

Supreme Court of Kentucky

2011-SC-000744-KB

KENTUCKY BAR ASSOCIATION

MOVANT

V.

IN SUPREME COURT

AUG 23 2012

WILLIAM ERIC MINAMYER

RESPONDENT

OPINION AND ORDER

This Court imposed reciprocal discipline (pursuant to SCR 3.435(4)) upon Respondent, William Eric Minamyer,¹ earlier this year in *Kentucky Bar Ass'n v. Minamyer*, 365 S.W.3d 546 (Ky. 2012). The Supreme Court of Ohio had already suspended Minamyer from the practice of law for a period of one year for violating several of Ohio's Rules of Professional Conduct.² *Butler Cty. Bar Ass'n v. Minamyer*, 953 N.E.2d 315, 320 (Ohio 2011). His Ohio suspension was probated for a period of one year so long as he adhered to the conditions set by that court. *Id.* at 320-21.

¹ Minamyer was admitted to the practice of law on July 12, 1995, and his roster address is 9832 Farmstead Drive, Loveland, Ohio 45140. His KBA Member Number is 85774.

² In that case, Minamyer had: failed to keep a client reasonably apprised of her case; failed to act with reasonable diligence in representing her; engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation; and failed to inform his client that he did not maintain professional-liability insurance (a requirement in Ohio, but not in Kentucky).

We imposed reciprocal discipline, mirroring (with one exception) the conditions of his Ohio suspension, ordering that:

William Eric Minamyer is hereby retroactively suspended from the practice of law in Kentucky for a period of one year, probated for one year, effective July 28, 2011, on condition that he: (1) limit his practice to domestic relations, general litigation, and labor law; (2) continue to follow the recommendations of his treating professionals, including ongoing pharmacological management by his treating physician; and (3) commit no further misconduct.³ His suspension is to run concurrently with the one-year probated suspension imposed by the Supreme Court of Ohio.

KBA v. Minamyer, 365 S.W.3d at 548.

Because Minamyer failed to pay the costs associated with his Ohio disciplinary proceeding, the Supreme Court of Ohio held him in contempt, revoked the probation of its original order of suspension, and suspended him from the practice of law for one year, beginning April 24, 2012. The KBA petitioned this Court for further reciprocal discipline pursuant to SCR 3.435(4), and Minamyer failed to show cause why such should not be imposed.

Pursuant to SCR 3.435, where an attorney is subjected to professional discipline in another jurisdiction, this Court “shall impose the identical discipline” unless the attorney proves by substantial evidence one of the following: (1) a lack of jurisdiction in the out-of-state proceedings, (2) fraud in the out-of-state proceedings, or (3) that the misconduct warrants substantially different discipline in this State. “In all other respects, a final adjudication in

³ “We decline[d] to impose one of the conditions imposed by the Supreme Court of Ohio—that Minamyer be monitored by an attorney for his practice in Kentucky. We believe[d] that Ohio’s monitor [would] adequately supervise Minamyer’s practice and that supervision by two attorneys, one in Ohio and one in Kentucky, [was] unnecessary.” *Minamyer*, 365 S.W.3d at 548 n.3.

another jurisdiction that an attorney has been guilty of misconduct shall establish conclusively the misconduct for purposes of a disciplinary proceeding in this State.” SCR 3.435(4)(c).

In this case, Minamyner does not allege that the Supreme Court of Ohio lacked jurisdiction or that its proceedings were tainted by fraud. Nor does he suggest that his misconduct warrants substantially different discipline in the Commonwealth. As a result, pursuant to SCR 3.435, this Court should impose reciprocal discipline identical to that imposed by the Supreme Court of Ohio.

While he does not show adequate cause, he does, however, offer mitigating factors. Minamyner suffered a concussion in an automobile accident on October 20, 2011. This injury was made more serious by his medical history of a traumatic brain injury (suffered when the Navy helicopter in which he was a riding crashed in the conflict in the Middle East in 2002). He has not made an appearance in any Court in Kentucky since his automobile accident. He also offers in mitigation the fact that his failure to pay the costs of his Ohio disciplinary hearing is due to an inability to pay; and that he currently has a pending bankruptcy case in the Southern District of Ohio.

Given the mitigating circumstances in this case, we believe it is appropriate to impose Minamyner’s reciprocal discipline retroactive to the date it was imposed by the Supreme Court of Ohio, April 24, 2012. *See Kentucky Bar Ass’n v. Harwood*, 341 S.W.3d 85, 88 (Ky. 2011) (imposing retroactive reciprocal discipline based on mitigating factors).

Accordingly, it is hereby ORDERED as follows:

- (1) William Eric Minamyer is subject to reciprocal discipline in Kentucky for the unprofessional conduct he committed in Ohio;
- (2) Minamyer is hereby retroactively suspended from the practice of law in Kentucky for a period of one year, effective April 24, 2012;
- (3) Pursuant to SCR 3.390, Minamyer shall, within ten days from the entry of this Opinion and Order: (a) notify, in writing, all clients of his inability to represent them, and of the necessity and urgency of promptly retaining new counsel; (b) notify, in writing, all courts in which he has matters pending of his suspension from the practice of law; and (c) to the extent possible, immediately cancel and cease any advertising activities in which he is engaged; and
- (4) Minamyer shall pay all costs, if any, associated with these proceedings, for which execution may issue from this Court upon certification of costs by the Disciplinary Clerk of the KBA.

All sitting. All concur.

ENTERED: August 23, 2012.


CHIEF JUSTICE

TO BE PUBLISHED

Supreme Court of Kentucky

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KENTUCKY BAR ASSOCIATION

MAY 21 2012

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V.

IN SUPREME COURT

WILLIAM ERIC MINAMYER

RESPONDENT

OPINION AND ORDER

The Respondent, William Eric Minamyer, KBA Member No. 85774,¹ was suspended from the practice of law by the Supreme Court of Ohio for a period of one year. *Butler Cty. Bar Ass'n v. Minamyer*, 953 N.E.2d 315, 320 (Ohio 2011). However, Minamyer's entire suspension was probated for a period of one year on condition that he (1) be supervised by a monitor, (2) limit his practice to domestic relations, general litigation, and labor law, (3) continue to follow the recommendations of his treating professionals, including ongoing pharmacological management by his treating physician, and (4) commit no further misconduct. *Id.* at 320-21.

Based on the discipline imposed by the Supreme Court of Ohio, the KBA petitioned this Court for reciprocal discipline pursuant to SCR 3.435. Having reviewed Minamyer's response to the KBA's petition, we impose reciprocal discipline retroactive to July 28, 2011.

¹ Minamyer was admitted to the practice of law on July 12, 1995, and his roster address is 9832 Farmstead Drive, Loveland, Ohio 45140.

I. BACKGROUND

The facts underlying Minamyers Ohio suspension stem from conduct related to a single client's case. The facts, as set forth by the Supreme Court of Ohio, are as follows:

[I]n April 2006, [Minamyers] filed a complaint on the [client]'s behalf in the Butler County Court of Common Pleas. Although [Minamyers] received notice of and participated in a mediation session and unsuccessfully opposed defendant's counsel's motion for leave to withdraw as counsel, he failed to submit a pretrial statement or appear at the scheduled pretrial on August 30, 2007. And in September 2007, the trial court granted the defendant's unopposed motion to dismiss the complaint.

When [Minamyers] learned of the dismissal, he advised the [client] that she did not need to appear for trial, without explaining that her case had been dismissed. From September to December 2007, when the [client] called [Minamyers] to discuss her case, he told her that he would send her something in the mail, but he never did. In December 2007, the [client] received a statement of court costs due and learned for the first time that her complaint had been dismissed.

[Minamyers] admitted that he had failed to advise the [client] that he did not carry malpractice insurance but advanced various excuses for his neglect, including the misdirection of his mail by the court, an office move, and an illness. He offered no documentary evidence to corroborate his testimony.

In its December 18, 2009 report granting relator's motion for default and in its December 9, 2010 report on remand, the [Board of Commissioners on Grievances and Discipline] found that [Minamyers] had violated DR 1-104 and Prof.Cond.R. 1.4(c) (both requiring a lawyer to inform the client if the lawyer does not maintain professional-liability insurance),^[2] DR 6-101(A)(3) and

² Kentucky's Rules of Professional Conduct do not require attorneys to advise their clients regarding their insurance status. However, we have previously issued reciprocal discipline for violation of Ohio Rule 1.4(c) based on SCR 3.130-3.4(c), which prohibits a lawyer from "knowingly disobey[ing] an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists." See *Kentucky Bar Ass'n v. Trainor*, 277 S.W.3d 604, 605 (Ky. 2009).

Prof.Cond.R. 1.3 (both requiring a lawyer to act with reasonable diligence in representing a client), Prof.Cond.R. 1.4(a)(3) (requiring a lawyer to keep the client reasonably informed about the status of a matter), Prof.Cond.R. 1.4(a)(4) (requiring a lawyer to comply as soon as practicable with reasonable requests for information from the client), and DR 1-102(A)(4) and Prof.Cond.R. 8.4(c) (both prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

Id. at 317-18.

Based upon this misconduct, the Board recommended that Minamyer be suspended from the practice of law for two years, "with the second year stayed for monitored probation." *Id.* at 317. However, after considering the mitigating evidence produced by Minamyer, the Supreme Court of Ohio declined to adopt the recommended sanction. *Id.* at 320. Instead, it imposed a one-year suspension probated upon the conditions enumerated above. *Id.* at 320-21. Among the mitigating evidence the court considered were the following facts: (1) that Minamyer had suffered a head injury during a Navy helicopter crash in 2002; (2) that Minamyer had been diagnosed with a traumatic brain injury, depression, and PTSD; (3) that Minamyer has received substantial treatment for his diagnosed conditions; (4) that Minamyer has participated in rehabilitation programs to improve his memory; (5) that this is the first disciplinary action taken against Minamyer in his over 30 years of practice; and (6) that Minamyer expressed genuine remorse and contrition. *Id.* at 319, 320.

Following the Ohio proceedings, upon motion by the KBA, this Court ordered Minamyer to show cause why reciprocal discipline should not be

imposed in accordance with SCR 3.435. In his response to the show cause order, Minamyler does not contest the validity of the Ohio proceedings. Instead, he requests that this Court stay any suspension it imposes upon him pending the completion of his year of monitoring in Ohio. In the alternative, Minamyler requests that this Court impose discipline identical to that imposed by the Supreme Court of Ohio.

II. ANALYSIS

Pursuant to SCR 3.435, where an attorney is subjected to professional discipline in another jurisdiction, this Court “shall impose the identical discipline” unless the attorney proves by substantial evidence of one of the following: (1) a lack of jurisdiction in the out-of-state proceedings; (2) fraud in the out-of-state proceedings; or (3) that the misconduct warrants substantially different discipline in this State. “In all other respects, a final adjudication in another jurisdiction that an attorney has been guilty of misconduct shall establish conclusively the misconduct for purposes of a disciplinary proceeding in this State.” SCR 3.435(4)(c).

In this case, Minamyler does not allege that the Supreme Court of Ohio lacked jurisdiction or that its proceedings were tainted by fraud. Nor does he suggest that his misconduct warrants substantially different discipline in the Commonwealth. As a result, pursuant to SCR 3.435, this Court shall impose reciprocal discipline identical to that imposed by the Supreme Court of Ohio. However, given the mitigating circumstances in this case, we believe it is appropriate to impose Minamyler’s reciprocal discipline retroactive to the date it

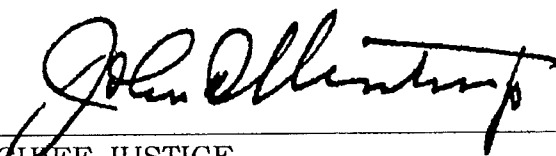
was imposed by the Supreme Court of Ohio, July 28, 2011. *See Kentucky Bar Ass'n v. Harwood*, 341 S.W.3d 85, 88 (Ky. 2011) (imposing retroactive reciprocal discipline based on mitigating factors).

Accordingly, it is hereby ORDERED as follows:

(1) William Eric Minamyler is hereby retroactively suspended from the practice of law in Kentucky for a period of one year, probated for one year, effective July 28, 2011, on condition that he: (1) limit his practice to domestic relations, general litigation, and labor law; (2) continue to follow the recommendations of his treating professionals, including ongoing pharmacological management by his treating physician; and (3) commit no further misconduct.³ His suspension is to run concurrently with the one-year probated suspension imposed by the Supreme Court of Ohio.

All sitting. All concur.

ENTERED: May 24, 2012.


CHIEF JUSTICE

³ We decline to impose one of the conditions imposed by the Supreme Court of Ohio—that Minamyler be monitored by an attorney for his practice in Kentucky. We believe that Ohio's monitor will adequately supervise Minamyler's practice and that supervision by two attorneys, one in Ohio and one in Kentucky, is unnecessary.