

Supreme Court of Kentucky

2019-SC-000713-KB

TO BE PUBLISHED
FINAL

DATE 3/3/20

MOVANT

a. Hutchinson

ROBERT F. SMITH

V.

IN SUPREME COURT

KENTUCKY BAR ASSOCIATION

RESPONDENT

OPINION AND ORDER

Movant, Robert F. Smith, was admitted to the practice of law in the Commonwealth of Kentucky on October 1, 1975. His Kentucky Bar Association (KBA) number is 65755 and his bar roster address is 222 South 1st Street, #305, Louisville, KY, 40202. Pursuant to SCR 3.480(2), he moves this Court to enter a negotiated sanction imposing a public reprimand, subject to conditions. The KBA has no objection.

I. BACKGROUND

On January 18, 2019, Smith was suspended from the practice of law for failing to pay his 2018-2019 bar dues and for failing to meet his Continuing Legal Education requirements for the 2017-2018 educational year. Smith failed to promptly inform the courts in which he had pending cases of his suspension and admits to appearing as counsel in more than a dozen cases in early-2019 while suspended.

The KBA charged Smith with three counts of misconduct. Count I charged Smith with violating SCR 3.130(5.5)(a), which provides that “a lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction or assist another in doing so.” Smith admits he violated this rule when he continued to practice law in Kentucky following his suspension.

Count II charged Smith with violating SCR 3.130(5.7)(a), which provides:

During a period of suspension a suspended lawyer may not perform any of the following acts:

- (1) render legal consultation or legal advice to any person;
- (2) appear on behalf of another person in any hearing or proceeding or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, commissioner, or hearing officer, unless the rules of the tribunal involved permit representation by non-lawyers and the represented person has been fully informed of the lawyer's suspension;
- (3) appear as a representative of another person at a deposition or other discovery matter;
- (4) negotiate or transact any matter for or on behalf of another person with third parties;
- (5) receive, disburse, or otherwise handle a client's funds; or
- (6) engage in activities that constitute the practice of law.

Smith admits violating this rule when he committed the unauthorized practice of law by continuing to appear in court and represent clients after his suspension.

Finally, Count III charged Smith with violating SCR 3.130(3.4)(c), which provides that “a lawyer shall not: . . . knowingly disobey an obligation of the

rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists.” Smith admits he violated this rule when he violated his obligation under SCR 3.390 to notify the courts before which he had pending matters of his suspension from the practice of law.

The KBA points out that since his admission in 1975, Smith had not received any discipline until 2019 when he was suspended from the practice of law in January, as noted above, and then received a private admonition in October of the same year for violating SCR 3.130(1.16)(d) (regarding steps to be taken upon termination of representation). It notes the motion for a public reprimand with conditions was reviewed and approved by the Chair of the Inquiry Commission and a Past President of the KBA before submission to the Court.

II. ANALYSIS

Having reviewed the facts of this case, we agree with the parties and adopt the negotiated sanction. We agree that Smith’s conduct in this case amounted to violations of SCR 3.130(5.5)(a), (5.7)(a), and (3.4)(c) for the reasons stated (and admitted) above.

We also hold that the sanction the parties negotiated in this case is adequate and in line with our precedent. For example, in *Hoff v. Kentucky Bar Association*, 537 S.W.3d 817 (Ky. 2018), this Court publicly reprimanded Hoff for almost identical violations of our rules. Specifically, the “Inquiry Commission initiated an investigation against Hoff alleging violations of Supreme Court Rule (SCR) 3.130-3.4(c) (failure to obey an obligation under the

Rules of a tribunal), SCR 3.130-5.5(a) (unauthorized practice of law), SCR 3.130-5.5(b) (falsely holding out or representing that he was admitted to practice), and SCR 3.130-5.7(a) (performing specifically prohibited acts while suspended).”

Just as in the *Hoff* case, here, Smith admits his conduct and seeks a resolution with which the KBA agrees. We agree with the parties that under these facts—and given Smith’s almost forty-five years in practice before receiving any bar discipline—a public reprimand with conditions for his violations is appropriate

III. ORDER

Agreeing that the negotiated sanction is appropriate, it is ORDERED that:

Robert F. Smith is found guilty of violating SCR 3.130(5.5)(a), (5.7)(a), and (3.4)(c) and is hereby publicly reprimanded with the following conditions:


1. Smith is ordered to attend, at his expense, the next scheduled Ethics and Professionalism Enhancement Program (EPEP) offered by the Office of Bar Counsel, separate and apart from his fulfillment of any continuing legal education (CLE) requirement, within twelve months after the issuance of this Order; Smith must pass the test given at the end of the program and will not apply for CLE credit of any kind for his participation in the EPEP program; and Smith will furnish a release and waiver to the Office of Bar Counsel to review his records

of the CLE Department that might otherwise be confidential, such release to continue in effect until after he completes his remedial education; and

2. In accordance with SCR 3.450, Smith is directed to pay all costs associated with these disciplinary proceedings against him, said sum being \$104.15, for which execution may issue from this Court upon finality of this Opinion and Order.

All sitting. All concur.

ENTERED: February 20, 2020.


CHIEF JUSTICE