

# Supreme Court of Kentucky

TO BE PUBLISHED

# FINAL

2004-SC-0634-KB

DATE 11-3-04 ELLAGrowitt, D.C.

KENTUCKY BAR ASSOCIATION

MOVANT

V.

IN SUPREME COURT

MARK ALAN BUBENZER

RESPONDENT

## OPINION AND ORDER

The Board of the Kentucky Bar Association has recommended that the Court find Respondent, Mark Alan Bubenzer ("Bubenzer"), whose last known address is 101 St. Clair Street, Frankfort, Kentucky 40601, guilty of violating: (1) SCR 3.130-1.15(a) for his failure to hold in a separate account the retainer he received from his client, Jacqueline Caudill; and (2) SCR 3.130-1.16(d) for his failure to return any portion of the retainer after Ms. Caudill terminated the attorney/client relationship. The Board recommended that Bubenzer receive a public reprimand for the violations and that he refund to Ms. Caudill the sum of \$2,650.00 with interest of 8% from September 1, 2001 until paid. Additionally, the Board recommended that Bubenzer submit to arbitration if Ms. Caudill requests it and, finally, that he pay the costs of this action.

Ms. Caudill hired Bubenzer to represent her in a dissolution proceeding and paid him \$3,500.00 as a retainer on May 8, 2001. Ms. Caudill paid an additional \$500.00 to Bubenzer later that month. The Respondent did not deposit the money into an escrow account, but instead deposited it into his general operating account. In June of 2001, Ms. Caudill terminated the attorney/client relationship; however, Bubenzer did not

refund any portion of the retainer, which prompted Ms. Caudill to make a written demand on August 15, 2001. When Bubenzer failed to respond to her demand, Ms. Caudill filed a bar complaint.

A trial commissioner held an evidentiary hearing and found Bubenzer guilty of four counts of misconduct and recommended a thirty-day suspension. The trial commissioner also recommended that Bubenzer submit to fee arbitration if agreed to by Ms. Caudill. Bubenzer appealed to the Board which determined that Bubenzer was only guilty of two of the four charges. The Board found that Bubenzer violated SCR 3.130-1.15(a) by failing to hold the retainer in a separate account and that he violated SCR 3.130-1.16(d) by failing to return any portion of the retainer once his services were terminated. The Board recommended that Bubenzer be publicly reprimanded, that he refund to Ms. Caudill \$2,650.00 with interest of 8% from September 1, 2001 until paid, that he submit to fee arbitration at Ms. Caudill's request, and that he pay the costs of the action. On May 20, 2004, Bubenzer forwarded \$2,250.00 to Ms. Caudill pending resolution of this matter.

Neither Bar Counsel nor Bubenzer have filed a notice for this Court to review the Board's decision,<sup>1</sup> and we have not elected to do so.<sup>2</sup> Therefore, we adopt the Board's decision.<sup>3</sup>

ACCORDINGLY, IT IS HEREBY ORDERED:

(1) Respondent, Mark Alan Bubenzer, is reprimanded for violating SCR 3.130-1.15(a) and SCR 3.130-1.16(d).

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<sup>1</sup> SCR 3.370(8).

<sup>2</sup> SCR 3.370(9).

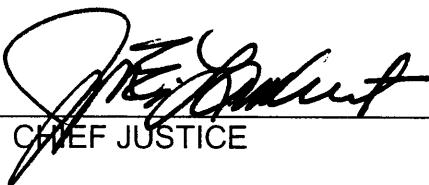
<sup>3</sup> SCR 3.370(10).

(2) Bubenzer shall submit the amount of his fee to arbitration if Ms. Caudill requests it within thirty days of this order. If Ms. Caudill does not request arbitration, Bubenzer shall pay to her the sum of \$2,650.00 with interest thereon of 8% per annum from September 1, 2001 until paid. In either event, he shall receive credit for the sum of \$2,250.00 paid on May 20, 2004.

(3) In accordance with SCR 3.450, Bubenzer shall pay all costs associated with these disciplinary proceedings against him, including the amount of \$1,127.27 assessed against him as of August 13, 2004, and for which execution may issue from this Court upon finality of this Opinion and Order.

Lambert, C.J.; Cooper, Graves, Johnstone, Stumbo and Keller, concur.  
Wintersheimer, J., not sitting.

Entered: October 21, 2004.

  
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CHIEF JUSTICE

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