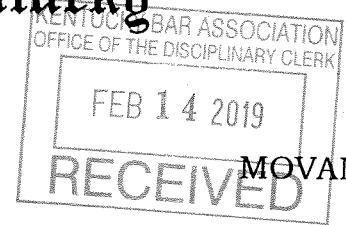


TO BE PUBLISHED

# Supreme Court of Kentucky

2018-SC-000600-KB



FRED GARLAND GREENE

V.

IN SUPREME COURT

KENTUCKY BAR ASSOCIATION

RESPONDENT

## **OPINION AND ORDER**

Movant, Fred Garland Greene, was admitted to the practice of law in the Commonwealth of Kentucky on September 1, 1972. His Kentucky Bar Association (“KBA”) member number is 26890, and his bar roster address is P.O. Box 490, Russellville, KY 42276. Pursuant to SCR 3.480(2), he moves this Court to enter a negotiated sanction imposing a three-year suspension. The KBA has no objection. Finding this sanction to be the appropriate discipline for his misconduct, we grant Greene’s motion.

### **I. BACKGROUND**

Greene has a history of prior discipline. He received private admonitions July 22, 1985, August 11, 2004, May 7, 2007, September 20, 2012, March 20, 2013, July 17, 2013, and July 17, 2017. He received a public reprimand and thirty-day suspension with conditions on November 21, 2012. Most recently,

Greene received a one hundred and eighty-one-day suspension with sixty-one-days probated for one year upon conditions on October 20, 2016.

The current case spans three consolidated KBA files which arise from a period when Greene was suspended from the practice of law. We will address each in turn.

**A. KBA 17-DIS-0044**

Greene represented Mr. and Mrs. Damon Green in a property action during his suspension from the practice of law. Throughout this representation, Greene sent letters regarding the case to the clients, advising them on legal matters. He also sent a letter to counsel for the opposing party in a case in which he stated he had advised the clients.

The Inquiry Commission issued a two-count charge against Greene alleging violations of SCR 3.130(5.5)(a)(1) and SCR 3.130(3.4)(c). SCR 3.130(5)(a) reads: "A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so." SCR 3.130(3.4) reads: "A lawyer shall not: (c) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists."

Movant admits that he violated SCR 3.130(3.4)(c) by engaging in the practice of law in violation of his suspension order. He requests dismissal of the SCR 3.130(5.5)(a)(1) count. The KBA has no objection.

**B. KBA 17-DIS-0255**

Greene's son, Jim Greene, and daughter-in-law, Lara Hunt, are attorneys licensed in the Commonwealth of Kentucky. In early 2017, Greene requested Jim and Lara to come to Russellville and discuss an opinion letter (dated in 2015) regarding one of his clients, Peggy Violet.

Jim, Lara, their child, and his friend met in Greene's law office with Violet, her two daughters and two sons-in-law on February 17, 2017. At the time of the meeting, Jim, Lara, and Violet were unaware that Greene was suspended from the practice of law.

Greene asked Lara to prepare an estate plan for Violet. After some correspondence regarding the matter, Lara learned that Greene was suspended from practice. Lara advised Greene she would no longer assist him in Violet's estate plan matter.

Violet met with Greene at his residence regarding the estate plan. Greene reviewed and discussed draft documents with Violet and told her to take the drafts with her, make changes, and return the drafts to him. Violet returned the documents to Greene with her changes.

On May 26, 2017, Violet visited Greene's law office where he and his administrative assistant were present. During this visit, four documents were executed: a will, a power of attorney, a trust, and a health care surrogate. One of the witnesses to the will was listed as William Sandlin. However, it was not William who signed the will but his wife, Joyce, Greene's assistant. Greene notarized William's purported signature on the will.

Further, Greene dated the will, power of attorney, trust, and health care surrogate as if executed on December 1, 2015. Per Greene's request, Violettt wrote him a check for \$2,500 after the documents were executed. Greene took the check to the bank and cashed it that day. On or about July 19, 2017, Violettt received notice (via a letter from Lara) that Greene was suspended from the practice of law.

A bar complaint was filed against Greene concerning the above conduct. Greene filed a response in which he stated that prior to his suspension he had contacted his son, Jim, to assist with Violettt's estate plan; that Jim indicated that he and his wife, Lara, would handle the situation; and that Jim and Lara were to prepare the documents. These statements were inaccurate. The Office of Bar Counsel sent Greene a letter and invited further response from Greene in light of the information and allegations in that letter. Greene provided the Office of Bar Counsel with a declaration in which he stated more than once he had told Violettt of his suspension. This statement was also inaccurate. Greene returned the \$2,500 to Violettt.

The Inquiry Commission issued an eight-count charge against Greene, charging him with violations of SCR 3.130(3.4)(c), SCR 3.130(5.5)(a), SCR 3.130(5.7)(a)(1), SCR 3.130(5.7)(a)(5), two counts of SCR 3.130(8.4)(b), SCR 3.130(8.4)(c), and SCR 3.130(8.1)(a).

SCR 3.130(3.4) reads: "A lawyer shall not: . . . (c) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists." Greene admits that his conduct,

continuing to practice law in the Violetts estate planning matter after his suspension, violated this rule.

SCR 3.130(5.7)(a) reads: During a period of suspension a suspended lawyer may not perform any of the following acts: . . . (5) receive, disburse, or otherwise handle a client's funds." Greene admits that he violated this rule by receiving or otherwise handling \$2,500 from Violetts while suspended from the practice of law.

SCR 3.130(8.4) reads: "It is professional misconduct for a lawyer to: . . . (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation." Greene admits he violated this rule by meeting with Violetts on the occasions detailed above and not telling her he was suspended from the practice of law; failing to tell Lara he was suspended from the practice of law; notarizing Violetts's will, trust, power of attorney, and health care surrogate with a date of December 1, 2015, when Violetts signed those documents in Greene's presence on or about May 26, 2017; and taking \$2,500 from Violetts either for legal services he could not lawfully render due to his suspension from practice or by failing to forward those funds to the attorney or attorneys who rendered such services.

SCR 3.130(8.1) reads: "An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not: (a) knowingly make a false statement of material fact." Greene admits he violated this rule by knowingly making false statements of material fact in connection with a disciplinary matter, as

specified above, when responding to the Inquiry Commission complaint and the Office of Bar Counsel regarding the Violettt matter

Greene asks that three counts be dismissed and the KBA has no objection. Specifically, those counts concern violations of SCR 3.130(5.5)(a),<sup>1</sup> SCR 3.130(5.7)(a)(1),<sup>2</sup> and SCR 3.130(8.4)(b).<sup>3</sup>

**C. 17-DIS-0300**

On or about February 27, 2017, Natali Monrroy paid Greene \$800 in cash to represent her in a pending domestic relations matter. He did not deposit the cash into an escrow account and was suspended from practice at the time. Greene repaid the cash to Monrroy.

The Inquiry Commission charged Greene with violations of SCR 3.130(1.15)(a) and SCR 3.130(5.7)(a)(5).

SCR 3.130(1.15)(a) reads:

A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client, third person, or both in the event of a claim by each to the property. The separate account referred to in the preceding sentence shall be maintained in a bank which has agreed to notify the Kentucky Bar

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<sup>1</sup> SCR 3.130(5.5)(a) reads: "A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so."

<sup>2</sup> SCR 3.130(5.7)(a) reads: "During a period of suspension a suspended lawyer may not perform any of the following acts: (1) render legal consultation or legal advice to any person."

<sup>3</sup> SCR 3.130(8.4) reads: "It is professional misconduct for a lawyer to: . . . (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects."

Association in the event that any overdraft occurs in the account. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

Greene admits that he violated this rule by failing to deposit the cash into an escrow account.

SCR 3.130(5.7)(a)(5) reads: "During a period of suspension a suspended lawyer may not perform any of the following acts: . . . (5) receive, disburse, or otherwise handle a client's fund." Greene admits that he violated this rule by receiving or handling \$800 from Monrroy while he was suspended from the practice of law.

## II. ANALYSIS

In agreeing to the negotiated sanction, the KBA cites three cases in support of its adequacy: *Kentucky Bar Association v. Thornsberry*, 399 S.W.3d 773 (2013), *Kentucky Bar Association v. Brinker*, 377 S.W.3d 553 (2012), and *Kentucky Bar Association v. Roberts*, 114 S.W.3d 843 (2003).

In *Thornsberry*, the attorney had been suspended from the practice of law for failure to pay dues. 399 S.W.3d at 775. Thornsberry was hired to represent a client in a divorce action. *Id.* He advised the client that he had filed the petition for divorce, though he had not. *Id.* This Court held that a two year suspension was appropriate for violations of SCR 3.130(5.5)(a) (undertaking legal representation while suspended), SCR 3.130(5.5)(b) (holding himself out to be a lawyer while suspended), and SCR 3.130(8.4)(c) (dishonesty, fraud, deceit or misrepresentation). *Id.*

In *Brinker*, this Court adopted the Board's recommendation of a one-year suspension. 377 S.W.3d at 555. Brinker had mishandled client funds and was ordered to return \$7,500 to his firm's IOLTA account and pay \$1,500 in sanctions. *Id.* The Board charged Brinker with violating SCR 3.130(3.4)(c) (knowingly disobeying an obligation of the rules of a tribunal), SCR 3.130(8.1)(b) (knowingly failing to respond to a lawful demand for information from an admission or disciplinary authority), and SCR 3.130(8.4)(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation). *Id.*

In *Roberts-Gibson*, the attorney was hired to represent a client on a contingent fee arrangement in a personal injury action. 114 S.W.3d at 844. The client was advised the suit had been filed and Roberts-Gibson made representations that she had discussed settlement and rejected a specific offer. *Id.* However, there was no evidence that Roberts-Gibson ever filed a suit regarding the matter or that Roberts-Gibson negotiated with any opposing counsel or other person regarding settlement. *Id.*

In January 2001, Roberts-Gibson was suspended from the practice of law for failure to comply with legal education requirements but failed to tell the client about the suspension. *Id.* The client requested her case file when she learned of the suspension. Roberts-Gibson denied that her license had been suspended, stated she was actively working on the claim, and failed to return the case file. *Id.* Further, on February 20, 2003, this Court suspended Roberts-Gibson for 181 days on additional violations. *Kentucky Bar Association v. Roberts-Gibson*, 97 S.W.3d 450 (2003).

In the September 2003 order cited by the KBA, Roberts-Gibson was charged with 1) failing to exercise reasonable diligence and promptness in dealing with a client, in violation of SCR 3.130(1.3); 2) failing to keep her client reasonably informed about the representation and failing to respond to reasonable requests for information, in violation of SCR 3.130(1.4)(a); 3) failing to provide the client with her case file after the termination of representation, in violation of SCR 3.130(1.16)(d); 4) practicing law while suspended, in violation of SCR 3.130(5.5)(a); 5) conduct involving fraud, dishonesty, deceit, or misrepresentation in violation of SCR 3.130(8.3)(c); and 6) failing to respond to the Inquiry Commission's complaint, in violation of SCR 3.130(8.1)(b). This Court held that a three-year suspension was appropriate.

In review of this Court's precedent, we agree with the terms of the parties' negotiated sanction.

### **III. ORDER**

Agreeing that the negotiated sanction is appropriate, it is ORDERED that:

1. Greene is found guilty of the above-described and admitted violations of the Rules of Professional Conduct and is suspended from the practice of law in Kentucky for a period of three years, retroactive to March 1, 2017. Specifically, the violations of SCR 3.130(3.4)(c), SCR 3.130(5.7)(a)(5), SCR 3.130(8.4)(c), SCR 3.130(8.1)(a), SCR 3.130(5.7)(a)(5) and SCR 3.130(1.15)(a).


2. The charges related to violations of SCR 3.130(5.5)(a)(1), SCR 3.130(5.5)(a), SCR 3.130(5.7)(a)(1), and SCR 3.130(8.4)(b) are dismissed.
3. The period of suspension shall be retroactive to March 1, 2017, and shall continue until he has complied with the requirements of this opinion and order and is reinstated to the practice of law by Order of this Court pursuant to SCR 3.510.
4. If he has not already done so, pursuant to SCR 3.390, Greene shall promptly take all reasonable steps to protect the interests of his clients, including, within ten days after the issuance of this order, notifying by letter all clients of his inability to represent them and of the necessity and urgency of promptly retaining new counsel and notifying all courts or other tribunals in which Greene has matters pending. Greene shall simultaneously provide a copy of all such letters to the Office of Bar Counsel.
5. If he has not already done so, pursuant to SCR 3.390, Greene shall immediately cancel any pending advertisements; shall terminate any advertising activity for the duration of the term of suspension; and shall not allow his name to be used by a law firm in any manner until he is reinstated;
6. Pursuant to SCR 3.390, Greene shall not, during the term of suspension, accept new clients or collect unearned fees; and

7. In accordance with SCR 3.450, Greene is directed to pay all costs associated with these disciplinary proceedings against him, said sum being \$1,042.14, 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.

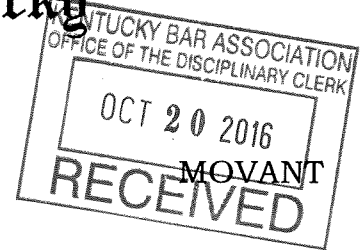
ENTERED: February 14, 2019.

  
CHIEF JUSTICE

TO BE PUBLISHED

# Supreme Court of Kentucky

2015-SC-000363-KB



FRED G. GREENE

V.

IN SUPREME COURT

KENTUCKY BAR ASSOCIATION

RESPONDENT

## **OPINION AND ORDER**

Pursuant to SCR 3.480(2), the negotiated sanction rule, Movant, Fred G. Greene<sup>1</sup> moves this Court to impose upon him a one hundred eighty-one day suspension with sixty-one days of the suspension to be probated for one year, conditioned upon Movant incurring no further disciplinary charges within one year from the date of the order of this Court, maintaining his continuing legal education requirements, and paying his membership dues. Movant further proposes that if he fails to comply with any of the above conditions during the one-year probationary period, the probationary status of his suspension may be revoked and the one hundred eighty-one day suspension from the practice of law shall be served. The Kentucky Bar Association (KBA) has no objection to Movant's request.

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<sup>1</sup> KBA Member No. 26890; bar roster address, P.O. Box 490, Russellville, Ky., 42276-0490. Movant was admitted to the practice of law September 1, 1972.

Previously in this same disciplinary action, this Court rejected a different negotiated sanction proposed by Movant with the approval of the KBA. Movant then proposed a sixty-one day suspension with sixteen days of the suspension probated for one year subject to conditions stated above. We rejected that negotiated sanction and remanded it for further consideration. We review the facts underlying the present charges.

### **I. KBA FILE NO. 18854**

Frank Doss, an itinerant race track worker originally from Christian County, retained Movant in 2008 to represent him in an anticipated contentious settlement of his mother's estate. Movant entered into a fee contract for one-half of whatever he received on Doss' behalf. Sometime in the late summer of 2009, Movant received a partial distribution of \$50,000.00 from the executrix's counsel. Pursuant to the fee arrangement, Movant deposited the money into his escrow account and then issued two checks, one to himself and another to Doss, each in the amount of \$25,000.00. Movant and Doss expected additional distributions later. Movant lost contact with Doss in the latter part of 2009.

Movant received two other partial distributions of the estate, one in December in the amount of \$100,000.00 and one in April of 2010 in the amount of \$50,000.00. Both partial distributions were deposited into Movant's escrow account. After receiving the \$100,000.00 distribution, he sent Frank Doss a check in the amount of \$50,000.00 at his last known address. The mail was not returned to Movant, and the check was never negotiated.

Consequently, when Movant received the second distribution, he did not make any effort to send any portion to Doss because he still could not locate him.

In June of 2010, Doss retained new counsel, Charles English, Sr. English contacted Movant and requested Doss's file. Movant provided the file on June 11, 2010. When English received the file, it contained a check written by Movant on his escrow account to Doss in the amount of \$25,000.00, dated June 11, 2010, the same date Movant turned over the file to new counsel. The \$25,000.00 represented the amount due to Doss from the April 2010, \$50,000.00 partial distribution. Also on June 11, Movant wrote a check for \$2,500.00 from his law office account to his escrow account to cover the \$25,000.00 check to Doss. After the deduction of the \$25,000.00, Movant's escrow account balance dropped to \$393.39. Movant later deposited additional funds into this escrow account to cover the \$50,000.00 partial distribution from December 2009.<sup>2</sup>

English ceased representing Doss and Doss's current whereabouts are unknown, making him unavailable to provide testimony at any evidentiary hearing.

Movant now admits that he failed to continuously maintain a minimum escrow balance of \$50,000.00 between December 9, 2009 and April 16, 2010 and a minimum balance of \$75,000.00 between April 16, 2010 and June 11, 2010. These amounts represented the minimum amount owed to Doss for the

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<sup>2</sup> The check that Doss never negotiated.

partial estate distributions. Between June 11, 2010, and June 16, 2010, after having distributed \$25,000.00 to Doss with the check provided in the file given to English, Movant failed to continuously maintain a minimum escrow account balance of \$50,000.00.

As a result of Movant's improper administration of his escrow account, the Inquiry Commission charged Movant with having violated SCR 3.130(1.15)(a).<sup>3</sup> Movant admits that his conduct violated SCR 3.130(1.15)(a).

## **II. KBA FILE NO. 20851**

In June of 2010, Polly Young retained Movant to represent her in her fiduciary capacity as executrix of her husband's estate. On June 14, 2010, Movant contacted Young and asked if he could borrow \$40,000.00. She agreed and Movant gave her a handwritten note which stated in part: "This is a loan which will be repaid in thirty days or less." Movant, however, did not repay the loan within thirty days, but did so eventually, with full interest. The loan proceeds were not from her husband's estate funds, but rather from Young's personal funds. Movant deposited the borrowed funds into his escrow account; in light of the timing, it is apparent that Movant borrowed the money so he could cover the deficiency in the Escrow account and cover amounts due to Doss as mentioned previously.

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<sup>3</sup> "A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. . . ."

As a result of the above conduct, the Inquiry Commission charged Movant with having violated SCR 3.130(1.8)(a).<sup>4</sup> Movant admits that his conduct violated SCR 3.130(1.8)(a), but additionally responds that he mistakenly believed that the estate of Mr. Young, rather than Mrs. Young, was his client. However, he has since learned that attorneys in such situations are actually representing the fiduciary as opposed to the estate.

### **III. DISCIPLINE**

Movant admitted to professional misconduct by violating the cited Kentucky Supreme Court Rules for the charges issued by the Inquiry Commission in the matters as set forth above. Under SCR 3.480(2), Movant and the KBA have further agreed to the discipline to be imposed: a one hundred eighty-one day suspension with sixty-one days of the suspension to be probated for one year, conditioned upon Movant incurring no further disciplinary charges, maintaining his Continuing legal education requirements, and paying his membership dues.

Movant has received multiple prior disciplinary sanctions for unprofessional misconduct. More specifically, Movant has incurred the following prior disciplinary sanctions:

1. July 22, 1985            Private Admonition
2. August 11, 2004        Private Admonition

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<sup>4</sup> “A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client. . . .”

3. May 7, 2007 Private Admonition
4. September 20, 2012 Private Admonition
5. November 21, 2012 Public Reprimand and Suspended thirty days, with conditions
6. March 20, 2013 Private Admonition
7. July 17, 2013 Private Admonition

The admitted ethical violations, which are the subject of this action, were previously considered by this Court in 2015. At that time and in agreement with Bar Counsel, Movant filed a motion under the negotiated sanction rule presenting a negotiated sanction of a sixty-one day suspension with sixteen days of the suspension to be probated for one year on the condition that he receive no additional disciplinary charges during that period. We rejected that negotiated sanction, stating as follows:

Despite the KBA's agreement, this Court has wide discretion in accepting or denying the proposed sanction. *Anderson v. Kentucky Bar Ass'n*, 262 S.W.3d 636, 638 (Ky. 2008). SCR 3.480(2) instructs that, "[t]he Court may approve the sanction agreed to by the parties, or may remand the case for hearing or other proceedings . . . ." Neither Movant nor the KBA have provided us with supporting case law illustrating that the proposed sanction is "adequate and comparable to [punishment] imposed for similar misconduct." *Perkins v. Kentucky Bar Ass'n*, 412 S.W.3d 877, 880 (Ky. 2013). Movant also fails to point to any mitigating factors indicating that a probated suspension is appropriate. In fact, while neither party mentions or discusses Movant's prior disciplinary history, a cursory review of his record shows that Movant was recently punished for a similar disciplinary infraction in November of 2012. More specifically, in *Kentucky Bar Ass'n v. Greene*, 386 S.W.3d 717, 721 (Ky. 2012), this Court found Movant guilty of violating SCR 3.130-1.15(a) (failure to hold client's property in a separate account for safe keeping) and SCR 3.130-1.5(a) (charging an unreasonable fee). This Court publically [sic]

reprimanded Movant for violating SCR 3.130-1.15(a) and suspended Movant for thirty-days for his violation of SCR 3.130-1.5(a). *Id.*

As Movant's prior and current disciplinary actions demonstrate, he has difficulty managing his clients' funds. We believe that Movant's consistent and arguably willful violations of SCR 3.130-1.15(a) warrant more than a probated suspension. It seems to the Court that the discipline is too light considering his prior record. Therefore, due to the nature of Respondent's misconduct and in consideration of his disciplinary history, this Court finds that the consensual discipline proposed by Movant and agreed to by the KBA is inadequate.

We accordingly denied the proposed negotiated sanction and remanded the case for further disciplinary proceedings in conformity with the Rules of Professional Conduct.

After reviewing the record, the applicable ethical standards, other relevant authorities, and Movant's past disciplinary history, this Court concludes that the revised discipline proposed by Movant, and agreed to by the KBA, is *adequate*. The proposed sanction period will amount to an actual suspension of 120 days or 4 months.

Four years ago, Movant was found guilty of two violations—charging an unreasonable fee in violation of SCR 3.130(1.5)(a) and commingling of funds in violation of SCR 3.130(1.15)(a). *Kentucky Bar Ass'n v. Greene*, 386 S.W.3d 717 (Ky. 2012). In that case, Movant was suspended from the practice of law for thirty days and required to complete six hours of additional continuing legal education on the subject of law office management, client agreements, and billing practice requirements. *Id.* at 736. It is noted that Movant committed the ethical violations addressed in the instant action before the imposition of

the thirty-day suspension, and thus we cannot conclude from his guilt here that the thirty-day suspension failed to make a therapeutic impression. We can say, however, that these offenses have the cumulative effect of exposing a more persistent and more harmful character deficiency than was apparent in Movant's previous appearance before this Court.

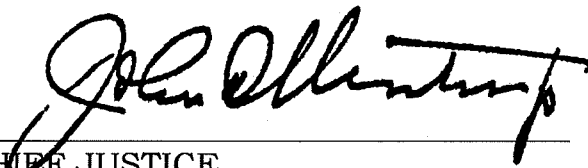
ACCORDINGLY, IT IS HEREBY ORDERED THAT:

- 1) Movant's motion for this Court to impose a one hundred eighty-one day suspension with sixty-one days of the suspension to be probated for one year is *granted* conditioned upon Movant incurring no further disciplinary charges, maintaining his Continuing legal education requirements, and paying his membership dues.
- 2) Pursuant to SCR 3.390, and to the extent that he has not otherwise done so, 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; and

3) Movant is directed to pay all costs associated with these disciplinary proceedings against him, said sum being \$829.38, for which execution may issue from this Court finality of this Opinion and Order.

All sitting. All concur.

ENTERED: October 20, 2016.

  
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CHIEF JUSTICE