

FINALSupreme Court of Kentucky **DATE** 3/3/20
A. Hutchinson

2019-SC-000708-KB

DERWIN LAMONT WEBB

MOVANT

V.

IN SUPREME COURT

KENTUCKY BAR ASSOCIATION

RESPONDENT

OPINION AND ORDER

On December 6, 2019, Derwin Lamont Webb¹ moved for consensual discipline under Supreme Court Rule (SCR) 3.480(2) based on a negotiated sanction agreement with the Kentucky Bar Association (KBA). Webb requests an order imposing a sanction of public reprimand. The KBA filed a response stating that it had no objection to the Motion for Public Reprimand. Because Webb and the KBA have agreed on the sanction, and we find that our caselaw supports the proposed resolution in this matter, we find this sanction to be the appropriate discipline for Webb's conduct and grant his motion.

I. BACKGROUND.

Webb was admitted to practice law in the Commonwealth of Kentucky in 2001. In 2006, he began a solo private practice that continued until Webb was

¹ Webb was admitted to the practice of law in the Commonwealth of Kentucky on October 19, 2001. His bar roster address is listed as 700 W. Jefferson Street, Louisville, Kentucky 40202, and his KBA number is 89079.

appointed Judge of the Jefferson Family Court.² During his time as a solo practitioner, Webb employed a legal assistant to assist him in representation of clients. While Webb accepts personal responsibility for the representation of his clients, the activity of his legal assistant is relevant to the discussion of the underlying facts of this case.

In September of 2014, Webb was retained by Julie Thompson to represent her in her pending divorce case. Ms. Thompson had previous representation who filed the divorce case on her behalf.³ Mr. Thompson had also retained counsel. Later that month, after Webb filed an Entry of Appearance in the Thompsons' divorce case, the court entered a standard Case Management Conference Order, scheduling the conference to take place on November 3, 2014. Because of what appears to be a clerical error,⁴ Webb did not receive the order, and neither he nor Ms. Thompson attended the case management conference.

By late 2014, Mr. Thompson and Ms. Thompson had been separated for about three years, and Ms. Thompson indicated her desire to remarry. It was

² In October of 2017, Webb was appointed to the Jefferson Family Court, Tenth Division, to serve the remaining term of a retiring judge. He was then elected to serve a full term in November of 2018. Although he is currently a sitting judge, most of the matters relevant to this proceeding occurred while he still was engaged in the private practice of law.

³ Before filing the divorce petition, Mr. and Ms. Thompson were involved in another court proceeding involving their child. This proceeding resulted in an order regarding certain action Ms. Thompson was to take, and this would later become a subject of the divorce proceeding when Mr. Thompson filed a motion requesting that Ms. Thompson show compliance with the prior order. It was after Mr. Thompson filed the motion requesting that Ms. Thompson show compliance that Ms. Thompson retained Webb as her separate counsel.

⁴ Webb asserts that the certificate of service shows that the order was sent to Ms. Thompson's former counsel. He also indicates that he may not have received the order because the notice could have gone to Mr. Webb's earlier address.

Webb's understanding, based on communication with Mr. Thompson's counsel, that Mr. Thompson did not object to Ms. Thompson remarrying even though all the issues in the divorce case had not yet been resolved.⁵

In November of 2014, Webb's legal assistant, on behalf of Webb, sent Ms. Thompson an email advising her that Mr. Thompson would not object to the court entering a Limited Decree so that the parties could be divorced, with the remaining issues reserved for later determination. Webb tendered to the court a Limited Decree of Dissolution of Marriage, which indicated that the property would be divided equally, each party would keep that party's respective assets and debts, neither party objected to a Limited Decree dissolving the marriage and acknowledged that the parties had not yet resolved issues regarding custody. The tendered Limited Decree further noted that mediation was scheduled for December 9, 2014 to resolve all pending issues. But the KBA noted that the tendered Limited Decree was not filed with an accompanying motion asking the judge to sign it.

On December 2, 2014, the court entered an order which, in part, declined to enter the Limited Decree because all issues in dispute had not been settled, but indicated that it would review the entry of the decree after the parties reached an agreement on all issues.⁶ Webb's legal assistant informed Ms. Thompson via email sent on December 17, 2014 that the Court had denied

⁵ Most of the issues left unresolved in the divorce case in 2014 concerned child custody and related child issues.

⁶ This Order also addresses other matters which came up at the November 3, 2014 Case Management Conference, which Webb and Ms. Thompson did not attend. These other matters do not appear to be relevant to the charges in this case.

the request for entry of the Limited Decree. Ms. Thompson responded to the email that she did not understand why the court denied the request for the entry of the Limited Decree.

In January of 2015, Webb filed two pleadings on behalf of Ms. Thompson. The first was a response to the Court's order for compliance documentation and other information from Ms. Thompson regarding the order entered in the earlier case.⁷ The second was a motion asking the Court to reconsider the order concerning entry of a Limited Decree. Webb also submitted a memorandum in support of the latter motion. The Court, however, denied the motion, and later scheduled a hearing for March 24, 2015 on the pending dispute concerning parenting times.

Later that same month, Webb's legal assistant, under the supervision of Webb, mailed to opposing counsel a tendered Limited Decree of Dissolution, which was tendered of record on February 2, 2015. That same month, Webb's legal assistant and Ms. Thompson engaged in an email exchange addressing several issues, including Ms. Thompson's question as to whether the Limited Decree had been entered. In an affidavit provided to Webb by his legal assistant during the Inquiry Commission stage of the present disciplinary proceeding, Webb's legal assistant stated that in early February of 2015 she spoke with court personnel and was advised that the Limited Decree had been entered. In fact, no Limited decree had been entered. But Webb's legal assistant conveyed

⁷ See *supra* footnote 3.

the incorrect information to Ms. Thompson.⁸ Webb did not independently check to confirm that the Limited Decree had been entered; instead, he relied on the information provided to him by his legal assistant.⁹

Ms. Thompson, in reliance on the statements by Webb's legal assistant that the Limited Decree had been entered, married Kevin Brown on February 14, 2015. When Mr. Brown retired in 2016, he named Ms. Thompson as his designated account beneficiary and named her and her children as covered parties under his retiree health insurance. Webb continued to represent Ms. Thompson in the divorce case until July of 2016. Webb filed a motion to withdraw as counsel of record for Ms. Thompson on July 20, 2016, citing SCR 3.130(1.16)¹⁰ as basis for the termination and claiming that the attorney-client relationship between Webb and Ms. Thompson had deteriorated such that Webb believed he was ethically required to withdraw from representation. The

⁸ Several emails were exchanged between Webb's legal assistant and Ms. Thompson indicating both the legal assistant and Ms. Thompson's incorrect belief that a Limited Decree had been entered. For example, Ms. Thompson emailed Webb's legal assistant informing her that she and Mr. Brown were on their way to obtain their marriage license and requesting a copy of the signed decree. Ms. Thompson also emailed both Webb and his assistant to thank them for finalizing her divorce; to which Webb's legal assistant responded with "Congrats and have a good weekend."

⁹ The KBA does not dispute Webb's claim that he honestly believed that the Limited Decree had been entered. In support of this claim, Webb points to, for example, a handwritten order entered by the court in March of 2015 regarding the parties' agreement on child custody issues. Webb claims that this order reflects Webb's understanding that the parties had been divorced given that the handwritten caption referred to the Petitioner, Ms. Thompson, as "Julie S. Thompson (Brown)."

¹⁰ SCR 3.130(1.16) provides circumstances under which an attorney is required to withdraw from representation, and circumstances under which an attorney is permitted to withdraw from representation.

court entered the order granting Webb's motion to withdraw on August 11, 2016. Ms. Thompson retained new counsel and the divorce case continued.¹¹

In September of 2017, Ms. Thompson decided to seek child support from Mr. Thompson. An employee at the child support office told Ms. Thompson that she needed a copy of her divorce decree. When Ms. Thompson went to the courthouse to obtain one, she discovered no decree had ever been entered and that her second marriage was void because she was still married to Mr. Thompson. In April of 2018, Ms. Thompson filed the bar complaint that initiated the present disciplinary proceeding.¹² In October of 2018, an Administrative Hearing Officer determined that Mr. Brown must reimburse the Kentucky Retirement System's health insurance trust a total of \$12,161.12,

¹¹ Ms. Thompson's successive counsel also seemed to believe that Ms. Thompson had been previously granted a Limited Decree of Dissolution, given that the counsel filed motions for Ms. Thompson identifying her as "Julie Brown (formerly Thompson)."

¹² Webb asserts that before filing the bar complaint, during his election campaign in March of 2018, Ms. Thompson and Mr. Brown began posting negative comments online concerning Webb. Furthermore, Webb asserts a couple of months after the bar complaint was filed, an attorney for Ms. Thompson and Mr. Brown sent Webb a letter containing a draft complaint that the attorney threatened to file against Webb unless Webb paid a monetary settlement to Ms. Thompson and Mr. Brown. Webb asserts that he believed Ms. Thompson and Mr. Brown were trying to extort money from him during his campaign for judicial office. He claims that Ms. Thompson and Mr. Brown's attorney indicated that they would release certain information to the "voting public" if his clients' claims were not satisfactorily resolved by payment of \$100,000 before a certain date. Webb also claims that Ms. Thompson and Mr. Brown's attorney also indicated that they "doubted Mr. Webb had that kind of money, [but] he made the demand anyway 'to test the willingness of the Judge's wealthy donor friends to step up and pay the claim on his behalf,' or something along those lines." Webb filed a civil suit in the Jefferson Circuit Court seeking a declaration of rights as to whether Ms. Thompson and Mr. Brown had any viable claims against Webb and asserting private causes of action for criminal coercion and attempted extortion. Following another civil suit filed on behalf of Mr. Brown against Webb, Webb and Ms. Thompson and Mr. Brown agreed to release each other's claims against each other. All parties reached a settlement and executed a mutual release effective September 28, 2018. An agreed order dismissing with prejudice the claims in both civil suits was filed in October of 2018.

the amount of overpayment of health insurance coverage for Ms. Thompson and her dependents. Mr. Brown was also unable to change his designated retirement beneficiary, and Ms. Thompson is the non-spouse beneficiary of Mr. Brown's retirement account.

On April 15, 2019, The KBA filed a charge against Webb for violating SCR 3.130(1.3)¹³ based on his failure to confirm entry of the divorce decree. Webb acknowledged that his subjective belief that the decree was entered was not a sufficient discharge of his duty of diligence in representing Ms. Thompson and that he should have independently confirmed its entry. Webb also acknowledged that because of Ms. Thompson's and Mr. Brown's belief that Ms. Thompson was divorced, Ms. Thompson remarried and received health benefits as Mr. Brown's wife. Webb and the KBA agreed to a negotiated sanction to resolve this matter.¹⁴

II. ANALYSIS.

Under SCR 3.480(2), this Court "may consider negotiated sanctions of disciplinary investigations, complaints or charges" Under this rule, Webb and the KBA reached a negotiated sanction to resolve this matter. Webb now moves this Court to accept this consensual discipline for his violation of SCR 3.130(1.3). He asks us to impose the sanction of a public reprimand. The KBA, having acknowledged its review of his motion and analogous case law, stated

¹³ SCR 3.130(1.3) provides that "A lawyer shall act with reasonable diligence and promptness in representing a client."

¹⁴ While Webb agreed that the financial loss and failure to verify entry of the divorce decree would support the imposition of a public reprimand, he noted that any claim for monetary damages by Ms. Thompson and Mr. Brown against Webb was waived. *See supra* footnote 12.

no objection to the proposed discipline and requested that we order the proposed discipline.

In support of the negotiated sanction, the KBA cited the following three cases: *Kentucky Bar Association v. Legg*;¹⁵ *Drake v. Kentucky Bar Association*;¹⁶ and *McAdam v. Kentucky Bar Association*.¹⁷

In *Legg*, Cathryn Grimes hired Legg to represent her after she was appointed personal representative for two estates.¹⁸ Grimes paid the \$1,500 invoice Legg billed to her, but Legg did not file any necessary pleading and rarely, if at all, communicated with Grimes.¹⁹ Grimes filed a bar complaint against Legg, and the KBA Board of Governors (the Board) found Grimes guilty of violating SCR 3.130(3.4(c)) (disobedience to obligation under the rules of tribunal), SCR 3.130(1.3) (diligence), and SCR 3.130(1.4(a)(4)) (communication).²⁰ Despite the Office of Bar Counsel's argument that Legg should be suspended, the Court accepted the Board's recommendation that Legg be publicly reprimanded and ordered to repay Grimes.²¹ Legg also had two previous private admonitions.²²

¹⁵ 537 S.W.3d 819 (Ky. 2018).

¹⁶ 414 S.W.3d 410 (Ky. 2013).

¹⁷ 262 S.W.3d 640 (Ky. 2008).

¹⁸ 537 S.W.3d at 820.

¹⁹ *Id.*

²⁰ *Id.* at 820–21.

²¹ *Id.* at 821.

²² *Id.*

In *Drake*, David Drake represented Richard Cecil in a social security benefits claim.²³ Drake filed a request for reconsideration of a previous adverse determination in Cecil’s social security case.²⁴ The Social Security Administration thereafter sent a letter advising termination of benefits and informing Cecil that he had sixty days to request a hearing; which Drake failed to timely request.²⁵ The Administrative Law Judge notified Cecil that he had fifteen days to show good cause for the untimely filing of the request for a hearing, stating that “[i]f good cause is not established, [the Judge] will dismiss your hearing.”²⁶ Drake instructed Cecil to complete a document Drake provided, which contained the handwritten words “Filed untimely because . . . ,” and to file it with the Social Security Administration.²⁷ Drake did not provide Cecil with any sort of guidance beyond the handwritten introduction.²⁸ Cecil’s social security benefits claim was eventually dismissed.²⁹ Drake and the KBA negotiated a sanction for his admitted violations of SCR 3.130(1.3) (diligence) and 3.130(1.4(b)) (communication).³⁰ The Court imposed the proposed sanction of a public reprimand.³¹

²³ 414 S.W.3d at 411.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* 411–12.

³¹ *Id.* at 412.

Finally, in *McAdam*, Gerry Boston retained Thomas McAdam to represent him in a divorce case.³² Following a trial on custody matters, Boston received an unfavorable ruling and McAdam filed a notice of appeal; however, McAdam failed to file timely the pre-hearing statement with the Court of Appeals.³³ The Court of Appeals issued a show cause order to McAdams, to which McAdams did not respond.³⁴ According to McAdams, he and Boston agreed not to pursue the appeal after McAdams advised Boston that the appeal would probably be dismissed since he missed the deadline.³⁵ McAdams claimed that he did not file any response to the show cause order because he did not believe he had any response that would prevent dismissal.³⁶ The Court of Appeals dismissed Boston's appeal and issued a second show cause order, which ordered McAdams to show cause why the court should not impose sanctions for his failure to respond to the first show cause order.³⁷ Still believing that a response would not help given that he did not comply with the pre-hearing filing requirement, McAdams did not file a response to the second show cause order.³⁸ The Court of Appeals issued an order imposing a \$200.00 fine to be paid within ten days, which McAdams did not pay.³⁹ Pursuant to a negotiated sanction agreement between McAdams and the KBA, the Court found

³² 262 S.W.3d at 641.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

McAdams guilty of violating SCR 3.130(1.1) (competence), SCR 3.130(1.3) (diligence), and SCR 3.130(3.4(c)) (fairness to opposing party and counsel), and imposed a public reprimand.⁴⁰

After reviewing the allegations, Webb's previous disciplinary record, and the cases cited by the KBA, this Court concludes that the discipline proposed by Webb, and agreed to by the KBA, is appropriate.

III. ORDER.

Accordingly, the Court hereby grants Webb's Motion and ORDERS that:

1. Derwin Lamont Webb is adjudged guilty of the above-described and admitted violation of SCR 3.130 (1.3) and is publicly reprimanded for that violation;
2. In accordance with SCR 3.450, Webb is directed to pay all costs associated with this disciplinary proceeding against him.

All sitting. All concur.

ENTERED: FEBRUARY 20, 2020


CHIEF JUSTICE

⁴⁰ *Id.* at 642-43.