

TO BE PUBLISHED

Supreme Court of Kentucky **FINAL**

2006-SC-0572-KB

DATE 10-31-06 EJA/Graun P.C.
PETITIONER

KENTUCKY BAR ASSOCIATION

V.

IN SUPREME COURT

WILLIAM T. KLAPHEKE II

RESPONDENT

OPINION AND ORDER

The Kentucky Bar Association (KBA) moves this Court to declare Respondent, William T. Klapheke, II, KBA Member No. 39143, whose last known address is P.O. Box 517, Edmonton, KY 42129, guilty of three charges brought before the KBA. In light of the seriousness of these charges and Respondent's past discipline, the KBA also moves this Court to enter an Order permanently disbaring Respondent from the practice of law in Kentucky. We so find and enter an Order of permanent disbarment.

I. KBA File 11537

Respondent was properly served charges by the Inquiry Commission on February 3, 2005, alleging three violations of the Rules of Professional Conduct in connection with his representation of Nancy Cochran. Respondent failed to file a response to the initial Bar Complaint, but on May 4, 2005, he did file an Answer to the charges served by the Inquiry Commission. After the answer was filed, a hearing was set before a trial commissioner at the Kentucky Bar Center. Respondent failed to appear either in person or through an attorney at the hearing. Since filing his answer, Respondent has failed to respond to any correspondence or proceedings in this matter.

Respondent was charged with violating SCR 3.130-1.15(b) (failure to promptly deliver client property), SCR 3.130 – 8.3(c) (misappropriating for one's own use settlement funds that belonged to a client), and SCR 3.130 – 8.1(b) (failure to respond to a disciplinary authority). In his answer, Respondent admitted violating SCR 3.130 – 8.1(b) (failure to respond to a disciplinary authority), but denied all remaining allegations.

At the hearing, Ms. Cochran testified that Respondent represented her in a personal injury action that was eventually settled. Betty R. Herbert, the attorney who represented the defendant in the matter, testified that she hand-delivered a settlement check to Respondent in July 1996 in the amount of \$6,426.54. After the check was delivered, Respondent instructed Ms. Cochran to endorse the check and that after doing so, he would deposit the check in his escrow account. Ms. Cochran had a due and owing medical bill to her chiropractor for the treatment of injuries which were sustained in the personal injury matter. Both Ms. Cochran and the chiropractor were assured by Respondent on numerous occasions that this medical bill would be paid from the settlement check, as well as \$500 to Ms. Cochran for her pain and suffering. Despite numerous telephone calls, letters, and years of waiting, neither Ms. Cochran nor the chiropractor was ever paid the funds promised by Respondent.

Respondent alleged in his answer that there were simply no funds left to distribute from the settlement check after his fee and expenses were deducted. The trial commissioner found that such an unsubstantiated claim was not sufficient to rebut the testimony and documentation presented by Ms. Cochran.

The Board of Governors voted 15 to 0 to find Respondent guilty of the three charges set forth above. The Board also unanimously recommended disbarment in accordance with the recommendation of the trial commissioner.

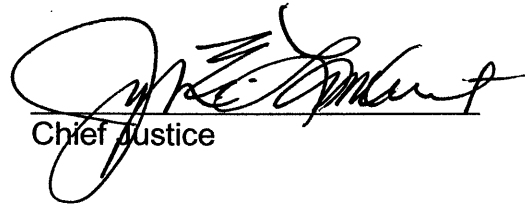
II. Conclusion

The record in this case indicates a clear and extended pattern of noncompliance with and disobedience to the rules of Respondent's chosen profession. On November 30, 1989, Respondent was publicly reprimanded for unprofessional conduct. On November 22, 2000, he was suspended for a period of three (3) years. On December 18, 2003, he was suspended for two (2) additional one (1) year terms. Upon the foregoing facts and charges, we find sufficient evidence to adjudicate Respondent guilty of all counts currently pending before this Court. We further hold that in light of the seriousness of Respondent's conduct and the extensiveness of Respondent's past discipline, the recommendation of the KBA should be adopted. Therefore, it is ORDERED that:

1. William T. Klapheke, II, KBA Member No. 39143, is adjudicated guilty of all charges alleged in KBA File 11537.
2. William T. Klapheke, II, KBA Member No. 39143, is hereby permanently disbarred from the practice of law in the Commonwealth of Kentucky for multiple violations of the Rules of Professional Conduct over an extended period of time.
3. In accordance with SCR 3 .450, Respondent is directed to pay all costs associated with these disciplinary proceedings in the amount of \$1,340.50 for which execution may issue from this Court upon finality of this Order.

All concur. Minton, J., not sitting.

ENTERED: October 19, 2006.



Chief Justice