

Supreme Court of Kentucky

2002-SC-1037-KB

FINAL
DATE 2-4-03 EJA/G-10377 D/f

KENTUCKY BAR ASSOCIATION,
CLE COMMISSION

MOVANT

V.

IN SUPREME COURT

GREGORY STEVEN PAGE,
KBA MEMBER NO. 86734

RESPONDENT

OPINION AND ORDER

On November 19, 2002, this Court issued an Order directing Respondent, Gregory Steven Page, of Dayton, Ohio, to show cause why he should not be suspended from the practice of law in the Commonwealth of Kentucky because of his failure to comply with SCR 3.661's minimum Continuing Legal Education (CLE) requirements. SCR 3.661 requires Kentucky Bar Association members to complete "a minimum of twelve and one-half (12.5) credit hours in continuing legal education activities approved by the Commission," SCR 3.661(1), and "[a]t least two (2) of the twelve and one-half (12.5) credit hours required shall be devoted to continuing legal education specifically addressing the topics of legal ethics or professional responsibility." SCR 3.661(2). For the 2001-2002 educational year, Respondent is deficient 0.50 ethics credits.

In response to the Order to Show Cause, Respondent states that: (1) on or about June 29, 2002, he "visited the Kentucky Bar Association website [www.kybar.org] to ascertain the status of any additional required [CLE credits]" and learned from the website that he was only one (1) CLE ethics credit short of meeting the requirements; (2) accordingly, the next day, June 30, 2002 -- the last day of the 2001-2002 CLE educational year -- he participated in, and certified completion of, a one (1) hour online CLE ethics course; (3) in August, when he received notice from the Commission that he was actually still 0.5 ethics credits short of the SCR 3.661 requirements, he contacted the Commission and spoke with Assistant Director Lewis Payne ("Payne") who, according to Respondent, informed him "that the KBA website had been experiencing 'technical difficulties' . . . that [were] the likely cause of the inaccurate reporting" and advised him "to simply take another ethics course to complete my certification" but at no point "did anyone indicate that as a result of the KBA website error, I would need to file a request for extension to comply with the Supreme Court's requirements"¹; (4) he then completed another course on August 29, and "submitted the appropriate paperwork evidencing my completion of the program" but "heard nothing from KBA until September 24, 2002, when they advised me that I missed a deadline to request an

¹Despite this allegation, Respondent admits that he did, in fact, obtain and submit an application for a hardship extension. As to the timing of that application, Respondent states:

An application for extension of time was prepared and signed on August 30, 2002. KBA claims it did not receive the application until after the filing deadline. Respondent cannot speak to this issue as he signed the completed application on August 30. Respondent is uncertain as to why the application "allegedly" did not reach the KBA until September 16th.

extension of time to complete my 2001-2002 CLE requirements." Respondent thus "maintains that he was in fact compliant as of June 30, 2002" and alternatively argues that the alleged website error and further misinformation from CLE Commission personnel represents "good cause" for any deficiency.

In reply, the Kentucky Bar Association's Continuing Legal Education Commission states that it "can neither confirm nor deny" Respondent's allegation that he received erroneous information regarding his CLE deficiency from the KBA website.

Nonetheless, the Commission argues that there is no dispute that Respondent obtained only 1.5 hours of the required two (2) CLE ethics credits and thus ended the 2001-2002 educational year with a deficiency of 0.5 ethics credits. And, even if Respondent is given the benefit of the doubt as to this explanation for his failure to complete all of his mandatory CLE credits during the educational year in question, the Commission argues that Respondent had actual knowledge of the deficiency by, at the latest, August 2002, and yet failed to make a timely application for an extension of time to satisfy his continuing education requirements. See SCR 3.667(1) ("The time requirements associated with completion of mandatory continuing legal education and certification thereof . . . may be extended by the Commission in case of hardship or other good cause clearly warranting relief. . . . All requests for time extension must be received by the Commission no later than the September 10th following the end of the educational year for which the time extension is sought."). The Commission further suggests that Respondent's two mutually-exclusive excuses regarding his request for a hardship time extension -- i.e., both that he: (1) was misinformed regarding his need to file for an extension of time; and (2) that he "prepared and signed [his application] on August 30, 2002" and thus "cannot speak to" why the Commission "allegedly" did not receive it --

lack credibility. Specifically, the Commission notes: (1) on July 26, 2002, it mailed Respondent his annual CLE statement, which listed the online program that Respondent completed on the last day of the educational year, but accurately reflected the deficiency of 0.5 ethics credits, and Respondent took no steps at that time to address the deficiency; (2) on August 21, 2002, the Commission mailed Respondent a "final notice" letter informing him of the continued deficiency, and, after that date, Respondent spoke with Payne about the alleged inaccuracy in Respondent's online CLE record; (3) Payne "told Respondent to take another course in order to 'make-up' the deficiency and file for a hardship time extension by the September 10, 2002 deadline"; (4) although Respondent completed another online course on August 29, 2002, and ostensibly completed his application for a hardship extension the next day, he did not mail the application until September 13, 2002;² and (5) the Commission denied the extension application when it received it after the September 10th deadline. Accordingly, the Commission moves the Court to find that Respondent has not shown cause why he should not be suspended from the practice of law or otherwise sanctioned pursuant to SCR 3.669(4).

In lieu of suspension, however, the Commission recommends other sanctions for Respondent's failure to satisfy SCR 3.661's mandatory CLE requirements. The

²The Commission attaches to its reply a copy of both: (1) a letter from (and personally signed by) Respondent -- and *dated September 13, 2002* -- that states "[e]nclosed, please find the completed Application for Extension of Time for Completion of Continuing Legal Education"; and (2) Respondent's attachment to that Application, in which he admits that, during the conversation with Payne (whom Appellant misidentifies), Payne "suggested that I take a course immediately, which I did *and then submit the enclosed*, which I am now doing." (emphasis added). On the basis of these documents, we conclude that Respondent's suggestion that he "cannot speak to" the issue of why the Commission received the application after the September 10th deadline is less than forthright, and quite possibly a willful misrepresentation of fact.

Commission observes that in an unpublished opinion and order rendered just last January, the Court fined Respondent \$750.00 for a two (2) credit CLE deficiency at the end of the 2000-2001 educational year.³ Accordingly, the Commission recommends that Respondent be publically reprimanded and fined \$1,250.00 and that he be additionally prohibited from obtaining a "non-hardship" time extension under SCR 3.667(2) for the educational years ending June 30, 2003 and June 30, 2004. The Commission further suggests that 0.5 ethics credit of the one (1) ethics credit Respondent earned on August 29, 2002 (i.e., in the current 2002-2003 educational year) be applied back to Respondent's 2001-2002 educational year total to cure the prior year's deficiency.

We find that Respondent has not shown cause why he should not be suspended from the practice of law; however, we agree with the Commission's recommendations. Accordingly, we hereby ORDER the following:

(1) Respondent, Gregory Steven Page, is hereby publically reprimanded for his non-compliance with the requirements of SCR 3.661(1), and, as an additional sanction for this non-compliance, Respondent shall pay a fine of \$1,250.00, payable to the Kentucky Bar Association within twenty (20) days from the date of this Order; and

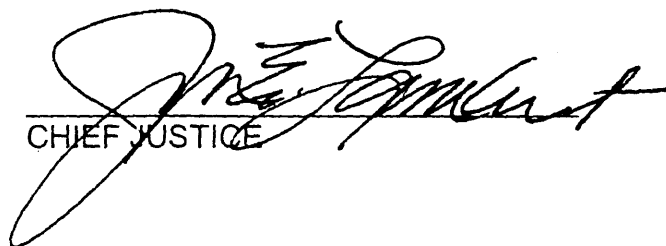
³At that time, we also ordered "that Page is precluded from obtaining a nonhardship time extension under SCR 3.667(2) for the educational year ending June 30, 2002 and for the educational year ending June 30, 2003." Thus, when Respondent ended the 2001-2002 educational year with a CLE credit deficiency, the only time extension avenue available to him was a hardship extension under SCR 3.667(1).

(2) Respondent is prohibited from applying for a SCR 3.667(2) "non-hardship" time extension for the educational years ending June 30, 2003 and June 30, 2004; and

(3) Respondent's existing 2001-2002 CLE deficiency shall be cured by the CLE Commission's application of 0.50 ethics credits earned by Respondent during the 2002-2003 education year to Respondent's total for the 2001-2002 educational year.

All concur.

Entered: January 23, 2003.


CHIEF JUSTICE