiction in which he was not licensed to practice law. Rule 5.5(a) states that a lawyer shall not practice law in a jurisdiction in violation of regulation of the legal profession in that jurisdiction.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel A, that MICHAEL DAVID COLLINS, Arkansas Bar No. 97078, be, and hereby is, REPRIMANDED, and assessed costs in the amount of FIFTY DOLLARS (\$50.00). All fines and 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
Steve Shults, Chair, Panel A

Date: July 20, 2012