

SUPREME COURT OF KENTUCKY

Kentucky Bar Association v. Whitehead

302 S.W.3d 66 (Ky. 2010) · No. 2009-SC-000541-KB · Decided January 21, 2010

SUMMARY

The Supreme Court of Kentucky imposed reciprocal discipline on Kenneth J. Whitehead after the Supreme Court of Arizona suspended him from practicing law for four years. The court ordered a four-year Kentucky suspension, restitution of \$112,464.80 to former clients, conditional reinstatement, payment of proceeding costs, and client-notification requirements.

CASE DETAILS

COURT	Supreme Court of Kentucky
WRITING FOR THE COURT	John D. Minton, Jr.; All sitting
JURISDICTION	Kentucky
DECIDED	January 21, 2010
DOCKET	2009-SC-000541-KB
DISPOSITION	other
PROCEDURAL POSTURE	The Kentucky Bar Association moved for reciprocal discipline after the Supreme Court of Arizona suspended Whitehead from practicing law for four years and ordered him to pay restitution. After the Kentucky Supreme Court issued a show-cause order, Whitehead failed to respond.
STANDARD OF REVIEW	Under SCR 3.435(4), reciprocal discipline is imposed identically unless the respondent proves by substantial evidence a lack of jurisdiction or fraud in the foreign proceeding, or that the established misconduct warrants substantially different discipline in Kentucky.
PRECEDENTIAL VALUE	Published Kentucky Supreme Court disciplinary opinion and order; binding on reciprocal-discipline proceedings to the extent of its stated rules.
PARTIES	Kentucky Bar Association v. Kenneth J. Whitehead

TOPICS

remedies restitution costs civil procedure

PRACTICE AREAS

legal ethics

attorney discipline

reciprocal discipline

QUESTIONS PRESENTED

1. Whether the Kentucky Supreme Court was required to impose reciprocal discipline after Whitehead failed to show cause why the Arizona discipline should not be imposed identically.
2. Whether Whitehead's Kentucky suspension should run concurrently with his Arizona suspension or begin when the Kentucky order was entered.
3. What restitution, reinstatement, cost, and client-notification conditions should accompany the reciprocal suspension.

HOLDINGS

1. The Kentucky Supreme Court must impose identical reciprocal discipline because Whitehead failed to establish any SCR 3.435(4) exception by substantial evidence.
2. A final adjudication of attorney misconduct in another jurisdiction conclusively establishes the same misconduct for purposes of a Kentucky reciprocal-discipline proceeding.
3. Whitehead's four-year Kentucky suspension would begin on the date of entry of the Kentucky Opinion and Order rather than run concurrently with the prior Arizona suspension.

KEY QUOTATIONS

“If an attorney licensed to practice law in this Commonwealth receives discipline in another jurisdiction, SCR 3.435(4) requires this Court to impose the identical discipline unless Respondent proves by substantial evidence: (a) a lack of jurisdiction or fraud in the out-of-state disciplinary proceeding, or (b) that misconduct established warrants substantially different discipline in this State.” (69)

“Whitehead's four-year suspension will begin to run from the date of the entry of this Opinion and Order.” (70)

FACTUAL BACKGROUND

Whitehead operated a law firm in Arizona that represented approximately 400 to 500 clients before financial problems led to its closure in 2002. Following the closure, he failed to provide accountings, return unearned fees, protect former clients' interests, and respond to numerous bar inquiries and disciplinary complaints. The Arizona disciplinary proceedings resulted in a four-year suspension, restitution of \$112,464.80 to twenty-eight clients, and two years of probation upon reinstatement.

PROCEDURAL HISTORY

Whitehead was disciplined by the Supreme Court of Arizona for numerous ethical violations arising from the negligent closure of his law firm, including failures to account for client funds, refund unearned fees, protect client interests, and respond to disciplinary authorities. The Kentucky Bar Association then sought reciprocal discipline under SCR 3.435. The Kentucky Supreme Court granted the motion and imposed a four-year

suspension beginning on January 21, 2010, restitution, conditional reinstatement requirements, costs, and client-notification obligations.

DISPOSITION

other

CASES CITED

- KBA v. Trainor, 145 S.W.3d 839 (Ky. 2004)
- KBA v. Marsick, 986 S.W.2d 899 (Ky. 1999)
- KBA v. Sullivan, 979 S.W.2d 104 (Ky. 1998)

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