

**BEFORE THE ARKANSAS SUPREME COURT  
COMMITTEE ON PROFESSIONAL CONDUCT  
PANEL B**

IN RE: **GARY R. SAMMONS**, Respondent  
Arkansas Bar ID # 90091  
CPC Docket No. 2014-001

**HEARING FINDINGS AND ORDER**

The formal charges of misconduct upon which this Findings and Order is based were developed from information provided to the Committee by Circuit Judge Marcia Hearnberger of Garland County on August 28, 2013. The information related to the representation of Crystal Stevens in 2013 by Respondent Gary R. Sammons, an attorney practicing primarily in Hot Springs, Garland County, Arkansas. On January 6, 2014, Respondent Sammons was served with a formal complaint, to which he filed a timely response. After a ballot vote decision by Panel A, Respondent requested a public hearing, which was conducted before Panel B on August 15, 2014, in Little Rock. The hearing Panel consisted by Steven Crane (Chair), James Dunham, Henry Hodges, Michael Mullally, Sylvia Orton, and Carolyn Morris, regular Panel B members, and Michael Mayton of Panel C, substituting for Niki Cung who was unavailable on the hearing date. Stark Ligon represented the Office of Professional Conduct. Mr. Sammons appeared pro se. Witnesses testifying were Circuit Judge Marcia Hearnberger and Mr. Sammons.

The proof and testimony at the hearing indicates that:

1. On June 3, 2013, in Garland County Circuit Court No. 26DR-06-170, Stevens v. Stevens, Ralph Stevens, represented by Tylar Tapp, filed a Petition for Change of Custody.
2. On June 28, 2013, Gary Sammons (“Sammons”) filed an Answer for Crystal

Stevens, contesting the change of custody of the parties' minor son to the father.

3. By notice dated July 24, 2013, and addressed to both counsel, the court set a forty-five minute temporary hearing on August 14, 2013, at 1:15 p.m. in the Stevens case.

4. On August 14, 2013, at 1:04 p.m., eleven minutes before the scheduled temporary hearing, Sammons filed a motion to withdraw, stating he had not been fully retained, had been paid nothing, and had expended 3.5 hours, billed at a total of \$525.00, on the case.

5. On August 14, 2013, the temporary hearing was conducted with Sammons in attendance. The transcript was attached to the Complaint. Though specifically not relieved or allowed to withdraw, Sammons declined to participate in the hearing for his client, even though directed to do so by the trial court.

6. By letter of August 28, 2013, the trial judge, Honorable Marcia Hearnberger, referred Sammons' conduct at the hearing to the Committee.

7. By letter opinion of August 29, 2013, the trial court found in favor of Mr. Stevens and granted a temporary change of custody to Mr. Stevens.

8. By Order filed August 30, 2013, the trial court appointed an attorney ad litem for the Stevens' minor child.

9. A Temporary Order was filed September 11, 2013, granting Mr. Stevens temporary custody of the minor child.

10. On September 23, 2013, counsel for Mr. Stevens filed a Motion to Compel, served on Sammons, raising the issue of Interrogatories to Ms. Stevens served July 24, 2013, on Sammons to which responses had not been made.

11. On October 3, 2013, Sammons filed a Response to Motion to Compel.

12. On October 3, 2013, Sammons filed a Motion for Reconsideration, asking the trial court to reconsider its earlier decision to not allow Sammons to withdraw from Ms. Stevens' case.

13. By Order filed October 7, 2013, the court granted Sammons' motion to withdraw. There has been no further activity in the case since then.

14. In December 2012, several months prior to the August 2013 hearing in the Stevens case, Sammons had similarly filed a motion to withdraw minutes before a parental termination case hearing in a Pulaski County case, where his client was L.L., and Sammons did not attend the hearing. L.L. filed a grievance with the Office of Professional Conduct, which contacted Sammons about the matter. No formal complaint was filed by the Office.

15. In addition to non-payment of his fee by his client in the Stevens case, in his Response to the Complaint and at hearing Sammons testified that he believed his client to also be impaired by drugs when he met with her about one hour before the hearing and he was in an ethical dilemma as to how to proceed, not wanting to be party to what he perceived would possibly be perjured testimony by his client if she testified. He admitted he did not give the trial judge any hint at court that his client may be impaired. His client testified and attempted to cross-examine the opposing party. Judge Hearnberger testified she has no reason from what she saw and heard in the hearing to believe Crystal Stevens was impaired during the hearing.

16. At the conclusion of the hearing, both parties were ordered to submit to a hair follicle drug test by Friday afternoon, August 16, about forty-eight (48) hours after court. Crystal Stevens tested positive from her test.

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

A. By a unanimous vote, that the conduct of Gary R. Sammons violated Rule 1.16(c), in that without notice to his client, the trial court, and opposing counsel, Sammons filed his motion to withdraw as counsel for Crystal Stevens less than fifteen minutes before the start of the hearing on temporary change of custody of the minor child away from her, then sat silent and offered her no assistance at the hearing, even after the trial judge told him he was not relieved from his obligations to Stevens as her counsel. Arkansas Rule 1.16(c) requires that a lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

B. By a unanimous vote, that the conduct of Gary R. Sammons violated Rule 1.16(d) in that Sammons filed his motion to withdraw as counsel for Crystal Stevens less than fifteen minutes before the start of the hearing on temporary change of custody of the minor child away from her, then sat silent and offered her no assistance at the hearing, even after the trial judge told him he was not relieved from his obligations to Stevens as her counsel, thereby failing to take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client and allowing time for employment of other counsel. Arkansas Rule 1.16(d) requires that, upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving

reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

C. By a unanimous vote, that the conduct of Gary R. Sammons violated Rule 3.4(c) in that at the hearing on August 14, 2013, Sammons was informed by the trial court that, just because he claimed he had not been paid by his client, he was not relieved from his obligation to represent his client Crystal Stevens at the hearing, yet Sammons disobeyed the court's verbal order, was silent on behalf of his client, and Sammons even encouraged the court to report his conduct to the Committee on Professional Conduct, which was done. In view of AR Rule 6.1 that an Arkansas lawyer has an obligation to provide at least limited legal services to those unable to pay, Sammons had no valid basis to refuse to represent Ms. Stevens at the August 14, 2013, temporary hearing. Arkansas Rule 3.4(c) requires that a lawyer shall not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists.

D. By a unanimous vote, that the conduct of Gary R. Sammons violated Rule 8.4(d) in that Sammons accepted Crystal Stevens as a client and filed an Answer for her on June 28, 2013, then abandoned her as her counsel at the August 14, 2013, hearing on temporary custody of her minor child, even though the court told Sammons at the hearing he was not relieved as counsel for Ms. Stevens, conduct by Sammons that was prejudicial to the administration of justice in the Stevens case. Arkansas Rule 8.4(d) provides that it is professional misconduct for a lawyer to 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, by unanimous vote of its Panel B, that Respondent **GARY R. SAMMONS**, Arkansas Bar No. 90091, be, and he hereby is, **REPRIMANDED, FINED \$5,000.00**, and assessed minimum costs of \$50.00, the court reporter's \$185.00 hearing appearance fee, and a witness fee/expense of \$56.50 for his conduct in this matter, totaling \$5,291.50. The fine and costs assessed herein, totaling \$5,291.50, shall be payable by cashier's check or money order payable to the "Clerk, Arkansas Supreme Court" delivered to the Office of Professional Conduct with thirty (30) days of the date this Findings and Order is filed of record with the Clerk of the Arkansas Supreme Court.

In addition to the sanction, fine, and costs assessed, the Respondent is also directed and ordered to attend and complete within twelve (12) months of the date of filing of this order a continuing legal education course of study, to be selected by Respondent but with prior approval by the Office of Professional Conduct, related to the proper manner by which an attorney withdraws from a litigated case. The Panel advises Respondent that his determination of an "ethical dilemma" was not correct. Upon denial of his motion to withdraw, his obligation was to represent his client. He was not required to explain to the judge his precise ethical reasons for seeking to withdraw. AR Rule 1.16.

The Respondent is informed he has thirty (30) calendar days after filing of this Findings and Order with the Supreme Court Clerk within which to file with the Office of Professional Conduct any notice of appeal to the Arkansas Supreme Court under Section 12 of the Court's Procedures.

ARKANSAS SUPREME COURT COMMITTEE  
ON PROFESSIONAL CONDUCT - PANEL B

By: /s/ Stephen R. Crane, Chairperson, Panel B

Date: September 16, 2014

Original filed with the Arkansas Supreme Court Clerk  
on September 18, 2014.

Prepared by Stark Ligon, #75077