

# Supreme Court of Kentucky

2021-SC-0284-KB

KENTUCKY BAR ASSOCIATION

MOVANT

V.

IN SUPREME COURT

ERIC TULEY WEINER

RESPONDENT

## **OPINION AND ORDER**

Eric Tuley Weiner, Kentucky Bar Association (KBA) Number 95736, was admitted to the practice of law in the Commonwealth of Kentucky on October 18, 2013. His bar roster address is 1387 S. 4th Street, Louisville, Kentucky 40208. In this default case under Supreme Court Rule (SCR) 3.210, the KBA Board of Governors (the Board) has recommended this Court find Weiner guilty of violating: four counts of SCR 3.130(1.3)<sup>1</sup>; six counts of SCR 3.130(1.4)<sup>2</sup>;

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1 SCR 3.130(1.3) (“A lawyer shall act with reasonable diligence and promptness in representing a client.”).

2 SCR 3.130(1.4) (“(a) A lawyer shall: (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules; (2) reasonably consult with the client about the means by which the client’s objectives are to be accomplished; (3) keep the client reasonably informed about the status of the matter; (4) promptly comply with reasonable requests for information; and (5) consult with the client about any relevant limitation on the lawyer’s conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.”).

SCR 3.130(1.5)(f)<sup>3</sup>; SCR 3.130(1.16)(d)<sup>4</sup>; SCR 3.130(3.4)(c)<sup>5</sup>; seven counts of SCR 3.130(8.1)(b)<sup>6</sup>; and SCR 3.130(8.4)(c)<sup>7</sup>. For these violations, which stem from multiple KBA disciplinary cases, the Board recommends Weiner be suspended from the practice of law for five years, with three years to serve and the remaining two years to be probated on the conditions Weiner: enter into and comply with a Kentucky Lawyers Assistance Program (KYLAP) Monitoring Agreement; attend and successfully complete the Ethics and Professionalism Enhancement Program (EPEP); pay restitution; and be required to pay the costs of this action. We agree with and adopt the Board's recommendation.

## I. FACTUAL BACKGROUND

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3 SCR 3.130(1.5) (“(f) A fee may be designated as an advance fee. An advance fee agreement shall be in a writing signed by the client evidencing the client’s informed consent, and shall state the dollar amount of the fee, its application to the scope of the representation and the time frame in which the agreement will exist.”).

4 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 giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.”).

5 SCR 3.130(3.4) (“A lawyer shall not: . . . (c) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists[.]”).

6 SCR 3.130(8.1) (“[A] lawyer . . . in connection with a disciplinary matter, shall not: . . . (b) . . . knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority[.]”).

7 SCR 3.130(8.4) (“It is professional misconduct for a lawyer to: . . . (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation[.]”).

This disciplinary action arises from seven separate KBA cases. By this Court's order dated January 21, 2021, under SCR 3.165(1), Weiner was indefinitely suspended from the practice of law in the Commonwealth of Kentucky upon a finding of probable cause to believe his conduct posed a substantial threat of harm to his clients or the public and he was mentally disabled or addicted to intoxicants or drugs to the extent he no longer had the physical or mental fitness to continue to practice law. *Kentucky Bar Ass'n v. Weiner*, 614 S.W.3d 494 (Ky. 2021). We noted Weiner had failed to respond to communications from the Inquiry Commission or to this Court's show cause order. Because Weiner has continued to fail to respond to the charges, the Board of Governors moves this Court to impose discipline under SCR 3.210.

**A. KBA File 20-DIS-0121**

Weiner was hired by Michael Gibson to represent him in a workers' compensation action and a separate action arising from a subsequent injury. After some initial communications, Weiner went nearly five months without updating or communicating with Gibson regarding the case. Gibson's phone calls, voicemails, and text messages went unanswered. When Gibson went to Weiner's office, he was informed Weiner had been evicted based on possible drug use. After Gibson obtained replacement counsel, Weiner contacted him seeking to renew the representation, which Gibson declined. Weiner did not file suit or take steps to pursue the subsequent injury action, and the statute of limitations ran on that claim.

Gibson filed a bar complaint which was personally served on Weiner. He did not respond to the complaint. The Inquiry Commission issued a charge against Weiner for violations of SCR 3.130(1.4) and SCR 3.130(8.1)(b). Weiner did not respond to the charge.

**B. KBA File 20-DIS-0122**

In February 2018, Weiner was hired by Bob Brady for representation in a premises liability negligence claim. Weiner filed suit and pursued the action for a period of time. Sometime in the fall of 2019 Brady had increasing difficulty communicating with Weiner who actively avoided meeting in person and did not provide status updates on the case. Brady's case was dismissed in December 2019 for lack of prosecution. Weiner did not notify Brady of the dismissal. Brady learned the fate of his cases through independent means. Brady obtained replacement counsel who was required to move to have the dismissal set aside.

Brady filed a bar complaint which was personally served on Weiner. He did not respond to the complaint. The Inquiry Commission issued a charge against Weiner for violations of SCR 3.130(1.3), SCR 3.130(1.4), SCR 3.130(1.16)(d), and SCR 3.130(8.1)(b). Weiner did not respond to the charge.

**C. KBA File 20-DIS-0123**

Michele Curtsinger hired Weiner to represent her in a workers' compensation matter and a separate personal injury claim. Curtsinger had previous counsel and Weiner took over her representation in late 2018 or early 2019. Weiner provided adequate representation until late 2019. Despite

numerous attempts to communicate with Weiner, Curtsinger found it impossible to reach him. Both of Curtsinger's actions were nearly dismissed for failure to prosecute due to Weiner's inactions. Weiner did not inform her of the status of her cases. After learning of Weiner's inactions and the near dismissal of her cases through independent means, Curtsinger terminated the representation and began seeking new counsel. Although he acknowledged the termination of representation in text messages, Weiner refused or failed to return Curtsinger's file materials, making efforts to obtain replacement counsel difficult.

Curtsinger filed two bar complaints, one for each of her two cases. The complaints were personally served on Weiner who failed to respond. The Inquiry Commission issued a charge against Weiner for violations of SCR 3.130(1.3), SCR 3.130(1.4), SCR 3.130(1.16)(d), and SCR 3.130(8.1)(b). Weiner did not respond.

#### **D. KBA File 20-DIS-0125**

Weiner represented many clients in proceedings with the Kentucky Labor Cabinet, Department of Workers' Claims. His actions and inactions in several of these cases drew the attention of the Chief Administrative Law Judge and other Administrative Law Judges who had concerns about Weiner and reported their observations to Bar Counsel. Although issues related to possible drug use were noted, more important was Weiner's absence from numerous case-related events including court appearances, telephone conferences, and other meetings. Even with repeated reminders from judges in charge of his cases,

Weiner missed important case milestones, failed to timely file important pleadings, and caused several cases to be dismissed by his inaction. Weiner was reported to have attempted to collect fees in cases from which he had been discharged or trying to settle cases for which he was no longer counsel of record.

The Inquiry Commission filed a bar complaint pursuant to SCR 3.160 based on the information received. Unable to serve Weiner via certified mail or personally through the sheriff's office, the charge was served on the Executive Director pursuant to SCR 3.035(2). Weiner did not respond to the complaint. The Inquiry Commission issued a charge against Weiner for violations of SCR 3.130(1.3), SCR 3.130(1.4), SCR 3.130(1.5)(f), SCR 3.130(3.4)(c), SCR 3.130(8.4)(c), and SCR 3.130(8.1)(b). Service was again effected on the Executive Director. No response to the charge was forthcoming.

#### **E. KBA File 20-DIS-0175**

Lisa Hunter discussed a possible medical malpractice claim with Weiner in early August 2019. The two met later in the month to review specifics of the matter. Weiner later informed Hunter he would undertake the representation and emailed her a contract which she filled out and returned. After undertaking some initial actions on the case, Weiner became difficult to reach and failed or refused to respond to Hunter's requests for status updates. The last communication Hunter had with Weiner was on November 16, 2019, after which she was unable to contact him despite numerous attempts. Hunter was

unable to obtain replacement counsel due to the short time period before the statute of limitations ran on her claim.

Hunter filed a bar complaint which was personally served on Weiner. He failed to respond. The Inquiry Commission issued a charge against Weiner for violations of SCR 3.130(1.4) and SCR 3.130(8.1)(b). Weiner did not answer the charge.

#### **F. KBA File 20-DIS-0183**

Weiner represented Jonathanon Isray in a workers' compensation matter. Despite an order from the Administrative Law Judge requiring it, Weiner failed to participate in a telephonic hearing. Isray received no response to his numerous telephone calls, text messages, or emails requesting status updates on his case. The failure to communicate persisted for a significant length of time. Isray ultimately learned Weiner had not filed or submitted important case-related documents or payment needed by the specialist retained to perform Isray's evaluation for an impairment rating.

Isray filed a bar complaint which was personally served on Weiner. No response was forthcoming. The Inquiry Commission issued a charge against Weiner for violations of SCR 3.130(1.3), SCR 3.130(1.4), and SCR 3.130(8.1)(b). Weiner did not respond.

#### **G. KBA File 20-DIS-0227**

Jeff Carnes retained Weiner to initiate and represent him in a workers' compensation matter. For several years, Weiner provided appropriate diligence and communication. In the spring of 2020, however, Weiner ceased

communicating with Carnes. Repeated attempts to contact Weiner by phone, email, and text messaging, were unsuccessful.

Carnes filed a bar complaint which was personally served on Weiner. Weiner did not respond. The Inquiry Commission issued a charge against Weiner for violations of SCR 3.130(1.4) and SCR 3.130(8.1)(b). Weiner did not answer the charge.

## **II. PRIOR DISCIPLINE**

Weiner has no prior disciplinary cases. He was administratively suspended for non-payment of bar dues on January 15, 2021. Weiner is also currently under an indefinite suspension pursuant to SCR 3.165(1)(b) and (d) as set forth in our Opinion and Order effective on January 21, 2021, and he remains suspended as of this date.

## **III. AGGRAVATING FACTORS CONSIDERED BY THE BOARD**

The known applicable aggravating factors include: (1) a pattern of misconduct; (2) multiple offenses; (3) bad faith obstruction of the disciplinary process by intentionally failing to comply with rules or orders of the disciplinary agency; (4) dishonest or selfish motive; and (5) the vulnerability of the victims. There are no known mitigating factors apart from Weiner's lack of a prior disciplinary record.

## **IV. ANALYSIS**

Due to Weiner's failure to respond to the current charges, the Inquiry Commission submitted the matter to the Board under SCR 3.210(1). The Board found Weiner not guilty of violating SCR 3.130(1.16)(d) in KBA File 20-



DIS-0122; SCR 3.130(1.4), SCR 3.130(1.5)(f), and SCR 3.130(1.16)(d) in KBA File 20-DIS-0125. The Board found Weiner guilty of all remaining counts. The Board considered permanent disbarment and a two-year suspension with conditions, but neither of these options garnered sufficient votes. By a vote of 15-5, the Board recommends Weiner be suspended for five years, with three years to serve and the remaining two years probated for two years on the conditions Weiner enter into and comply with a KYLAP Monitoring Agreement; attend and successfully complete the EPEP; pay restitution; and pay the costs associated with this action.

Having reviewed the record, we agree the Board reached the appropriate conclusions as to Weiner's guilt. Weiner has not filed a notice to this Court to review the Board's decision, and we do not elect to review the decision of the Board under SCR 3.370(8). Accordingly, the decision of the Board is adopted under SCR 3.370(9).

For the foregoing reasons, it is hereby ORDERED:

1. Eric Tuley Weiner is found guilty of violating four counts of SCR 3.130(1.3); six counts of SCR 3.130(1.4); SCR 3.130(1.5)(f); SCR 3.130(1.16)(d); SCR 3.130(3.4)(c); seven counts of SCR 3.130(8.1)(b); and SCR 3.130(8.4)(c); and

2. Eric Tuley Weiner is suspended from the practice of law in the Commonwealth of Kentucky for five years, with three years to be served and the remaining two years probated for two years on the following conditions:

- a. Weiner must enter into and comply with a KYLAP Monitoring Agreement;
- b. Weiner must attend and successfully complete the Ethics and Professionalism Enhancement Program (EPEP);
- c. Weiner must pay restitution; and
- d. In accordance with SCR 3.450, Weiner is directed to pay all costs associated with these disciplinary proceedings against him, said sum being \$2,352.16, for which execution may issue from this Court upon finality of this Opinion and Order.

All sitting. All concur.

ENTERED: September 30, 2021.

  
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CHIEF JUSTICE