

TO BE PUBLISHED

Supreme Court of Kentucky

2001 -SC-0822-KB

FINAL
DATE 12-3-01 BY JAC/gra/H.D.C.

DAVID R. REEVES
KBA MEMBER NO. 57353

MOVANT

V. IN SUPREME COURT

KENTUCKY BAR ASSOCIATION

RESPONDENT

OPINION AND ORDER

Movant, David R. Reeves, of Grayson, Kentucky, desires to terminate Kentucky Bar Association ("KBA") proceedings against him by consenting to a suspension from the practice of law for a period of ninety (90) days to serve, and an additional ninety (90) days probated for one (1) year with conditions. The KBA does not object to this motion and requests that the motion be granted. Movant was previously suspended from the practice of law by Order of this Court on April 20, 2000, *KBA v. Reeves*, Ky., 15 S.W.3d 371 (2000), and has not been reinstated. After careful review of the charges and the record, we hereby grant the motion.

The proceedings against Movant arose out of two separate incidents, the charges for which were consolidated for purposes of discipline. KBA charge number 7465 charged Movant with a violation of SCR 3.130-1 .15(a) for failing to hold the property of a client separate from his own. KBA charge number 7940 charged Movant

with a violation of SCR 3.130-I .3 for failing to act with reasonable diligence and promptness in his representation of a client. In his motion for suspension, Movant admitted to the following facts:

Charge Number 7465.

In November of 1998, Movant represented John L. Boggs in a bankruptcy action. On November 15, 1998, he issued a check, drawn on his escrow account, to the Clerk of the United States Bankruptcy Court to cover \$175.00 in filing fees on behalf of Mr. Boggs. However, the check was returned because of insufficient funds. Mr. Boggs had paid Movant \$175.00 to cover the filing fees, as well as \$500.00 in attorney fees. Said payments were made in cash and were either placed in Movant's business account or spent by Movant. None of the money was placed in Movant's escrow account as required by SCR 3.130-I. 15(a).

SCR 3.130-I. 15(a) requires a lawyer to keep property of clients that is in the lawyer's possession 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 consent of the client. . . ." Since Movant did not deposit Mr. Boggs's funds into Movant's escrow account, there were insufficient funds to cover the filing fees.

Charge Number 7940.

This charge arose out of Movant's representation of Paul and Carol Miles in a civil suit instituted against them by H. A. Jones Chevrolet-Buick-Oldsmobile, Inc. (hereinafter "Jones"). On July 22, 1998, counsel for Jones filed a motion for partial summary judgment to which Movant filed a response and also tendered a counterclaim. The motion for summary judgment was overruled. However, Jones had also moved for

leave to file an amended complaint, which motion was sustained. Movant failed to file an answer to the amended complaint.

On October 18, 1999, the Carter Circuit Court heard a motion on behalf of Jones to dismiss the counterclaim for lack of prosecution. At that time, another attorney, at Movant's request, appeared and advised the court that Mr. and Mrs. Miles intended to pursue their counterclaim. The motion to dismiss the counterclaim was overruled; however, Movant took no further steps to prosecute that claim or to defend his clients against Jones's claim. Because of those failures, Jones filed another motion to dismiss the counterclaim for lack of prosecution and a motion for default judgment premised upon Movant's failure to file an answer to the amended complaint. Movant did not appear at the hearing on these motions and did not defend against them in any way. Both motions were granted, the counterclaim was struck from the docket, and a default judgment was entered in favor of Jones. Movant admits that his inaction violated SCR 3.130-1 .3 which requires a lawyer to "act with reasonable diligence and promptness in representing a client."

Upon the foregoing facts and charges, it is ordered that Movant's motions for termination of the proceedings against him and for suspension are granted. It is hereby ordered that:

1. Movant, David R. Reeves, is suspended from the practice of law in the Commonwealth of Kentucky for a period of ninety days to serve, and an additional ninety days probated for one year with conditions as stated below. The period of suspension shall commence on the date of entry of this order and continue until such time as Movant is reinstated to the practice of law by order of this Court pursuant to SCR 3.510 or any controlling amendment to SCR 3.510.

2. Upon reinstatement, Movant shall remain on probation for a period of one year under the following terms and conditions:

A. Movant shall abstain from the consumption of alcoholic beverages;

B. Movant shall participate in the Lawyers Helping Lawyers program and meet all of its requirements;

C. A member of the Lawyers Helping Lawyers Committee will supervise Movant during his probationary period. The member of the Lawyers Helping Lawyers Committee shall file quarterly reports with the disciplinary clerk of the KBA for distribution to bar counsel. Said reports shall state if Movant is complying with the terms and conditions of this order. If, at any time, the member becomes aware of Movant's violation of any of the terms of this order, the member shall immediately file a notice of such violation with the disciplinary clerk of the KBA for distribution to bar counsel and Movant.

3. During Movant's period of probation, the Lawyers Helping Lawyers Committee member shall have the following responsibilities:

A. Obtain an affidavit from Movant as to whether Movant has abstained from the consumption of alcoholic beverages;

B. Review the records of the Carter District and Circuit Courts to determine if Movant has been involved in any alcohol-related incidents during the reporting period; and

C. Contact Movant as the member of the Lawyers Helping Lawyers Committee deems appropriate to discharge his or her responsibilities as set forth above.

4. If Movant violates the terms of this probation within one year of the date of Movant's reinstatement, the KBA shall file a motion with this Court requesting the issuance of a show cause order directing Movant to show cause, if any, why the ninety-day suspension should not be imposed.

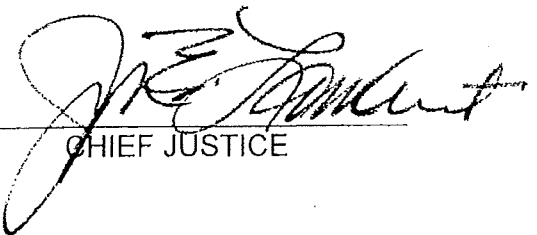
5. If, at the expiration of the probation period of one year, Movant has fully complied with the above terms and conditions, the Order of Suspension shall automatically terminate along with all terms and conditions of probation, and the Lawyers Helping Lawyers Committee member shall be relieved of any further responsibility under this order.

6. Pursuant to SCR 3.390, Movant shall, within ten (10) days from the entry of this order, notify all clients in writing of his inability to represent them, notify all courts in which he has matters pending of his suspension from the practice of law, and furnish copies of said letters of notice to the Director of the KBA.

7. In accordance with SCR 3.450, Movant is directed to pay all costs associated with these disciplinary proceedings against him, said sum being \$142.12, and for which execution may issue from this Court upon finality of this Opinion and Order.

All concur.

ENTERED: November 21, 2001.


CHIEF JUSTICE

TO BE PUBLISHED

Supreme Court of Kentucky

2000-SC-0086-KB

FINAL

DATE **MAY 10 2000** COMPLAINT *Hill D.C.*

KENTUCKY BAR ASSOCIATION

V. IN SUPREME COURT

DAVID R. REEVES

RESPONDENT

OPINION AND ORDER

Respondent, David R. Reeves, whose address is Grayson, Kentucky, and who is admitted to practice law in this Commonwealth, was issued a three-count charge by the Kentucky Bar Association (KBA) alleging violations of SCR 3.130-I .3, SCR 3.130-I .4 and SCR 3.130-I .16(d) based on his representation of AESOP Financial Corporation, (AESOP). An evidentiary hearing was held before a trial commissioner. Neither party filed a notice of appeal pursuant to SCR 3.360(4). Therefore, pursuant to SCR 3.370(10), this Court adopts the recommendation of the trial commissioner and Respondent is suspended from the practice of law for a period of sixty (60) days.

In December 1997, Respondent agreed to assume representation of AESOP against St. Claire Medical Center (St. Claire), in a collection case after he was contacted by Michael Levy, counsel for AESOP in Virginia. Respondent agreed to

handle the matter on a contingency fee basis and requested **court** costs and a retainer fee from AESOP totaling \$256.00. Levy forwarded that sum to Respondent in March 1998. Respondent did not file suit until October 8, 1998.

In April 1998, Levy wrote Respondent inquiring as to the status of the litigation. Levy testified before the trial commissioner that he also attempted to phone Respondent in April and again in August 1998. Levy testified that on neither occasion was he able to speak with Respondent, nor did Respondent return his calls. On October 27, 1998, Levy wrote Respondent and demanded that Respondent return the AESOP file and the \$256.00 fee. In response, Respondent forwarded Levy the Complaint (filed on October 8, 1998), the Answer and the \$150.00 retainer. At this time, Respondent failed to notify Levy that an economic litigation project (ELP) order had been entered on October 27, 1998. Furthermore, Respondent failed to advise Levy that a status conference had been scheduled for December 18, 1998 and that the Rowan Circuit Court had ordered each party to file an ELP status report before that conference.

On December 4, 1998, St. Claire filed its ELP status report with the circuit court. Respondent mailed a copy of the ELP status report to Levy on December 16, 1998, two days prior to the court-ordered status conference. Levy testified that he received the report on December 18, 1998, the day the conference was held; and that, as of that time, he still had not been informed that a status conference was to take place on that day. The order from the Rowan Circuit Court reflects that no attorney appeared on behalf of AESOP.

At the status conference, the court ordered that dispositive motions be filed within thirty (30) days, after which each party would have twenty (20) days in which to

respond. Respondent failed to provide Levy with a copy of the status conference order. Pursuant to the order, St. Claire moved for summary judgment. While St. Claire's motion indicates that it was mailed to Respondent on January 18, 1999, Levy did not receive it until February 3, 1999. Levy testified that he attempted but was unable to obtain substitute counsel to handle the motion. As a result, the Rowan Circuit Court granted St. Claire's motion for summary judgment on March 2, 1999.

As a result of his inaction in this matter, the KBA issued a three-count charge against Respondent. Count 1 alleged a violation of SCR 3.130-I .3, which states that, "[a] lawyer shall act with reasonable diligence and promptness in representing a client." The trial commissioner found Respondent guilty of violating SCR 3.130-I .3 by failing to timely file the civil suit on behalf of AESOP after receiving the filing fee and other requirements in March 1998.

Count 2 of the charge alleged that Respondent violated SCR 3.130-I .4 which states:

- (a) A lawyer should keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.
- (b) A lawyer should explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Respondent was found guilty of violating SCR 3.130-I .4 by failing to return Levy's phone calls and letters regarding the status of the litigation. Respondent also failed to inform Levy of the ELP order and status conference scheduled for December 18, 1998 and of the motion schedule ordered by the court, ordering each side to submit dispositive motions and responses if necessary. Finally, Respondent failed to promptly supply Levy with a copy of St. Claire's motion for summary judgment,

which precluded Levy from being able to arrange for substitute counsel to respond to the motion.

Count 3 of the charge alleged that Respondent violated SCR 3.130-I .16(d) by failing to notify opposing counsel and the Rowan Circuit Court of the termination of his representation of AESOP. Respondent also failed to promptly inform AESOP of pending hearings and deadlines in the matter and failed to provide Levy with a copy of the dispositive motion filed by St. Claire, which, if timely provided, would have given AESOP time to retain substitute counsel to file a response or request additional time in which to do so. SCR 3.130-I .16(d) states:

Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned.

As with regard to counts 1 and 2 of the charge, the trial commissioner found by a preponderance of the evidence that Respondent had violated SCR 3.130-I. 16(d).

The trial commissioner also found that even though Levy was a licensed attorney in Virginia, that fact did not relieve Respondent of his duty to protect AESOP's interests. While Respondent's failure to timely file suit on behalf of AESOP did not cause substantial harm to the client, his failure to protect AESOP's interests after his termination did substantially impact AESOP's position in the case. Because of this failure, the trial commissioner found Respondent guilty of all three counts of the charge and recommended that Respondent be suspended from the practice of law in this Commonwealth for a period of sixty (60) days.

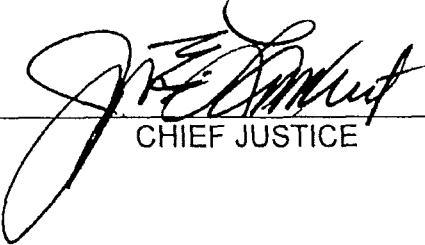
Upon the foregoing facts and charges, the trial commissioner's findings and recommendation are hereby adopted. It is further ordered that:

1. Respondent, David R. Reeves, is suspended from the practice of law in this Commonwealth for a period of sixty (60) days. The period of suspension shall commence on the date of entry of this Opinion and Order.

2. In accordance with SCR 3.450, Respondent is directed to pay all costs associated with these disciplinary proceedings against him, said sum being \$596.74, and for which execution may issue from this Court upon finality of this Opinion and Order.

All concur.

Entered: April 20, 2000.


CHIEF JUSTICE