

# SUPREME COURT OF KENTUCKY

## Inquiry Commission v. Sivalls

118 S.W.3d 590 (Ky. 2003) · Decided October 23, 2003

### SUMMARY

The Kentucky Supreme Court temporarily suspended Tammie Jones Sivalls from practicing law after finding probable cause to believe that she misappropriated or improperly handled client funds and posed a substantial threat of harm to clients or the public. The order required her to notify clients, cease advertising, and face disciplinary proceedings unless she resigned under terms of disbarment.

### CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                |
|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Kentucky                                                                                                                                                                                                                                                                      |
| WRITING FOR THE COURT | Joseph E. Lambert                                                                                                                                                                                                                                                                              |
| JURISDICTION          | Kentucky                                                                                                                                                                                                                                                                                       |
| DECIDED               | October 23, 2003                                                                                                                                                                                                                                                                               |
| DISPOSITION           | other                                                                                                                                                                                                                                                                                          |
| PROCEDURAL POSTURE    | The Inquiry Commission petitioned the Supreme Court of Kentucky for an order temporarily suspending Respondent Tammie Jones Sivalls from the practice of law based on alleged misappropriation or improper handling of client funds and a substantial threat of harm to clients or the public. |
| STANDARD OF REVIEW    | The Court reviewed the Inquiry Commission's submitted materials to determine whether probable cause existed under SCR 3.165(l)(a) and (l)(b).                                                                                                                                                  |
| PRECEDENTIAL VALUE    | Published Kentucky Supreme Court opinion and order                                                                                                                                                                                                                                             |

### TOPICS

administrative law

bankruptcy

### PRACTICE AREAS

legal ethics and professional responsibility

attorney discipline

administrative law

bankruptcy

### QUESTIONS PRESENTED

1. Whether the submitted materials established probable cause to believe that Sivalls had misappropriated or otherwise improperly dealt with funds held for others.
2. Whether the submitted materials established probable cause to believe that Sivalls's conduct posed a substantial threat of harm to her clients or to the public.
3. Whether temporary suspension and related protective measures were warranted under SCR 3.165.

#### **HOLDINGS**

1. The Court concluded that probable cause existed to believe Sivalls was or had been misappropriating funds held for others to her own use or was otherwise improperly dealing with those funds.
2. The Court concluded that probable cause existed to believe Sivalls's conduct posed a substantial threat of harm to her clients or to the public.
3. Sivalls was temporarily suspended from practicing law in Kentucky effective immediately and until superseded by a subsequent order; the Court also required initiation of disciplinary proceedings, client notifications, and cessation of advertising.

#### **KEY QUOTATIONS**

*“Upon review of the materials provided by the Inquiry Commission, the Court concludes that there is probable cause to believe Respondent “is or has been misappropriating funds the attorney holds for others to her own use or has been otherwise improperly dealing with said funds,” SCR 3.165(l)(a), and that there is probable cause to believe that her “conduct poses a substantial threat of harm to her clients or to the public.” SCR 3.165(l)(b).” (592)*

#### **FACTUAL BACKGROUND**

Sivalls was indicted in Montgomery County, Kentucky, on felony charges arising from the alleged conversion of \$26,922.40 in proceeds from a government check payable to a client. Another client alleged that Sivalls wrongfully retained approximately \$16,500 from an insurance settlement. Several additional clients alleged that they paid retainers for bankruptcy matters that Sivalls neither filed nor refunded, and the United States Bankruptcy Court for the Eastern District of Kentucky had suspended her from practice there for failing to respond to court orders.

#### **PROCEDURAL HISTORY**

The Inquiry Commission submitted information including criminal indictments, sworn client complaints, and an order from the United States Bankruptcy Court for the Eastern District of Kentucky suspending Sivalls from practicing in that court. Sivalls filed no response to the petition. The Kentucky Supreme Court reviewed the submitted materials and entered an order temporarily suspending her from practicing law, directing initiation of disciplinary proceedings, and imposing notice and advertising obligations.

#### **DISPOSITION**

other

## OPINION

Inquiry Commission v. Sivals 118 S.W.3d 590

LAMBERT, J.

### \*591OPINION AND ORDER

Pursuant to SCR 3.165(l)(a) and SCR 8.165(l)(b), the Inquiry Commission has petitioned this Court to enter an order temporarily suspending the Respondent, Tammie Jones Sivals of Mt. Sterling, Kentucky, from the practice of law in the Commonwealth of Kentucky. The Inquiry Commission alleges that probable cause exists to believe that Respondent has misappropriated client funds for her own use or has otherwise improperly dealt with funds, SCR 3.165(l)(a), and that her dishonesty or negligence in handling funds entrusted to her presents a real and present danger to the public. SCR 3.165(l)(b). In support of its petition, the Inquiry Commission has submitted the following information about acts of alleged wrongdoing by Respondent. On June 10, 2003, Respondent was indicted by a grand jury in Montgomery County, Kentucky, on two felony counts: one count of criminal possession of a forged instrument in the first degree, KRS 516.050 (Class C felony), and one count of theft by failure to make required disposition of property, KRS 514.070 (Class C felony). Both of these counts stem from the alleged conversion by Sivals of the proceeds of a check from the United States government to her client, Luther McIntosh, in the amount of \$26,922.40. The Inquiry Commission also attaches a sworn complaint, dated July 16, 2003, and filed by Wilgus Combs, which alleges that Respondent wrongfully retained approximately \$16,500.00 of a check paid to Combs by Allstate Insurance Co. in settlement of the personal injury claim Respondent litigated for him. Attached with this complaint were several letters that Combs's current attorney sent Respondent inquiring about the settlement proceeds. The Inquiry Commission also cites several sworn complaints from individuals who retained Respondent to file bankruptcy claims for them. Each of these individuals claims to have paid Respondent a retainer fee to handle a bankruptcy claim,<sup>1</sup> and that Respondent neither filed the claim with the bankruptcy court nor returned the fee. Finally, the Inquiry Commission includes a copy of an order issued \*592on June 24, 2003, by the United States Bankruptcy Court, Eastern District of Kentucky at Lexington, suspending Respondent from practicing law in that court for a period of one year. This order stemmed from Respondent's failure to respond to that court's orders, including a show cause order, issued in connection with the bankruptcy case she had filed for Ralph and Bonita King. Respondent has not tendered any response to the Inquiry Commission's petition. Upon review of the materials provided by the Inquiry Commission, the Court concludes that there is probable cause to believe Respondent "is or has been misappropriating funds the attorney holds for others to her own use or has been otherwise improperly dealing with said funds," SCR 3.165(l)(a), and that there is probable cause to believe that her "conduct poses a substantial threat of harm to her clients or to the public." SCR 3.165(l)(b). ACCORDINGLY, IT IS THEREFORE ORDERED THAT: 1. Respondent is temporarily suspended from the practice of law in the Commonwealth effective this date and until this order is superseded by subsequent order.

2. If it has not already done so, the Inquiry Commission shall initiate disciplinary proceedings against Respondent pursuant to SCR 3.160 unless Respondent resigns under terms of disbarment.
3. Pursuant to SCR 3.165(5), Respondent shall, within twenty (20) days of the date of entry of this order, notify in writing any and all clients of her inability to continue to represent them and shall furnish copies of such written notifications to the Director of the Kentucky Bar Association.
4. Pursuant to SCR 3.165(6), Respondent shall, to the extent reasonably possible, immediately cancel and cease any and all advertising activities in which she is engaged.

All concur. ENTERED: October 23, 2003. /s/ Joseph E. Lambert CHIEF JUSTICE . Nancy Crouch claims to have paid Respondent \$750.00 plus a \$200.00 filing fee for the filing of her bankruptcy claim. Gwen Roberts claims to have paid Respondent in full for handling her bankruptcy claim. Buena Vista Burgette claims to have paid Respondent \$900.00 to file her bankruptcy claim.