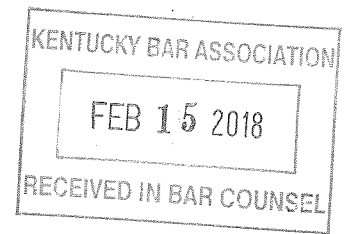


*Supreme Court of Kentucky*  
2017-SC-000591-KB



KENTUCKY BAR ASSOCIATION

MOVANT

V.

IN SUPREME COURT

DAVID THOMAS SPARKS

RESPONDENT

**OPINION AND ORDER**

David Thomas Sparks, Kentucky Bar Association (KBA) Number 85840, was admitted to the practice of law in the Commonwealth of Kentucky on October 13, 1995, and his bar roster address is listed as 1719 Ashley Circle, Suite 100, P.O. Box 1925, Bowling Green, Kentucky, 42102. Based on three separate KBA files, the Board of Governors recommends this Court find Sparks guilty of violating SCR 3.130-1.3 (three counts), 3.130-1.4(a)(3) (three counts), 3.130-1.4(a)(4) (three counts), 3.130-1.5, 3.130-1.15(a), 3.130-1.16(d) (three counts), 3.130-3.4(c) (two counts), 3.130-5.5, and 3.130-8.4(c). For these violations, the Board recommends Sparks be permanently disbarred from the practice of law and pay all associated costs. For the following reasons, we adopt the Board's recommendation.

## I. BACKGROUND

The current case spans three separate KBA files. We will address each in turn.

### A. KBA File Number 16-DIS-0353

Larry Putty paid Sparks \$20,000 to represent his grandson Trevor in a civil lawsuit stemming from Trevor's assault. Service was never completed against the named defendant or several John Does identified in the complaint. The case was ultimately dismissed for lack of prosecution. Larry died the year after he paid Sparks to represent Trevor, and three years after all correspondence from Sparks ceased, two of Trevor's family members filed bar complaints against Sparks. Copies of the complaints were mailed to Sparks at his bar roster address, but were returned as undeliverable. Attempted service by the Warren County Sheriff's office also failed, and Sparks was served pursuant to 3.175(2) via service on the KBA Director. Sparks failed to respond to either bar complaint.

Ultimately, the Inquiry Commission issued an eight-count charge, alleging Sparks had violated: (1) SCR 3.130-1.3 (by failing to act with reasonable diligence and promptness in representing Trevor); (2) 3.130-1.4(a)(3) (by failing to keep Trevor reasonably informed about the status of his case); (3) 3.130-1.4(a)(4) (by failing to promptly comply with reasonable requests for information); (4) 3.130-1.5 (by collecting an unreasonable fee); (5) 3.130-1.15(a) (by failing to hold the funds paid him by Larry on Trevor's behalf separate from his own property); (6) 3.130-1.16(d) (by failing to protect Trevor's

interests by giving him reasonable notice, surrendering Trevor's file, and refunding any unearned fee); (7) 3.130-3.4(c) (by knowingly disobeying an obligation under the rules of a tribunal); and (8) 3.130-8.4(c) (by engaging in conduct involving "dishonesty, fraud, deceit or misrepresentation").

Service of the charge was attempted in much the same way as it had been for the complaints. After other attempts at service failed, Sparks was served via the KBA Director. Sparks did not respond to the charge.

**B. KBA File Number 16-16157**

The facts concerning the second charge contained in the case at bar involve Larry Putty's daughter, Kandy Putty Fear and her husband Gregory. Kandy and Gregory paid Sparks a \$2,500 retainer to represent them in a legal matter related to real property. Sparks did file a lawsuit on Kandy and Gregory's behalf. However, after being granted a continuance in that case, he pursued no further action until after he was suspended from the practice of law by this Court in a separate matter, *Kentucky Bar Ass'n v. Sparks*, 480 S.W.3d 278 (Ky. 2016). Then, in spite of the fact that he was suspended from the practice of law at the time, Sparks filed a pretrial compliance statement and appeared before the court at a pretrial conference. Sparks failed to schedule his clients' depositions and did not return the phone calls or letters of opposing counsel. The trial court eventually dismissed the Fears' lawsuit for failure to prosecute the case after no one appeared in court on their behalf at a hearing.

The Inquiry Commission filed a six-count charge against Sparks related to the Fears' case, alleging Sparks had violated: (1) SCR 3.130-1.3 (by failing to act with reasonable diligence and promptness in representing the Fears); (2) 3.130-1.4(a)(3) (by failing to keep the Fears reasonably informed about the status of their case); (3) 3.130-1.4(a)(4) (by failing to promptly comply with the Fears' reasonable requests for information); (4) 3.130-1.16(d) (by failing to protect the Fears' interests by giving them reasonable notice, surrendering their file, and refunding any unearned fee); (5) 3.130-3.4(c) (by knowingly disobeying an obligation under the rules of a tribunal); and (6) 3.130-5.5 (by practicing law while under suspension from the practice).

As with the previous file, service through the mail and the Sheriff's office upon Sparks were unsuccessful. Service was completed through the KBA Director, and, again, Sparks responded to neither the complaint nor the charge.

**C. KBA File Number 17-DIS-0108**

Finally, Bobby Gilmer hired Sparks to file a lawsuit on his behalf against a contractor. Gilmer, an elderly retired veteran, paid Sparks \$2,500 as an advance retainer. Sparks's sole communication with Gilmer was one letter regarding the representation. Gilmer terminated the representation and demanded a refund, which Sparks failed to pay.

In this file, the Inquiry Commission filed a four-count charge against Sparks, alleging he had violated: (1) SCR 3.130-1.3 (by failing to act with reasonable diligence and promptness in representing Gilmer); (2) 3.130-

1.4(a)(3) (by failing to keep Gilmer reasonably informed about the status of his case); (3) 3.130-1.4(a)(4) (by failing to promptly comply with Gilmer's reasonable requests for information); and (4) 3.130-1.16(d) (by failing to protect Gilmer's interests by refunding any unearned fee). Just as in the previous two KBA files, service of the complaint and charge by mail and personal service failed. Service was completed through the KBA Director, and Sparks did not respond.

## **II. BOARD'S RECOMMENDATION**

In reaching its recommendation as to Sparks's discipline, the Board considered his prior disciplinary history. Since 2016, Sparks has been severely sanctioned by this Court.

In the first of four cases, Sparks was found to have violated some of the same rules as those in the present case—namely, SCR 3.130–1.4(a)(4), 3.130–1.15(a), 3.130–1.15(b), 3.130–8.1(b), and 3.130–8.4. *Sparks*, 480 S.W.3d 278. In that case, Sparks failed to respond to the bar complaint and charge, even though he was personally served. He did not file an answer to the charges until the case was submitted to the Board of Governors as a default matter. The KBA asked this Court to review the Board of Governors' recommendation and, instead of the Board's recommended sanction, to permanently disbar Sparks. However, this Court disagreed with the KBA that Sparks's violations deserved his permanent disbarment, and instead suspended Sparks for 181 days (with 61 days to serve and the remainder probated with conditions). Later that year, when Sparks failed to comply with the terms of the probated

suspension, we ordered him to show cause why his probation should not be revoked. Sparks failed to respond to that order and this Court revoked his probation in *Kentucky Bar Ass'n v. Sparks*, 505 S.W.3d 258 (Ky. 2016), and ordered that he serve the remainder of the suspension.

In *Kentucky Bar Ass'n v. Sparks*, 498 S.W.3d 389 (Ky. 2016), the Board of Governors recommended this Court suspend Sparks for 181 days, to run consecutive to the aforementioned 181-day suspension. Sparks acknowledged receipt of both the bar complaint and the charge, but responded to neither. Therefore, the case proceeded as a default case. Neither party sought review of the Board's recommendation, and this Court adopted it, suspending Sparks for an additional 181 days for violating SCR 3.130-1.4(a)(4), 3.130-1.16(d), and SCR 3.130-8.1(b).

Finally, the Board recommended this Court suspend Sparks for one year, to run consecutive to his other suspensions in *Kentucky Bar Ass'n v. Sparks*, 518 S.W.3d 146, 148 (Ky. 2017). Sparks did not respond to either the bar complaint (even though he was personally served by the Warren County Sheriff's Office) or the charge (which was served through the KBA Director) in that case. Much like many of the other charges against Sparks, this case involved Sparks's failure to communicate with a client or to provide the legal services for which he was paid. The Court adopted the Board's recommended

sanction and found Sparks guilty of violating SCR 3.130-1.3, 3.130-1.4(a)(2), 3.130-1.4(a)(4), 3.130-1.16(d), and 3.130-8.1(b).<sup>1</sup>

In light of Sparks's continuing pattern of accepting money from clients, ceasing communication, and failing to complete (or, in some cases, even begin) working on their cases, the Board recommends this Court permanently disbar Sparks from the practice of law. Given the gravity and number of charges against him and his complete disregard for our profession's ethical standards, we agree.

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<sup>1</sup> In the present case, after the time had passed in which Sparks could file a notice of review with this Court, he filed a motion for enlargement of time. Through that motion, Sparks sought leave to file a late response. Sparks asserted that he had "previously been deprived of proper notice." Sparks stated in the motion that he denied any wrongdoing and that his previous home had been lost through foreclosure, and the documents had been sent to that address and a defunct post office box. However, he never changed his bar roster address with the KBA. Three days before the time in which he could properly file a notice of review expired, the Office of Clerk of the Supreme Court of Kentucky received correspondence from Sparks with a change of address which referenced three of his prior KBA cases. He still failed to change his bar roster address with the KBA.

Sparks now asks this Court for "leave to file an appropriate response, which may include a request for return of the matter to the [KBA] for exercise of the rights to which he has been deprived." He also asks this Court to enter "an Order directing the Clerk to send [him] a copy of the file materials in this matter with [Sparks] afforded thirty (30) days after the Clerk certifies that the office has sent these materials in which to file an appropriate response."

The KBA objects to Sparks's motion, citing the numerous disciplinary cases (as recounted above) in which Sparks failed to participate. We agree with the KBA's assertion that it followed the proper procedures pursuant to our rules. The blame for the fact that Sparks may not have known about the charges in this case lies at his feet. All relevant complaints and charges were first mailed to Sparks's bar roster address, before the Warren County Sheriff's Office failed in its attempt to serve Sparks. Only then was service completed by serving the KBA Director pursuant to SCR 3.175(2).

It is not incumbent on the KBA—and certainly not on this Court—to go to any further lengths to ensure Sparks has access to the file information in this case or to afford him any further time to respond. Therefore, we deny his motion for enlargement of time.

### III. ADOPTION OF BOARD'S RECOMMENDATION

Pursuant to SCR 3.370(9),<sup>2</sup> this Court adopts the recommendation of the Board given the gravity and number of charges against Sparks and his complete disregard for our profession's ethical standards. Agreeing that the Board's recommended sanction is appropriate, it is ORDERED that:

1. David Thomas Sparks's motion for enlargement of time is DENIED;  
and
2. Sparks is permanently disbarred from the practice of law; and
3. In accordance with SCR 3.450, Sparks shall pay all costs associated with these proceedings, said sum being \$1086.20, for which execution may issue from this Court upon finality of this Opinion and Order;  
and
4. Pursuant to SCR 3.390, Sparks shall, within ten (10) days from the entry of this Opinion and Order, notify all clients, in writing, of his inability to represent them; notify, in writing, all courts in which he has matters pending of his disbarment from the practice of law; and furnish copies of all letters of notice to the Office of Bar Counsel.

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<sup>2</sup> SCR 3.370(9) provides that "[i]f no notice of review is filed by either of the parties, or the Court under paragraph eight (8) of this rule, the Court shall enter an order adopting the decision of the Board or the Trial Commissioner, whichever the case may be, relating to all matters."

Furthermore, to the extent possible, Sparks shall immediately cancel and cease any advertising activities in which he is engaged.

All sitting. All concur.

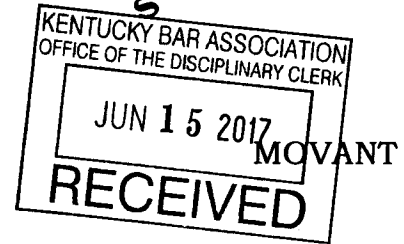
ENTERED: February 15, 2018.

  
CHIEF JUSTICE

TO BE PUBLISHED

# Supreme Court of Kentucky

2017-SC-000115-KB



KENTUCKY BAR ASSOCIATION

V.

IN SUPREME COURT

DAVID THOMAS SPARKS

RESPONDENT

## **OPINION AND ORDER**

The Board of Governors (“Board”) for the Kentucky Bar Association (“KBA”) recommends this Court suspend Respondent, David Thomas Sparks, from the practice of law for one year, to run consecutively with other pending suspensions and that he be required to repay his former client, Donald G. Meredith, the sum of \$1,000.00. The Board further recommends that Respondent be required to attend and successfully complete the Ethics and Professional Enhancement Program (“EPEP”), and that Respondent be referred to the Kentucky Lawyer Assistance Program (“KYLAP”). The Board also proposes that Respondent be required to satisfy all conditions imposed in other pending disciplinary actions<sup>1</sup> and that Respondent be required to pay all costs

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<sup>1</sup> Previously, by Opinion and Order, Respondent was suspended from the practice of law in February 2016 for one hundred eighty one-one days, with one hundred twenty days of that suspension probated with conditions. In September

associated with this action. Respondent's bar roster address is 1719 Ashley Circle, Suite 100, P.O. Box 1925, Bowling Green, KY 42102-1925, and his KBA Member Number is 85840.

### **I. BACKGROUND**

In December 2014, Donald G. Meredith paid Respondent \$1,000.00 to represent him in a foreclosure action in which Meredith and his wife claim that \$50,000.00 of personal property was stolen from their vacated home. After paying Respondent the \$1,000.00, Meredith claimed that Respondent provided no legal services; that he failed to respond to two registered letters requesting information; and that he also did not provide consultation or any work.

After many unsuccessful attempts to contact Respondent, Meredith filed a bar complaint with the KBA in April 2016. Upon receiving and reviewing the complaint, the Office of Bar Counsel ("OBC") mailed a copy to Respondent via certified mail at his bar roster address. Respondent did not answer the complaint. A couple of weeks later, OBC mailed the Warren County Sheriff's Office a copy of the complaint for personal service at Respondent's bar roster address. Eventually, the Sheriff's Office was able to serve Respondent with a

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2016, this Court suspended Respondent for one hundred eighty-one days to run consecutively to his previous suspension. In December 2016, this Court revoked Respondent's probation imposed in February 2016 due to violation of the conditions assessed in that case and imposed the remaining one hundred twenty day suspension originally ordered in February 2016. Respondent must complete the one hundred eighty-one day suspension ordered in September 2016, as well as, the one hundred twenty day suspension that was probated in February 2016 and ordered in December 2016 to be served due to revocation.

copy at a different address. Again, no response to the complaint was filed by Respondent.

In August 2016, the Inquiry Commission (“Commission”) launched a complaint against Respondent alleging the following violations:

(1) SCR 3.130(1.3) (Diligence) for failing to act with reasonable diligence and promptness in representing a client; (2) SCR 3.130(1.4)(a)(2) (Communication) for failure to consult with a client about the means by which the client’s objectives are to be accomplished; (3) SCR 3.130(1.4)(a)(4) (Communication) for failure to promptly comply with reasonable requests for information; (4) SCR 3.130(1.16)(d) (Declining or Terminating Representation) for abandoning the client, failing to return the client’s paperwork, failing to return any advance payment not used, and failure to properly withdraw from the case upon termination of representation; (5) SCR 3.130(8.1)(b) (Bar Admission and Disciplinary Matters) for failure to respond to a lawful demand for information from a disciplinary authority. The Commission’s Charge was mailed to Respondent in August 2016. It was returned with a handwritten note that read “BOX CLOSED, UNABLE TO FORWARD.” Numerous other unsuccessful attempts were made by the Warren County Sheriff’s Department to serve Respondent. Respondent has not filed an answer to the Commission’s Charge.

## **II. ANALYSIS**

Due to Respondent’s failure to respond to the Charge, the Commission submitted the matter to the Board of Governors under SCR 3.210(1), our rule

for processing cases of default.<sup>2</sup> Following a discussion of the charges, seventeen members of the Board voted on Respondent's charges and unanimously found him guilty of each charge. After considering Respondent's prior disciplinary history, the Board unanimously recommended the disciplinary measures proffered by the Commission as previously set forth herein. The Board also voted that service of this suspension run consecutively to the suspensions previously ordered in *Kentucky Bar Association v. Sparks*, 480 S.W.3d 278 (Ky. 2016)<sup>3</sup>; *Kentucky Bar Association v. Sparks*, 498 S.W.3d 389 (Ky. 2016)<sup>4</sup>; and *Kentucky Bar Association v. Sparks*, 505 S.W.3d 258 (Ky. 2016).<sup>5</sup>

Having reviewed the record, we agree that the Board reached the appropriate conclusions as to Respondent's guilt. Respondent has not filed a notice to this Court to review the Board's decision, and we do not elect to

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<sup>2</sup> "If no answer is filed after a Respondent is notified, the Inquiry Commission shall order the record, together with such investigative evidence as may have been obtained, to be submitted to the Board."

<sup>3</sup> In February 2016, by Opinion and Order, Respondent was suspended from the practice of law for a period of one hundred eighty-one days, with sixty-one days to be served and the remainder to be probated with conditions.

<sup>4</sup> In September 2016, by Opinion and Order, Respondent was suspended from the practice of law for a period of one hundred eighty-one days to run consecutively to the suspension ordered by this Court in February 2016.

<sup>5</sup> In December of 2016, by Opinion and Order, this Court revoked the partially probated suspension from February 2016 and ordered Respondent to serve the remaining of the one hundred twenty days. One of the conditions of probation was that Respondent was not to receive any new disciplinary charges after February 2016, and the OBC received a new complaint in April 2016.

review the decision of the Board under SCR 3.370(8).<sup>6</sup> Accordingly, the decision of the Board is hereby adopted under SCR 3.370(9).<sup>7</sup>

For the foregoing reasons, it is hereby ORDERED:

1. Respondent, David Thomas Sparks, is found guilty of violating SCR 3.130 (1.3); SCR 3.130 (1.4)(a)(2); SCR 3.130 (1.4)(a)(4); SCR 3.130 (1.16)(d); and SCR 3.130 (8.1)(b).
2. Respondent is suspended from the practice of law for one year to run consecutively with the one hundred eighty-one days from the February 2016 Opinion and Order and another one hundred eighty-one day suspension from the September 2016 Opinion and Order, all to run consecutively. Further Respondent is to be referred to KYLAP; directed to attend and successfully complete EPEP; directed to refund the \$1,000.00 unearned fee to Donald G. Meredith; and directed to satisfy all conditions imposed in this and the other pending disciplinary actions.
3. As required by SCR 3.390, Respondent shall notify by letter duly placed with the United States Postal Service, all courts or tribunals in which he

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<sup>6</sup> "If no notice of review is filed by either party, the Court may notify Bar Counsel and Respondent that it will review the decision. If the Court so acts, Bar Counsel and Respondent may each file briefs, not to exceed thirty (30) pages in length, within thirty (30) days, with no right to file reply briefs unless by order of the Court, whereupon the case shall stand submitted. Thereafter, the Court shall enter such orders or opinion as it deems appropriate on the entire record."

<sup>7</sup> "If no notice of review is filed by either of the parties, or the Court under paragraph eight (8) of this rule, the Court shall enter an order adopting the decision of the Board or the Trial Commissioner, whichever the case may be, relating to all matters."

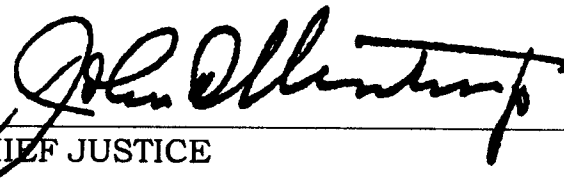
has matters pending, and all his clients of his inability to represent them and of the necessity and urgency of promptly retaining new counsel.

Respondent shall simultaneously provide a copy of all such letters of notification to the Office of Bar Counsel. Respondent shall immediately cancel any pending advertisements to the extent possible, and shall terminate any advertising activity.

4. In accordance with SCR 3.450, Respondent is directed to pay all costs associated with these disciplinary proceedings against him, said sum being \$342.85, for which execution may issue from this Court upon finality of this Opinion and Order.

All sitting. All concur.

ENTERED: JUNE 15, 2017.

  
CHIEF JUSTICE

# Supreme Court of Kentucky

2015-SC-000425-KB

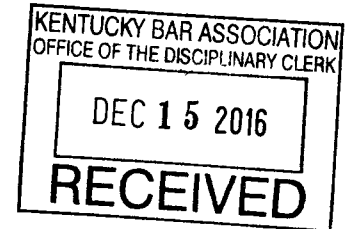
KENTUCKY BAR ASSOCIATION

MOVANT

V.

IN SUPREME COURT

DAVID THOMAS SPARKS



RESPONDENT

## OPINION AND ORDER

On February 18, 2016, this Court entered an order suspending David Thomas Sparks for 181 days, with 61 days to serve and the remainder probated for two years, with conditions. *See Kentucky Bar Ass'n v. Sparks*, 480 S.W.3d 278 (Ky. 2016). The Office of Bar Counsel has now moved to revoke probation and to impose the remainder of the suspension because Sparks violated several conditions of his probation. This Court grants the motion.

Sparks' KBA number is 85840, and his bar roster address is 1719 Ashley Circle, Suite 100, P.O. Box 1925, Bowling Green, Kentucky 42102. He was admitted to the practice of law in the Commonwealth of Kentucky in October 1995.

As noted above, he was suspended, with partial probation of the sanction, in February 2016. Sparks' probation was subject to several conditions, including that he "not receive any new disciplinary charges during the probationary period related to conduct discovered or occurring after the

date of this Order,” attend ethics and business-management education courses, establish an IOLTA account, and pay the costs of the proceedings. And, as with all suspensions over 60 days, Sparks was ordered to notify his clients by letter of his inability to represent them during the period of suspension and to send copies of those letters to the Office of Bar Counsel, as required by SCR 3.390(b).

According to the Office of Bar Counsel, a new bar complaint was filed against Sparks on April 14, 2016. The new complaint was filed by Donald Meredith, who alleged that Sparks had been hired in December 2014 to perform legal services and that he failed to do so. He also alleged that Sparks failed to refund the fee Meredith had paid.

A copy of the bar complaint was mailed to Sparks in April 2016, but he filed no response. In June 2016, copies of the complaint were served on Sparks by the Warren County Sheriff’s Office and by service on the KBA’s Executive Director under SCR 3.175(2). He again did not respond to the complaint.

In August 2016, the Inquiry Commission issued a four-count formal charge against Sparks alleging violations of SCR 3.130-1.3 (diligence), -1.4(a)(2) and (4) (communication), -1.16(d) (failure to return unearned fees), and -8.1(b) (failure to respond to a disciplinary authority).

This disciplinary action appears to have set the Office of Bar Counsel into action. It moved to have Sparks’ probation revoked. Copies of the bar complaint and formal charge were attached to the motion.

As noted by the Office of Bar Counsel, this new disciplinary matter arose during Sparks' probationary period, and it relates to conduct discovered after the previous suspension order entered in February 2016. Based on this, the Office of Bar Counsel claims that Sparks has failed to satisfy the conditions imposed on him by the Court.

The Office of Bar Counsel also points out that Sparks failed to notify Meredith of his suspension or to send copies of such notice to the Office of Bar Counsel, as required by this Court's prior order and SCR 3.390(b). This, the Office of Bar Counsel notes, violated another condition on Sparks' probation.

The Office of Bar Counsel also notes that there is no evidence that Sparks attended the required ethics and business-management education course or established an IOLTA account. It also notes that he has not provided a CLE release form, as ordered by the Court, so that it could confirm that Sparks did not seek CLE credit for any courses he took under this Court's order. Finally, the Office of Bar Counsel notes that Sparks has not paid the costs of the underlying disciplinary action.

Sparks was ordered in October 2016 to show cause why his probation should not be revoked and the remaining suspension be ordered served. He did not respond to that order.

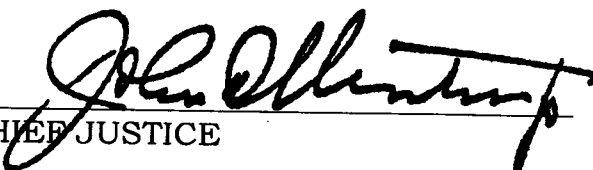
There is evidence, based on the Office of Bar Counsel's motion and attached documents, that Sparks has failed to satisfy the conditions of his disciplinary probation. This Court concludes, therefore, that Sparks' probation should be revoked and the remainder of his suspension served.

Therefore, it is ORDERED that the Office of Bar Counsel's motion to revoke David Thomas Sparks' probation based on the new bar complaint and other failures is GRANTED, and Sparks is suspended from the practice of law in this Commonwealth for the remaining 120 days previously probated by this Court's Opinion and Order.

This Court is aware that Sparks was also found guilty of misconduct and suspended for 181 days on September 22, 2016. That misconduct, having been reported before this Court's February 2016 suspension order, did not trigger revocation of Sparks' probation. However, the 181-day suspension in that case was ordered to be served consecutively to that ordered in this case, and it is still being served. Sparks, however, was not under suspension in September, at least not under this Court's February 2016 order, which would have allowed him to return to practice sometime in April 2016. That said, his suspension may have persisted at that time if Office of Bar Counsel objected to his automatic reinstatement under SCR 3.510(2). Regardless, Sparks will be required to serve both the 181-day suspension from September and the remaining 120 days from the February order before he can begin to seek reinstatement, which will require that he appear before the Character and Fitness Committee.

All sitting. All concur.

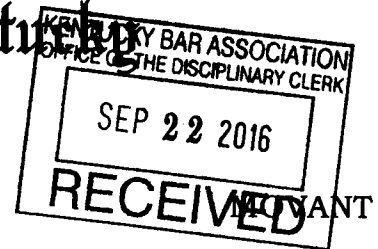
ENTERED: December 15, 2016.

  
CHIEF JUSTICE

TO BE PUBLISHED

# Supreme Court of Kentucky

2016-SC-000338-KB



KENTUCKY BAR ASSOCIATION

V.

IN SUPREME COURT

DAVID THOMAS SPARKS

RESPONDENT

## OPINION AND ORDER

The Board of Governors (“Board”) for the Kentucky Bar Association (“KBA”) recommends this Court suspend David Thomas Sparks from the practice of law for one-hundred-eighty-one (181) days, and that he be referred to the Kentucky Lawyers Assistance Program (KYLAP) and required to pay all relevant costs. Finding sufficient cause to do so, we adopt the Board’s recommendation. Sparks whose bar roster address is 1719 Ashley Circle Ste. 100, P.O. Box 1925, Bowling Green KY 42102 was admitted to the practice of law in 1995.

In the fall of 2015, Sparks was retained by Marion and Beverly Sanford to respond to a civil complaint filed in Warren District Court. The complaint concerned the construction and expense of a permanent boundary fence between the Sanfords and the plaintiff. Sparks filed an answer and counterclaim to the complaint and notified the Sanfords. Subsequently, the plaintiff replied to the counterclaim. Sparks in a letter notified the Sanfords of the reply being filed and suggested that they should “leave the next move to

[the plaintiff].” Subsequently, the Sanfords made repeated attempts to contact Sparks to no avail. Despite their efforts, the Sanfords have not had contact with Sparks since October 2015, and have been unable to retrieve their file which remains in Sparks’s possession.

In January 2016, Marion Sanford filed a bar complaint with the KBA. The KBA forwarded that complaint to Sparks by certified mail. While that correspondence was received and signed for by Sparks, he declined to answer the complaint or provide any information to the KBA. In March 2016, the Inquiry Commission (“Commission”) initiated a complaint against Sparks alleging the following violations: (1) Supreme Court Rule (SCR) 3.130-1.4(a)(4) (Communication) for failing to respond to his clients’ request for information; (2) SCR 3.130-1.16(d) (Declining or Terminating Representation) for failing to return the client paperwork, abandoning the client, and failing to properly withdraw from the case, upon termination of the representation; and (3) SCR 3.130-8.1(b) (Bar Admission and Disciplinary Matters) for failing to respond to a lawful demand for information from an admissions or disciplinary authority. The Commission’s charge was forwarded to Sparks in March 2016 by certified mail. While Sparks acknowledged receipt of the charge, he declined to respond.

Due to Sparks’s failure to respond, the Commission submitted the matter to the Board of Governors under SCR 3.210. Following a discussion of the charges, eighteen members of the Board voted on Sparks’s charges and unanimously found Sparks guilty of each charge. After considering the

relevant authorities and Sparks's prior disciplinary history, the Board unanimously recommended that he be suspended for one-hundred-eighty-one (181) days, be referred to KYLAP, and be required to pay costs. Previously, in February 2016, Sparks was suspended from the practice of law for one-hundred-eighty-one (181) days, with sixty-one (61) days to serve and the balance probated for two years, with conditions. *Kentucky Bar Ass'n v. Sparks*, 480 S.W.3d 278 (Ky. 2016). By a vote of twelve to six, the Board recommended that Sparks's suspension run consecutive to his prior discipline.

Having reviewed the record, we agree that the Board reached the appropriate conclusions as to Sparks's guilt. Sparks has not filed a notice with this Court to review the Board's decision, and we do not elect to review the decision of the Board under SCR 3.370(8). The decision of the Board is hereby adopted under SCR 3.370(10).

For the foregoing reasons, it is hereby ORDERED:

1. David Thomas Sparks, is found guilty of violating SCR 3.130-1.4(a)(4); SCR 3.130-1.16(d); and (3) SCR 3.130-8.1(b).

2. Sparks is suspended from the practice of law for one-hundred-eighty-one (181) days to run consecutive to the 181-day suspension ordered by this Court on February 18, 2016. Should Sparks, thereafter, seek to have his license restored, he must be processed by the Character and Fitness Committee.

3. Sparks will submit to an evaluation by KYLAP and successfully complete any resulting course of recommended treatment.

4. Sparks will notify all necessary courts and clients of his one-hundred-eighty-one (181) day suspension in accordance with SCR 3.390(b). Those notifications will be made by letter placed in the United States mail within ten (10) days from the date of this Opinion and Order. Sparks will also simultaneously provide a copy of all such letters to the Office of Bar Counsel. Also, to the extent possible, Sparks will cancel and cease any advertising activities in which he is engaged.

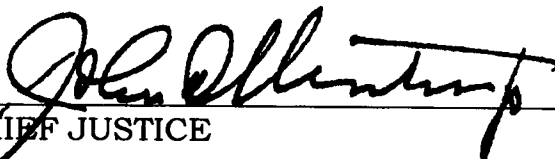
5. As stated in SCR 3.390(a), this order will take effect on the 10th day following its entry. Sparks is instructed to promptly take all reasonable steps to protect the interests of his clients.

6. Pursuant to SCR 3.390, Sparks will not, during the term of suspension, accept new clients or collect unearned fees.

7. Pursuant to SCR 3.450, Sparks is ordered to pay all costs associated with this disciplinary proceeding, in the amount of \$229.13, for which execution may issue from this Court upon finality of this Opinion and Order.

All sitting. All concur.

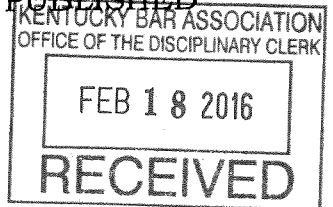
ENTERED: September 22, 2016.

  
CHIEF JUSTICE

# Supreme Court of Kentucky

2015-SC-000425-KB

TO BE PUBLISHED



KENTUCKY BAR ASSOCIATION

MOVANT

V.

IN SUPREME COURT

DAVID THOMAS SPARKS

RESPONDENT

## **OPINION AND ORDER**

The Board of Governors (the Board) of the Kentucky Bar Association (KBA) recommends that David Thomas Sparks be suspended from the practice of law for 181 days, 120 days of which may be probated upon condition that he attend ethics education and business management education including the use of escrow accounts in the amount of 30 hours, and that he establish an IOLTA account in accordance with Supreme Court Rule (SCR) 3.830.<sup>1</sup> Finding sufficient cause to do so, we adopt the Board's recommendations. Sparks,

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<sup>1</sup> In its Conclusions of Law, the Board stated that: "Pursuant to SCR 3.370(5), the Board of Governors decided . . . that the decision of the Trial Commissioner as to the findings of the violations and degree of discipline imposed was supported by substantial evidence and not clearly erroneous. *It adopts those findings as its own*["] (Emphasis added). We note that the Trial Commissioner recommended that Sparks be suspended "for 181 days, which may be probated 120 days," which we interpret as recommending Sparks serve a suspension of 61 days with 120 days probated. However, the Board's recommendation states that Sparks should be suspended "for 181 days, which may be probated to 120 days," which appears to be a recommendation that Sparks serve 120 days with 61 days probated. Because the Board indicated its intention to adopt the Trial Commissioner's discipline as its own, we believe that this apparent change in the length of the "to serve" portion of the suspension was inadvertent. Therefore, we adopt the suspension as initially proposed by the Trial Commissioner.

whose KBA number is 85840, and whose bar address is 1719 Ashley Circle, Suite 100, P.O. Box 1925 Bowling Green, Kentucky 42102, was admitted to the practice of law in the Commonwealth of Kentucky in October 1995.

### **I. BACKGROUND**

In 2009, Sparks represented Bill Adams (Bill) in a personal injury lawsuit against Beacon Construction, Inc., which was insured through Cincinnati Insurance Co. (Cincinnati). During litigation, Cincinnati issued two partial settlement checks to Bill; one for \$4,316.67 and another for \$5,000. The distribution of funds from those checks is not in dispute. In August 2010, Bill completely resolved his claim, and Cincinnati issued an \$11,000 check, payable to "Bill Adams & His Attorney, David T. Sparks." Sparks deposited the \$11,000 check in a non-IOLTA escrow account.

On December 5, 2011, Bill's son, Jeffrey Adams (Jeffrey), a practicing attorney in Atlanta, Georgia, sent a letter to Sparks indicating that Bill was unhappy with Sparks's representation. According to Jeffrey, Sparks had failed to follow up with Bill regarding the status of the \$11,000 settlement check despite several previous attempts to contact Sparks made by Bill, by Jeffrey, and by Jeffrey's sister. Additionally, Jeffrey asked Sparks to provide regular, written status reports to Bill, as well as to release all money owed to Bill from the settlement. Sparks did not respond to this letter.

On February 6, 2012, Jeffrey sent another letter to Sparks, which referenced the December letter. Sparks did not respond in writing to this letter. However, at approximately 2:00 a.m. on April 27, 2012, Sparks left a

message on Jeffrey's voicemail stating that he was still holding the \$11,000 check in his escrow account because he was waiting to hear from Medicare about a potential lien.

Bill died shortly after Jeffrey sent the February letter. Jeffrey, who was appointed co-executor of his father's Estate, contacted the law firm of English, Lucas, Priest, & Owsley to represent Bill's Estate. Attorney Charles English, a member of the firm, investigated the handling of the \$11,000 settlement check and ultimately requested a final accounting from Sparks. Sparks did not respond.<sup>2</sup>

On August 20, 2012, Jeffrey filed a complaint with the KBA against Sparks. The complaint was served on Sparks on October 12, 2012. Sparks failed to respond within the allotted 20-day time period and the Inquiry Commission then issued a six-count charge against Sparks, which was served on January 12, 2013. The charge alleged that Sparks violated:

1. SCR 3.130-1.4(a)(4) by failing to respond to requests for information from his client;
2. SCR 3.130-1.15(a) by failing to properly maintain a client's funds in an escrow account;

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<sup>2</sup> English originally sent a letter to Mike Breen, of Breen & Morgan Associates at Law PSC, asking about the \$11,000 check. English believed that Sparks was working for Breen & Morgan when he represented Bill because Cincinnati's \$4,316.67 and \$5,000 checks were made payable to "Bill Adams and Breen & Morgan Associates at Law PSC." However, Breen informed English that Sparks had never worked for Breen & Morgan. Sparks disputed this claim during his hearing with the Trial Commissioner. The nature of the relationship between Sparks and Breen & Morgan is not clear, but it is not at issue here.

3. SCR 3.130-1.15(b) by failing to properly notify his client upon receiving funds, by failing to promptly deliver funds his client was entitled to, and by failing to render a full accounting as requested by his client;
4. SCR 3.130-8.1(b) by failing to respond to the bar complaint, despite receiving notification from the Disciplinary Clerk that the Inquiry Commission, through the Office of Bar Counsel, required information regarding the complaint, and despite having received a warning that failure to respond to that demand for information could result in additional charges;
5. SCR 3.130-8.4(b) by taking funds, subject to a known obligation to make a specified distribution of those funds, with the failure to make the required distribution constituting a violation of KRS 514.070(1) (Theft by Failure to Make Required Disposition of Property); and
6. SCR 3.130-8.4 by keeping a client's funds for his personal use.

The Inquiry Commission remanded the matter for Bar Counsel to determine if Sparks had an escrow account and if documentation regarding the account could be obtained. Sparks filed for leave to file an answer to the charge on March 29, 2013, which was granted. On April 11, 2013, attorney Brandon Marshall agreed to represent Sparks, *pro bono*, and on April 19, 2013, Sparks wired \$11,000 into Marshall's escrow account to be appropriately dispersed. On April 25, 2013, Marshall, on behalf of Sparks, filed an Answer to the charge stating that Sparks was prepared to make substantial admissions of

fault and raising concerns regarding Sparks's mental and emotional health, which may have resulted in his inattention to his client and the KBA.

A Trial Commissioner was appointed and, after preliminary hearings and depositions, she held an evidentiary hearing on July 31, 2014. During these proceedings Sparks, now representing himself, testified that he always maintained contact with his client, Bill. However, he refused to respond to Jeffrey, Jeffrey's sister, or English, because he was not given authorization by Bill to discuss the case with them, and he did not want to breach his duty of confidentiality to his client. Sparks further testified that he did not respond to the KBA's requests because they seemed to imply he had partaken in criminal activity, and he believed his Fifth Amendment rights protected him from having to respond to such accusations. Sparks also testified that he had mistakenly spent most of the \$11,000 from the settlement on other case-related material. Sparks stated that he believed he was spending money he had earned from another case, which he accidentally put into his personal account instead of his escrow account, and did not realize his error until formal charges were brought against him. However, Sparks did not produce any documentation to support his testimony.

On November 4, 2014, the Trial Commissioner filed her Report, finding that five of the six counts (Counts I, II, III, IV, and VI) against Sparks had been proven by a preponderance of the evidence. The Trial Commissioner found that Count V, the alleged violation of SCR 3.130-8.4(b), had not been proven by a preponderance of the evidence. In her Report, the Trial Commissioner

expressed concerns about Sparks's mental status as well as his understanding of the use of escrow accounts and stated that she could not conclude that Sparks intentionally took his client's property pursuant to KRS 514.070(1). The Trial Commissioner recommended that Sparks be suspended from the practice of law for 181 days, 120 days of which should be probated on the condition that Sparks attend 30 hours of ethics education and business management education including the use of escrow accounts; that he establish an IOLTA account; and that he pay the costs of the proceedings. Sparks then appealed to the Board, which held oral arguments on May 15, 2015. The Board approved the Trial Commissioner's decision by a vote of 18 to 1 and filed its "Findings of Fact, Conclusions of Law, and Recommendation of the Board of Governors" on August 5, 2015. Bar Counsel then filed a Notice for the Court to review the Board's decision pursuant to SCR 3.370(7)

## II. ANALYSIS

Before we consider the substance of the parties' arguments, we address a procedural issue raised by Sparks. SCR 3.370(6) provides that "[t]he Board shall issue a written decision within forty five (45) days of voting on [a case]." Sparks argues that the Board missed this deadline, issuing its written decision some 82 days after voting.

Setting aside whether the Board missed the preceding deadline, we do not dismiss a disciplinary proceeding for such a procedural error absent some prejudice to the attorney. *Kentucky Bar Association v. Deters*, 465 S.W.3d 30, 33 (Ky. 2015), *reconsideration denied* (Aug. 20, 2015) (denying an attorney's

motion to dismiss the Board's late filing of its findings because the attorney failed to show any prejudice). Furthermore, as we pointed out in *Deters*, even if we grant Sparks's motion and strike the Board's findings, "the trial commissioner's findings and report would remain within the record. And the trial commissioner found [Sparks] guilty with a recommended suspension . . . ." *Id.* Therefore, "[s]triking the Board's findings would have little impact on our review of [Sparks's] conduct." *Id.*

We therefore decline to dismiss this disciplinary action against Sparks because Sparks has failed to show how he was prejudiced by any delay by the Board.

Turning now to the substantive arguments on appeal, we find that more than sufficient evidence exists to support the Board's findings of fact and conclusions. Therefore, we accept the Board's recommendation and find Sparks guilty of violating Counts I, II, III, IV, and VI of the charge against him but not guilty of violating Count V. We address each count below in turn.

#### **A. Count I**

Sparks violated SCR 3.130-1.4(a)(4) by refusing to respond to multiple requests for information about his client's \$11,000 settlement check. SCR 3.130-1.4(a)(4) states that "[a] lawyer shall promptly comply with reasonable requests for information[.]" Sparks concedes that he ignored multiple requests for information regarding the handling of the settlement check. However, Sparks argues that he did not violate this rule because his client did not give him authorization to speak with anyone about his case, and that he was

worried about breaching his duty of confidentiality under SCR 1.130(6). This argument is not persuasive because Sparks did not reach out to his client for permission to reveal this information, nor did he inform any party who requested information that they needed authorization from his client. Furthermore, despite his concern about client confidentiality, Sparks left a message regarding the status of the funds on Jeffrey's voicemail. Therefore, Sparks clearly violated SCR 3.130-1.4(a)(4).

### **B. Count II**

Sparks violated SCR 3.130-1.15(a) by failing to properly maintain client funds. This issue is not in dispute, as Sparks admits to comingling his clients' funds in his escrow account in violation of this rule.

### **C. Count III**

Sparks violated SCR 3.130-1.15(b) by failing to promptly deliver funds to which his client was entitled. SCR 3.130-1.15(b) states that "a lawyer shall promptly deliver to the client any funds or other property that the client is entitled to receive[.]" Sparks claims that his delay in delivering the client his share of the settlement was due to a potential Medicare lien. However, Sparks failed to contact Medicare about this matter until receiving his bar complaint, which occurred two years after Sparks received the \$11,000 settlement check. Once contacted, Medicare informed Sparks that no lien existed on his client's settlement. Thus, Sparks's stated reason for holding the settlement funds is unpersuasive. Finally, while it is true that Sparks paid Bill's Estate the full

amount of the settlement, he did not do so until more than two years after the receipt of the funds and after being threatened with discipline.

**D. Count IV**

Sparks violated SCR 3.130-8.1(b) by failing to respond to the KBA's complaint. SCR 3.130-8.1(b) states that a lawyer shall not "knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority[.]" Sparks claims that he did not realize how much time he had to respond to the complaint. However, the letter he received specified the time in which he had to respond. We find no justification for Sparks's confusion regarding this violation.

Sparks also argues that he believed he had a Fifth Amendment right not to respond; however, he did not advise the KBA that he was asserting this right. Furthermore, the right would have applied only to Count V, and would not have relieved Sparks of the duty to respond to Counts I, II, III, IV, and VI of the charge.

**E. Count V**

SCR 3.130-8.4(b) states that "[i]t is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects[.]" The KBA alleges that Sparks violated this rule by committing theft under KRS 514.070(1), which states the following:

A person is guilty of theft by failure to make required disposition of property received when:

(a) He obtains property upon agreement or subject to a known legal obligation to make specified payment or other disposition . . . ;  
and

(b) He intentionally deals with the property as his own and fails to make the required payment or disposition.

In order to show a violation of SCR 3.130-8.4(b), “[w]e only require a Respondent's actions to be shown, by a preponderance of the evidence, to fit within a crime under state or federal law.” *Kentucky Bar Association v. Edwards*, 377 S.W.3d 557, 563 (Ky. 2012). Thus, neither a criminal conviction nor filed charges are necessary to discipline Sparks for potential criminal acts. *Id.*

Sparks argues that he did not intentionally spend his client's money. The Trial Commissioner agreed, finding that Sparks believed he was appropriately spending money he had earned from another client, which he had mistakenly put in the wrong bank account. Although we are not bound by the findings of fact of the Trial Commissioner, *Kentucky Bar Association v. Greene*, 386 S.W.3d 717, 722 (Ky. 2012), we believe that those findings herein are supported by the evidence.

As noted by the Trial Commissioner, Sparks indicated in his answer that he has some mental health issues. The Trial Commissioner also found that Sparks exhibited a remarkable lack of knowledge regarding the need for and use of escrow accounts. These findings support the Trial Commissioner's conclusion that Sparks lacked the intent to commit theft. Furthermore, we note that Sparks eventually distributed the entirety of the settlement proceeds

without taking a fee. While this does not negate his misuse of the funds, it does mitigate against a finding of intent to commit theft. Therefore, we agree with the Trial Commissioner that the KBA did not meet its burden of proving that Sparks's actions constituted theft under KRS 514.070(1).

#### **F. Count VI**

Sparks violated SCR 3.130-8.4 by using his client's funds for personal use. This issue is not in dispute, as Sparks admitted to spending the majority of the \$11,000 settlement check on other case-related activity in violation of this rule.

#### **G. Suspension**

The KBA asks this Court to permanently disbar Sparks, or at least suspend him for several years. The punishment sought by the KBA is far more severe than the suspension recommended by the Trial Commissioner and the Board. SCR 3.380 describes the degrees of discipline available:

Upon findings of a violation of these rules, discipline may be administered by way of private reprimand, public reprimand, suspension from practice for a definite time, all of which may be with or without such conditions as the Court may impose, or permanent disbarment.

The KBA cites *Fitzgerald v. Kentucky Bar Association*, 381 S.W.3d 318 (Ky. 2012), *Kentucky Bar Association v. Rice*, 229 S.W.3d 903 (Ky. 2007), and *Caudill v. Kentucky Bar Association*, 155 S.W.3d 725 (Ky. 2005) to support its contention that Sparks deserves a more stringent penalty. All of these cases involve attorneys who were permanently disbarred. However, the disciplined attorneys were also convicted of criminal financial misconduct. In *Fitzgerald*,

the attorney, who was the designated payee for a social security disability recipient, converted the recipient's benefits to his own use and pled guilty to theft by failure to make disposition under KRS 514.070, a Class D felony. 381 S.W.3d at 318. In *Rice*, the attorney obtained two credit cards by using someone else's identity, used those credit cards to make purchases totaling \$14,322.42, and, after his indictment, fled the country. 229 S.W.3d at 903. When he returned to Kentucky, the attorney was arrested and he pled guilty to two counts of false statement as to identity under KRS 434.570. *Id.* In *Caudill*, the attorney sought permanent disbarment after pleading guilty to embezzlement of money belonging to the United States in violation of Title 18 U.S.C. § 641 and to two counts of theft by failure to make required disposition of property. 155 S.W.3d at 725. These cases are distinguishable because Sparks was not charged with and did not plead guilty to committing any crime.

The KBA also cites to *Kentucky Bar Association v. Isenburg*, 329 S.W.3d 327 (Ky. 2011) in which we suspended an attorney for five years for depositing a client's settlement check into his personal account, never sending the client his portion of the check, and making a series of misrepresentations to the client. While Sparks was not responsive, and while Sparks may have made a misrepresentation to Jeffrey, no evidence exists that he made any misrepresentations to Bill about the settlement check. Therefore, we do not find this case to be persuasive.

Instead, we find the cases relied on by the Trial Commissioner to be more analogous. In *King v. Kentucky Bar Association*, 440 S.W.3d 378 (Ky. 2014),

the attorney deposited settlement checks into his escrow account; however, he used his escrow account to pay personal expenses and failed to maintain a sufficient balance to pay his clients. *Id.* at 379. King, who had previously been publicly reprimanded for a DUI conviction, moved for a 181 day suspension with conditions, which the KBA essentially did not oppose and which we granted. *Id.* at 380.

In *Kentucky Bar Association v. Francis*, 439 S.W.3d 750 (Ky. 2014), the attorney paid personal expenses from his escrow account, failed to maintain sufficient funds in that account, failed to respond to notices from Bar Counsel, and failed to return unearned fees to a client. *Id.* 750-53. The Board, after noting the attorney had been privately admonished twice before, recommended a 181 day suspension, which this Court imposed. *Id.* at 753.

Sparks's actions here are more in line with those of the attorneys in *King* and *Francis*, who misused client funds, but were not charged with or convicted of crimes. Therefore, we believe that the sanctions recommended by the Board are appropriate.

ACCORDINGLY, IT IS ORDERED THAT:

1. David Thomas Sparks, KBA Member No. 85840, is found guilty of violating SCR 3.130-1.4(a)(4), SCR 3.130-1.15(a), SCR 3.130-1.15(b), SCR 3.130-8.1(b), and SCR 3.130-8.4.
2. Sparks is suspended from the practice of law for one-hundred-eighty-one (181) days, with sixty-one (61) days to serve<sup>3</sup> and the balance probated for

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<sup>3</sup> See footnote 1.

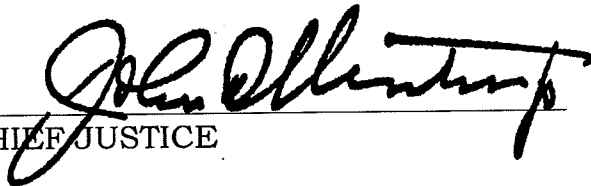
two years from the date of this Order conditioned on Sparks completing the conditions set forth below.

3. Sparks shall attend at his own cost and successfully complete thirty (30) hours of ethics education and business management education including the use of escrow accounts and shall establish an IOLTA account. Sparks will not apply for CLE credit for his attendance at these programs. Furthermore, Sparks will provide an appropriate release form so that his CLE records can be reviewed for one year following his completion of those programs.
4. Sparks shall not commit any crimes, including misdemeanors and felonies, during the period of probation.
5. Sparks shall not receive any new disciplinary charges during the probationary period related to conduct discovered or occurring after the date of this Order.
6. Sparks shall notify all necessary courts and clients of his sixty-one (61) day suspension in accordance with SCR 3.390(b). Those notifications shall be made by letter placed in the United States mail within ten (10) days from the date of this Opinion and Order. Sparks shall also simultaneously provide a copy of all such letters to the Office of Bar Counsel. Also, to the extent possible, Sparks shall cancel and cease any advertising activities in which he is engaged.

7. As stated in SCR 3.390(a), this order shall take effect on the 10th day following its entry. Sparks is instructed to promptly take all reasonable steps to protect the interests of his clients.
8. Pursuant to SCR 3.390, Sparks shall not, during the term of suspension, accept new clients or collect unearned fees.
9. Pursuant to SCR 3.450, Sparks is directed to pay all costs associated with this disciplinary proceeding for which execution may issue from this Court upon finality of this Opinion and Order.

All sitting. All concur.

ENTERED: February 18, 2016.

  
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CHIEF JUSTICE