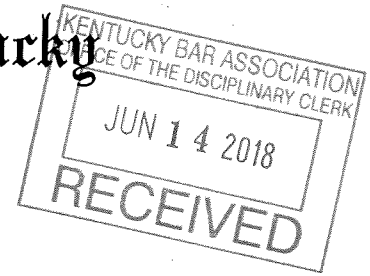


TO BE PUBLISHED

Supreme Court of Kentucky



2018-SC-000100-KB

KENTUCKY BAR ASSOCIATION

MOVANT

V.

IN SUPREME COURT

DENNIS MICHAEL STUTSMAN

RESPONDENT

OPINION AND ORDER

The Kentucky Bar Association (KBA) has charged Dennis Michael Stutsman¹ as a default case under SCR² 3.210. Based on its proceedings, the KBA Board of Governors found Stutsman guilty on three counts, and recommended that Stutsman be suspended from the practice of law for 181 days, and be required to pay costs in this action. We adopt the Board's recommendations. SCR 3.370(9).

I. Factual Background.

KBA file 16-DIS-0170 concerns Stutsman's failure to answer a Bar Complaint filed by his former client, Angela Morath, with respect to his

¹ Stutsman's KBA Number is 81569. He was admitted to the practice of law on April 27, 1987, and his bar roster address is 1112 Taborlake Drive, Lexington, Kentucky 40502.

² Kentucky Rules of Supreme Court.

mishandling of her adoption case. The Bar Complaint was filed on August 11, 2016. The Fayette County Sheriff's Department personally served Stutsman with the Bar Complaint on November 16, 2016. After Stutsman failed to file an Answer to the Complaint, the Inquiry Commission issued a four-count charge against him, on July 25, 2017.

Stutsman was retained by Angela Morath in April 2015 to handle an adoption. Morath signed a retainer agreement with Stutsman and paid him \$4,000.00 in advance for his services. When the child was born in August 2015, Stutsman did successfully obtain temporary custody of the child in the Hardin Circuit Court but did not progress the adoption any farther. Stutsman prepared consent forms to be signed, but these were rejected by the court multiple times as insufficient. Additionally hearings were repeatedly rescheduled. Morath was rarely able to contact Stutsman despite attempts via phone, email, and text. Stutsman only responded several times, and when he did, he inaccurately represented the status of the case, often blaming the court for delays.

The adoption agency contacted Morath seeking final paperwork and advised her that the process had been pending much longer than usual. Almost a year after retaining Stutsman, Morath hired a new attorney to proceed with the adoption. Her new counsel requested Morath's file from Stutsman and a partial refund of fees, but neither were provided. That attorney was able to complete the adoption in June 2016 with no delays or

complications. Morath again requested a partial refund of attorney fees, to which no response was made.

Stutsman was charged with the following violations:

Count I: SCR 3.130-1.1: "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."

Count II: SCR 3.130-1.16(d): "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 or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law."

Count III: SCR 3.130-3.2: "A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client."

Count IV: SCR 3.130-8.1(b): "[A] lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not . . . knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority."

The Board of Governors found Stutsman guilty of Counts II, III, and IV by a vote of 16-0, and not guilty on Count I by a vote of 16-0. The Board voted 11-5 to recommend that Stutsman be suspended from the practice of law for 181 days.³

This matter is not the first time Stutsman has been cited and disciplined for his misconduct as a practicing attorney. On September 4, 2002, Stutsman received a private reprimand for violating SCR 3.130-1.3 and SCR 3.130-1.4(a)

³ The Board also considered a suspension of 180 days with EPEP attendance and payment of costs.

for failure to timely file an appellate brief and cited for lack of diligence and failure to keep a client reasonably informed. On February 23, 2006, Stutsman was issued a public reprimand for violating SCR 3.130-1.3, SCR 3.130-3.2, and SCR 3.130-3.4(c) after being held in contempt by the Kentucky Court of Appeals for failure to file timely briefs in three cases. *Stutsman v. Ky. Bar Ass'n*, 184 S.W.3d 560 (Ky. 2006).⁴ Stutsman was cited for lack of diligence, failure to expedite litigation consistent with client interests, and knowingly disobeying an obligation to a tribunal. On April 27, 2017, Stutsman was suspended from the practice of law for thirty days for violating SCR 3.130-1.3, SCR 3.130-3.4(c), and SCR 3.130-8.1(b), referred to KYLAP for an evaluation, and ordered to complete the Ethics and Professionalism Enhancement Program (EPEP) before being reinstated. *Ky. Bar Ass'n v. Stutsman*, 515 S.W.3d 668 (Ky. 2017).

Here, Stutsman's misconduct in KBA file 16-DIS-0170 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 Ass'n v. Emerson*, 276 S.W.3d 823 (Ky. 2009), this Court exercised its discretion to suspend the Respondent for 181 days and ordered repayment of unearned costs for violating SCR 3.130-1.16(d) and SCR 3.130-8.1(b) after considering Emerson's prior disciplinary matters, which included a public

⁴ That disciplinary action also incorporated the Court of Appeals' reference to six additional cases in which Stutsman repeatedly missed deadlines and failed to file responses to show cause orders.

reprimand and 61-day suspension. Likewise, in light of Stutsman's previous disciplinary actions, we believe that suspension of 181 days and payment of costs is appropriate.

ACCORDINGLY, IT IS ORDERED THAT:

A. Stutsman is adjudged guilty of violating SCR 3.130-1.16(d), SCR 3.130-3.2, and SCR 3.130-8.1(b);

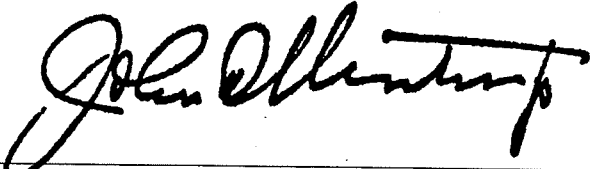
B. Stutsman is hereby suspended from the practice of law in Kentucky for 181 days, to run consecutively to all suspensions currently imposed;

C. As required by SCR 3.390, Stutsman shall, within ten (10) days of the date of this Opinion and Order, notify all courts in which he has matters pending, if any, and shall notify all clients for whom he is actively engaged in continuing litigation or similar legal matters, if any, of his inability to continue to represent them and of the necessity and urgency of promptly retaining new counsel, and shall provide a copy of all such letters to the Office of Bar Counsel. Stutsman shall, to the extent possible, cancel and cease any advertising activities in which he is engaged; and

D. In accordance with SCR 3.450, Stutsman is directed to pay all costs associated with these disciplinary proceedings against him. The costs of this proceeding, including amounts incurred after the consideration and vote by the Board, as calculated and certified by the Disciplinary Clerk, are \$364.40.

All sitting. All concur.

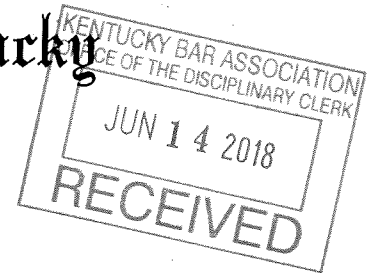
ENTERED: June 14, 2018.



CHIEF JUSTICE

TO BE PUBLISHED

Supreme Court of Kentucky



2018-SC-000100-KB

KENTUCKY BAR ASSOCIATION

MOVANT

V.

IN SUPREME COURT

DENNIS MICHAEL STUTSMAN

RESPONDENT

OPINION AND ORDER

The Kentucky Bar Association (KBA) has charged Dennis Michael Stutsman¹ as a default case under SCR² 3.210. Based on its proceedings, the KBA Board of Governors found Stutsman guilty on three counts, and recommended that Stutsman be suspended from the practice of law for 181 days, and be required to pay costs in this action. We adopt the Board's recommendations. SCR 3.370(9).

I. Factual Background.

KBA file 16-DIS-0170 concerns Stutsman's failure to answer a Bar Complaint filed by his former client, Angela Morath, with respect to his

¹ Stutsman's KBA Number is 81569. He was admitted to the practice of law on April 27, 1987, and his bar roster address is 1112 Taborlake Drive, Lexington, Kentucky 40502.

² Kentucky Rules of Supreme Court.

mishandling of her adoption case. The Bar Complaint was filed on August 11, 2016. The Fayette County Sheriff's Department personally served Stutsman with the Bar Complaint on November 16, 2016. After Stutsman failed to file an Answer to the Complaint, the Inquiry Commission issued a four-count charge against him, on July 25, 2017.

Stutsman was retained by Angela Morath in April 2015 to handle an adoption. Morath signed a retainer agreement with Stutsman and paid him \$4,000.00 in advance for his services. When the child was born in August 2015, Stutsman did successfully obtain temporary custody of the child in the Hardin Circuit Court but did not progress the adoption any farther. Stutsman prepared consent forms to be signed, but these were rejected by the court multiple times as insufficient. Additionally hearings were repeatedly rescheduled. Morath was rarely able to contact Stutsman despite attempts via phone, email, and text. Stutsman only responded several times, and when he did, he inaccurately represented the status of the case, often blaming the court for delays.

The adoption agency contacted Morath seeking final paperwork and advised her that the process had been pending much longer than usual. Almost a year after retaining Stutsman, Morath hired a new attorney to proceed with the adoption. Her new counsel requested Morath's file from Stutsman and a partial refund of fees, but neither were provided. That attorney was able to complete the adoption in June 2016 with no delays or

complications. Morath again requested a partial refund of attorney fees, to which no response was made.

Stutsman was charged with the following violations:

Count I: SCR 3.130-1.1: "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."

Count II: SCR 3.130-1.16(d): "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 or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law."

Count III: SCR 3.130-3.2: "A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client."

Count IV: SCR 3.130-8.1(b): "[A] lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not . . . knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority."

The Board of Governors found Stutsman guilty of Counts II, III, and IV by a vote of 16-0, and not guilty on Count I by a vote of 16-0. The Board voted 11-5 to recommend that Stutsman be suspended from the practice of law for 181 days.³

This matter is not the first time Stutsman has been cited and disciplined for his misconduct as a practicing attorney. On September 4, 2002, Stutsman received a private reprimand for violating SCR 3.130-1.3 and SCR 3.130-1.4(a)

³ The Board also considered a suspension of 180 days with EPEP attendance and payment of costs.

for failure to timely file an appellate brief and cited for lack of diligence and failure to keep a client reasonably informed. On February 23, 2006, Stutsman was issued a public reprimand for violating SCR 3.130-1.3, SCR 3.130-3.2, and SCR 3.130-3.4(c) after being held in contempt by the Kentucky Court of Appeals for failure to file timely briefs in three cases. *Stutsman v. Ky. Bar Ass'n*, 184 S.W.3d 560 (Ky. 2006).⁴ Stutsman was cited for lack of diligence, failure to expedite litigation consistent with client interests, and knowingly disobeying an obligation to a tribunal. On April 27, 2017, Stutsman was suspended from the practice of law for thirty days for violating SCR 3.130-1.3, SCR 3.130-3.4(c), and SCR 3.130-8.1(b), referred to KYLAP for an evaluation, and ordered to complete the Ethics and Professionalism Enhancement Program (EPEP) before being reinstated. *Ky. Bar Ass'n v. Stutsman*, 515 S.W.3d 668 (Ky. 2017).

Here, Stutsman's misconduct in KBA file 16-DIS-0170 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 Ass'n v. Emerson*, 276 S.W.3d 823 (Ky. 2009), this Court exercised its discretion to suspend the Respondent for 181 days and ordered repayment of unearned costs for violating SCR 3.130-1.16(d) and SCR 3.130-8.1(b) after considering Emerson's prior disciplinary matters, which included a public

⁴ That disciplinary action also incorporated the Court of Appeals' reference to six additional cases in which Stutsman repeatedly missed deadlines and failed to file responses to show cause orders.

reprimand and 61-day suspension. Likewise, in light of Stutsman's previous disciplinary actions, we believe that suspension of 181 days and payment of costs is appropriate.

ACCORDINGLY, IT IS ORDERED THAT:

A. Stutsman is adjudged guilty of violating SCR 3.130-1.16(d), SCR 3.130-3.2, and SCR 3.130-8.1(b);

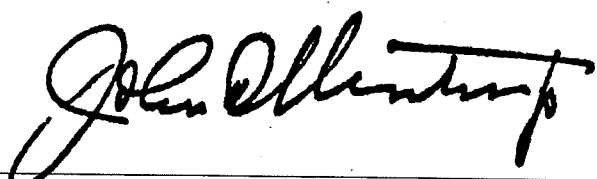
B. Stutsman is hereby suspended from the practice of law in Kentucky for 181 days, to run consecutively to all suspensions currently imposed;

C. As required by SCR 3.390, Stutsman shall, within ten (10) days of the date of this Opinion and Order, notify all courts in which he has matters pending, if any, and shall notify all clients for whom he is actively engaged in continuing litigation or similar legal matters, if any, of his inability to continue to represent them and of the necessity and urgency of promptly retaining new counsel, and shall provide a copy of all such letters to the Office of Bar Counsel. Stutsman shall, to the extent possible, cancel and cease any advertising activities in which he is engaged; and

D. In accordance with SCR 3.450, Stutsman is directed to pay all costs associated with these disciplinary proceedings against him. The costs of this proceeding, including amounts incurred after the consideration and vote by the Board, as calculated and certified by the Disciplinary Clerk, are \$364.40.

All sitting. All concur.

ENTERED: June 14, 2018.



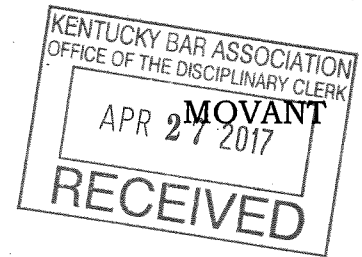
CHIEF JUSTICE

TO BE PUBLISHED

Supreme Court of Kentucky

2017-SC-000098-KB

KENTUCKY BAR ASSOCIATION



V.

IN SUPREME COURT

DENNIS MICHAEL STUTSMAN
KBA MEMBER NO. 81569

RESPONDENT

OPINION AND ORDER

Respondent, Dennis Michael Stutsman, was admitted to the practice of law in the Commonwealth of Kentucky on April 27, 1987. Respondent's Kentucky Bar Association ("KBA") Member Number is 81569 and his bar roster address is 1112 Taborlake Drive, Lexington, Kentucky 40502. On July 21, 2016, the KBA Inquiry Commission issued a three-count disciplinary Charge against Respondent in KBA File Number 24086. The Charge reached the KBA Board of Governors (the "Board") by default on February 21, 2017. The Board found Respondent guilty of committing all three disciplinary infractions, and recommended a suspension from the practice of law for a period of thirty (30) days, in addition to other conditions. The case now stands submitted to this Court for adoption of the Board's Findings of Fact, Conclusions of Law, and Recommendation.

The underlying facts of this disciplinary action occurred during the course of Respondent's representation of Chelsey Wilson. After Ms. Wilson's application for Social Security disability was denied, Respondent was hired to appeal the denial. Accordingly, on March 20, 2015, Respondent filed a timely appeal in the United States District Court for the Eastern District of Kentucky. The federal judge entered an order on July 20, 2015, requiring the parties to file appellate briefs within sixty days. Respondent failed to file the appellate brief on Ms. Wilson's behalf. Subsequently, the presiding judge became aware that Respondent had failed to file an appellate brief in another Social Security case on appeal before a different federal judge. Consequently, the presiding judge issued an order banning Respondent from filing any new cases in federal court for a period of one year. The matter was referred to the KBA Office of Bar Counsel for disciplinary proceedings.

On February 9, 2016, the Inquiry Commission filed a Complaint against Respondent. A Fayette County Sherriff served Respondent with the Complaint on March 18, 2016. Included with the bar complaint was a request for additional information and a warning that failure to respond could result in an additional charge of misconduct. Respondent, however, failed to respond to the Complaint. As a result, on July 21, 2016, the KBA Inquiry Commission filed a three-count Charge against Respondent alleging the following violations of the Kentucky Rules of Professional Conduct: Count I, Supreme Court Rule ("SCR") 3.130-1.3 (failure to act with reasonable diligence and promptness); Count II, SCR 3.130-3.4(c) (knowingly disobeying an obligation under the rules

of a tribunal); and Count III, SCR 3.130-8.1(b) (failure to respond to a lawful demand for information from an admissions or disciplinary authority).

On August 12, 2016, Respondent was served with the Charge via certified mail. Respondent did not file an answer to the Charge and the case proceeded to the Board by default. By a unanimous vote, Respondent was found guilty of committing all three disciplinary infractions. The Board has determined that the appropriate punishment is to suspend Respondent from the practice of law for thirty (30) days, order him to complete the Ethics and Professionalism Enhancement Program ("EPEP"), and refer him to the Kentucky Lawyer Assistance Program.

Neither Respondent, nor the Office of Bar Counsel has requested that this Court take review of the Board's decision pursuant to SCR 3.370(7). This Court also declines the opportunity to independently review the Board's decision per SCR 3.370(8). The Board's findings are adequately supported by the record and its recommended period of suspension is a suitable punishment. *See Kentucky Bar Ass'n v. Justice*, 198 S.W.3d 583 (Ky. 2006) (thirty-day suspension was appropriate for attorney who failed to file responsive pleadings resulting in the dismissal of client's case); *see also Kentucky Bar Ass'n v. Pridemore*, 436 S.W.3d 526 (Ky. 2014) (imposing a thirty-day suspension, probated for two years, on an attorney with no disciplinary history, who failed to file a timely appeal); *Kentucky Bar Ass'n v. Leadingham*, 269 S.W.3d 419 (Ky. 2008) (failure to file appellate briefs warranted a thirty-day suspension from the practice of law, probated on the completion of EPEP).

This Court finds additional support for the Board's imposition of suspension based on Respondent's disciplinary history. On September 4, 2002, Respondent was privately admonished for similar misconduct when he failed to timely file an appellate brief. In that disciplinary proceeding, Respondent was also found guilty for lack of diligence and failure to keep his client reasonably informed.

On February 23, 2016, this Court imposed further discipline upon Respondent in *Stutsman v. Kentucky Bar Ass'n*, 184 S.W.3d 560 (Ky. 2006). The disciplinary action was based on a contempt order issued by the Kentucky Court of Appeals for Respondent's failure to timely file a brief in three separate cases. *Id.* The Court of Appeals also referenced six other cases in which Respondent disregarded deadlines and failed to file responses to show cause orders. *Id.* This Court issued a public reprimand for Respondent's failure to diligently represent his clients and expedite their cases, and for disobeyingly ignoring the Court of Appeals' orders. *Id.* at 561.

Having reviewed the record, analogous case law, and Respondent's disciplinary history, we hereby adopt the Board's Findings of Fact, Conclusions of Law, and Recommendation pursuant to SCR 3.370(9).

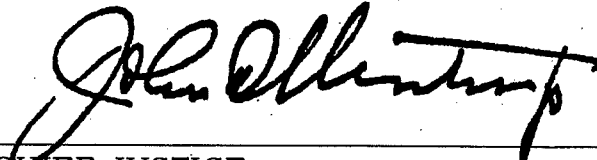
ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent, Dennis Michael Stutsman, KBA Member Number 81569, is found guilty of violating SCR 3.130-1.3, SCR 3.130-3.4(c), and 3.130-8.1(b);
2. Respondent is suspended from the practice of law in the Commonwealth of Kentucky for a period of thirty (30) days;

3. Respondent may not be reinstated to the practice of law until he completes the Ethics and Professionalism Enhancement Program;
4. Respondent is also hereby referred to the Kentucky Lawyer Assistance Program for an evaluation; and
5. Pursuant to SCR 3.450, Respondent is directed to pay all costs associated with this disciplinary proceeding, in the amount of \$178.95 for which execution may issue from this Court upon finality of this Order.

All sitting. All concur.

ENTERED: April 27, 2017.



CHIEF JUSTICE