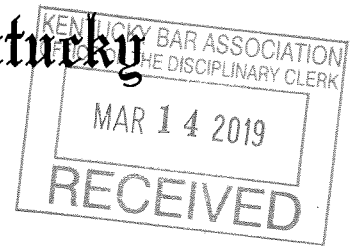


Supreme Court of Kentucky



2018-SC-000664-KB

KENTUCKY BAR ASSOCIATION

MOVANT

V.

IN SUPREME COURT

JUSTIN NEAL O'MALLEY

RESPONDENT

OPINION AND ORDER

Justin Neal O'Malley was admitted to the practice of law in the Commonwealth on May 2, 2011. His Kentucky Bar Association ("KBA") Number is 94125, and his bar roster address is 1011 Hanly Lane, Frankfort, KY 40601. On October 10, 2018, the United States Bankruptcy Court for the Eastern District of Kentucky permanently disbarred O'Malley from the practice of law in that court. The KBA filed a petition for reciprocal discipline pursuant to SCR¹ 3.435. For the following reasons, we impose such identical reciprocal discipline as required by SCR 3.435(4).

In May 2012, Tracy and Myra Blackwelder hired O'Malley to represent them in a Chapter 13 bankruptcy reorganization filing. The Blackwelders paid O'Malley a retainer and he represented them in three separate attempts to

¹ Kentucky Rules of the Supreme Court.

modify their home loan between 2013 and 2016. In March 2016, O'Malley was suspended by this Court for 30 days for violations of SCR 3.130(1.3), 3.130(1.4)(a)(3), 3.130(3.2), and 3.130(8.40)(c), with respect to neglect and misrepresentation about the status of a client's case. *O'Malley v. Kentucky Bar Ass'n*, 482 S.W.3d 782 (Ky. 2016). He was not reinstated after the 30 days due to another pending disciplinary case and unpaid costs. He also never informed the Blackwelders of his suspension.

In June 2016, O'Malley told the Blackwelders that, in order to move their refinancing forward, they needed to make a \$6,402.33 "good faith" payment on their mortgage. The Blackwelders sent this money to O'Malley's bank account in two separate payments and he promptly used it for both personal and business expenses. In October 2016, O'Malley was suspended for 181 days by this Court for his actions in another bankruptcy case concluding in violations of SCR 3.130(1.1) (competency), 3.130(1.16)(d) (duties upon termination of representation), 3.130(3.3)(a)(1) (making a false statement of fact to a tribunal), 3.130(3.4)(c) (disobeying an obligation to a tribunal), and 3.130(8.4)(c) (dishonesty). *O'Malley v. Kentucky Bar Ass'n*, 499 S.W.3d 285 (Ky. 2016). Again, O'Malley never informed the Blackwelders that he was suspended.

In October 2017, the Blackwelders were contacted by a real estate agent letting them know that their house was in foreclosure. O'Malley had not been negotiating their loan modification as promised, and the Blackwelders had to accept a "cash for keys" agreement to move to a rental home. In December 2017, the Blackwelders requested their funds from O'Malley. O'Malley made

several promises to pay them their funds, but never returned their money. The Blackwelders' bankruptcy case was closed without discharge in late 2017 and, although O'Malley was suspended, he continued to give assurances that he would reopen their bankruptcy case until March 2018 when the Blackwelders contacted Beverly Burden, a Chapter 13 Bankruptcy Trustee to resolve the issues.

Burden discovered that a "Michael Taylor" had entered an appearance for the Blackwelders in their case. Burden contacted Michael Taylor and both he and the Blackwelders assured Burden that Taylor was not the Blackwelders' attorney. O'Malley, who knew Taylor, had forged his name on legal documents pertaining to the Blackwelder case, as O'Malley was suspended from the practice of law. On July 9, 2018, Burden filed a Motion of the U.S. Trustee to Disbar Attorney Justin O'Malley, and for Sanctions, Fees Disgorgement, and Other Relief. Douglas Howard entered an appearance on behalf of O'Malley and a hearing was eventually set for September 20, 2018. Joint Stipulations were entered on September 19 with O'Malley admitting to (1) depositing the Blackwelders' funds into his personal bank account which he used for such expenses as "eating out, daily coffee, salon visits, bookstore purchases, movie rentals, and trips to Best Buy;" (2) failing to return escrow funds; (3) forging the Blackwelders' signatures in court filings; and (4) forging Michael Taylor's name and signature in multiple court filings without his knowledge. To add insult to injury, on the same day, Douglas Howard filed a Motion to Withdraw because "the undersigned received a tendered retainer amount that was returned today

[not sufficient funds], due to the account being closed.” Judge Gregory R. Schaaf granted Howard’s Motion to Withdraw and rescheduled the hearing for October 3, 2018.

O’Malley failed to appear for the October 3 hearing and eventually the parties signed an Agreed Order wherein O’Malley agreed to be permanently prohibited from practice in the United States Bankruptcy Court for the Eastern District of Kentucky and to pay the Blackwelders \$10,500 within 30 days.

In his oral findings on the record Judge Schaaf noted that:

Mr. O’Malley made a couple of statements that implied personal issues had a hand in his actions, but those excuses started four years ago. At some point a lawyer must accept responsibility for his actions, and that time has long passed. . . . The record shows a pattern of neglect and of deceit and dishonesty by Mr. O’Malley in this case, and several other cases in this Court. . . . Further, I believe the sanctions therein are necessary to protect the public and the integrity of this Court.

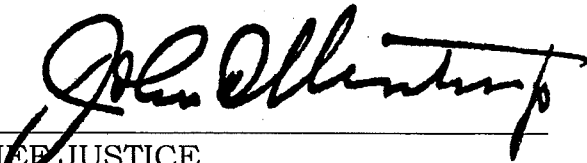
The KBA filed a reciprocal discipline petition with the Kentucky Supreme Court on December 17, 2018. O’Malley has failed to respond to the petition as directed by SCR 3.435(2)(b). Therefore, because O’Malley failed to show cause why identical reciprocal discipline should not be imposed in this jurisdiction,² pursuant to SCR 3.435(4), the Court Orders:

² This Court, in *Kentucky Bar Ass’n v. Sebastian*, 268 S.W.3d 928 (Ky. 2008), granted reciprocal discipline when an attorney was suspended by the United States District Court for the Eastern District of Kentucky. *See also Kentucky Bar Ass’n v. Stewart*, 533 S.W.3d 683 (Ky. 2017) (this Court imposed reciprocal discipline on an attorney who was suspended five years by the Supreme Court of Minnesota, who in turn had imposed its suspension based on a reciprocal discipline action on an Order from the United States Patent and Trademark Office). Although not defined by SCR 3.435, based on the holding in *Sebastian*, we recognize that federal courts are within the scope of “another jurisdiction” as stated in SCR 3.435(1). *See also* N.J Ct. R. 1:20-14 (reciprocal discipline is proper “in connection with the practice of law in another

1. Justin Neal O'Malley is permanently disbarred from the practice of law in the Commonwealth of Kentucky, effective from the entry of this Opinion and Order;
2. Pursuant to SCR 3.390, O'Malley shall, if he has not already done so, 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 permanent disbarment from the practice of law; and furnish copies of all letters of notice to the Office of Bar Counsel. Furthermore, to the extent possible, Respondent shall immediately cancel and cease any advertising activities in which he is engaged; and
3. In accordance with SCR 3.450, O'Malley shall pay all costs associated with these disciplinary proceedings against him, and for which execution may issue from this Court upon finality of this Opinion and Order.

Minton, C.J.; Hughes, Keller, Lambert, VanMeter and Wright, JJ., sitting.
All concur.

ENTERED: March 14, 2019



CHIEF JUSTICE

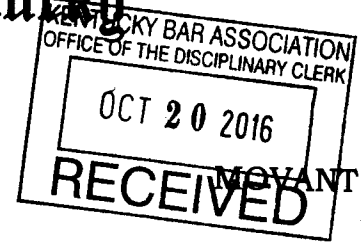
jurisdiction, **including any federal court of the United States** or the District of Columbia, a state or federal administrative agency or other tribunal, a court of any state, territory, commonwealth or possession of the United States[.]” (emphasis added); *People v. Bode*, 119 P.3d 1098, 1100 (Colo. 2005) (“For reciprocal discipline purposes, a federal agency such as the [United States Patent and Trademark Office] can be considered a ‘jurisdiction[.]’”).

Supreme Court of Kentucky

2016-SC-000483-KB

TO BE PUBLISHED

JUSTIN NEAL O'MALLEY
KBA MEMBER NO. 94125



V. IN SUPREME COURT

KENTUCKY BAR ASSOCIATION

RESPONDENT

OPINION AND ORDER

Pursuant to SCR 3.480(2), Movant, Justin Neal O'Malley, moves this Court to impose a 181-day suspension from the practice of law for his admitted violations of the Rules of Professional Conduct. The Kentucky Bar Association (KBA) has no objection to this negotiated discipline.

Finding this agreed upon disciplinary sanction to be appropriate under the facts of this case, we grant Movant's motion. Movant's KBA member number is 94125 and his bar roster address is 1011 Hanly Lane, Frankfort, Kentucky 40601. Movant was admitted to the practice of law in the Commonwealth of Kentucky on May 2, 2011.

KBA FILE 23785

On November 7, 2014, Movant represented to a U.S. Bankruptcy Judge that he would repay fees to two clients after he failed to appear for their

hearings. Movant later claimed that he refunded the fees but failed to comply with the bankruptcy court's order to file an affidavit regarding payment prior to a hearing on December 4, 2015. The court sanctioned Movant as a result and he was subsequently prohibited from filing any bankruptcy cases for 180 days after making additional misrepresentations to the court and the bankruptcy trustee concerning the repayment of the fees.

It was eventually revealed that Movant did not have sufficient personal funds to repay his clients. Movant admitted during a deposition that his checking account was already overdrawn when he wrote the checks to his clients when the trustee found a discrepancy in his statements after reviewing his bank records. Movant also admitted that he lacked sufficient knowledge in the practice of bankruptcy law and agreed not to file any bankruptcy cases for five years.

As a result, Movant was subsequently charged with violating Supreme Court Rule ("SCR") 3.130(1.1) (competency); and SCR 3.130(1.16)(d) (duties upon termination of representation); SCR 3.130(3.3)(a)(1) (making a false statement of fact to a tribunal); SCR 3.130(3.4)(c) (disobeying an obligation to a tribunal); SCR 3.130(8.4)(c) (dishonesty). On March 17, 2016, Movant was suspended from the practice of law for thirty (30) days and has not been reinstated.

Movant now moves this Court to impose a 181-day suspension from the practice of law for his admitted violations of the Rules of Professional Conduct.

The KBA has no objection to the proposed discipline, which

was negotiated pursuant to SCR 3.480(2). The KBA specifically cites that Movant possesses extensive mitigating evidence such as physical and mental impairments. The KBA further notes that Movant has sought counseling for alcohol abuse and mental health issues, and is currently cooperating with the Kentucky Lawyer's Assistance Program (KYLAP). Upon review of the facts in this case and relevant case law, we find the proposed discipline is appropriate. *See, e.g., KBA v. Rowsey*, 334 S.W.3d 105 (Ky. 2011).

Accordingly, it is hereby ORDERED that:


1. Movant, Justin Neal O'Malley, KBA Member No. 94125, is found guilty of the above-described and admitted violations of the Rules of Professional Conduct;
2. Movant is suspended from the practice of law in the Commonwealth of Kentucky for a period of 181 days effective from the entry of this Opinion and Order;
3. Pursuant to SCR 3.390, and to the extent that he has not done so as a result of his prior suspension, Movant shall notify in writing, all courts in which he has matters pending of his suspension from the practice of law, and notify in writing all clients of his inability to represent them and of the necessity and urgency of promptly retaining new counsel. Such notification shall be by letter duly placed in the United States mail within ten days of the date of this Opinion and Order. Movant shall simultaneously provide a copy of all such letters to the Office of Bar Counsel. Furthermore, to the extent possible and necessary, Movant

shall immediately cancel and cease any advertising activities in which he is engaged;

4. Movant shall cooperate with the conditions of his treatment plan with KYLAP; and
5. Pursuant to SCR 3.450, Movant is directed to pay all costs associated with these disciplinary proceedings for which execution may issue from this Court upon finality of this Opinion and Order.

All sitting. All concur.

ENTERED: October 20, 2016.



CHIEF JUSTICE

MAR 17 2016

Supreme Court of Kentucky

2016-SC-000084-KB

JUSTIN NEAL O'MALLEY

MOVANT

V.

IN SUPREME COURT

KENTUCKY BAR ASSOCIATION

RESPONDENT

OPINION AND ORDER

Justin Neal O'Malley, Kentucky Bar Association (KBA) Number 94125, was admitted to the practice of law in the Commonwealth of Kentucky on May 2, 2011, and his bar roster address is listed as 1011 Hanly Lane, Frankfort, KY 40601. He moves this Court to impose the sanction of a thirty-day suspension, subject to the condition that he complete the Ethics and Professional Enhancement Program (EPEP) within one year of this Court's order suspending him for his violations of SCR 3.130-1.3, -1.4(a)(3), -3.2 and -8.4(c). The Kentucky Bar Association has no objection, as the parties have agreed to a negotiated sanction pursuant to SCR 3.480(2).

In April 2013, Jennifer Dennis retained O'Malley to represent her in a civil action regarding a car she had purchased. Dennis did not hear anything regarding the status of her claim for several months, at which point she texted O'Malley for an update. O'Malley told Dennis he was working toward a

settlement and awaiting an order from the judge in the case. Dennis's car was repossessed in August of that year.

In February 2014, ten months after retaining O'Malley in her case, Dennis contacted the circuit clerk who informed her that a petition had never been filed on her behalf. When Dennis contacted O'Malley, he told her he had personally delivered the petition to the judge and assumed it had been filed. O'Malley actually filed the petition almost a year after Dennis retained him. He continued to tell Dennis that her case was progressing, indicating at one point that the judge's secretary had informed him a trial order had gone out. However, when Dennis contacted the clerk, she was told her case may be closed as there had been no activity since the petition was filed.

In May 2014, O'Malley wrote Dennis a letter promising to pay her \$10,000 to cover the value of her claim (\$9,000) and compensate her for the amount of time she had awaited payment. O'Malley did not make this payment, but sent Dennis a second letter in August 2014, promising to pay her an additional \$1,000 to account for the further lapse of time. O'Malley did not pay Dennis and she filed a bar complaint against him and hired new counsel.

Based on Dennis' bar complaint for the above-described actions, the KBA's Inquiry Commission issued a four-count charge against O'Malley. The first count charged O'Malley with violating SCR 3.130-1.3 for failing to act with reasonable diligence and promptness in his representation of Dennis. The second count charged O'Malley with violating SCR 3.130-1.4(a)(3) for failing to keep Dennis reasonably informed about the status of her case. Count three

charged O'Malley with violating SCR 3.130-3.2 for failing to expedite Dennis's litigation consistent with her best interests. Finally, the fourth count charged O'Malley with violating SCR 3.130-8.4(c) for being dishonest with Dennis by misrepresenting the actual status of her case. O'Malley admits that he committed all four of these violations.

In light of his admissions, O'Malley and the KBA have agreed to a negotiated sanction pursuant to SCR 3.480(2) which would impose a thirty-day suspension on the condition that he attend and successfully complete EPEP within one year of the entry of this Court's order in his case. After a perusal of our prior sanctions in comparable cases, and considering the mitigating factors O'Malley presents, we hold that this is an appropriate sanction. *See Kentucky Bar Association v. Jarrett*, 997 S.W.2d 456 (Ky. 1999) (lawyer received thirty-day suspension after representing to his client that a settlement had been reached, when, in fact, the case had been dismissed—he also offered to pay his client from personal funds); *Lookofsky v. Kentucky Bar Association*, 982 S.W.2d 670 (Ky. 1999) (lawyer received thirty-day suspension for lying to his client about a settlement offer); *Kentucky Bar Association v. O'Bryan*, 780 S.W.2d 353 (Ky. 1989) (lawyer received thirty-day suspension for failing to keep client informed and for lying to her regarding the status of her case—telling her it was proceeding to trial when, in fact, it had been dismissed). In mitigation, this is O'Malley's first bar discipline. He points out that at the time of the underlying litigation, his father had been diagnosed with a terminal illness and his step-daughter had been diagnosed with a severe mental illness. He was also

encountering financial difficulties after the water pipes in his home burst and had been implicated criminally in a case in which his former client had committed bankruptcy fraud (for which he was later found not guilty).


Agreeing that the negotiated sanction proposed in O'Malley's motion is appropriate, it is ORDERED that:

1. Movant, Justin Neal O'Malley, is found guilty of the above-described and admitted violations of the Rules of Professional Conduct and is suspended for thirty days from the practice of law for those violations;
2. O'Malley shall complete the EPEP program at his expense, separate and apart from his fulfillment of any other continuing education requirement; he will not apply for CLE credit of any kind for this program and will furnish a release and waiver to the OBC to review his records in the CLE department that might otherwise be confidential, such release to continue in effect until one year after he completes EPEP, in order to allow the OBC to verify that he has not reported any such hours to the CLE Commission; and
3. In accordance with SCR 3.450, O'Malley is directed to pay all costs associated with these disciplinary proceedings against him, said sum

being \$198.91, for which execution may issue from this Court upon
finality of this Opinion and Order.

All sitting. All concur.

ENTERED: March 17, 2016.


CHIEF JUSTICE