

Supreme Court of Kentucky

2012-SC-000576-KB

WAYNE W. FITZGERALD

MOVANT

V.

IN SUPREME COURT

KENTUCKY BAR ASSOCIATION

RESPONDENT

OPINION AND ORDER

Wayne W. Fitzgerald, KBA Member No. 22380, with a Bar Roster Address of P.O. Box 427, Cynthiana, Kentucky, 41031, moves this Court to enter an order permanently disbaring him from the practice of law in this Commonwealth. The Kentucky Bar Association has filed a response to the effect that permanent disbarment is the appropriate discipline in this matter. We agree and grant said motion.

Movant was admitted to practice law in the Commonwealth of Kentucky on September 18, 1950. On March 6, 2012, Movant was indicted in Harrison County, Kentucky, for the offense of Theft by Failure to Make Disposition of an amount between \$500.00 and \$10,000.00, a Class D Felony under KRS 514.070. Movant was an "Escrow Agent" or "Representative Payee" of a disabled man for Social Security benefits and converted the funds to Movant's own use.

Movant entered a plea of guilty as charged in Harrison Circuit Court (12-CR-00021) on June 11, 2012, with sentencing scheduled for August 30, 2012. Pursuant to SCR 3.166(1), Movant was automatically suspended from the practice of law the next day, June 12, 2012. Rather than wait for the Inquiry Commission to act, Movant moves, by verified motion, pursuant to SCR 3.480(3), for an order of permanent disbarment from this Court. Movant acknowledges that his conduct would warrant a Complaint for violations of SCR 3.130-8.4(b) (criminal acts reflecting adversely on a lawyer's honesty, trustworthiness, or fitness as a lawyer) and SCR 3.130-8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). The Kentucky Bar Association filed a response agreeing that permanent disbarment is appropriate. *See Kentucky Bar Ass'n v. Christian*, 320 S.W.3d 687, 691 (Ky. 2010). We agree with Movant and Respondent and grant said motion, and the requested disciplinary action.

Accordingly, IT IS HEREBY ORDERED THAT:

1. Movant, Wayne W. Fitzgerald, is adjudicated guilty of violating SCR 3.130-8.4(b) and SCR 3.130-8.4(c) as described above;
2. Movant is hereby permanently disbarred from the practice of law in Kentucky;
3. Movant shall, within ten days of the date of this Opinion and Order, notify all courts in which he has matters pending, if any, and shall notify all clients for whom he is actively engaged in continuing litigation or similar legal matters, if any, of his inability to continue to represent them

and of the necessity and urgency of promptly retaining new counsel, and shall provide a copy of all such letters to the Office of Bar Counsel;

4. Movant shall, to the extent possible, cancel and cease any advertising activities in which he is engaged; and

5. Movant shall pay the costs of this proceeding, certified in the amount of \$19.25, for which execution may issue upon finality of this Opinion and Order.

All sitting. All concur.

ENTERED: October 25, 2012.


CHIEF JUSTICE