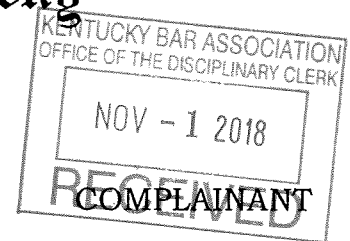


TO BE PUBLISHED

Supreme Court of Kentucky

2018-SC-000376-KB

KENTUCKY BAR ASSOCIATION



V.

IN SUPREME COURT

KENNETH JOSEPH BADER

RESPONDENT

OPINION AND ORDER

Kenneth Joseph Bader was admitted to the practice of law in the Commonwealth of Kentucky on October 22, 1980. His bar roster address is 544 Baxter Avenue, Suite 200, Louisville, Kentucky 40204-1154, and his Kentucky Bar Association (KBA) number is 02455. The KBA charged Bader with violations of several of the Kentucky Rules of Professional Conduct (SCR). Bader has failed to file responses to any of these charges. Finding sufficient cause, we adopt the recommendation of the Board of Governors (Board) and suspend Bader for two (2) years. The facts of each disciplinary case are summarized below.

KBA File 16-DIS-0304 – Mattingly Representation

Linda Mattingly hired Bader to represent her in a personal injury case. Bader filed a complaint on Mattingly's behalf in Jefferson County, but the action was dismissed eight months later for lack of prosecution. Bader got the

dismissal set aside and the case was ultimately transferred to Nelson County for further proceedings. The Nelson Circuit Court filed a Notice to Dismiss for Lack of Prosecution which was uncontested. The case was dismissed on November 17, 2014, and Bader failed to inform Mattingly of the dismissal. Mattingly only learned of the dismissal when she sought representation by another attorney.

The Inquiry Commission issued a three-count charge against Bader on February 16, 2017, asserting violations of SCR 3.130(1.3) for failing to perform work in Mattingly's case, SCR 3.130(1.4)(a)(3) for failing to inform Mattingly that her case was dismissed, and SCR 3.130(8.1)(b) for failing to respond to the bar complaint. Bader was personally served with the bar complaint on November 30, 2016, and the charge on February 16, 2017, by sheriff. He did not file any responses.

KBA File 17-DIS-0018 – Rhea Representation

Bader agreed to represent Michelle Rhea in a legal matter and Rhea paid Bader a \$400 retainer on April 18, 2016. Bader deposited the check into his law practice's bank account in the name of Kenneth J. Bader, LLC. Bader then used the bank account for personal expenses. After being unable to contact Bader, Rhea went to his office, informed Bader that she wanted to terminate his services and requested a refund. Bader told Rhea that his secretary would mail her a check. Bader did not perform any work on Rhea's behalf nor did he return the retainer fee.

The Inquiry Commission issued a five-count charge against Bader on August 18, 2017, asserting violations of SCR 3.130(1.3) for failing to perform any work in Rhea's case, SCR 3.130(1.4)(a)(4) for failing to respond to Rhea's requests for information, SCR 3.130(1.15)(a) for failing to keep his client's money in a separate account from his own property, SCR 3.130(1.16)(d) for failing to return the unearned fee, and SCR 3.130(8.1)(b) for failing to respond to the bar complaint.

Bader was personally served with the bar complaint by sheriff on March 2, 2017. He was served with the charge through the Executive Director, pursuant to SCR 3.035(2). Bader did not file a response.

KBA File 17-DIS-0220 - Hall Representation

Rex Hall contacted Bader in May 2017 to represent his son, Ryan Hall, in a criminal matter. Bader agreed to the representation and Rex Hall gave him a \$500 retainer. Candace Pollack, Ryan Hall's girlfriend, also gave Bader a \$200 retainer. Bader deposited both checks into an account for Renaissance By Design, LLC (owned by Bader's wife), which is an antique boutique and estate sales company. This was not an escrow or trust account maintained for representing clients. Rex Hall made several attempts to obtain information from Bader, with little to no response. Bader did not perform any work in Ryan Hall's criminal case and did not refund any of the unearned fees to Rex Hall or Pollack.

The Inquiry Commission issued a six-count charge against Bader on December 19, 2017, asserting violations of SCR 3.130(1.3) for failing to perform

work on Hall's case, SCR 3.130(1.4)(a)(4) for failing to return messages from Rex Hall regarding the representation of his son, SCR 3.130(1.15)(a) for commingling client funds with his own, SCR 3.130(1.16)(d) for failing to return the unearned fee to Rex Hall, SCR 3.130(1.16)(d) for failing to return the unearned fee to Pollack, and SCR 3.130(8.1)(b) for failing to respond to the bar complaint.

Bader was served with the bar complaint by the Executive Director pursuant to SCR 3.035(2) on August 1, 2017, and served with the charge by the Executive Director on February 27, 2018. Bader has not filed any responses.

KBA File 17-DIS-0413 – Glaab Representation

Bader was suspended from the practice of law for thirty days on September 28, 2017. On October 20, 2017, the Office of Bar Counsel objected to Bader's automatic reinstatement because he failed to pay costs, and the charges listed above in the Mattingly, Rhea, and Hall representations were pending. On November 7, 2017, Bader was indefinitely suspended by this Court.

Bader previously represented Rickie Glaab in a criminal case in 2016 but withdrew as counsel due to a conflict. On October 26, 2017, during his suspension, Bader appeared in Jefferson District Court on a redocket request filed on behalf of Glaab. Opposing counsel brought up the fact that Bader was previously removed from the case due to a conflict. The judge refused to hear Bader's motion, and subsequently informed the Office of Bar Counsel. On

December 22, 2017, Bader again appeared in Jefferson District Court but the judge informed him that he was not authorized to practice law pursuant to his suspension order.

The Inquiry Commission filed a four-count charge against Bader, alleging violations of SCR 3.130(1.7)(a) for filing a redocket request and appearing on behalf of a client in a matter in which he had a conflict, SCR 3.130(5.5)(a) for practicing law while suspended, SCR 3.130(5.7)(a)(2) for appearing on behalf of clients while suspended, and SCR 3.130(8.1)(b) for failing to respond to the bar complaint.

Bader was served with the bar complaint by the Executive Director pursuant to SCR 3.035(2) on January 29, 2018, and served with the charge by the Executive Director on April 18, 2018. Bader has not filed any responses.

Discussion

These matters are not the first time Bader has been disciplined for misconduct as an attorney. In 2014, he received a private admonition. In September 2017, he was suspended for thirty days and after attempting to practice law during that suspension, he was suspended indefinitely on November 2, 2017. Bader failed to participate in either of those disciplinary proceedings.

By majority vote, the Board found Bader guilty on all of the eighteen charges outlined above. The Board considered a two-year suspension and a five-year suspension. The Board voted 15-6 to suspend Bader for two years and require him to pay the costs in this action. Given Bader's previous


discipline and failure to participate in these proceedings, we agree with the Board's recommendation.

For the foregoing reasons, it is hereby ORDERED:

1. Kenneth Joseph Bader is found guilty of the violations of the various rules of the Kentucky Supreme Court as set forth above.
2. Bader is hereby suspended from the practice of law for a period of two (2) years.
3. Bader must notify all courts and clients of his suspension in accordance with SCR 3.390. Those notifications must be made by letter in the United States mail within ten (10) days from the date of entry of this Opinion and Order. Bader must also simultaneously provide a copy of all notification letters to the Office of Bar Counsel. Also, to the extent possible, Bader must cancel and cease any advertising activities in which he is engaged.
4. In accordance with SCR 3.450, Bader is directed to pay the costs of this action in the amount of \$1,015.32 for which execution may issue from this Court upon finality of this Opinion and Order.

All sitting. All concur.

ENTERED: November 1, 2018.


CHIEF JUSTICE

TO BE PUBLISHED

Supreme Court of Kentucky

2017-SC-000312-KB



KENTUCKY BAR ASSOCIATION

MOVANT

V.

IN SUPREME COURT

KENNETH JOSEPH BADER

RESPONDENT

OPINION AND ORDER

The Kentucky Bar Association (“KBA”) moves this Court, pursuant to SCR¹ 3.380(2), to suspend Respondent, Kenneth Joseph Bader, KBA Number 02455, for failure to Answer the Charge in KBA file 16-DIS-0304. Respondent maintains a bar roster address at 544 Baxter Avenue, Suite 200, Louisville, Kentucky 40204. KBA file 16-DIS-0304 concerns Respondent’s failure to answer a Bar Complaint filed by his former client, Linda Mattingly, with respect to his mishandling of her personal injury case. The Jefferson County Sheriff’s Department personally served Respondent with the Bar Complaint on November 30, 2016. After Respondent failed to file an Answer to the Complaint, the Inquiry Commission issued a three-count Charge against him, on February 16, 2017, alleging a violation of SCR 3.130(1.3), which requires a

¹ Supreme Court Rules.

lawyer to act with reasonable diligence and promptness in the representation of a client. Respondent violated this Rule when he failed to perform any work in his client's personal injury case for approximately two years until its dismissal. Respondent was also charged with violating SCR 3.130(1.4)(a)(3), which requires an attorney to keep his clients informed about the status of their case. Respondent violated this Rule when he failed to inform his client her personal injury case had been dismissed. Finally, Respondent was charged with violating SCR 3.130(8.1)(b), which requires a lawyer to respond to a lawful demand for information from a disciplinary authority. Respondent violated this Rule by failing to respond to the Bar Complaint. The Jefferson County Sheriff's Department personally served Respondent with the three-count Charge, yet he failed to file an Answer, and has not participated in any stage of these proceedings.

This matter is not the first time Respondent has been cited and disciplined for his misconduct as a practicing attorney. Recently, this Court found Respondent guilty of one count of violating SCR 3.130(3.4)(c) for knowingly disobeying an obligation under the rules of a tribunal, and one count of SCR 3.130(8.1)(b) for failing to respond to a lawful demand for information from a disciplinary authority. *Ky. Bar Assoc. v. Bader*, -- S.W.3d --, 2017 WL 4310500 (Ky. Sept. 28, 2017). Notably, Respondent likewise failed to participate in that disciplinary proceeding. Because of his committed violations, we suspended Respondent from the practice of law for a period of thirty (30) days.

Similarly, in 2014, Respondent received a private reprimand for the following: 1) violating SCR 3.130-1.3 by failing to file a client's bankruptcy petition in a timely manner; 2) violating SCR 3.130-1.4(a)(2) by failing to tell his client that he was not filing her bankruptcy petition because she had not paid his fee; and 3) violating SCR 3.130-1.4(a)(3) by failing to respond to his client's requests for information about her bankruptcy proceedings.

Here, Respondent's misconduct in KBA file 16-DIS-0304 in large part mirrors that for which he has been previously disciplined, and indicates repeated noncompliance with the rules of his chosen profession. In the case of *Ky. Bar Assoc. v. Benton*, 449 S.W.3d 368 (Ky. 2014), this Court exercised its discretion, pursuant to SCR 3.380, to suspend Benton indefinitely until he appeared and accounted for his failure to answer the disciplinary charges. Likewise, here we believe that indefinite suspension of Respondent's license to practice law is warranted until he appears and accounts for his behavior.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent, Kenneth Joseph Bader, is found guilty of violating SCR 3.130(1.3), SCR 3.130(1.4)(a)(3), and SCR 3.130(8.1)(b).
2. Respondent is suspended from the practice of law indefinitely.
3. As required by SCR 3.390, Respondent will, if he has not already done so, within 10 days after issuance of this order of suspension from the practice of law for more than 60 days, notify, by letter duly placed with the United States Postal Service, all courts or other tribunals in which he has matters pending, and all clients of his inability to represent them

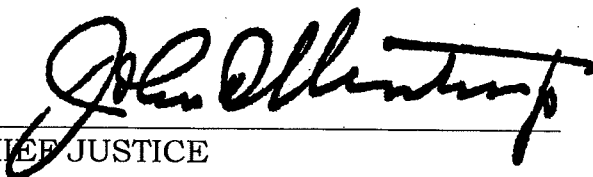
and of the necessity and urgency to promptly obtain new counsel.

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 for the duration of the term of suspension.

4. Respondent is instructed to promptly take all reasonable steps to protect the interests of his clients. He shall not, during the term of suspension, accept new clients or collect unearned fees, and he shall comply with the provisions of SCR 3.130-7.50(5).
5. In accordance with SCR 3.450, Respondent is directed to pay all costs associated with these disciplinary proceedings against him, for which execution may issue from this Court upon finality of this Opinion and Order.

All sitting. All concur.

ENTERED: November 2, 2017.


CHIEF JUSTICE

TO BE PUBLISHED

Supreme Court of Kentucky

2017-SC-000204-KB

KENTUCKY BAR ASSOCIATION



V. IN SUPREME COURT

KENNETH JOSEPH BADER

RESPONDENT

OPINION AND ORDER

In this attorney disciplinary proceeding, the Trial Commissioner issued a report finding that Respondent Kenneth Joseph Bader had violated two rules of professional misconduct, as charged by the Inquiry Commission. As a sanction, the Trial Commissioner recommended that Bader be suspended from the practice of law for thirty (30) days and be assessed all costs associated with this proceeding, pursuant to SCR¹ 3.450. Neither Bader nor the Kentucky Bar Association (“KBA”) filed a notice of appeal from the report; accordingly, this case is before this Court for entry of a final order pursuant to SCR 3.370(9). Finding sufficient cause to do so, we adopt the Trial Commissioner’s recommendation.

¹ Supreme Court Rules.

KBA File 23761

Bader, KBA Number is 02455, bar roster address 544 Baxter Avenue, Suite 200, Louisville, Kentucky 40204, was admitted to the practice of law in the Commonwealth of Kentucky on October 22, 1980. This disciplinary proceeding arose from orders entered by the Bullitt Circuit Court finding Bader to be in contempt of court on three separate occasions for failing to appear to represent the interests of his clients. Based upon complaints by the Bullitt Circuit Court judge, the Inquiry Commission issued a complaint against Bader in July 2015. Bader did not file a response. Subsequently, the Inquiry Commission issued a two-count charge against him. Count I charged that Bader violated SCR 3.130(3.4)(c), which provides: "A lawyer shall not . . . knowingly disobey an obligation under the rules of a tribunal without an open refusal based on the claim that no valid obligation exists." Count II charged that Bader violated SCR 3.130(8.1)(b), which states, in part, that in conjunction with a disciplinary matter, a lawyer shall not "knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority."

Bader did not timely answer the charge, but later requested, and received, additional time to file an answer. In his answer, Bader addressed difficulties he faced as a sole practitioner, especially trying to cover cases in multiple courts. He claimed that he missed his contempt hearing in Bullitt Circuit Court because he did not receive timely notice of it. He also spoke of health problems and serious personal issues, and stated that he had suffered a

serious accident that caused him to be off work. However, Bader filed no documentation to support any of these claims; and filed nothing else of record throughout this proceeding, despite additional requests for information from the KBA and the Trial Commissioner, nor did he participate in any other way. Bader did not appear at the pre-hearing conference, file any witness or exhibit lists in anticipation of the hearing, or attend the December 6, 2016 disciplinary hearing itself.

Following the hearing, the KBA timely filed its post-hearing brief. Bader did not file a brief or request an extension of time to do so. The Trial Commissioner thereafter issued its report, finding that with respect to Count I, Bader violated SCR 3.130(3.4)(c) by engaging in conduct that resulted in three contempt orders being issued by the Bullitt Circuit Court. The Trial Commissioner found that the proof showed by a preponderance of the evidence that on three separate occasions Bader failed, without cause, to appear in the Bullitt Circuit Court after having been duly ordered to appear. With respect to Count II, the Trial Commissioner found that the proof established by a preponderance of the evidence that Bader had violated SCR 3.130(8.1)(b) by failing to respond to additional requests, both from KBA Counsel and the Trial Commissioner, for additional information during this proceeding and in all ways failed to participate in his disciplinary hearing.

Having concluded that Bader violated the Rules of Professional Conduct as charged in Count I and II, the Trial Commissioner considered Bader's past disciplinary history in determining the appropriate sanction to recommend.

The record shows that by order entered July 21, 2014, Bader received a private reprimand for the following: 1) violating SCR 3.130-1.3 by failing to file a client's bankruptcy petition in a timely manner; 2) violating SCR 3.130-1.4(a)(2) by failing to tell his client that he was not filing her bankruptcy petition because she had not paid his fee; and 3) violating SCR 3.130-1.4(a)(3) by failing to respond to his client's requests for information about her bankruptcy proceedings. Considering Bader's conduct in the proceeding at bar, and his disciplinary history, the Trial Commissioner recommended that Bader be suspended from the practice of law for 30 days and be assessed all costs associated with this proceeding, pursuant to SCR 3.450.

Upon review of the Trial Commissioner's recommendation, we find that the proposed sanction is appropriate and is supported by this Court's prior decisions. *See, e.g., Ky. Bar Ass'n v. Myles*, 436 S.W.3d 204 (Ky. 2014) (61-day suspension warranted where attorney disobeyed order of disciplinary authority requiring him to return file to former client, and failed to respond to disciplinary authority's request for information); *Ky. Bar Ass'n v. Leadingham*, 269 S.W.3d 419 (Ky. 2008) (public reprimand, and 30-day suspension probated on condition that attorney attend ethics program, appropriate sanction for attorney's failure to obey orders of the court and failure to respond to a demand for information from a disciplinary authority); *Ky. Bar Ass'n v. Quesinberry*, 203 S.W.3d 137 (Ky. 2006) (30-day suspension merited where attorney failed to properly handle a client's case and failed to respond to the Inquiry Commission's request for information).

The record in this case indicates clear noncompliance with the rules of Bader's chosen profession. The admonition he received in 2014 was for similar conduct. Upon the foregoing facts and charges, we find sufficient evidence to adjudicate Bader guilty of all counts alleged in KBA File 23761. We further hold that in light of Bader's conduct, the recommended sanction of the Trial Commissioner should be adopted. Therefore, it is hereby ORDERED that:

1. Respondent, Kenneth Joseph Bader, KBA Number 02455, 544 Baxter Avenue, Suite 200, Louisville, Kentucky 40204 is adjudged guilty of violating SCR 3.130(3.4)(c) and SCR 3.130(8.1)(b);
2. Respondent is hereby suspended from the practice of law in the Commonwealth of Kentucky for a period of thirty (30) days;
3. In accordance with SCR 3.450, Respondent is directed to pay all costs associated with these disciplinary proceedings against him, in the amount of \$1,241.19, for which execution may issue from this Court upon finality of this Opinion and Order.

All sitting. All concur.

ENTERED: September 28, 2017.


CHIEF JUSTICE