

TO BE PUBLISHED

Supreme Court of Kentucky

2009-SC-000404-KB

FINAL

DATE 10/11/09 Kelly Ueber D.C.
MOVANT

JACQUELINE L. CHAUVIN

V. IN SUPREME COURT

KENTUCKY BAR ASSOCIATION

RESPONDENT

OPINION AND ORDER

Jacqueline L. Chauvin, whose KBA member number is 85883 and whose bar roster address is The Willows of Plainview, 10070 Willowbrook Circle, Louisville, Kentucky, 40223, admits that she is guilty of committing all charges of misconduct alleged by the Kentucky Bar Association (KBA) and requests that this Court impose a five-year suspension from the practice of law in order to resolve her charges as set forth in KBA Files 15209, 15362, 15780, 15016, and 16702. The KBA agrees that this is an appropriate discipline and recommends that this Court grant Chauvin's request. Having reviewed the record, this Court grants Chauvin's motion, orders that she be suspended from the practice of law in this Commonwealth for five years, that she enter a Supervision Agreement with the Kentucky Lawyers Assistance Program for five years, and

that she pay back all unearned fees plus interest to her clients as set forth below within two years of the date of this Opinion and Order.

Chauvin was admitted to practice law in this Commonwealth on October 13, 1995. In January 2006, Chauvin began demonstrating misconduct in her representation of clients, which resulted in the KBA opening five different files and charging Chauvin with a total of twenty-three counts of violations of the Rules of Professional Conduct. The facts underlying these charges are explained below.

KBA File 15209

In January 2006, Helen Palmer hired Chauvin to represent her in a divorce proceeding, and without entering into a written fee agreement, Palmer gave Chauvin \$20,000 for her representation. During the next several months, Palmer contacted Chauvin on numerous occasions requesting that Chauvin give her statements regarding the details of the work being performed and the status of her case. Chauvin neither returned Palmer's phone calls nor provided her with any accounting statements. Chauvin also did not inform Palmer that on August 1, 2006, the court entered an order setting a case management conference for October 25, 2006.

Due to this failure to communicate, Palmer sent a letter to Chauvin on October 7, 2006, terminating her attorney/client relationship with Chauvin. Despite Palmer's request that Chauvin forward an accounting of the \$20,000 and her case file to her new attorney, Chauvin never complied with either

request. Subsequently, the court entered an order of substitution of counsel on October 17, 2006.

On October 16, 2008, the KBA issued a six-count charge against Chauvin based on her misconduct in representing Palmer. These charges included violating SCR 3.130-1.3 for failing to act with due diligence, SCR 3.130-1.4(a) and (b) for failing to communicate with her client, SCR 3.130-1.5(a) for charging an unreasonable fee, SCR 3.130-1.16(d) for failing to return an unearned fee to her client upon termination of representation,¹ SCR 3.130-3.2 for failing to expedite the divorce action, and SCR 3.130-8.3(c)² for engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. In her motion to this Court, Chauvin admits that she is guilty of violating these rules as set forth in KBA File 15209 and acknowledges that Palmer is entitled to a reimbursement of \$3,970.

KBA File 15362

In the spring of 2006, Chauvin agreed to represent David Patterson in his appeal of a Jefferson Family Court Judgment. As Patterson's legal counsel, Chauvin was required to file her brief with the Kentucky Court of Appeals by May 9, 2006. However, Chauvin failed to file a brief by this date. Thereafter,

¹ In accounting for the portion of the fee that should be returned to Palmer, Chauvin explains that she submitted several pleadings on behalf of Palmer, which is verified by the court record, and worked a total of 91.6 hours on Palmer's divorce case. Chauvin states that at \$175 per hour, she was entitled to \$16,030, and acknowledges that Palmer is due a reimbursement of \$3,970. This accounting is not disputed by the KBA.

² Effective July 15, 2009, SCR 3.130-8.3 was renumbered as SCR 3.130-8.4. The language of this rule did not change. This renumbering will be reflected throughout this Opinion and Order.

on August 16, 2006, the Court of Appeals entered an order requiring Chauvin to file a status report to inform the court whether she had abandoned her appeal. Chauvin never responded to this order. The Court of Appeals entered two more orders—a show cause order on October 30, 2006, and an order requiring Chauvin to pay a \$200 fine on December 14, 2006—to which Chauvin failed to respond. Subsequently, on April 9, 2007, the Court of Appeals entered a fourth order requiring Chauvin to appear on May 9, 2007, to show cause as to why she should not be held in contempt for her repeated failure to comply with court orders, why an additional \$500 fine should not be imposed, and why her actions should not be reported to the Inquiry Commission. Chauvin appeared before the court with counsel on May 9, 2007, but did not offer a satisfactory explanation as to why she had failed to comply with court orders. Thus, on May 18, 2007, the Court of Appeals entered an Opinion finding that Chauvin was in contempt of court, imposing a \$200 penalty for such contempt, and imposing an additional \$500 fine for Chauvin's failure to comply with numerous court orders. Chauvin complied with these orders, submitting the \$200 fine on May 21, 2007, and the \$500 fine on May 25, 2007, to the Clerk of the Court of Appeals.

After receiving the Court of Appeals' Opinion, the Inquiry Commission sent two separate letters to Chauvin, one on June 7, 2007, and one on June 25, 2007, requesting that she respond to the allegations of professional misconduct relating to her representation of David Patterson. Chauvin did not respond to either of these letters. Thereafter, on December 2, 2008, the Inquiry

Commission issued a four-count charge against Chauvin, alleging that she violated SCR 3.130-1.3 for being less than diligent in her representation of Patterson, SCR 3.130-3.2 for failing to expedite her client's appeal, SCR 3.130-3.4(c) for disobeying the rules of a tribunal, and SCR 3.130-8.1(b) for failing to respond to a disciplinary authority. Chauvin now acknowledges that she violated the above stated rules of professional conduct in her failure to adequately represent Patterson in his appeal.

KBA File 15780

In June 2006, Robert Hallenberg began trying to contact Chauvin to discuss the status of the dissolution proceeding between John O'Neil, one of Chauvin's clients, and Cathryn O'Neil. John O'Neil passed away in 2005, and while the Executor of Mr. O'Neil's estate hired Robert Hallenberg to generally represent his estate, the Executor allowed Chauvin to continue representing Mr. O'Neil in the post dissolution of marriage proceedings regarding the division of property. In December 2006, despite the fact that Hallenberg had still been unable to contact Chauvin, Chauvin unilaterally made a motion for a trial date in the dissolution proceeding, which the court granted on January 9, 2007. After the Domestic Relations Commissioner filed his report and recommendation on January 16, 2007, Hallenberg and Chauvin finally contacted each other and discussed what Mr. O'Neil's response should be to the commissioner's recommendation. Following two hearings regarding the exceptions to the recommendation, Hallenberg again began contacting Chauvin to request information, but she failed to respond.

On July 10, 2007, the Jefferson Family Court delivered its Findings of Fact and Conclusions of Law to Hallenberg. Hallenberg continued trying to contact Chauvin to discuss the court's findings, but she failed to return any of his calls. Thereafter, one of Hallenberg's partners filed a motion to alter, amend, or vacate the court's findings, a copy of which was mailed to Chauvin. Having still received no response from Chauvin, on August 7, 2007, the Executor of Mr. O'Neil's estate fired Chauvin and requested that she return all of Mr. O'Neil's files, which Chauvin failed to do. Subsequently, on October 12, 2007, Hallenberg filed a bar complaint against Chauvin. On February 15, 2008, the Jefferson County Deputy Sheriff served a copy of this complaint on Chauvin, which advised her that a failure to respond to the complaint could subject her to a further charge of misconduct pursuant to SCR 3.130-8.1. After the Inquiry Commission received no response, the sheriff served a reminder letter on Chauvin, to which she again failed to respond.

On March 9, 2009, the Inquiry Commission issued a three-count charge based on Chauvin's misconduct in representing Mr. O'Neil. The charge alleged that Chauvin violated SCR 3.130-1.4(a) and (b) by failing to communicate with Hallenberg, SCR 3.130-1.16(d) by failing to return Mr. O'Neil's file upon termination of the attorney/client relationship, and SCR 3.130-8.1(b) by failing to respond to a disciplinary authority. In her motion, Chauvin admits that her misconduct in representing Mr. O'Neil and later his executor violated the above referenced rules of professional conduct.

KBA File 15016

In August 2006, Geraldine Wood paid Chauvin \$500 to represent her in a divorce proceeding, and paid her another \$1,000 in September 2006. After Ms. Wood's then husband filed a petition for dissolution, Chauvin filed a response and counter petition on behalf of Ms. Wood on September 21, 2006. On October 31, 2006, Mr. Wood's attorney sent Chauvin a settlement offer, which was to expire if not accepted in writing on or before November 14, 2006. Chauvin never informed Ms. Wood of this settlement offer, and despite Ms. Wood's attempts to contact Chauvin during this time, Chauvin never returned her phone calls or emails. On December 12, 2006, Ms. Wood sent a letter to Chauvin terminating their attorney/client relationship and requesting a refund of any unearned fees and her case file. Chauvin never responded to this letter.

On January 30, 2007, Ms. Wood filed a bar complaint against Chauvin. Chauvin neither responded to this bar complaint nor to the reminder letter served on Chauvin via certified mail. Subsequently, on September 10, 2007, the Inquiry Commission issued a five-count charge against Chauvin, alleging that she violated SCR 3.130-1.3 for failing to act with due diligence in her representation of Ms. Wood, SCR 3.130-1.4(a) and (b) for failing to communicate properly with her client, SCR 3.130-1.16(d) for failing to refund an unearned fee upon termination of her representation, SCR 3.130-3.2 for failing to expedite the dissolution of marriage on behalf of her client, and SCR 3.130-8.1(b) for failing to respond to a disciplinary authority. In addition to admitting her guilt in violating these aforementioned rules, Chauvin also

acknowledges that Ms. Wood is entitled to a complete reimbursement of the \$1,500 advance payment.

KBA File 16702

In the fall of 2006, Leslie Brook Singleton paid Chauvin \$10,000 to represent her in a divorce proceeding. During the course of Chauvin's representation, Singleton began living with Chauvin in order to recuperate after having medical treatment. Thereafter, in October 2006, Chauvin used Singleton's credit card to buy approximately \$1,100 worth of various items and withdrew approximately \$1,200 of Singleton's money at three different ATM machines. Although it is not disputed that these purchases and withdrawals were made with the knowledge, consent, and participation of Singleton, Chauvin admits that it was improper to receive such assistance during the period of her legal representation of Singleton.

In April 2007, Chauvin informed Singleton that due to personal reasons, she was no longer going to practice law. At this time, Chauvin did not provide a complete accounting to Singleton regarding any unearned fees. After the termination of their attorney/client relationship, in March 2008, Chauvin again used Singleton's credit card, again with Singleton's knowledge and consent, to purchase approximately \$1,435 worth of various items for Chauvin's personal use. Chauvin admits that to the extent that Singleton has not been reimbursed for these expenses, Singleton is entitled to a reimbursement.

On July 9, 2008, Singleton filed a bar complaint against Chauvin. On August 26, 2008, a Jefferson County Deputy Sheriff served the complaint on

Chauvin, and after receiving no response, served a reminder letter on October 2, 2008. Chauvin also failed to respond to this reminder letter. On March 9, 2009, the Inquiry Commission issued a five-count charge against Chauvin, alleging that she violated SCR 3.130-1.3 for failing to diligently represent Singleton, SCR 3.130-1.15(d) for failing to return money that belonged to her client, SCR 3.130-8.4(b) and (c) for engaging in a criminal act—misappropriating her client’s property—that reflects poorly on a lawyer’s honesty and trustworthiness, SCR 3.130-1.16(d) for failing to return an unearned fee upon the termination of the attorney/client relationship, and SCR 3.130-8.1(b) for failing to respond to a disciplinary authority. Chauvin admits in this motion that she is guilty of these violations as set forth in KBA File 16702 and that Singleton is entitled to a reimbursement of \$1,435.

In addition to admitting that she is guilty of all the charges set forth in these KBA files, Chauvin explains in her motion that she has a mental health condition that affected her judgment and ability to practice law during her representation of Helen Palmer, David Patterson, the Estate of John O’Neil, Geraldine Wood, and Leslie Brook Singleton. Chauvin also acknowledges that her failure to respond to any of the bar complaints or the KBA’s requests for information further complicated these disciplinary proceedings to the KBA’s detriment. Chauvin’s prior discipline includes a sixty-one day suspension from the practice of law entered on August 23, 2007, with thirty days to be served and thirty-one days probated under certain conditions. On August 28, 2007, the KBA objected to Chauvin’s automatic reinstatement pursuant to SCR

3.510(2), and Chauvin has not since been reinstated to practice law in this Commonwealth.

In its motion, the KBA notes that pursuant to SCR 3.480(2) and its procedure in consensual discipline cases, it entered into sanction negotiations with Chauvin. The KBA explains that Chauvin's motion represents its negotiated sanction and acknowledges that both the KBA and the Chair of the Inquiry Commission approve of Chauvin's motion. Having reviewed these motions, this Court agrees that a five-year suspension from the practice of law with certain conditions is an appropriate sanction for Chauvin's misconduct. In the past, this Court has imposed a five-year suspension against attorneys who have engaged in similar misconduct. KBA v. Hammond, 241 S.W.3d 310 (Ky. 2007) (attorney suspended for five years for his failure to diligently represent six clients); KBA v. Hall, 173 S.W.3d 621 (Ky. 2005) (attorney suspended for five years for his neglect of multiple clients' cases, retention of unearned fees and client property, and failure to respond to bar complaints). Therefore, it is hereby ORDERED that:

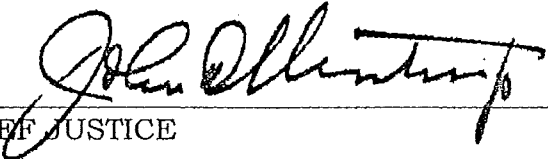
1. Jacqueline L. Chauvin is suspended from the practice of law in this Commonwealth for five years to run from the date of this Opinion and Order.
2. Jacqueline L. Chauvin is directed to enter into a Supervision Agreement with the Kentucky Lawyers Assistance Program for a total of five years.

3. Jacqueline L. Chauvin is directed to reimburse Helen Palmer the sum of \$3,970, plus legal interest accumulating from October 7, 2006, and Geraldine Wood the sum of \$1,500, plus legal interest accumulating from December 12, 2006. Chauvin is also ordered to reimburse Leslie Brook Singleton the sum of \$1,435, plus legal interest accumulating from March 2008, to the extent that Singleton has not been previously reimbursed this amount by a third party on behalf of Chauvin. These reimbursements to Palmer, Wood, and Singleton must be paid within two years from the date of this Opinion and Order.
4. If Chauvin currently has any clients, pursuant to SCR 3.390, she is directed to notify all clients in writing within ten days from the entry of this Opinion and Order of her inability to represent them, and notify all courts in which she has matters pending of her suspension from the practice of law, and furnish copies of the notification letters to the Director of the KBA. Further, to the extent possible and necessary, Chauvin shall immediately cancel and cease any advertising activities in which she is engaged.
5. Pursuant to SCR 3.450, Chauvin is directed to pay all costs associated with this proceeding in the amount of \$604.81, for which

execution may issue from this Court upon finality of this Opinion and Order.

All concur. Venters, J., not sitting.

ENTERED: October 1, 2009.



CHIEF JUSTICE

Supreme Court of Kentucky

TO BE PUBLISHED

FINAL

2007-SC-000399-KB

DATE 9-5-07 ELAGrowthPC.
MOVANT

JACQUELINE L. CHAUVIN

V.

IN SUPREME COURT

KENTUCKY BAR ASSOCIATION

RESPONDENT

OPINION AND ORDER

Movant, Jacqueline L. Chauvin, pursuant to SCR 3.480(2), moves this Court to enter an Order suspending her license to practice law in the Commonwealth of Kentucky for sixty-one days, with thirty days to serve and thirty-one days probated for two years, subject to certain conditions. Movant was admitted to the practice of law in October of 1993. Her KBA Member Number is 85883 and her Bar Roster Address is 4023 Elmwood Ave, Louisville, Kentucky 40207. The Kentucky Bar Association (KBA) states that it has no objection to the motion. For the following reasons, the motion is granted.

The Charge brought against Movant stems from her representation of Dennis Dempsey. In 1997, Dempsey was indicted by a federal grand jury in Illinois. He was arrested in Louisville, Kentucky in early 1998. At that time, he hired Scott Cox to represent him in proceedings related to the criminal case in Louisville. To cover the cost of the representation, Dempsey had \$10,000 in cash delivered to Cox by a friend named Cynthia Lega. Cox ultimately took a \$4,000 fee from the cash that had been entrusted to him.

Movant's first contact with Dempsey occurred around the time that Scott Cox's representation ended. Movant had been representing Cynthia Lega, who referred Dempsey to Movant and communicated with Movant on his behalf. Movant claims she was asked to obtain and hold the remaining \$6,000 in cash from Scott Cox and then to suggest the name of an attorney in Illinois to represent him in the remaining criminal proceedings. Movant collected the money and recommended an attorney from Chicago. Dempsey asked that Movant not forward the money to the recommended attorney, apparently having opted not to employ him, and that she continue holding the cash. Movant did so, keeping the cash in her office safe. Dempsey eventually entered into a plea agreement and was sentenced to twenty years in prison in 1999.

On January 4, 2002, Dempsey contacted Movant by letter asking that she represent him in a real estate dispute. She conducted some preliminary legal research on the matter and attempted to contact Dempsey's brother, who had called on behalf of Dempsey. The record contains a letter sent by Movant to Dempsey in March 2002 in which she stated, "I regret the misunderstanding which caused you to file a complaint with the Kentucky Bar Association." It is not clear from the record that a bar complaint was actually filed, or if one was, whether it was the one that eventually led to the current Charge against Movant. From the content of the letter, it appears that any complaint stemmed from Movant's lack of contact with Dempsey or his brother. The letter also indicated that Movant was willing to continue representing Dempsey in the real estate dispute. Dempsey replied with a letter of his own in which he stated, "I too regret our misunderstanding." The letter also included the following: "Shall we call the \$6,000 a retainer and proceed from there?"

Movant subsequently asked Dempsey to provide documents related to the real estate matter, which he did. By late summer 2002, Movant was ready to file a civil complaint concerning the real estate. On August 12, 2002, she sent Dempsey a letter in which she outlined the nature of her proposed continuing representation, including the filing of the suit, and her fee, which was to be a flat \$6,000. In the letter, she asked Dempsey to sign and return a copy to memorialize their agreement about the representation. Dempsey, however, did not respond to the letter, and Movant did no further work on the real estate matter.

In April 2003, Dempsey sent Movant a letter expressing dissatisfaction over the fact that it had been over a year since Movant had said she would proceed with the real estate matter. He also stated, "I realize it was rather naïve of me to expect much from someone I had to file a complaint on just to receive a response to my letters and calls." He ended the letter by requesting the return of his \$6,000 plus interest for the five years in which Movant held the money.

Movant did not respond directly to Dempsey's letter. Instead, she had her own attorney send a letter indicating that her lack of further action on the real estate matter was the result of Dempsey's failure to respond to the August 12 letter. The letter also stated that if Dempsey felt he was entitled to reimbursement of any of the \$6,000, then Movant would be willing to participate in the KBA's Fee Arbitration process to resolve the matter.

This sequence of events led to the issuance of a Charge (and subsequent Amended Charge) against Movant. The Charge as amended alleged four counts of professional misconduct by Movant: (1) a violation of SCR 3.130-1.16(d) for failing to return the unearned fee to the client; (2) a violation of SCR 3.130-1.15(a) for keeping

property belonging to a client in an office safe rather than a separate bank account; (3) a violation of SCR 3.130-1.15(b), also for failing to return the unearned fee to the client upon request; and (4) a violation of SCR 3.130-8.3(c) for obtaining the \$6,000 in cash from Scott Cox without Dempsey's authorization.

Movant responded to the Charge and Amended Charge essentially by arguing that it did not accurately reflect the entirety of the events that transpired. She specifically objected to the fourth count, claiming that she acted with express authorization from Dempsey when she obtained the cash from Scott Cox.

The Charge was assigned to a trial commissioner, who proceeded with pre-trial matters and set trial for October 30, 2006. It is not clear from the record whether the trial was held. However, it appears that Movant entered into, and successfully completed, negotiations with Bar Counsel to dispose of the Charge because she subsequently filed a Verified Motion for Consensual Discipline pursuant to SCR 3.480(2).

In the motion, Movant admits that her conduct concerning the cash and her representation of Dempsey constituted misconduct. Based on this admission, she admits the ethical violations described in Counts I - III in the Amended charge. However, Movant continues to deny that she acted without authorization in obtaining the cash as described in Count IV. The motion requests that Movant's license to practice law in the Commonwealth of Kentucky be suspended for sixty-one days, with thirty days to serve and thirty-one days probated for two years. The probation is conditioned upon return of the funds to Dempsey, Movant's attendance at remedial ethics education (which do not count toward her CLE requirements), and periodic reports to the KBA on

Movant's progress in completing the remedial ethics education. Movant also asks that Count IV of the Amended Charge be dismissed.

The negotiated sanction rule provides that the KBA may "object[] to the terms proposed. . . ." SCR 3.480(2). Upon receiving such objection, "if the Court determines good cause exists, [it] shall remand the case for hearing or other proceedings specified in the order of remand." Id. However, the KBA has stated that it has no objection to the sanction proposed by Movant.

Nevertheless, acceptance of the proposed negotiated sanction still falls within the discretion of the Court: "The Court may approve the sanction agreed to by the parties, or may remand the case for hearing or other proceedings specified in the order of remand." Id. The discipline proposed by Movant being adequate, the Court hereby approves it and therefore declines further review of the matter.

ACCORDINGLY, IT IS ORDERED THAT:

(1) Jacqueline L. Chauvin is hereby suspended from the practice of law in the Commonwealth of Kentucky for sixty-one days, thirty days of which is to be served and thirty-one days of which is probated for two years subject to the following conditions:

(a) Return of the \$6,000.00 in client funds to Dennis Dempsey within sixty days.

(b) Completion of ten hours of remedial ethics education within the two-year probation period.

(c) The remedial ethics education requirement must be satisfied by Movant's personal attendance at live continuing legal education or adult education programs approved by the KBA Office of Bar Counsel, or such formal ethics and professional enhancement program as may be established

by the Office of Bar Counsel at the KBA, if so directed by that office, and must be appropriate for the remedial education of Movant regarding her ethical obligation to clients, third parties, and the public.

(d) Movant will not apply for CLE credit of any kind for the remedial hours, even if the courses she attends are approved for CLE in Kentucky. Movant will furnish a release and waiver to the Office of Bar Counsel to review her records in the CLE department that might otherwise be confidential, with such release to continue in effect until one year after she completes her remedial education, to allow the Office of Bar Counsel to verify that she has not reported any hours to the CLE Commission that are taken as remedial education.

(e) Movant will report to the KBA every ninety days concerning her progress in satisfying her remedial ethics education obligation. In the event that Movant fails to comply with any of the terms of discipline contained herein, upon motion by the KBA Office of Bar Counsel, the Court may issue an order imposing the remainder of Movant's suspension.

(2) Count IV of the Amended Charge is dismissed.

(3) In accordance with SCR 3.450, Movant is directed to pay all costs associated with these disciplinary proceedings against her, said sum being \$138.99, for which execution may issue from this Court upon finality of this Opinion and Order.

All sitting. Lambert, C.J.; Cunningham, Minton, Noble, Schroder and Scott, JJ.,
concur.

ENTERED: August 23, 2007.


CHIEF JUSTICE