

Supreme Court of Kentucky

2011-SC-000333-KB

AN UNNAMED ATTORNEY

MOVANT

V.

IN SUPREME COURT

KENTUCKY BAR ASSOCIATION

RESPONDENT

OPINION AND ORDER

Movant, An Unnamed Attorney,¹ is before this Court pursuant to SCR 3.480(2) with a negotiated sanction of a Private Reprimand With Conditions. Upon review of the record, this Court accepts the negotiated sanction.

Movant was charged by the Inquiry Commission with a violation of former SCR 3.130-1.15(b)² which required a lawyer to notify the client or third parties with an interest of the receipt of settlement funds and to promptly render an accounting to the client or third party with an interest.

¹ The name of the Movant has been changed to protect the anonymity of the attorney being reprimanded privately. Though the reprimand is private, the parties and the Court believe other members of the bar will benefit from a published redacted opinion disapproving the attorney's actions.

² SCR 3.130-1.15(b) was amended in 2009, effective July 15, 2009. The amendment is a minor wording change that would not affect the results in this case.

The facts which give rise to the charge stem from the Movant's representation of a client in a personal injury matter resulting from an automobile accident. The Movant received a document entitled "Assignment of Proceeds, Lien, and Authorization" from a chiropractor who treated the client. Upon subsequent settlement of the case for \$4,000.00, Movant deducted his fee and distributed the remaining \$2,600.00 to his client without notifying the chiropractor of the settlement or distribution.

Movant admits he violated the above rule by not notifying the chiropractor of the settlement, and in not escrowing the balance of the settlement (after deducting his fee) for distribution to the client *and* the chiropractor, according to their interests. In negotiating a penalty, the Respondent was agreeable to a private reprimand if the Movant agreed to a publication by the Court and the KBA of the Order of Private Reprimand, redacting the Movant's name and any fact-specific identifying information in a published opinion. The KBA's purpose in publication of a redacted private reprimand is to educate members of the public and the bar concerning this type of conduct and the ramifications therefrom. The Respondent also requested the Movant attend the Ethics and Professionalism Enhancement Program offered by the Office of Bar Counsel, and not receive any CLE credits for this program. Movant is agreeable to the conditions. This Court does not publish private reprimands but does enter confidential orders. The KBA places a copy in the KBA member's file with all pertinent information, which remains in the file for future reference, such as in subsequent disciplinary actions.

However, the Court is agreeable to publishing a redacted copy of the private reprimand, and the Court is of the opinion that a private reprimand with conditions is sufficient in this case. Therefore:

IT IS HEREBY ORDERED that the Movant, An Unnamed Attorney, is adjudicated guilty of one count of violating former SCR 3.130-1.15(b), and that he be issued a Private Reprimand with these conditions:

1. Movant shall attend the next Ethics and Professionalism Enhancement Program offered by the Office of Bar Counsel, separate and apart from his fulfillment of any other continuing legal education requirements;
2. Movant will not apply for any CLE credit for attending said program, and shall furnish a release and waiver to the Office of Bar Counsel to review his records with the Continuing Legal Education Commission, such release to continue in effect until one year after he completes said program, in order to allow the OBC to verify that Movant has not reported said program for any type of CLE credit;
3. Movant agrees to publication by this Court and the Kentucky Bar Association of this Private Reprimand With Conditions, redacting the Movant's name and any fact-identifying information of Movant; and

4. Movant shall pay the costs of these proceedings, as certified by the Disciplinary Clerk, for which execution may issue upon finality of this Order.

All sitting. All concur.

ENTERED: August 25, 2011.



CHIEF JUSTICE

Supreme Court of Kentucky

2011-SC-000309-KB

ROBERT W. RILEY

MOVANT

V.

IN SUPREME COURT

KENTUCKY BAR ASSOCIATION

RESPONDENT

OPINION AND ORDER

Movant, Robert W. Riley, was admitted to the practice of law in the Commonwealth of Kentucky on September 1, 1973. His KBA Member No. is 58570, and his current bar roster address is: Riley & Associates, 9400 Williamsburg Plaza, Suite 110, Louisville, Kentucky 40222-5097. Movant is before this Court with a negotiated sanction under SCR 3.480(2).

The Inquiry Commission charged Movant with a violation of SCR 3.130-1.7(b) for engaging a client in sexually explicit telephone conversations, and for making a sexual advance towards the client while Movant was representing the client in a *class* action, sometime in November and December of 2003. The

rule in question deals with conflicts of interest and loyalty to a client. At the time charged, June 2, 2005,¹ SCR 3.130-1.7(b) read:

A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless: (1) The lawyer reasonably believes the representation will not be adversely affected; and (2) The client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.

In this case the client turned down the attorney's advances and notified the firm that she was going elsewhere for representation. The client stayed with the firm after a partner in the firm talked to the client and reassigned the claim to another member of the firm.

Movant and the KBA have negotiated a sanction pursuant to SCR 3.480(2). Accordingly, Movant admits a violation of SCR 3.130-1.7(b) and requests this Court impose a public reprimand. The Kentucky Bar Association filed a response agreeing to a public reprimand, with costs.

A review of Movant's record reveals three prior private reprimands for matters not similar to the facts in this case. In the case before us, the client turned Movant down and Movant was soon taken off the case. There is no allegation that other members of the class or the client involved were prejudiced by a conflict of interest, and Movant admits he erred in his professional conduct. Case law on SCR 3.130-1.7(b) prior to the 2009

¹ Amended effective July 15, 2009.