

Supreme Court of Kentucky

2020-SC-0584-KB

KENTUCKY BAR ASSOCIATION

MOVANT

V.

IN SUPREME COURT

GRETA LYNNE DAWSON NOE

RESPONDENT

OPINION AND ORDER

Greta Lynne Dawson Noe, Kentucky Bar Association (KBA) Number 89934, was admitted to the practice of law in the Commonwealth of Kentucky on October 7, 2003, and her bar roster address is listed as P.O. Box 1853, Elizabethtown, Kentucky 42702. This case involves two consolidated disciplinary cases; in addition to the usual issues of guilt on the discipline charges, this case presents collateral issues of (1) whether service of the first Charge satisfies the requirements for service of the later-filed second Charge, for which constructive service was attempted and (2) whether the Rules of the Supreme Court permit the Inquiry Commission to consolidate a properly-served disciplinary case with a second disciplinary case against the same Respondent, for which service was not perfected.

In KBA File 18-DIS-0179 (“first case”), the Board of Governors (“the Board”) found Noe guilty of violating SCR¹ 3.130(1.3), (1.4)(a)(3), (1.5)(a)(4), and (8.1)(b). For these violations, the Board recommends Noe: (1) be suspended from the practice of law for thirty (30) days and (2) pay all associated costs in the amount of \$352.80. In KBA File 18-DIS-0198 (“second case”), the Board found that Noe had not been properly served and thus the Board lacked jurisdiction over the matter. The Board recommended dismissing the second case with prejudice. The Board also concluded that consolidation of the cases was improper under SCR 3.210(1). For the following reasons, we adopt the Board’s recommendation, except we conclude that the second case should be dismissed without prejudice.

I. BACKGROUND

In the first case, the Office of Bar Counsel properly served Noe with the Charge, to which Noe did not respond. In the second case, the Office of Bar Counsel served the Charge through the Executive Director pursuant to SCR 3.035(2), rather than as required by SCR 3.164. The Inquiry Commission consolidated the two cases and it came before the Board as a single, default case pursuant to SCR 3.210(1). Upon review, the Board found service on the second case was deficient and remanded the consolidated matter to the Office of Bar Counsel to serve the second Charge pursuant to SCR 3.164. The Board vacated its vote and disciplinary ruling on the first case.

¹ Kentucky Rules of the Supreme Court.

The Inquiry Commission disagreed with the Board's order, found that service had been completed, and presented the consolidated case to the Board for review. Specifically, the Inquiry Commission noted that further attempts at service "would have been an exercise in futility and a waste of resources, and that reasonable efforts were made to serve [Noe] at that [bar roster] address." When the Board took up this submission from the Inquiry Commission again, it found Noe guilty in the first case and imposed discipline and dismissed the second case with prejudice due to the deficiency in service.

II. KBA FILE 18-DIS-0179 (FIRST CASE)

In April 2017, John Smith, Jr. hired Noe to appeal a family court ruling. Noe filed a Notice of Appeal and later moved to consolidate various appeals and for additional time to file an appellate brief. Noe took no other action on the case. The appellee filed a motion to dismiss, which the court denied, but meanwhile ordered Noe to file her brief within 30 days. Noe did not, and the appellee again moved for dismissal. Upon learning of the pending motion to dismiss, Smith contacted Noe via text, and Noe assured him she would respond to the motion and file an appellate brief. She did neither, and the court dismissed Smith's appeal. Thereafter, Smith filed a bar complaint against Noe, noting that during the course of representation Noe frequently did not respond to his attempts to communicate with her and, toward the end, quit responding entirely.

The Inquiry Commission charged Noe with violating: (1) SCR 3.130(1.3) for failing to act with "reasonable diligence and promptness in representing"

her client; (2) SCR 3.130(1.4)(a)(3) for failing to “keep the client reasonably informed about the status of the matter”; (3) SCR 3.130(1.4)(a)(4) for failing to “promptly comply with reasonable requests for information”; and (4) SCR 3.130(8.1)(b) for knowingly failing “to respond to a lawful demand for information from an admissions or disciplinary authority[.]”

The Inquiry Commission sent the Charge by certified mail to Noe’s bar roster address, which was returned unserved. The Inquiry Commission then served the Charge upon Noe through the KBA’s Executive Director pursuant to SCR 3.035(2), who fulfilled his service obligation. Again, the Charge was returned.

III. KBA FILE 18-DIS-0198 (SECOND CASE)

In July 2016, Calvin Wease retained Noe to handle an expungement and paid her \$1,000. Noe took no action. When Wease contacted Noe to inquire about the status of his case, she said she had moved offices and lost his file, but that she would begin working on the expungement. She did not. After numerous attempts to contact Noe, Wease finally hired another attorney.

The Inquiry Commission charged Noe with violating: (1) SCR 3.130(1.3) for failing to act with “reasonable diligence and promptness in representing” her client; (2) SCR 3.130(1.4)(a)(3) for failing to “keep the client reasonably informed about the status of the matter”; and (3) SCR 3.130(1.16)(d): “Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client’s interests, such as . . . refunding any advance payment of fee or expense that has not been earned or incurred.”

The Inquiry Commission served this Charge upon Noe through the KBA's Executive Director pursuant to SCR 3.035(2), who complied with his service obligation. No attempt was made to serve Noe directly with this Charge pursuant to SCR 3.164.

IV. CONSOLIDATION

After finding Noe in default in both cases, the Inquiry Commission consolidated the cases pursuant to SCR 3.210(1) and transmitted the consolidated case to the Board for review.

V. BOARD'S RECOMMENDATION

In the first case, the Board by unanimous vote found Noe guilty of violating all counts of the Charge. After considering Noe's prior disciplinary history (she had been suspended for non-payment of dues on January 18, 2019), the Board issued a 30-day suspension and ordered Noe to pay all the associated costs of the proceeding.

In the second case, the Board by unanimous vote found improper service of the Charge, as no attempt was made to serve Noe directly before serving the Charge upon the Executive Director. Thus, the Board concluded it lacked jurisdiction over the second case and that the cases had been improperly consolidated. The Board dismissed the second case with prejudice.

VI. ADOPTION OF BOARD'S RECOMMENDATION

Pursuant to SCR 3.370(9),² this Court adopts the unanimous recommendation of the Board in the first case given: (1) the significance of Noe's violations, (2) her failure to respond to the first Charge, and (3) her disciplinary history. Our precedent supports the Board's recommendation. For example, in *Coorssen v. Kentucky Bar Ass'n*, 266 S.W.3d 237 (Ky. 2008), this Court suspended Coorssen from the practice of law for one year, with 181 days to be served and the remainder probated for two years subject to certain conditions, after he failed to return client telephone calls, failed to provide clients with information concerning the status of their cases, failed to return unearned fees, and failed to properly withdraw from a case. While all but 181 days of that suspension was probated, we agree with the Board that, due to the aggravating factors in this case including Noe's failure to answer the first Charge and her repeated offenses, including failure to pay bar dues, and the vulnerability of her clients, she should serve her suspension in full. The Board found no known mitigating factors.

In the second case, we likewise adopt the Board's decision to dismiss the Charge, except we believe dismissal without prejudice is more appropriate. "Jurisdiction can only be obtained . . . by service of process in the manner provided by law; and, when the process is not served, the court is without

² SCR 3.370(9) provides that "[i]f no notice of review is filed by either of the parties, or the Court under paragraph eight (8) of this rule, the Court shall enter an order adopting the decision of the Board or the Trial Commissioner, whichever the case may be, relating to all matters."

power to make any order[.]” *Bayne v. Stratton*, 131 Ky. 494, 500, 115 S.W. 728, 730 (1909). In other words, proper service is a prerequisite to jurisdiction.

SCR 3.164 provides: “Upon the filing of a charge, the Disciplinary Clerk shall furnish the Respondent with a copy, by certified mail return receipt requested to the Respondent’s bar roster address, **or** by service on the Director as set forth in SCR 3.035[.]” (emphasis added). The term “shall” as used in SCR 3.164 is a mandatory requirement. Service is thus permitted in one of two ways, certified mail or service on the Director. Certified mail was not attempted. Service, therefore, depended on whether the requirements of SCR 3.035 were met.

SCR 3.035(2) permits appointment of the Director as the member’s agent for service of process of any document requiring service under Rule 3. Such constructive service, however, is dependent upon “proof that all of the following requirements have been satisfied: (a) Reasonable efforts have been made to achieve actual service of the document upon the member[.]” *Id.* In this instance, we agree with the Board that no attempt was made to achieve actual service of Noe with the second Charge. Because no reasonable attempt was made to serve Noe with the second Charge, service upon the Executive Director was improper. While service on Noe may have ultimately proved futile since she failed to respond to the first Charge, the rules, nevertheless, set forth mandatory requirements. Since the Board lacked jurisdiction to entertain the second case, its dismissal of that case was appropriate but, as noted, the dismissal should have been without prejudice.

Agreeing that the Board's recommended sanction on the first Charge is appropriate, it is ORDERED that:

1. Noe is found guilty of the above-described violations of the Rules of Professional Conduct and thus suspended from the practice of law for thirty days; and
2. In accordance with SCR 3.450, Noe is directed to pay all costs associated with these disciplinary proceedings against her, said sum being \$352.80, for which execution may issue from this Court upon finality of this Opinion and Order; and
3. Pursuant to SCR 3.390, Noe shall, within ten days from the entry of this Opinion and Order, notify all Kentucky clients, in writing, of her inability to represent them; notify, in writing, all Kentucky courts in which she has matters pending of her suspension from the practice of law; and furnish copies of all letters of notice to the Office of Bar Counsel of the KBA. Furthermore, to the extent possible, Noe shall immediately cancel and cease any advertising activities in which she is engaged.

IT IS FURTHER ORDERED that the second Charge is remanded to the Board for dismissal without prejudice.

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

KELLER, J., CONCURRING IN PART AND DISSENTING IN PART: While I concur with the remainder of the majority's opinion, I dissent from its holding that we remand the second Charge to the Board for dismissal without prejudice. The Board of Governors recommended dismissal with prejudice. I see no reason to alter their well-reasoned decision.

ENTERED: September 30, 2021


CHIEF JUSTICE