

Supreme Court of Kentucky

2000-SC-0857-KB

FINAL

DATE 1-3-01 John Hill, Jr.
MOVANT

KENTUCKY BAR ASSOCIATION

V. IN SUPREME COURT

CYNTHIA ANN MANDELLO

RESPONDENT

OPINION AND ORDER

The Inquiry Tribunal charged Respondent, Cynthia Ann Mandello, with eight counts of misconduct. Two of these counts have been settled or resolved in separate proceedings. The Board of Governors of the Kentucky Bar Association held a hearing on the remaining charges. The Board found Mandello guilty of two of these counts and not guilty of the other four. The Board recommended a suspension of six (6) months to run consecutively with a previous eighteen months of suspension. See Kentucky Bar Association v. Mandello, Ky., 986 S.W.2d 897 (1999). We adopt the Board's findings and recommendation as our own.

These charges stem from Mandello's representation of Carolyn Williams in connection with the death of her husband, George Williams, at the University of Kentucky Medical Center. Mandello became aware of George Williams' death and some of the surrounding circumstances during a social encounter with nurses from the

University of Kentucky Medical Center. These nurses allegedly described the events leading to Mr. Williams' death in such a way that Mandello became convinced that he died as the result of gross negligence. Based on this knowledge and belief, Mandello sent Mrs. Williams the following letter:

October 27, 1989

Dear Ms. Williams,

I sincerely regret the necessity for this letter and it is only due to my strong feelings of fairness that I would write to you at this time. Over the past weekend, through friends, I learned of the circumstances surrounding your husbands (sic) death and I feel a moral responsibility to suggest that you retain an attorney to investigate it.

I realize that your first thought will be that I am an ambulance chaser. I assure you that I am not, nor have I ever had a need to **solicite** (sic) business in such a manner. This knowledge that I have concerning your husbands (sic) death has preyed on my mind since learning of it, and in order to alleviate any doubts that you may have concerning my intentions, I can only say that I will cooperate fully with any attorney that you may already have or that you ultimately retain. While I would like to represent you and feel that my background provides me with a strong basis of knowledge with which to protect your interests, I must say that in this particular situation, it is not who you choose to represent you, but that you choose someone. It was purely coincidental that I learned of this occurrence (sic). My being an attorney had nothing to do with how I discovered it.

Carolyn, I am a strong Christian. I believe that God has reasons for everything and if it is in his perfect plan that I represent you, then he will provide the means. If someone else is to represent you, then he will insure that my information reaches that person. I truely (sic) believe this and will willingly speak to anyone you choose.

I do not know how to adequately discuss what I learned without causing you additional pain. Please ask someone you trust to call me and I will relate the information, how I learned of it, and what I feel you should legally do.

I know that this is a difficult time for you and again, I regret any additional pain that I may have unwittingly caused. I remain,

Sincerely,

Cynthia A. Mandello
Attorney at Law

Mrs. Williams was not a current or former client of Mandello's, nor had the two ever met prior to this letter being sent. After dismissing the first attorney she hired to represent her, Mrs. Williams hired Mandello to represent her in a medical malpractice action against the University of Kentucky Medical Center in connection with her husband's death.

Mandello was found not guilty on Counts II, IV, VI and VII. Further, Counts V and VII have either been settled or resolved. The remaining two counts -- those upon which Mandello was found guilty -- are discussed immediately below.

COUNT I

The Inquiry Tribunal charged Mandello with violation of former rule SCR 3.135(6)(a), which was in effect at the time Mandello sent the above letter. That rule provided in pertinent part, "that a fair and accurate representation of any advertisement that does not qualify under Rule 3.135(6)(a) shall be delivered to the Attorneys Advertising Commission in care of the Director no fewer than 30 days before such advertisement is used."¹ The basis of this charge is: (1) Mandello failed to deliver a copy of the above letter to the Attorneys Advertising Commission thirty (30) days before she sent it to Mrs. Williams; and (2) Williams was not a current or former client at the

¹The Supreme Court Rules concerning attorney advertising are currently located at SCR 7.1 et seq.

time the letter was sent. The Board of Governors found Mandello guilty of this charge by a unanimous vote. Implicit in this conclusion is the finding that Mandello's letter to Mrs. Williams dated October 27, 1989, constituted a letter soliciting business. We agree with this finding and specifically hold that the letter was and is an advertisement within the meaning of the applicable Supreme Court Rules.

COUNT III

The Inquiry Tribunal charged Mandello with violation of former rule SCR 3.135(4), which was in effect at the time Mandello sent the above letter. That rule provided that an attorney could not "use or participate in the use of any form of advertising containing a statement or claim which is false or tends to be misleading, deceptive or unfair or which is self-laudatory." The Board of Governors gives no written basis for finding Mandello guilty of this rule. Nonetheless, it found her guilty by a **vote of 15 to 1.**

We note the following: Mandello acknowledges in her response to the Trial Commissioner's Findings of Fact that the following statement from the letter is **self-laudatory**: ". . . I would like to represent you and feel that my background provides me with a strona basis of knowledge with which to protect your interests" (Emphasis added). Further, the statement is at the very least misleading in light of the following facts: (1) Mandello only had been engaged in the practice of law for two years prior to sending the letter; and (2) Mandello had never before handled a medical malpractice case. Therefore, we adopt the recommendation of the Board of Governors.

Upon the foregoing facts and charges, it is ordered that:

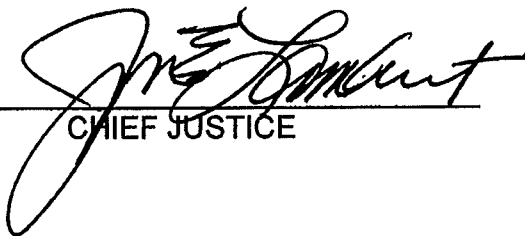
1. Respondent, Cynthia Ann Mandello, is hereby suspended from the practice of law in the Commonwealth of Kentucky for a period of six (6) months, to run

consecutively with any and all current suspensions. The period of suspension shall continue until such time as Mandello is reinstated to the practice of law pursuant to SCR 3.510, or any controlling amendment to SCR 3.510.

2. In accordance with SCR 3.450 and SCR 3.480(3), Mandello is directed to pay all costs associated with this disciplinary proceeding against her, said sum being \$2,516.55. Upon the finality of this opinion, an order of execution may issue from this Court for said costs.

All concur.

Entered: December 21, 2000.


CHIEF JUSTICE

TO BE PUBLISHED

Supreme Court of Kentucky

RECEIVED
KENTUCKY BAR ASSOCIATION

APR - 6 1999

DISCIPLINE ALERT

FINAL

98-SC-551-KB
AND
98-SC-574-KB

DATE

4-5-99 *Jim Hill, DC.*

KENTUCKY BAR ASSOCIATION

MOVANT

v.

IN SUPREME COURT

CYNTHIA ANN MANDELLO

RESPONDENT

OPINION AND ORDER

In this Opinion and Order, we adopt the Kentucky Bar Association ("KBA") Board of Governors' recommendations in two separate disciplinary proceedings, pursuant to SCR 3.370(9), to suspend Cynthia A. Mandello from the practice of law for six (6) months and one (1) year, respectively, for a total of eighteen (18) months.

I.

The facts of the first disciplinary proceeding against Respondent are as follows. Cynthia Ann Mandello was admitted to the practice of law in Kentucky on October 30, 1987, and recently practiced in and around the Henderson County area of Kentucky. On December 21, 1989, Respondent entered into an agreement with Robert L. Hackney, a non-lawyer, by way of a signed "Contract for Services," which provided:

I, Cynthia Mandello, attorney at law, do hereby contract and hereinafter employ Robert L. Hackney to act in my behalf in the investigation of any and all claims arising from the wrongful death of George Eugene Williams, said services provided by Robert L. Hackney as directed by Cynthia A. Mandello to be recompensed as 15% of the gross amount of any sums received by Cynthia A. Mandello from the estate of George E. Williams as a result of the contract between Cynthia A. Mandello and Carolyn Lynn Williams, Administratrix of the estate of George E. Williams.

This agreement constitutes a violation of SCR 3.130-DR3-102(a) (in effect through December 31, 1989) and SCR 3.130-5.4(a)(1), which prohibit a lawyer from sharing legal fees with a nonlawyer except in certain enumerated situations.

While the foregoing charge was pending, Respondent was notified by letter, dated October 10, 1997, from Bruce K. Davis, the Executive Director of the Kentucky Bar Association, that the

original Inquiry Tribunal charge against her had been expanded to cover additional issues and allegations, and the letter requested a detailed written response to these allegations no later than November 1, 1997. Respondent failed to respond to this letter, in violation of SCR 3.130-8.1(b), which prohibits a lawyer from knowingly failing to respond to a lawful demand for information from an admissions or disciplinary authority in connection with a disciplinary matter.

II.

The facts of the second disciplinary proceeding against Respondent are as follows. In January 1995, Respondent was retained by Richard Milford for a \$500 fee to file an action against John Newgent, a would-be purchaser of property owned by Milford under a contract for deed. Thereafter, Milford heard nothing from Respondent from January 31, 1995 through March 25, 1996, despite repeatedly having sent her letters and having made numerous telephone calls. By failing to respond to the client's request for information and by failing to file suit on behalf of the client, Respondent committed violations of SCR 3.130-1.3, which requires that a "lawyer shall act with reasonable diligence and promptness in representing a client." Furthermore, by

failing to return Mr. Milford's telephone calls, by failing to answer his letters, and by failing to otherwise keep him apprised of the status of the case, Respondent committed violations of SCR 3.130-1.4(a), which provides that a "lawyer should keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information."

Upon receipt of Milford's complaint against Respondent, copies of the complaint and corroborating documents were sent by certified mail to Respondent at her two known addresses. The first envelope, sent to Respondent at her Waverly, Kentucky address, was returned to the KBA marked "unclaimed." The enveloped forwarded to respondent at her address in Henderson, Kentucky was received and signed for by Donna Southard. Thereafter, the KBA sent copies of the complaint to the sheriffs of Henderson County and Union County for personal service on Respondent. She was served on January 12, 1998, in Henderson County, and on January 16, 1998, in Union County.

On February 2, 1998, Respondent was sent letters at her two addresses by the KBA warning her that the complaint would be reviewed by the Inquiry Tribunal without response from her unless her default was cured by filing of such response before February 13, 1998. Respondent was also reminded in the letters that

failure to respond might subject her to additional charges of professional misconduct. Neither of those letters was returned to the KBA. By failing to respond to the complaint and by failing to acknowledge receipt of the complaint, Respondent committed a violation of SCR 3.130-8.1(b).

Upon the foregoing facts and circumstances, it is ordered that:

1. Cynthia A. Mandello is hereby suspended from the practice of law for six (6) months for her professional misconduct described in part I.

2. Cynthia A. Mandello is hereby suspended from the practice of law for an additional one (1) year for her professional misconduct described in part II. Her total of eighteen (18) months of suspension shall commence on the date of entry of this order and continue until such time as she is reinstated to the practice of law by order of this Court pursuant to SCR 3.510.

3. In accordance with SCR 3.450(1), Cynthia A. Mandello is directed to pay the costs of the proceedings described in part I in the amount of \$114.14, for which execution may issue from this Court upon finality of this opinion and order.

4. In accordance with SCR 3.450 and SCR 3.480(3), Cynthia A. Mandello is directed to pay all costs of the proceedings described in part II in the additional amount of \$39.04, for which execution may issue from this Court upon finality of this opinion and order.

5. In accordance with SCR 3.390, Cynthia A. Mandello shall, within ten (10) days of the entry of this order, notify all clients of her inability to represent them and furnish copies of said letters of notice to the Director of the Kentucky Bar Association. She shall also provide such notification to all courts in which she has matters pending.

All concur.

ENTERED: January 21, 1999.


CHIEF JUSTICE

FOR MOVANT:

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