

Supreme Court of Kentucky

2020-SC-0228-KB

KENTUCKY BAR ASSOCIATION

MOVANT

V.

IN SUPREME COURT

ROBERT ANDREW ROWLAND

RESPONDENT

OPINION AND ORDER

Robert Andrew Rowland was admitted to the practice of law on October 23, 2010. Rowland's bar roster address is 222 W. Main Street, P.O. Box 631, Frankfort, KY 40602, and his KBA number is 93249.

On April 15, 2019, the Inquiry Commission of the Kentucky Bar Association levied a four-count charge against Rowland stemming from his representation of Kimberly McGaughey in an Anderson County divorce action. Rowland filed an answer to the charge but then ceased to participate in the proceedings. A hearing was held in front of a trial commissioner who found by a preponderance of the evidence that Rowland violated all four counts in the charge brought against him. The trial commissioner adopted the recommendation of the Kentucky Bar Association ("KBA") and recommended that Rowland be suspended from the practice of law for 181 days with

conditions. This Court chose to review the decision of the trial commissioner and allowed the parties to file briefs pursuant to Supreme Court Rule (“SCR”) 3.370(8). The KBA filed a brief, but Rowland did not. For the following reasons, we hold that the trial commissioner’s findings and conclusions are supported by the facts and the law but that an alternate sanction is more appropriate.

I. BACKGROUND

Rowland was hired to represent McGaughey in a divorce action on August 20, 2018. McGaughey paid Rowland a \$2,000.00 retainer but did not execute any kind of payment agreement. When Rowland was hired, a trial had already been scheduled in McGaughey’s case for October 4, 2018. During September, Rowland filed various documents in the case. The day before the trial was scheduled, the court continued the trial and ordered mediation. Rowland had a phone conversation with McGaughey where he explained this but failed to have any other contact with her after that conversation, despite McGaughey’s repeated requests for information via phone, email, and certified mail. Rowland also failed to communicate with opposing counsel in the case and failed to set up mediation. Due to Rowland’s failure to cooperate in scheduling mediation, opposing counsel filed a motion to show cause against McGaughey and Rowland. Rowland neither appeared at the hearing on this motion, nor informed McGaughey of the motion and hearing so that she could attend.

After repeated failed attempts to contact Rowland, McGaughey hired other counsel. McGaughey’s new attorney only received part of McGaughey’s

file from Rowland, so he had to obtain the rest of the file from the attorney who represented McGaughey before Rowland. Rowland did not notify McGaughey of his intent to terminate the representation, did not provide McGaughey an accounting for the \$2,000.00 retainer, and did not refund any portion of that retainer to her.

In January of 2019, Rowland was served with the bar complaint in this matter accompanied by a letter requesting additional information from him regarding the complaint. Rowland failed to respond to the complaint or the request for information. On April 8, 2019, the Inquiry Commission issued a four-count charge against Rowland based on his conduct in representing McGaughey and failure to respond to the complaint. Rowland was charged with violating SCR 3.130(8.1)(b) (knowing failure to respond to a lawful demand for information from a disciplinary authority); SCR 3.130(1.3) (reasonable diligence); SCR 3.130(1.4)(a)(4) (prompt compliance with requests for information); and SCR 3.130(1.16)(d) (steps to be taken upon termination of representation). On June 26, 2019, Rowland filed a one-page answer to the charge but otherwise did not participate in the disciplinary process. The Office of Bar Counsel attempted to contact Rowland at the end of June and repeatedly throughout August via telephone and mail but received no response.

Pursuant to SCR 3.230, a trial commissioner was appointed on August 23, 2019. The trial commissioner made several unsuccessful attempts to contact Rowland by both mail and email. A telephonic pretrial conference was held on October 10, 2019, but Rowland did not attend. He also failed to attend

the disciplinary hearing held on January 16, 2020. On February 20, 2020, pursuant to SCR 3.380(2), this Court indefinitely suspended Rowland from the practice of law for his failure to participate in the disciplinary process. *See Kentucky Bar Ass’n v. Rowland*, 2019-SC-000614-KB, 2020 WL 1291641 (Ky. Mar. 3, 2020). Rowland remains indefinitely suspended pursuant to that order.

On March 2, 2020, Rowland emailed the Office of Bar Counsel to provide it with a copy of the letters he sent to clients, pursuant to SCR 3.390, to inform them of his suspension. The following day he sent another email to the Office of Bar Counsel indicating his desire to discuss “a final determination of the disciplinary action.” Both emails were sent from his bar roster email address, which is the same email address the trial commission used when unsuccessfully attempting to contact Rowland.

On March 31, 2020, the trial commissioner issued his Memorandum finding Rowland violated all four of the rules as alleged by the KBA and adopting the recommendation of the KBA of a 181-day suspension with conditions. No appeal of the trial commissioner’s recommendation, as allowed under SCR 3.360, SCR 3.365 and SCR 3.370, was sought, either by Rowland or Bar Counsel. As a result, this matter was submitted directly to this Court without going before the Board of Governors. *See* SCR 3.360(4).

II. ANALYSIS

The trial commissioner’s report is advisory only. *See* SCR 3.360(2); *e.g.*, *Kentucky Bar Ass’n v. Steiner*, 157 S.W.3d 209, 211 (Ky. 2005). Although neither Rowland nor the KBA requested review by this Court, SCR 3.370(8)

permits this Court to undertake a review of the trial commissioner's order on its own initiative. We have chosen to do so in this case, as the recommended sanction of the trial commissioner is incongruent with sanctions this Court has recently imposed in other attorney discipline cases.

Before reviewing the trial commissioner's recommended discipline, we must first review the trial commissioner's factual findings. We have undertaken a thorough review of the record and find the trial commissioner's factual findings regarding Rowland's rule violations to be supported by the record. As such, we adopt the trial commissioner's factual findings as our own and hold that Rowland violated SCR 3.130(8.1)(b), SCR 3.130(1.3), SCR 3.130(1.4)(a)(4), and SCR 3.130(1.16)(d).

It is now this Court's job to establish the appropriate sanction for violations of our ethical rules, *Steiner*, 157 S.W.3d at 211, and to "enter such orders or opinion as [we] deem[] appropriate on the entire record." SCR 3.370(8). In its brief to the trial commissioner, the KBA relied on *Kentucky Bar Association v. Fulmer*, 439 S.W.3d 746 (Ky. 2014) to support its recommendation that Rowland be suspended from the practice of law for 181 days. Fulmer accepted a \$2000 retainer from a client and then failed to do any work on the client's case. *Id.* at 747. Shortly after paying Fulmer the retainer, the client was no longer able to contact Fulmer. *Id.* Fulmer was not only found to have violated the same four ethical rules Rowland violated, but was also found to have violated SCR 3.130(1.4)(a)(3) for failing to keep his client informed about the status of his case. *Id.* Fulmer had a previous disciplinary

record of suspensions for failure to comply with his Continuing Legal Education (“CLE”) requirements and failure to pay his bar dues. *Id.* at 748. Fulmer was never personally served with the bar complaint or the charge against him and did not participate in the disciplinary process at all. *Id.* at 747-48.

In contrast, Rowland did complete some work on McGaughey’s case by filing certain documents with the court. He was found to have violated only four, as opposed to five, ethical rules. His only previous discipline is the indefinite suspension that stemmed from his failure to participate, after filing an answer, in this disciplinary proceeding. As such, we believe that Rowland’s actions do not merit as severe of a sanction as was imposed on Fulmer.

In *Fulmer*, we acknowledged that “we have imposed sanctions for violations of these rules that range from disbarment... to a thirty day suspension.” *Id.* In *Kentucky Bar Association v. McCartney*, 281 S.W.3d 286 (Ky. 2009), we disbarred McCartney after he “retained nearly \$30,000.00 in unearned fees; failed to answer a complaint on behalf of a client, garnering the client a \$22,000.00 judgment; and failed to respond to a Charge by KBA.” *Fulmer*, 439 S.W.3d at 748. In *Kentucky Bar Association v. Thornton*, 392 S.W.3d 399 (Ky. 2013), we suspended Thornton for 181 days after finding him guilty of ten ethical violations, including failure to respond to a lawful demand for information from a disciplinary authority, failure to act with reasonable diligence, and failure to promptly comply with requests for information, levied against him in three separate charges. He was further ordered to pay more

than \$7,000.00 in restitution to clients for failing to charge a reasonable fee for his services. *Id.* at 417. Finally, in *Kentucky Bar Association v. Robinson*, 324 S.W.3d 735 (Ky. 2010), we suspended Robinson for thirty days after he “took a retainer from client; failed to respond to client; failed to act diligently and promptly in representation of client; and failed to respond to the KBA; but voluntarily refunded the majority of the retainer paid by client.” *Fulmer*, 439 S.W.3d at 748.

Rowland’s actions are certainly not as egregious as McCartney’s or Thornton’s; however, they do merit a sanction more severe than that imposed on Robinson. This Court is especially frustrated with Rowland’s lack of participation in front of both the trial commissioner and this Court despite maintaining the same email address at which the trial commissioner attempted to contact him. However, we are also not of the opinion that Rowland’s actions necessitate an investigation by the Character and Fitness Committee under SCR 2.300 before he can be reinstated to the practice of law. We further have confidence that Bar Counsel will file an objection to Rowland’s reinstatement under SCR 3.510(2) if she feels it necessary.

ACCORDINGLY, IT IS ORDERED THAT:

1. Robert Andrew Rowland, KBA Number 93249, is found guilty of violating SCR 3.130(8.1)(b), SCR 3.130(1.3), SCR 3.130(1.4)(a)(4), and SCR 3.130(1.16)(d);
2. Rowland is suspended from the practice of law for 180 days;

3. Rowland shall make restitution to Kimberly McGaughey in the amount of \$1,000.00 and provide proof of this payment to the Office of Bar Counsel;
4. Rowland shall attend and complete the next scheduled ethics and professional enhancement program offered by the Kentucky Bar Association;
5. If he has not already done so, pursuant to SCR 3.390, Rowland shall promptly take all reasonable steps to protect the interests of his clients, including, within ten days after the issuance of this order, notifying by letter all clients of his inability to represent them and of the necessity and urgency of promptly retaining new counsel and notifying all courts or other tribunals in which Rowland has matters pending. Rowland shall simultaneously provide a copy of all such letters to the Office of Bar Counsel;
6. If he has not already done so, pursuant to SCR 3.390, Rowland shall immediately cancel any pending advertisements; shall terminate any advertising activity for the duration of the term of suspension; and shall not allow his name to be used by a law firm in any manner until he is reinstated;
7. Pursuant to SCR 3.390, Rowland shall not, during the term of suspension and until reinstatement, accept new clients or collect unearned fees; and
8. Finally, pursuant to SCR 3.450, Rowland is directed to pay the costs of this action, \$883.28, for which execution may issue from this Court upon finality of this Opinion and Order.

All sitting. Minton, C.J.; Hughes, Keller, Lambert, Nickell and Wright, JJ., concur. VanMeter, J., concurs in part and dissents in part by separate opinion.

VANMETER, J., CONCURRING IN PART AND DISSENTING IN PART: I would adopt the trial commissioner's recommendation of a 181-day suspension.

ENTERED: October 29, 2020.



CHIEF JUSTICE MINTON