

SUPREME COURT OF KENTUCKY

Kentucky Bar Ass'n v. Kleinsmith

408 S.W.3d 746 (Ky. 2013) · Decided September 26, 2013

SUMMARY

The Kentucky Supreme Court granted the Kentucky Bar Association’s petition for reciprocal discipline against Philip M. Kleinsmith. The court imposed a public reprimand and one year of probation, subject to early termination upon completion of an approved ethics program, based on discipline previously imposed by the Arizona Supreme Court.

CASE DETAILS

COURT	Supreme Court of Kentucky
WRITING FOR THE COURT	John D. Minton, Jr.
JURISDICTION	Kentucky
DECIDED	September 26, 2013
DISPOSITION	other
PROCEDURAL POSTURE	The Kentucky Bar Association petitioned the Supreme Court of Kentucky for reciprocal attorney discipline based on an Arizona Supreme Court disciplinary judgment. The court issued a show-cause order, and Kleinsmith failed to respond.
STANDARD OF REVIEW	Under SCR 3.435(4), identical reciprocal discipline is imposed unless the respondent proves by substantial evidence a lack of jurisdiction or fraud in the out-of-state proceeding, or that the established misconduct warrants substantially different discipline in Kentucky.
PRECEDENTIAL VALUE	Published Kentucky Supreme Court opinion and order
PARTIES	Kentucky Bar Association v. Philip M. Kleinsmith

TOPICS

appellate procedure

sanctions

civil procedure

PRACTICE AREAS

legal ethics

attorney discipline

professional responsibility

QUESTIONS PRESENTED

1. Whether the Arizona Supreme Court's disciplinary judgment constituted a final adjudication establishing Kleinsmith's misconduct for purposes of Kentucky reciprocal discipline.
2. Whether Kleinsmith demonstrated a jurisdictional defect, fraud, or grounds for substantially different discipline so as to avoid identical reciprocal discipline in Kentucky.
3. What reciprocal discipline should be imposed under SCR 3.435.

HOLDINGS

1. A final adjudication in another jurisdiction that an attorney was guilty of misconduct conclusively establishes that misconduct for purposes of a Kentucky disciplinary proceeding.
2. An attorney is subject to identical discipline in Kentucky following an out-of-state disciplinary judgment unless the attorney proves by substantial evidence a lack of jurisdiction or fraud in the out-of-state proceeding, or that the misconduct warrants substantially different discipline in Kentucky.

KEY QUOTATIONS

"In all other respects, a final adjudication in another jurisdiction that an attorney has been guilty of misconduct shall establish conclusively the misconduct for purposes of a disciplinary proceeding in this State." (408 S.W.3d at 747)

FACTUAL BACKGROUND

Kleinsmith improperly certified nine Arizona cases for arbitration between January and September 2010, filed two complaints that were dismissed for lack of service, and made errors in a Florida notice of sale and certificate of title. He also failed to appear at two Wisconsin hearings, resulting in a dismissal with prejudice and costs, and attempted to withdraw from a Texas matter without prior notice to his client. The Arizona Supreme Court entered a final judgment publicly reprimanding him and placing him on probation for one year after he admitted violating seven Arizona professional-conduct rules.

PROCEDURAL HISTORY

The Arizona Supreme Court publicly reprimanded Kleinsmith and placed him on one-year probation after he admitted violating seven Arizona Rules of Professional Conduct. The Kentucky Bar Association then sought reciprocal discipline under SCR 3.435. After Kleinsmith failed to respond to the Kentucky court's show-cause order, the court granted the petition and imposed reciprocal discipline.

DISPOSITION

other