

SUPREME COURT OF KENTUCKY

Kentucky Bar Ass'n v. Klapheke

122 S.W.3d 64 (Ky. 2003) · Decided December 18, 2003

SUMMARY

The Kentucky Supreme Court upheld two concurrent one-year suspensions imposed on William T. Klapheke for professional misconduct arising from his representation of two estates while suspended from practicing law. The misconduct included failing to notify clients of his suspension, continuing to perform legal services, failing to complete estate matters, and failing to respond to disciplinary authorities; costs of \$732.85 were also assessed.

CASE DETAILS

COURT	Supreme Court of Kentucky
WRITING FOR THE COURT	Lambert, Chief Justice; Lambert, C.J.; Cooper, J.; Johnstone, J.; Keller, J.; Stumbo, J.; Graves, J.; Wintersheimer, J.
JURISDICTION	Kentucky
DECIDED	December 18, 2003
DISPOSITION	other
PROCEDURAL POSTURE	Attorney-disciplinary proceeding in which the Board of Governors recommended two concurrent one-year suspensions following the respondent's existing three-year suspension.
PRECEDENTIAL VALUE	Published Kentucky Supreme Court disciplinary opinion

TOPICS

probate estate administration probate procedure

PRACTICE AREAS

legal ethics attorney discipline probate and estate administration

QUESTIONS PRESENTED

1. Whether Klapheke committed the charged violations of the Kentucky Supreme Court Rules in the two disciplinary matters.
2. What discipline should be imposed for the violations in light of Klapheke's existing three-year suspension.

HOLDINGS

1. Klapheke was guilty of the charged violations arising from his representation of the Lockhart and Boles estates, including failing to notify clients of his suspension, failing to communicate, failing to comply with tribunal requirements, failing to respond to disciplinary authorities, and engaging in the unauthorized practice of law.
2. Klapheke was suspended from the practice of law for one year for each disciplinary matter, with the suspensions concurrent with each other and commencing after completion of his existing three-year suspension.

KEY QUOTATIONS

“Pursuant to SCR 3.370(10), we hereby adopt the recommendation of the Board.” (122 S.W.3d at 66)

“Each one-year suspension ordered above shall be concurrent-with the other and commence at the conclusion of his present three-year suspension.” (122 S.W.3d at 66)

FACTUAL BACKGROUND

Klapheke represented the administrators of the Lois H. Lockhart estate and the Judge M. Boles estate while under a three-year suspension from practicing law. He failed to notify the estate representatives of his suspension, failed to complete or properly finalize estate matters, continued performing legal work for the Boles estate, and failed to respond to disciplinary complaints. Evidentiary hearings resulted in findings that he committed the charged violations.

PROCEDURAL HISTORY

Klapheke was charged in two disciplinary matters with professional misconduct arising from his representation of two estates and his failure to respond to bar complaints. After evidentiary hearings, a trial commissioner found him guilty of all charged violations. The Board of Governors recommended one-year suspensions in each matter, concurrent with each other and consecutive to his existing three-year suspension, and the Supreme Court of Kentucky adopted that recommendation.

DISPOSITION

other

OPINION

Kentucky Bar Ass'n v. Klapheke 122 S.W.3d 64

LAMBERT, J.

OPINION AND ORDER

LAMBERT, Chief Justice. William T. Klapheke, II, KBA No. 39143, was adjudged guilty of six counts of professional misconduct arising out of two separate disciplinary cases, KBA File 8579 and 8597. The Board of Governors (“Board”) has recommended that Klapheke be suspended for

one year following the conclusion of his current three-year suspension. The first disciplinary case presents the following facts. On February 15, 1999, Respondent was hired by the co-administrators of the Lois H. Lockhart estate. On November 22, 2000, this Court suspended Respondent from the practice of law for three years. At that time the Lockhart estate was not finalized, and Respondent failed to notify the co-administrators of his suspension and inability to further represent them. In the spring of 2001, the Barren District Court notified the co-administrators that they had thirty days to file the final report for the estate. They notified Respondent but when he failed to take action the co-administrators sent Klapheke a letter requesting return of \$1000.00 of the \$1847.00 fee they paid to him. On May 21, 2001, a bar complaint alleging misconduct was filed with the Kentucky Bar Association. Respondent failed to respond to the Kentucky Bar Association after he was served with the bar complaint. On November 5, 2001, the Inquiry Commission charged Respondent with violating SCR 3.130 — 1.16(d) (duties upon termination of representation); SCR 3.130-1.4(a) and (b) (duties to communicate with clients); SCR 3.130-3.4(c) (duty to obey the rules of a tribunal); and SCR 3.130-8.1(b) (duty to respond to a disciplinary authority). A full evidentiary hearing was held by the trial commissioner, and Respondent was found guilty of committing the alleged misconduct. The second case presents these facts. On February 18, 2000, Ms. Boles, the surviving spouse, was appointed administrator of the Judge M. Boles estate and Mrs. Boles hired Respondent as counsel for the estate. As in the other case, Respondent did not notify Ms. Boles of his suspension from the practice of law ordered by this Court on November 22, 2000. He continued to represent the estate through correspondence to beneficiaries of the estate, preparation of documents, and solicitation of answers to questions concerning the estate. On November 29, 2000, Respondent wrote Ms. Boles declaring to her that the estate was finalized; yet the estate was not complete on that date. On May 31, 2001, a bar complaint was filed and again Respondent did not file a response. On November 5, 2001, the Inquiry Commission charged Respondent with violating SCR 3.130-5.5(a) (unauthorized practice of law) and SCR 3.130-8.1(b) (duty to respond to a disciplinary authority). Following the evidentiary hearing, he was found guilty of committing the alleged misconduct. The Board considered both of these cases and in light of Respondent's previous suspension, which he is still serving, recommended one additional year of suspension for each case to be concurrent with the other beginning at the conclusion of his current three-year suspension. Pursuant to SCR 3.370(10), we hereby adopt the recommendation of the Board. Accordingly, IT IS HEREBY ORDERED:

1. Respondent, William T. Klapheke, II, is suspended from the practice of law in Kentucky for a period of one year for his violations in KBA File 8579 of SCR 3.130-1.16(d), SCR 3.130-1.4(a) and (b), SCR 3.130-3.4(c), SCR 3.130-8.1(b).
2. Respondent, William T. Klapheke, II, is suspended from the practice of law in Kentucky for a period of one year for his violations in KBA File 8597 of SCR 3.130-5.5(a) and SCR 3.130-8.1(b).
3. Each one-year suspension ordered above shall be concurrent-with the other and commence at the conclusion of his present three-year suspension.

4. In accordance with SCR 3.450 and SCR 3.480(3), Respondent is directed to pay all costs associated with the disciplinary proceedings against him, said sum being \$732.85 and for which execution may issue from this Court upon finality of this opinion and order.

LAMBERT, C.J., and COOPER, JOHNSTONE, KELLER, and STUMBO, JJ., concur. GRAVES and WINTERSHEIMER, JJ., would grant review.