

Supreme Court of Kentucky

2023-SC-0290-KB

KENTUCKY BAR ASSOCIATION

MOVANT

V.

IN SUPREME COURT

ERIC TULEY WEINER

RESPONDENT

OPINION AND ORDER

Eric Tuley Weiner was admitted to the practice of law in Kentucky on October 18, 2013, and his bar roster address is 1387 S. 4th Street, Louisville, Kentucky 40208. These two cases came before the KBA Board of Governors (Board) on March 17, 2023. Weiner failed to file any answer contesting these allegations, so these two cases were consolidated and dealt with by the Board as a default case pursuant to SCR 3.210(1). The Board voted on a total of ten counts and found Weiner guilty on eight of them. After the Board found Weiner guilty, they held a vote where a majority recommended permanent disbarment. This Court accepts the recommendation of the Board and hereby holds that Eric Tuley Weiner is permanently disbarred from the practice of law in the Commonwealth of Kentucky.

I. BACKGROUND

As noted above, the Board consolidated two cases filed against Weiner. They are KBA Files 22-DIS-0008 and 22-DIS-0123. The first case was opened by the Inquiry Commission when it filed a Charge containing four counts

against Weiner based on his representation of Brandon Bryant in a workers' compensation claim in 2017. Weiner's representation of Bryant led to the defendant's insurance carrier sending Weiner a check for \$34,876 as the lump sum portion of the award. After Weiner received the check, he sent \$10,000 of the award directly to Bryant and \$7,000 to Bryant's landlord as part of a prearranged plan with Bryant. There was \$17,876 remaining, and Weiner informed Bryant that the remaining would be allocated first to Weiner as compensation for his representation and the remaining was to be paid out to any creditors that Bryant owed money. Weiner, however, failed to pay any of Bryant's creditors and did not file a motion in the workers' compensation proceeding seeking approval from the administrative law judge for attorney's fees.

Bryant made numerous efforts to contact Weiner about the remaining money. Bryant made phone calls, sent emails, and even visited Weiner's office. Despite Bryant's efforts, Weiner never contacted him. Bryant then filed a claim with the KBA's Client's Security Fund, which led to the Inquiry Commission's complaint.

The Inquiry Commission filed a Charge containing four counts against Weiner on May 13, 2020, in which it alleged that Weiner had committed numerous ethical violations. Quoting from the Board's recommendation, the Commission alleged:

Count I: SCR 3.130(1.15)(a): requires a lawyer to "hold property of clients...that is in a lawyer's possession in connection with the representation separate from the lawyer's own property." Comment One following the rule further instructs, "A lawyer should hold

property of others with the care required of a professional fiduciary.”

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.”

The Commission alleged that Werner did not disburse the remaining proceeds as agreed, to his client and his client’s creditors, that Weiner did not seek approval of his attorney fees in the workers compensation proceeding, and that Werner failed to account to his client for the remaining proceeds.

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

The Commission alleged that Weiner told his client that he would use the funds to pay the client and his client’s creditors, failed to do so, and retained funds owed to his client.

Count III: 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 . . .”

The Commission alleged that Weiner failed to keep his client informed of the progress of the disbursements, failed to respond to multiple inquiries from his client, and failed to provide his client with an accounting of the funds.

Count IV: SCR 3.130(8.1)(b): In connection with a disciplinary matter a lawyer shall not “knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority.”

The Commission alleged that Weiner failed to respond to the complaint filed by his client.

The Inquiry Commission issued its Charge in May of 2022. It was then mailed to Weiner via certified mail. The KBA also attempted to reach Weiner via his home address and attempted service through the Jefferson County Sheriff's Department. All these attempts were unsuccessful. Wiener was eventually served pursuant to SCR 3.035 by service on the KBA Executive Director. Weiner failed to file an answer to the Charge.

KBA File 22-DIS-123 is the other case against Weiner. It originated from Weiner's representation of Michelle Gilbert. In 2019, Gilbert was represented by John Ritter, another attorney in Weiner's office, in a social security disability benefits claim. While this claim was still pending, Gilbert requested that Weiner represent her in a case against Cigna, the insurer that had been paying Gilbert long-term disability benefits but ceased payment to her when Cigna determined that she was no longer disabled. Weiner sent a demand letter to Cigna in order to restore Gilbert's benefits but failed to inform Gilbert about any subsequent communications Weiner had with Cigna.

Through Ritter's representation of Gilbert, she was awarded social security disability benefits in 2019. Weiner informed Gilbert that he had communicated to Cigna that Gilbert had been awarded social security disability benefits. In October of 2019, Weiner contacted Gilbert and informed her that he had a \$28,676 check from Cigna. Gilbert obtained the check, written from Weiner's account, from his office. Gilbert attempted several times, without success, to cash the check before she was finally able to do so. Weiner never informed Gilbert about the terms of the settlement with Cigna. When Gilbert

tried to contact Wiener at his office, she was informed that Wiener was no longer at his office due to substance abuse issues.

A few years later in December of 2021, Cigna informed Gilbert that their medical board determined that Gilbert was able to return to work. Additionally, Gilbert later received a communication from Cigna demanding repayment of the check from Cigna because she had been awarded social security disability benefits. It was at this time that Gilbert learned that Cigna had sent Wiener a check for \$36,804 because that is the amount that Cigna now demanded be repaid. Apparently, Wiener had kept a little over \$8,000 but never accounted for those funds to Gilbert. Cigna has been withholding disability benefits to Gilbert while Gilbert has been trying to repay the \$36,804. Gilbert still has not been contacted by Wiener to provide an accounting of these funds nor received an explanation of the original settlement agreement. In May of 2022, Gilbert filed a claim with the KBA's Client Security Fund prompting the Inquiry Commission to file a complaint.

Wiener was mailed a copy of the complaint by the Inquiry Commission by certified mail but did not respond. Service was also attempted by the Jefferson County Sheriff's Department, but that also was in vain. Wiener was ultimately served through the Kentucky Bar Association's Executive Director on July 20, 2021.

On September 28, 2022, the Inquiry Commission filed a Charge containing six counts which alleged Wiener violated the rules of professional

responsibility. Quoting from the Board's recommendation the Commission alleged:

Count I: SCR 3.130(1.3): "A lawyer shall act with reasonable diligence and promptness in representing a client."

The Commission alleged that Weiner failed to communicate to Cigna during his settlement negotiations with Cigna the fact that Ms. Gilbert had been awarded social security benefits and that Weiner failed to notify Ms. Gilbert of the terms of the settlement and why repayment was due to Cigna.

Count II: SCR 3.130(8.4)(c): "It is professional misconduct for a lawyer . . . to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation."

The Commission alleged that Weiner misrepresented to Ms. Gilbert that he had sent information to Cigna about the social security disability award when he had not done so.

Count III: SCR 3.130(8.4)(c): "It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation."

The Commission alleged that Weiner purposefully concealed information about the social security disability award from Cigna in order to negotiate a large settlement with Cigna and a large attorney fee.

Count IV: 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."

The Commission alleged that Weiner failed to keep his client informed about his communications and negotiations with Cigna, the terms of the settlement With Cigna, any potential obligation to repay sums to Cigna, and the amount of his fee.

Count V: 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 Commission alleged that Weiner retained a large fee without explaining the terms of his engagement or the settlement with Cigna, leaving his client with an obligation to repay the total amount of Cigna’s payment to Cigna.

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

The Commission alleged that Weiner failed to respond to the complaint filed by his client.

When the Commission issued the Charge in September of 2022, it was sent via certified mail to Weiner, who did not respond. Next, the KBA attempted to serve Wiener through the Jefferson County Sheriff’s Department, which was also unsuccessful. Finally, Wiener was again served via the KBA’s Executive Director pursuant to SCR 3.035 on December 14, 2022. Wiener neglected to file an answer to the Charge.

On March 17, 2023, the Board met and voted on the consolidated Charges against Wiener. In KBA File 22-DIS-0008, the Board considered four counts and convicted on all four. The votes were unanimous on Counts I, II, and III. On Count IV, fifteen members voted to convict and two voted not guilty. In KBA File 22-DIS-0123, the Board considered six counts against Wiener and voted to convict on four counts. The Board found Wiener not guilty on Counts II and III, while convicting on Counts I, IV, V, and VI. On the Counts the Board voted to convict, it did so unanimously, with the exception of Count VI, where the Board voted 15-2.

The Board next considered its options regarding what sanctions were appropriate for its recommendation. The Board considered Weiner's past history of discipline. On January 15, 2021, Weiner was administratively suspended from the practice of law for failure to pay dues. Weiner has also not reported any CLE credits since 2018. On January 21, 2021, this Court entered an Opinion and Order temporarily suspending Weiner pursuant to SCR 3.165(1)(b) and (d). *Kentucky Bar Ass'n v. Weiner*, 614 S.W.3d 494 (Ky. 2021). This Court found that Weiner did not have the physical or mental fitness to practice law. *Id.* at 496.

On September 30, 2021, this Court followed the recommendation of the Board of Governor's and imposed a five-year suspension. *Kentucky Bar Ass'n v. Weiner*, 630 S.W.3d 722 (Ky. 2021). Weiner's final two years of his five-year suspension were to be probated upon the condition that Weiner enroll and comply with the KYLAP monitoring program, complete the Ethics and Professionalism Enhancement Program, pay restitution, and pay the costs from the disciplinary action. *Id.* Weiner has failed to comply with any of these conditions.

On August 18, 2022, this Court again accepted the recommendations of the Board of Governor's and imposed another five-year suspension. *Kentucky Bar Ass'n v. Weiner*, 651 S.W.3d 776 (Ky. 2022). Weiner's suspension in this case ran concurrently to his previous suspension and he was required to comply with the KYLAP monitoring program, complete the Ethics and Professionalism Enhancement Program, pay restitution, and pay the costs of

the disciplinary proceeding. *Id.* Weiner has not complied in any way with this Court's Order.

The Board also considered any aggravating and mitigating factors. Because Wiener never participated in the disciplinary process, the Board was unable to consider any mitigating factors. However, the Board did find that there were several aggravating factors such as “(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) vulnerability of victims.”

The Board then voted on the recommended disposition and considered two different disciplinary recommendations. They considered either a five-year suspension running consecutively to his two current five-year suspensions, or whether to permanently disbar Wiener. The Board voted 14-3 to permanently disbar Wiener.

II. DISCIPLINE

In deciding whether to adopt the recommendations of the Board in permanently disbaring Wiener, this Court takes note of its precedent in *Kentucky Bar Ass'n v. Christian*, 320 S.W.3d 687 (Ky. 2010). In *Christian*, this Court adopted the recommendation of the Board of Governors and permanently disbarred Christian from the practice of law. *Id.* at 691. The charges against Christian stemmed from his role as an attorney and executor of an estate.

Christian wrote nine checks totaling \$13,000.00 to himself from the Estate. Christian admitted that he did not earn these fees either as executor or as attorney. Prior to his removal as executor in December 2003, Christian ignored multiple court orders

directing him to file inventories and settlements. Christian's inaction also caused the estate to be assessed \$9,517.00 by the Kentucky Revenue Cabinet.

Nearly three years after he was removed as executor of the estate, Christian signed an order admitting that he owed the estate \$19,600.00. Christian signed a corresponding promissory note as well. The trial commissioner found that this figure was a compromise of the amount Christian had paid himself and the amount of the tax assessment. Despite having signed the documents in 2006, Christian made no effort to repay any of the debt to the estate. Moreover, the trial commissioner found that after his removal as executor, Christian failed to expeditiously furnish the new executor with the estate files.

Id. at 689. Christian was found to have violated five counts total.¹ *Id.* Here, Wiener was found guilty of eight counts stemming from his representation of two different clients. Here, just as in *Christian*, Wiener's clients suffered great financial loss due to his actions. Unlike in *Christian*, however, Wiener had been subject to several disciplinary actions and has not complied with any of the orders from this Court.

Therefore, the Court adopts the recommendation of the Board of Governors and ORDERS:

- (1) Eric Tuley Wiener, KBA Member No. 95736, is hereby permanently disbarred from the practice of law in the Commonwealth of Kentucky;
- (2) In accordance with SCR 3.450, Wiener shall pay all costs associated with these disciplinary proceedings, said sum being \$906.15, for

¹ SCR 3.130-1.3, SCR 3.130-1.5, SCR 3.130-1.16(d), SCR 3.130-3.4(c), and SCR 3.130-8.4(c).

which execution may issue from this Court upon finality of this Opinion and Order;

- (3) Pursuant to SCR 3.390, Wiener shall, within ten (10) days from the entry of this Opinion and Order, notify all clients, in writing, of his inability to represent them; notify, in writing, all courts in which he has matters pending of his disbarment from the practice of law; and furnish copies of all letters of notice to the Office of Bar Counsel. Furthermore, to the extent possible, Wiener shall immediately cancel and cease any advertising activities in which he is engaged.

All sitting. All concur.

ENTERED: October 26, 2023


CHIEF JUSTICE