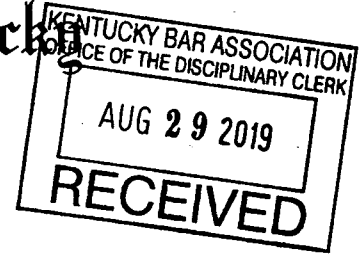


TO BE PUBLISHED

Supreme Court of Kentucky



2010-SC-000064-KB

KENTUCKY BAR ASSOCIATION

MOVANT

V.

IN SUPREME COURT

WILLIAM O. AYERS

RESPONDENT

OPINION AND ORDER

William Ayers was admitted to practice law in Kentucky on October 21, 1994. On January 28, 2010, Ayers was convicted on five felony counts of failure to file a tax return in violation of KRS¹ 141.990(5). Pursuant to SCR² 3.166(1), he was “automatically suspended from the practice of law in [the] Commonwealth.” On May 20, 2010, Ayers was suspended for thirty days for failing to refund an unearned fee.³ The order suspending Ayers stated that Ayers was suspended for thirty days “from the date of this order.” Ayers returned the unearned fee to the client but has still failed to pay \$1,385.45 in disciplinary proceedings costs as required by the order. On March 24, 2011,

¹ Kentucky Revised Statutes.

² Rules of the Kentucky Supreme Court.

³ *Kentucky Bar Ass’n v. Ayers*, 311 S.W.3d 722 (Ky. 2010).

Ayers received another thirty-day suspension for practicing law without a license after he was convicted of the five felonies in 2010.⁴ The order states that his suspension was to “begin on the date of the entry of this order to run consecutively from any other discipline.” Ayers has yet to pay the disciplinary proceedings costs of \$313.98.

No further action was taken by the KBA or Ayers. On August 22, 2018, the Sixth Circuit reversed Ayers’s 2010 felony convictions.⁵ The United States Supreme Court denied the Commonwealth’s petition for certiorari on March 19, 2019, making the Sixth Circuit’s opinion final. Ayers now petitions this Court to reinstate him to the Kentucky bar in accordance with our previous decisions in *Kentucky Bar Ass’n v. Barger*, 98 S.W.3d 861, 862 (Ky. 2003) and *Kentucky Bar Ass’n v. Hays*, 220 S.W.3d 688 (Ky. 2006). Based on the specific facts of this case, and Ayers’s failure to pay costs in two other disciplinary proceedings, this Court orders that Ayers’s automatic suspension under SCR 3.166(1) be dissolved. However, because of Ayers’s failure to pay costs for his May 2010 suspension, his March 2011 suspension has not begun to run. The March 2011 suspension will only begin to run upon payment of his costs with interest from the May 2010 court order. Additionally, Ayers must pay his unpaid costs with interest from his March 2011 disciplinary proceedings before he can reapply for admission under SCR 3.510(4).

⁴ *Kentucky Bar Ass’n v. Ayers*, 336 S.W.3d 113 (Ky. 2011).

⁵ *Ayers v. Hall*, 900 F.3d 829 (6th Cir. 2018).

I. Analysis.

In his petition, Ayers failed to mention his two thirty-day suspensions, and merely sought automatic reinstatement under *Barger* and *Hays*. In *Hays*, this Court held that when “the underlying basis for the automatic suspension has been overturned . . . the suspension should be dissolved.” 220 S.W.3d at 688. In *Dunn v. Kentucky Bar Ass’n*, 160 S.W.3d 347, 349 (Ky. 2005), this Court held that “[a]n automatic suspension pursuant to SCR 3.166 is clearly a disciplinary suspension because it is based on misconduct of the attorney.” However, because of the Sixth Circuit’s reversal, Ayers is “returned to his pre-suspension status[,]” is as if the suspension never existed. *Hays*, 220 S.W.3d at 689 (quoting *Barger*, 98 S.W.3d at 862). Therefore, if Ayers’s automatic suspension under SCR 3.166(1) was the only current disciplinary proceeding against Ayers, his bar membership would be restored by order of this Court.⁶ However, Ayers has yet to pay costs in either of his two thirty-day suspension proceedings, and his March 24, 2011 suspension was set to “run consecutively from any other discipline.”

The KBA argues that the March 2011 suspension has not yet run because the suspension was to “run consecutively from any other discipline.” This argument has merit as this Court in 2011 noted that Ayers had yet to pay

⁶ In a typical case such as *Dunn*, the KBA will institute proceedings against an attorney once the attorney has been convicted of a felony. See 160 S.W.3d at 348. The automatic suspension under SCR 3.166 becomes a placeholder until the KBA’s proceedings are complete and permanent discipline is ordered by this Court. Once that suspension (or other discipline) is imposed, the attorney can apply for reinstatement in accordance with SCR 3.510. The record does not reflect that this process occurred in Ayers’s case.

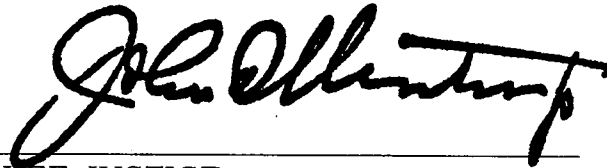
the costs of his May 2010 proceedings. *Ayers*, 336 S.W.3d at 115. In *Dunn*, we opined that a suspension can be extended in perpetuity by an attorney's own actions, including the failure to pay costs. 160 S.W.3d at 349–50. *Dunn* held that “if by delay in paying the bonds or costs of original proceedings, the lawyer's suspension has persisted longer than 5 years, SCR 3.510(4) will control.” *Id.* at 350. *Ayers* has never paid the costs of his May 2010 thirty-day suspension, and as a result, his March 2011 suspension has not yet begun to run. He has effectively turned his thirty-day suspension into one that has lasted longer than nine years. Accordingly, *Ayers*'s only avenue for reinstatement is through SCR 3.510(4)—the rule dealing with reinstating an attorney after five or more years of suspension.

Therefore, it is hereby ORDERED that:

1. William O. *Ayers*'s January 29, 2010, automatic suspension is dissolved.
2. *Ayers* is directed to pay the costs from his May 20, 2010 Order, with interest in accordance with SCR 3.450 and KRS 360.040 and must file an application for reinstatement under SCR 3.510(4).
3. Once costs for the May 20, 2010 Order have been paid with interest, *Ayers*'s March 24, 2011, thirty-day suspension will begin to run and will expire on its own terms upon the filing of an affidavit of compliance with the terms of the suspension, including the payment of the disciplinary costs assessed in the March 24, 2011 Order with interest in accordance with SCR 3.450 and KRS 360.040.

All sitting. All concur.

ENTERED: August 29, 2019.

A handwritten signature in black ink, appearing to read "John Ollentrop". The signature is written in a cursive style with a horizontal line extending from the end of the name.

CHIEF JUSTICE

TO BE PUBLISHED

Supreme Court of Kentucky

2010-SC-000220-KB

KENTUCKY BAR ASSOCIATION

V.

IN SUPREME COURT

WILLIAM OTTO AYERS

RESPONDENT

OPINION AND ORDER

Respondent, William Otto Ayers, stands accused of violating SCR 3.130-1.16(d) for failing to return a portion of a fee after his representation of a client was terminated. The trial commissioner has recommended that Ayers, who was admitted to practice law in Kentucky on October 21, 1994, whose Bar Roster Address is 821 West Main Street, Louisville, Kentucky 40202, and whose KBA Member Number is 85512, be found to have violated SCR 3.130-1.16(d) and suspended from the practice of law in this Commonwealth for thirty days. This Court, finding no reason for further review, adopts the recommendation of the trial commissioner.

On or about June 18, 2005, Frances Parella hired Respondent to represent her daughter, Bridget Elliott, on two criminal matters in the circuit court for a fee of \$1,200. Though there was no written fee agreement, evidence showed that the fee was part of a "flat fee" arrangement intended to cover Respondent's services for two circuit court matters.

During the course of his representation, Respondent visited the client while she was incarcerated and filed pleadings on her behalf. On or about September 18, 2005, before Ms. Elliot's case was over, Respondent was "fired" from the representation, not because of his work performance but because of Ms. Parella's "gut instinct."

At that time, both Ms. Parella and Respondent agreed that \$500 of the fee would be refunded. At a later date, Respondent "changed his mind," deciding that he was entitled to the full fee and would therefore not refund any portion of it. Respondent informed Ms. Parella of his decision by telephone, not in writing.

Subsequently, a bar complaint was filed and the Inquiry Commission issued a one-count charge against Respondent alleging a violation of SCR 3.130-1.16(d), which at the time read,

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 charge indicated that the violation occurred when Respondent failed to refund the \$500 to which he had agreed.

The matter was referred to a trial commissioner, who held an evidentiary hearing and received briefs from both bar counsel and Respondent. Respondent argued that he had earned the entire fee because it was a non-refundable, "flat fee" arrangement and that SCR 3.130-1.16(d) applies only to where the attorney, not the client terminates the representation.

Following the hearing and review of the briefs, the trial commissioner submitted a report that included findings of fact consistent with those described above. The report also concluded that Respondent violated SCR 3.130-1.16(d) for failing to refund the \$500 that he had promised to Ms. Parella, that Respondent's legal claim of the inapplicability of SCR 3.130-1.16(d) was incorrect because subsection (a)(3) of the rule clearly contemplates situations where the "the lawyer is discharged," and that Respondent's refusal to return the money was particularly egregious because he had agreed to the refund and therefore had no basis for failing to make it. Finally, based on these findings and conclusions, the trial commissioner recommended that Respondent be suspended from the practice of law for thirty days and be ordered to pay the \$500 refund to Ms. Parella.

The trial commissioner's recommendation was made after considering Respondent's prior disciplinary record, which consists of an automatic suspension under SCR 3.166 for conviction of one or more felonies on January 29, 2010, as confirmed and described in *Kentucky Bar Association v. Ayers*, No. 2010-SC-000064-KB, --- S.W.3d --- (Ky. Mar. 18, 2010).

No appeal of the trial commissioner's recommendation, as allowed under SCR 3.360, .365, and .370, was sought. As a result, this matter was submitted directly to this Court without going before the Board of Governors. See SCR 3.360(4). Because the trial commissioner's findings and conclusions are supported by the record and the law, and because the recommended sanction is appropriate in light of Respondent's history of prior discipline and the seriousness of the charges, this Court elects not to review the recommendation

of the trial commissioner as allowed under SCR 3.370(9). The recommendation of the trial commissioner is therefore adopted pursuant to SCR 3.370(10).

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

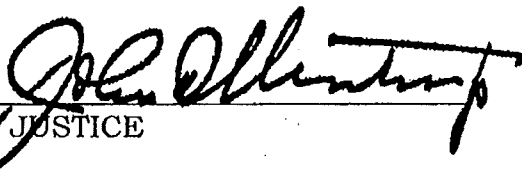
(1) Respondent, William Otto Ayers, is suspended from the practice of law in the Commonwealth of Kentucky for thirty days from the date of this Order.

(2) Respondent shall refund \$500 in unearned fees to Frances Parella if he has not done so already. Respondent shall confirm his repayment of the unearned portion of the fee by written notice to the Office of Bar Counsel.

(5) In accordance with SCR 3.450, Respondent is directed to pay all costs associated with these disciplinary proceedings against him, said sum being \$1,385.45, for which execution may issue from this Court upon finality of this Opinion and Order.

All sitting. All concur.

ENTERED: May 20, 2010.


CHIEF JUSTICE

TO BE PUBLISHED

Supreme Court of Kentucky

2010-SC-000064-KB

MAR 18 2010

KENTUCKY BAR ASSOCIATION

MOVANT

V.

IN SUPREME COURT

WILLIAM O. AYERS

RESPONDENT

ORDER CONFIRMING AUTOMATIC SUSPENSION

The Kentucky Bar Association (KBA) moved for an order confirming the automatic suspension of William O. Ayers, KBA member number 85512, pursuant to SCR 3.166. Ayers was admitted to practice law in this Commonwealth on October 21, 1994, and his bar roster address is 821 West Main Street, Louisville, Kentucky 40202. The Court grants the KBA's motion, in accordance with SCR 3.166, because Respondent was convicted of five felonies in the Jefferson Circuit Court.

Respondent was charged with five felony counts for failing to file a tax return, in violation of KRS 141.990(5). On January 28, 2010, the jury convicted Respondent of all five counts. Respondent is scheduled for sentencing on March 10, 2010. The KBA's motion includes a copy of the jury's verdict forms (which find Respondent guilty of the five felonies), and the court's Order Upon Jury Verdict.

Pursuant to SCR 3.166(1),

Any member of the Kentucky Bar Association who . . . is convicted by a judge or jury of a felony, in this State or in any other jurisdiction, shall be automatically suspended from the practice of law in this Commonwealth. "Felony" means an offense for which a sentence to a term of imprisonment of at least one (1) year is authorized by law. . . . The suspension shall take effect automatically beginning on the day following the . . . finding of guilt by a judge or jury or upon the entry of judgment whichever occurs first. The suspension under this rule shall remain in effect until dissolved or superseded by order of the Court. Within thirty (30) days of the plea of guilty, or the finding of guilt by a judge or jury, or entry of judgment, whichever occurs first, the suspended attorney may file a motion with the Clerk of the Supreme Court of Kentucky setting forth any grounds which the attorney believes justify dissolution or modification of the suspension.

The offenses for which Respondent was convicted were felonies as defined by SCR 3.166(1). That rule defines a felony as "an offense for which a sentence to a term of imprisonment of at least one (1) year is authorized by law." Failing to file a tax return is a Class D felony, *see* KRS 141.990(5), for which a sentence between one and five years is authorized, *see* KRS 532.060(2)(d). Thus, due to this conviction, Respondent was automatically suspended from the practice of law by action of SCR 3.166(1) on January 29, 2010, the day after his conviction. Respondent did not file a motion challenging or seeking to modify his suspension. The purpose of this order is to memorialize and confirm the fact that Respondent was automatically suspended from the practice of law in Kentucky by the action of SCR 3.166 beginning one day after his conviction.

Therefore, it is hereby ordered that:

1. Respondent's automatic suspension from the practice of law in the Commonwealth of Kentucky, effective January 29, 2010, is confirmed and shall

continue until dissolved or superseded by subsequent order of this Court;

2. This order shall be published for the information and benefit of all members of the bar and public;

3. Pursuant to SCR 3.166(4), Respondent shall notify all his clients in writing of his inability to continue to represent them and shall furnish copies of all such letters to the Director of the KBA, shall make arrangements to return all active files to his clients or new counsel, shall return all unearned attorney fees and client property to his clients, and shall advise the Director of such arrangements, if Respondent has not already done so as required by the Rule within ten days of the conviction by jury;

4. Pursuant to SCR 3.166(5), if he has not done so already, Respondent shall immediately, to the extent possible, cancel and cease any advertising activities in which he is engaged; and

5. Pursuant to SCR 3.166(6), disciplinary proceedings against Respondent shall be initiated by the Inquiry Commission pursuant to SCR 3.160, unless already begun or unless he resigns under terms of disbarment.

All sitting. All concur.

ENTERED: March 18, 2010.


CHIEF JUSTICE

TO BE PUBLISHED

Supreme Court of Kentucky

2010-SC-000811-KB

FINAL

DATE 4-5-11 211A Grant D.C.

KENTUCKY BAR ASSOCIATION

MOVANT

V.

IN SUPREME COURT

WILLIAM O. AYERS

RESPONDENT

OPINION AND ORDER

The Respondent, William O. Ayers, KBA Member No. 85512, has a bar roster address of 821 West Main, Louisville, Kentucky 40202. The Kentucky Bar Association (KBA), moves the Court, pursuant to Ayer's default under SCR 3.210, to impose a sanction of suspension from the practice of law for a period of thirty days, consecutive to any other discipline imposed, as he unlawfully practiced law as set forth in KBA file No. 18409. We now adopt the KBA's motion and impose such sanction for the reasons set forth below.

Ayers was admitted to the practice of law in 1994. On January 28, 2010, he was found guilty by jury verdict of five felony counts of Failure to File a Tax Return. Pursuant to SCR 3.166(1), any attorney convicted by a judge or jury of a felony "shall be automatically suspended from the practice of law" The

suspension takes effect “automatically beginning on the day following the plea of guilty or finding of guilt by a judge or jury or upon the entry of judgment whichever occurs first.” *Id.* By Order entered March 18, 2010, we confirmed that Ayers was automatically suspended effective January 29, 2010. This suspension remains in effect.

According to a Bar Complaint from Jefferson Circuit Court Judge Audra J. Eckerle, Ayers appeared in her court on February 1, 2010 in a criminal matter. Upon inquiry from both the Court and the prosecuting attorney, Ayers asserted his belief he could continue to represent persons until otherwise notified by the KBA and that, in his opinion, a felony conviction could not occur until the sentence was imposed. He also served a pleading on the Commonwealth’s Attorney in another matter on January 29, 2010.

In his Response, Ayers reiterated his belief that he was not suspended because he had not been notified by the KBA and the conviction was not final. He also claimed that he did not practice law, but merely “attempted to represent an individual who had previously paid for his services.” According to Ayers, he immediately ceased practicing law upon receiving notice from the KBA.

Judge Eckerle then submitted Supplemental Comments, stating that Ayers continued to persist in his efforts to practice law despite notification by both the Court and the prosecutor. Judge Eckerle also asserted that attempting to represent an individual, as Ayers admits he did, is “the essence of practicing law.”

The Charge was issued June 29, 2010 and sent via certified mail to Ayers' bar address.¹ The mailing was returned unclaimed on August 26, 2010. On August 30, 2010, service was made upon the Executive Director pursuant to SCR 3.175(2). The Director subsequently sent notification via certified mail to Ayers' bar address, which was also returned unclaimed on September 28, 2010.

On October 7, 2010, the Office of Bar Counsel sent a letter to Ayers' bar address advising him that his Answer to the Charge had not been received. Apparently receiving this letter, Ayers contacted the Disciplinary Clerk and filed a Motion for Permission to File a Late Answer on October 13, 2010. The KBA then filed a Response and Ayers' Motion was denied by the Inquiry Commission by Order entered November 8, 2010. Ayers filed an objection to the Order of Submission entered November 9, 2010, which was subsequently overruled.

Based on the above facts, Count I of the Charge alleged that Ayers violated SCR 3.130-5.5(a), which provides that "[a] lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so." Count II alleged that Ayers violated SCR 3.130-5.5(b)(2), which states that "[a] lawyer who is not admitted to practice in this jurisdiction shall not . . . (2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction."

As Ayers did not answer the above-described charges, he was before the Board of Governors ("Board") of the KBA by default. The Board, by a vote of

¹ Ayers' bar address was, and remains, 821 West Main, Louisville, Kentucky 40202.

16-0 (with one member recused), found him guilty of both Counts I and II. The Board thus recommends that Ayers be found guilty of violating both counts in KBA file No. 18409.

After the Board found Ayers guilty, they considered an appropriate discipline, examining his prior discipline, mitigating factors, and applicable law. Specifically, on March 18, 2010, we confirmed his automatic suspension effective January 29, 2010 following his felony convictions. On May 20, 2010, the Court entered an Order suspending Ayers for thirty days for violating SCR 3.130-1.16(d), which provides that, “[u]pon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as . . . refunding any advance payment of fee . . . that has not been earned” The Court ordered Ayers to return \$500 in unearned fees, as well as to pay the costs of the proceeding in the amount of \$1,385.45. The KBA objected to his automatic reinstatement on May 27, 2010, as the costs of the proceeding have not been paid.

The Board recommends that Ayers be suspended from the practice of law for a period of thirty days consecutive to any other discipline imposed. The Board also recommends that the costs of this proceeding as certified by the Disciplinary Clerk, \$313.98, should be assessed against and paid by Ayers as required by SCR 3.450.

Accordingly, having reviewed the findings of fact, conclusions of law, and the recommendations of the Board, we now accept the Board's recommendations and enter such an order reflecting Ayers' thirty day

suspension from the practice of law to run consecutively to any other discipline imposed and order him to pay all costs.

Thus, it is ORDERED that:

1. William O. Ayers, KBA Member No. 85512, is suspended from the practice of law for thirty days to begin on the date of the entry of this order to run consecutively from any other discipline.

2. In accordance with SCR 3.450, Ayers is directed to pay all costs, in the amount of \$313.98, associated with this proceeding for which execution may issue from this Court upon finality of this order.

All sitting. All concur.

ENTERED: March 24, 2011.


CHIEF JUSTICE