

Supreme Court of Kentucky

2013-SC-000469-KB

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KENTUCKY BAR ASSOCIATION

SEP 26 2013

MOVANT

KENTUCKY BAR ASSOCIATION

DISCIPLINARY CLERK

V.

IN SUPREME COURT

STEVEN F. CLAYPOOLE

RESPONDENT

OPINION AND ORDER

A trial commissioner has recommended that Steven F. Claypoole receive a six-month suspension from the practice of law, conditionally probated for two years, for his alleged violations of former Supreme Court Rule ("SCR") 3.130-1.2(a), former SCR 3.130-1.4(b), former SCR 3.130-1.7(b), and former SCR 3.130-8.3(c).¹ Claypoole, whose Kentucky Bar Association ("KBA") number is 89169 and whose last known bar roster address is 1227 Keswick Blvd., Louisville, KY 40217, was admitted to the practice of law in the Commonwealth of Kentucky on May 1, 2002.

In June, 2004, Teresa Muniz's son, Nick, was killed in an automobile accident. Within days of her son's death, Muniz met with Claypoole, her step-brother, to execute a release to obtain her son's motorcycle from an impound lot. Prior to meeting with Claypoole, Muniz was under the impression that her

¹ These are references to the rules as they were written prior to the 2009 Amendments to the Rules of Professional Conduct. The current equivalent of SCR 3.130-1.7(b) is SCR 3.130-1.7(a)(2), and the current equivalent of SCR 3.130-8.3(c) is SCR 3.130-8.4(c). There were no substantive changes to the rules relevant to the disposition of this case.

family attorney, Andrew Gailor, would be representing the family in any claims against the driver's insurance company. With Gailor out of the state, Muniz agreed to meet Claypoole to review and sign the release. During that meeting, Claypoole presented Muniz with a variety of documents, which he reviewed with her for less than an hour before securing Muniz's signatures. Among the documents signed by Muniz was a contract for a contingent fee arrangement, authorizations for the release of health and employment records, and a document titled "Limited Power of Attorney." Claypoole did not fully explain the effect of the documents to Muniz, nor did he provide copies of the documents for her records.

Unbeknownst to Muniz, the driver of the vehicle that struck and killed her son was insured by Progressive Insurance, a client of Claypoole's firm. Claypoole neglected to conduct a conflicts check on the parties prior to Muniz's execution of the fee agreement and other documents. After his meeting with Muniz, Claypoole failed to notify his supervising attorney of Muniz's claim against Progressive Insurance, nor did he enter the case information into the firm's computer system. As an associate at the firm, Claypoole was familiar with the firm's procedure requiring attorneys to enter case information into the system in order to run a conflicts check. Without Muniz's information in the system, no subsequent conflicts check was conducted.

Despite this conflict of interest, Claypoole proceeded with Muniz's case by corresponding directly with Progressive Insurance. Claypoole's firm became aware of the conflict only when Progressive Insurance contacted another

attorney at the firm and alerted him of the impending claim. In a letter dated July 8, 2004, Muniz terminated Claypoole from all representation.

The Inquiry Commission issued a four-count charge against Claypoole for his alleged violations of SCR 3.130-1.2(a) for failing to abide by a client's decisions concerning the objectives of representation and failing to consult with the client; SCR 3.130-1.7(b) by failing to explain matters to the extent reasonably necessary to permit a client to make informed decisions; SCR 3.130-1.4(b) by representing a client when representation would be materially limited by the attorney's responsibilities to another client; and SCR 3.130-8.3(c) by engaging in acts of dishonesty, fraud, deceit, or misrepresentation.²

Two days of hearings commenced on January 24, 2013, and concluded on February 7, 2013. The KBA called six witnesses, including Muniz and attorneys from Claypoole's firm. At the conclusion of the hearing, the trial commissioner concluded that Claypoole was guilty of all four charges of misconduct. Specifically, the trial commissioner found that Claypoole failed to adequately explain the documents presented to Muniz, who anticipated only executing a release to obtain the motorcycle, and that his "over-reaching" in having her sign the additional documents was deceitful. Additionally, Claypoole never informed Muniz of the conflict which prevented her from making informed decisions concerning her claims. The trial commissioner further found that Progressive Insurance provided significant business to

² Claypoole instituted a civil action relating to the underlying issue in this case. As a result, there was a nine-year delay between the charged misconduct and the KBA hearing.

Claypoole's firm, and senior members of the firm admitted that they would have never taken Muniz as a client had they known of the conflict. Claypoole himself had worked on Progressive Insurance cases for the firm, and had communicated with Progressive Insurance's claim representative in other cases before meeting with Muniz. Notably, Claypoole's own testimony at the hearing revealed that he was unconcerned with checking for conflicts, but instead focused his attention on generating billable hours.

The trial commissioner recommended that Claypoole be found guilty of having engaged in the above-referenced misconduct, and be suspended from the practice of law for six months, probated for two years upon the condition that Claypoole successfully completes ten hours of remedial ethics training. In reaching this recommendation, the trial commissioner considered Claypoole's prior disciplinary history, which includes a 30-day suspension, as well as a 181-day suspension both of which were imposed when Claypoole failed to comply with the conditions of the relevant disciplinary orders.

Neither Claypoole nor Bar Counsel has filed a notice for this Court to review the trial commissioner's decision as allowed under SCR 3.370(8).³ This Court elects not to review the recommendation of the trial commissioner as allowed under SCR 3.370(8), as the trial commissioner's findings and conclusions are supported by the record and the law. The decision of the trial commissioner is adopted pursuant to SCR 3.370(9). Accordingly, it is hereby ORDERED:

³ The case is before this Court pursuant to SCR 3.360(4) and 3.370(9).

1. Steven Claypoole is found guilty of the misconduct alleged against him. If Claypoole fails to comply with any of the conditions contained in this order during the two (2) year period following the entry of this order, then, upon motion of the KBA Office of Bar Counsel, a six (6) month suspension from the practice of law in the Commonwealth of Kentucky shall be imposed;

2. Claypoole shall complete, at his expense, the next scheduled Ethics and Professionalism Enhancement Program ("EPEP") (7 hours of remedial ethics training) offered by the Office of Bar Counsel, separate and apart from his fulfillment of any other continuing legal education ("CLE") requirement, within twelve (12) months after entry of this Court's order;

3. In addition to his completion of EPEP, and separate and apart from his fulfillment of any other CLE requirement, Claypoole shall complete, at his expense, three (3) hours of remedial ethics education within twelve (12) months after entry of this Court's order. The remedial ethics education must be satisfied by Claypoole's personal attendance at a live CLE program, a satellite or video CLE program in the presence of a monitor, or other programs approved in advance by the KBA Office of Bar Counsel;

4. Claypoole shall furnish a release and waiver to the Office of Bar Counsel to review his records in the CLE department that might otherwise be confidential, with such release to continue in effect for one year after completion of the remedial education, in order to allow the Office of Bar Counsel to verify that Respondent has not reported any hours to the CLE Commission that are taken as remedial education;

5. In accordance with SCR 3.450 and SCR 3.480(3)(b), Claypoole is directed to pay all costs associated with this disciplinary proceeding, said sum being \$2,903.81, and for which execution may issue from this Court upon finality of this Opinion and Order.

All sitting. All concur.

ENTERED: September 26, 2013.


CHIEF JUSTICE

TO BE PUBLISHED

Supreme Court of Kentucky

FINAL

2006-SC-000242-KB

DATE Feb 5, 08 EIA Groat D.C.

KENTUCKY BAR ASSOCIATION

MOVANT

V.

IN SUPREME COURT

STEVEN F. CLAYPOOLE

RESPONDENT

OPINION AND ORDER

By Order entered on August 24, 2006, Respondent was suspended from the practice of law for thirty (30) days with an additional sentence of one hundred eighty-one (181) days probated for two years on the condition that he participate in the KYLAP Program and comply with the monitoring agreement. Thereafter, the KBA filed an Objection to the Automatic Reinstatement, pursuant to SCR 3.510(2), because it believed that Respondent had violated his KYLAP Supervision Agreement by testing positive for alcohol consumption. On September 21, 2006, the KBA filed with this Court a Motion to Show Cause and to Commence Suspension requesting the Court to issue a rule against Respondent to show cause why the 181-day suspension should not be imposed because of a violation of the terms of his probation.

On October 6, 2006, Respondent filed with this Court his Response to the Objection to the Automatic Reinstatement and Motion to Show Cause and Commence Suspension. Thereafter, the Court ordered that this matter be sent to the Board of

Governors to conduct an evidentiary hearing on the issue of the reliability of the EtG test and its application in this case.

On February 5, 2007, the KBA filed a Motion to Reconsider for the Purpose of Clarification and to direct that the Board designate a member of the Bar to preside over the evidentiary hearing. On April 19, 2007, the Court granted the KBA's Motion and directed the Board to so designate a member of the Bar. However, before that hearing occurred, Respondent filed a notice to withdraw his objection to commencement of the 181-day probated suspension, which he has now served.

Therefore, the Court acknowledges Respondent's withdrawal of his objection to the commencement of the 181-day probated suspension in the above-referenced matter.

IT IS ORDERED that Respondent shall be suspended from the practice of law for a period of one hundred eighty-one (181) days commencing January 25, 2007.

All sitting. All concur.

ENTERED: January 24, 2008.



CHIEF JUSTICE

COUNSEL FOR MOVANT:

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Supreme Court of Kentucky

TO BE PUBLISHED
KENTUCKY BAR ASSOCIATION
OFFICE OF THE DISCIPLINARY CLERK

AUG 24 2006

2006-SC-0242-KB

FILED

KENTUCKY BAR ASSOCIATION

MOVANT

V.

IN SUPREME COURT

STEVEN F. CLAYPOOLE

RESPONDENT

OPINION AND ORDER

Respondent, Steven F. Claypoole, whose bar roster address is 1227 Keswick Blvd., Louisville, Kentucky 40217, has been charged with violating SCR 3.130-8.1(b), for failing, in connection with a bar admission application, to respond to a lawful demand for information from an admissions authority. Respondent admits that he is guilty of violating that Rule of Professional Conduct, and requests that this Court impose the sanction of 30 days' suspension from the practice of law, with an additional sentence of 181 days suspended for two years in which he will participate in the KYLAP program.

Respondent applied to sit for the February 2002 Kentucky Bar examination by application dated September 27, 2001. He took the bar examination on February 26, and 27, 2002. Following the examination, and prior to learning the results, Respondent was charged with Driving Under the Influence, First Offense, KRS 189A.010, on or about March 23, 2002, in Jefferson County, Kentucky. On April 19, 2002, Respondent

learned that he had passed the bar examination. He was admitted to the practice of law by Order of the Kentucky Supreme Court on May 1, 2002. On May 8, 2002, Respondent entered a plea of guilty to Driving Under the Influence, First Offense. His driving privileges were revoked and he was ordered to complete an alcohol-counseling program. In addition, he was ordered to pay a fine, court costs and service fees.

Respondent admits that he has had other incidents involving alcohol, including charges of Driving Under the Influence, First Offense, and Reckless Driving on June 22, 1989, to which Respondent pled guilty; Driving Under the Influence, Second Offense within five years, on December 18, 1992, to which Respondent pled guilty; and Alcohol Intoxication, First Offense, on September 20, 2001, for which Respondent paid a fine.

On May 7, 2002, Respondent sought a Kentucky Bar Association Ethics Hotline Opinion regarding whether he needed to report to the Office of Bar Admissions an act of misconduct which occurred after he had taken the bar examination and for which he pled guilty after he had been admitted to the bar. On May 31, 2002, Respondent received an Ethics Hotline Opinion stating that from the time of his arrest for Driving Under the Influence Respondent had a duty pursuant to SCR 3.130-8.1(b), to report his misconduct to the Office of Bar Admissions. Respondent disclosed to the Office of Bar Admissions that he had been charged with Driving Under the Influence on June 4 2002.

The application for admission contains a provision entitled "Update of Character and Fitness Information," which instructs applicants: "If you have any incident or occurrence that would change the information provided since filing of your application (i.e. change of employment, traffic citation, arrests, disposition of pending litigation), you must complete the Update of Character and Fitness Information Form that is provided

at the end of these instructions." All applicants for eligibility to sit for the bar examination sign a "Verification" page on which the applicant affirms that he understands "this application for admission to the practice of law in Kentucky is a continuing application and must show correctly and fully the information herein sought as the date of my taking an oath of an attorney at law," and that the applicant will, "after the happening of any event, immediately notify the Board by filing an amendment to this application as to any changes in respect to any matter regarding which information is herein sought, and as to any incident which may have bearing upon any information sought."

The Kentucky Bar Association (KBA) advises this Court that it has no objection to Respondent's motion for suspension from the practice of law. The KBA requests that this Court impose the suspension requested, including the probated sentence. In support, the KBA cites the fact that this Court has found it appropriate to impose probated sentences in other cases. Kentucky Bar Ass'n v. Hemming, 152 S.W.3d 865 (Ky. 2005); Aulenbach v. Kentucky Bar Ass'n, 151 S.W.3d 330 (Ky. 2004). The motion for suspension from the practice of law was reviewed and approved by the Chair of the Inquiry Commission and the Immediate Past President of the Kentucky Bar Association before submission to this Court, pursuant to the Office of Bar Counsel's standard procedure in consensual discipline cases.

Accordingly, being duly advised, this Court finds that, in accordance with his admission of guilt, Respondent violated SCR 3.130-8.1(b), when after taking the bar examination, but before being admitted to the practice of law in the Commonwealth of Kentucky, he failed to promptly inform the Office of Bar Admissions that he was charged with Driving Under the Influence. It is the order of this Court that Respondent

is suspended from the practice of law in the Commonwealth of Kentucky for a period of 30 days, with an additional sentence of 181 days probated for two years on the following conditions:

(1) that he participate in the KYLAP program as stated in the KYLAP monitoring and supervision agreement;

(2) if he fails to comply with any of the terms of this sanction, including the terms of the KYLAP monitoring and supervision agreement, the Court may upon motion of the KBA Office of Bar Counsel implement the 181-day suspension from the practice of law in the Commonwealth of Kentucky;

(3) at the expiration of the probation period, and in the event of Respondent's full compliance with and performance of all conditions imposed herein, the order of suspension shall be terminated and all the terms of Respondent's probation shall be terminated;

(4) the Respondent shall pay all costs associated with these disciplinary proceedings in accordance with SCR 3.450, which totals \$26.90, and for which execution may issue from this Court upon finality of this Opinion and Order.

All concur.

ENTERED: August 24, 2006.


CHIEF JUSTICE