

Supreme Court of Kentucky **FINAL**

2004-SC-001029-KB

DATE 12-5-06 EIA/Gravitt/P.C.

KENTUCKY BAR ASSOCIATION

MOVANT

V.

IN SUPREME COURT

JOHN D. HAYS

RESPONDENT

**OPINION AND ORDER**

John D. Hays, whose last known address in the bar roster is P.O. Box 1470, Pikeville, Kentucky, moves this Court to vacate his temporary suspension from the practice of law imposed pursuant to SCR 3.166, entered by the Court on January 20, 2005. The Inquiry Commission states in response that it has no objection to the motion. For the reasons set forth herein, we grant the motion.

Pursuant to SCR 3.166, the basis for Hays' temporary suspension was his criminal conviction in the United States District Court for the Eastern District of Kentucky. In October 2006, the United States Court of Appeals for the Sixth Circuit ordered the case remanded to the District Court with instructions to dismiss the indictments. Therefore, because the underlying basis for the automatic suspension has been overturned, we agree the suspension should be dissolved.

We are mindful that this Court in Kentucky Bar Association v. Barger, 98 S.W.3d 861 (Ky. 2003), required that an attorney suspended from the practice of law pursuant

to SCR 3.166 should pay bar dues and complete CLE credits for the years during which the suspension was imposed before becoming eligible to be listed as a member in good standing of the Kentucky Bar Association. However, we now depart from those requirements, as we also emphasized in that case that when restoring membership in such circumstances after an automatic suspension, the member should be "returned to his pre-suspension status and not be penalized for having yet to complete the current year's CLE requirements." Accordingly, we overrule Barger to the extent that prior CLE and bar dues are required for the years during which a suspension pursuant to SCR 3.166 was effective.

Therefore, IT IS HEREBY ORDERED:

1. John D. Hays shall pay any and all dues owed to the Kentucky Bar Association prorated for the current year;
2. He shall be allowed until the June 30, 2007, deadline to fulfill his current 2006-2007 CLE requirement; and
3. The automatic suspension of John D. Hays from the practice of law in this Commonwealth, pursuant to SCR 3.66, is hereby dissolved and his bar membership is restored.

All concur.

Entered November 22, 2006.

  
\_\_\_\_\_  
CHIEF JUSTICE