

Supreme Court of Kentucky

2023-SC-0327-KB

PHILIP R. PRICE

MOVANT

V.

IN SUPREME COURT

KENTUCKY BAR ASSOCIATION

RESPONDENT

OPINION AND ORDER

Philip R. Price, whose bar roster address is 1601 Business Center Ct., Louisville, KY 40299-2370, KBA Member Number 93477, moves this Court, pursuant to Supreme Court Rule (SCR) 3.480(2), to impose a sanction of a 30-day suspension, probated for one year with conditions. The Kentucky Bar Association (KBA) has no objection to Price's request. For the following reasons, the motion is granted.

I. BACKGROUND

In 2015, James Applewhite hired the law firm Isaacs & Isaacs, PSC, to represent him in a personal injury claim arising from a motor vehicle accident. Price was the assigned attorney from the firm. Mr. Applewhite passed away on July 3, 2016, and his wife, Wanda Faye Applewhite, continued with the claim as Administratrix of his estate.

Mr. Applewhite was a veteran and was treated for his injuries at Department of Veterans Affairs (VA) medical facilities. The VA determined, in 2016, that Mr. Applewhite's treatment did not meet eligibility requirements for payment for service-connected care and sent the Applewhites a letter memorializing that decision. The Applewhites provided Price with that determination letter.

Under the Federal Medical Care Recovery Act (FMCRA) the VA can impose a lien on the proceeds of a lawsuit settlement to repay the VA for services it rendered to the injured veteran. 42 U.S.C. § 2651. In June 2018, the VA asserted a lien against any future settlement proceeds received by Mr. Applewhite and noticed both Price and defense counsel. On August 2, 2018, the VA Office of General Counsel (OGC) confirmed the lien amount of \$65,377.90 via email with Price's paralegal. On September 13, 2018, Price's paralegal sent an email to OGC requesting a reduction in the lien amount. The next day, OGC responded with a required compromise worksheet and notice that the FMCRA makes no provisions for reduction of the VA's lien unless there is a shortage of settlement proceeds to go around.

Meanwhile, on August 22, 2018, Mrs. Applewhite executed a settlement agreement settling her husband's personal injury claim for \$245,000. On October 11, 2018, Price sent Mrs. Applewhite a letter regarding the settlement, the contents of which can only be described as unclear.

Price's letter memorialized that he had settled Mr. Applewhite's personal injury claim, included a check for \$123,457.22, and required Mrs. Applewhite

to sign the letter to acknowledge receipt of the check. Aside from those foundational details, the letter curiously next stated that Price and Isaacs & Isaacs “have reduced our fee by \$63,500.00 but will collect this back before disbursing the balance of the escrow account to you.” The letter went on to state that “no money is being withheld from James’ settlement to pay any outstanding medical bills and/or obligations that may exist in relation to this accident.” However, the very next sentence stated that Isaacs & Isaacs would be withholding \$100,000 to deposit into an escrow account to use to “negotiate the payment of James’ outstanding lien with Department of Veteran[s] Affairs.” Despite Price’s knowledge that the amount of the VA’s lien was \$65,377.90, the letter then stated that Price could not guarantee the \$100,000 would be enough to satisfy the lien. Never in this letter did Price meaningfully explain to Mrs. Applewhite that any funds remaining in the escrow account after payment of the lien would be paid to the firm. For the next three years, Price failed to pay the VA lien, told Mrs. Applewhite that he was negotiating a reduction of the lien, and led her to believe that she was entitled to any funds remaining in the Issacs & Issacs escrow account.

Nearly one year after he sent the above-described letter, Price sent Mrs. Applewhite a check for \$34,622.10, reducing the balance of the Isaacs & Isaacs escrow account to exactly \$65,377.90 – the same amount owed to the VA. Throughout 2019, 2020, and 2021, OGC informed Price there would not be a reduction in the lien, and Price repeatedly told OGC personnel that he was sending, or had sent, a check to satisfy the lien. Price did not pay the lien.

During this time, Price was also on notice that the Department of the Navy had asserted a second lien against Mrs. Applewhite's settlement proceeds in the amount of \$3,275.78. Price paid that lien on December 2, 2020, reducing the balance of the Isaacs & Isaacs escrow account to \$62,102.12.

Due to nonpayment of the VA lien, OGC referred the case to the United States Attorney's Office for collection in January 2021. Price had notice of this referral.

After years of failure to pay the VA lien, Price met with Mrs. Applewhite in September 2021 and told her that she would receive money from the escrow account in two weeks. Price later told Mrs. Applewhite he had put a check in the mail, and then that he would hand deliver a check to her.

At their September 2021 meeting, Price did not disclose to Mrs. Applewhite that OGC had referred the case to the United States Attorney's Office for collection. But at some point over the next month, Price did inform Mrs. Applewhite about the collections referral, and, on October 15, 2021, Mrs. Applewhite filed the bar complaint against Price giving rise to this case.

Isaacs & Issacs finally sent the remaining balance of its escrow account, \$62,101.12, to the VA on November 11, 2021. Price did not inform Mrs. Applewhite of this payment.

It appears that Price ultimately agreed to take a reduced fee in this case, and, in fact, took no fee.

The KBA Inquiry Commission charged Price with violating SCR 3.130(1.3) for a lack of diligence, SCR 3.130(1.4)(a)(3) for failing to keep his

client reasonably informed, SCR 3.130(1.4)(b) for failing to reasonably explain matters to his client, and SCR 3.130(8.4)(c) for engaging in misrepresentation. Price admits to all four charges.

II. ANALYSIS

Pursuant to SCR 3.480(2), Price and the KBA have agreed to a negotiated sanction of a 30-day suspension, probated for one year. Because this Court has imposed similar sanctions in instances of comparable conduct, Price has overall been cooperative throughout the discipline process, and, prior to this case, Price has received no private admonitions, suspensions, or other discipline, we approve the sanction agreed to by the parties.

In *Kentucky Bar Association v. Burgin*, this Court imposed a 60-day suspension, with 30 days probated for two years, with conditions, for an attorney's violation of SCR 3.130(1.3). 412 S.W.3d 872 (Ky. 2013). In 2007, Burgin settled a \$5,000 personal injury claim for a client that was subject to a lien filed by Medicaid in excess of \$3,000. *Id.* at 873. Rather than deposit the check, satisfy the lien, and pay his client the remaining settlement proceeds, Burgin placed the check in his file where it remained for three years until his client filed a Bar Complaint. *Id.* Burgin would not right his wrong until 2013 when he paid all of the settlement proceeds to his client, did not take a fee, and stated he intended to pay the Medicaid lien from his own funds. *Id.* at 874.

While it may be true that the \$100,000 Price withheld from Mrs. Applewhite dwarfs the \$5,000 at issue in *Burgin*, it is important to note that both clients in these cases eventually escaped with no monetary harm. Here,

Mrs. Applewhite likely received **more** than the agreed benefit of her representation when Price sent her a check for the difference between the \$100,000 he withheld and the amount of the VA lien. There is also no indication that Mrs. Applewhite was harmed by the collections proceedings brought on by Price's lack of diligence. It also appears Price took no fee in this case. The true harm in this case arises from Price's continued misrepresentations that instilled an expectation in his client that the lien would somehow be reduced, and she would be entitled to all or a portion of the remaining escrowed funds.

In doling out its sanction in *Burgin*, this Court adopted the Trial Commissioner's determinations that Burgin's "pattern of conduct leaves much to be desired and exhibits a clear violation of the duties owed to his client and the profession as a whole." *Id.* at 875. The Trial Commissioner also considered that Burgin had a disciplinary history that included a prior probated suspension. Here, Price has no history of prior private admonitions, suspensions, or other discipline.

This Court has also imposed 30-day suspensions where attorneys have similarly violated SCR 1.130(1.3), 1.4(a)(3), and 8.4(c). In *Deskins v. Kentucky Bar Association*, attorney Deskins repeatedly failed to timely contact and inform his client who he was representing in a divorce action. 432 S.W.3d 163 (Ky. 2014). For months, Deskins also made misrepresentations to his client until she ultimately discovered Deskins had never filed a case on her behalf. *Id.* at 165. Deskins's misconduct occurred over the course of less than one year. *Id.*

In *Kentucky Bar Association v. Gibson*, attorney Gibson likewise failed to timely contact and inform a client he was representing in a divorce action. 525 S.W.3d 90 (Ky. 2017). When Gibson did, in fact, correspond with his client, the Trial Commissioner found his responses were often false and misleading. *Id.* at 92. Gibson made several misrepresentations that he had filed certain documents and that his client's divorce would be finalized by a certain date when that outcome was factually impossible because Gibson had failed to file the proper documents. *Id.* Gibson's misconduct lasted less than one year. *Id.* at 91-92. In both of these cases, Deskins and Gibson each received 30-day suspensions. *Id.* at 92; *Deskins*, 432 S.W.3d at 166-67. Deskins's suspension was probated for one year, with conditions. Neither was the result of a negotiated sanction.

In the case at hand, Price made similar misrepresentations to Mrs. Applewhite that ultimately left her uninformed as to the state of her case. Price repeatedly told Mrs. Applewhite he was negotiating with the VA to reduce her lien, when he was on notice that the VA would not reduce the lien. Price also made several statements that he had mailed Mrs. Applewhite a check for her remainder of the settlement proceeds, or that he planned to deliver such a check, when he made no such efforts. Unlike the two prior cases, Price's misconduct spanned over three years.

This Court feels it is also important to note that Price has seemingly been cooperative during this disciplinary process – something the attorneys in *Deskins* and *Gibson* cannot claim. Price has admitted to all charges filed

against him, taken responsibility for his actions, and cooperated with the KBA to reach a settlement agreement. Deskins initially failed to respond to his bar complaint, resulting in a SCR 1.30(8.1)(b) charge, and Gibson disputed he had violated any rules of professional conduct. *Deskins*, 432 S.W.3d at 165; *Gibson*, 525 S.W.3d at 90.

The KBA and Price have agreed to a 30-day suspension, probated for one year, with conditions. This Court has imposed similar sanctions for similar misconduct, Price has seemingly cooperated during this disciplinary process, and Price has not faced any prior discipline from the KBA. Therefore, we hold a 30-day suspension, probated for one year, with conditions, is appropriate.


ACCORDINGLY, IT IS HEREBY ORDERED THAT:

1. Philip R. Price is found guilty of one count of violating SCR 3.130(1.3), one count of violating SCR 3.130(1.4)(a)(3), one count of violating SCR 3.130(1.4)(b), and one count of violating SCR 3.130(8.4)(c).
2. Price is suspended from the practice of law in Kentucky for a period of 30 days to be probated for one year, subject to the following conditions.
3. Price shall not receive any additional disciplinary Charges in the next year.
4. Pursuant to SCR 3.450, Price shall pay all costs associated with the

investigation and prosecution of this proceeding, totaling \$82.81.

All sitting. All concur.

ENTERED: September 28, 2023.

A handwritten signature in black ink, reading "Suzanne B. Van Meter". The signature is written in a cursive style with a horizontal line extending from the end of the name.

CHIEF JUSTICE