

SUPREME COURT OF KENTUCKY

Kentucky Bar Ass'n v. Zimmerman

69 S.W.3d 465 (Ky. 2001) · Decided November 21, 2001

SUMMARY

The Kentucky Supreme Court permanently disbarred Charles H. Zimmerman after finding him guilty of multiple violations involving neglect of client matters, failure to communicate, dishonesty, noncompliance with court and disciplinary authorities, and practicing while suspended. The court adopted the Board of Governors' recommendation, ordered Zimmerman to pay disciplinary costs, and required notice to courts and clients.

CASE DETAILS

COURT	Supreme Court of Kentucky
WRITING FOR THE COURT	Joseph E. Lambert, Chief Justice
JURISDICTION	Kentucky
DECIDED	November 21, 2001
DISPOSITION	other
PROCEDURAL POSTURE	Attorney-discipline proceeding in which the Kentucky Bar Association submitted the Board of Governors' findings and recommendation of permanent disbarment. The respondent filed no notice of review after the Board considered the remanded charges and additional disciplinary charges.
PRECEDENTIAL VALUE	Published Kentucky Supreme Court disciplinary opinion

TOPICS

sanctions costs discovery dispute civil procedure remedies

PRACTICE AREAS

attorney discipline professional responsibility legal ethics

QUESTIONS PRESENTED

1. Whether the Board of Governors' findings of misconduct in the six disciplinary files should be adopted.
2. Whether permanent disbarment, with no eligibility to apply for reinstatement, was the appropriate sanction.

3. Whether Zimmerman should be assessed the costs of the disciplinary proceedings and required to notify courts and clients of his inability to provide further legal services.

HOLDINGS

1. The Supreme Court of Kentucky adopted the Board of Governors' findings that Zimmerman was guilty of all counts in the six disciplinary files.
2. Zimmerman was permanently disbarred from the practice of law in Kentucky and was prohibited from applying for reinstatement.
3. Zimmerman was ordered to pay \$1,235.29 in disciplinary costs and, within ten days of entry of the order, notify courts and clients in writing that he could not provide further legal services.

KEY QUOTATIONS

“Upon consideration of the record and recommendation of the Board of Governors, this Court orders that Charles H. Zimmerman be and is hereby permanently disbarred from the practice of law in Kentucky, and he shall not be permitted to apply for reinstatement of his license to practice law.” (468)

FACTUAL BACKGROUND

The Board found that Zimmerman repeatedly neglected client matters, failed to communicate with clients, failed to comply with court and discovery orders, misrepresented the status of matters, failed to respond to disciplinary authorities, mishandled client funds or retainers, and continued representing a client while suspended. The charges arose from six Kentucky Bar Association disciplinary files involving multiple clients and matters. The Board found him guilty of all counts and recommended permanent disbarment.

PROCEDURAL HISTORY

The Kentucky Bar Association filed the Board of Governors' conclusions of law and recommendations concerning three consolidated disciplinary files. On remand, the Board considered those charges together with three additional files, found Charles H. Zimmerman guilty of all counts, and recommended permanent disbarment. No notice of review was filed, and the Supreme Court of Kentucky adopted the Board's recommendations and entered an order of permanent disbarment.

DISPOSITION

other

OPINION

Kentucky Bar Ass'n v. Zimmerman 69 S.W.3d 465

LAMBERT, J.

OPINION AND ORDER OF PERMANENT DISBARMENT

On August 16, 2000, the Kentucky Bar Association filed with this Court its Conclusions of Law and Recommendations of the Board of Governors in KBA File Nos. 7426, 7518, and 7721. These

files represented three consolidated charges against Charles H. Zimmerman of Louisville, Kentucky. The Board found Zimmerman guilty of all charges contained in the files and recommended that Zimmerman be disbarred. Zimmerman filed a notice of review, in which he argued that the Board's On remand, the Board considered the remanded charges along with three additional, unrelated charges (KBA File Nos. 7887, 8024, and 8305) that had been brought against Zimmerman in the interim. Zimmerman did not present any mitigating evidence or respond to the additional charges against him. The Board found Zimmerman guilty of all counts contained in all six charges and recommends that Zimmerman be permanently disbarred. No notice of review has been filed in this case. We adopt the recommendations of the Board. The Board's relevant findings and conclusions as to each charge are set forth below.

FILE NO. 7126

The Brownsboro Road Area Development Association (BRAD) retained Zimmerman in connection with a possible zoning dispute. BRAD paid Zimmerman a retainer of \$1,500 in January of 1997. No action in the case had occurred by May of the same year. BRAD decided at that time it did not wish to pursue the matter. After informing Zimmerman of this decision, BRAD asked Zimmerman to return \$1,000 of the retainer. Zimmerman never responded to BRAD's request for return of part of the retainer. BRAD eventually filed a bar complaint against Zimmerman, who failed to respond to the complaint. Further, Zimmerman failed to respond to three additional warnings, one of which was hand-delivered to Zimmerman by Bar Counsel. Another warning was delivered by a Jefferson County Deputy Sheriff along with a subpoena requesting his billing records. Count I of this file charges Zimmerman with failing to promptly reply to an information request and with failing to keep his client reasonably informed in violation of SCR 3.130-1.4. Count II charges Zimmerman with failing to respond to an order of a tribunal in violation of SCR 3.130-3.4(c). The Board found Zimmerman guilty of both counts by a vote of 12 to 0, with one member abstaining.

FILE NO. 7518

The Camp Taylor Fire Protection District retained Zimmerman to represent it in a boundary dispute with another local fire district. At issue in the case was which district was obligated to serve the disputed property and, consequently, which district would be entitled to receive the tax revenue generated by the disputed properties. Zimmerman was fined \$300 for failing to comply with discovery requests and was subsequently ordered to so comply. He neither paid the fine, nor complied with the discovery order. As a result, Camp Taylor was prohibited from presenting any evidence at trial. Not surprisingly, the trial court adopted the line of division proposed by opposing counsel, and ordered the parties to negotiate a settlement concerning which district would levy a tax on the properties. Zimmerman did not inform Camp Taylor that the trial court ruled in the other fire district's favor or why Camp Taylor was prohibited from introducing evidence at trial. Zimmerman appealed from the adverse judgment, but failed to file a pre-hearing statement. The Court of Appeals ordered a show cause order, to which Zimmerman failed to respond. Later, he

filed a motion to withdraw as counsel. He did not inform Camp Taylor of this action. Once Zimmerman's dilatory conduct came to light, Camp Taylor demanded return of most of the retainer it had paid Zimmerman. In response, Zimmerman sent Camp Taylor a check for \$7,500, which was less than the amount demanded by Camp Taylor. The check did not clear. Zimmerman did not further communicate with Camp Taylor, despite the fire district's repeated requests for information and return of the retainer. Count I of this file charges Zimmerman with failing to act with reasonable diligence and promptness in violation of SCR 3.130-1.3. Count II charges him with failure to keep his client informed about the status of the matter in violation of SCR 3.130 — 1.4(a). Count III charges Zimmerman with engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of SCR 3.130-8.3(c). The Board found Zimmerman guilty of all three counts by a vote of 12 to 0, with one member abstaining.

FILE NO. 7721

Zimmerman took a vehicle to the Louisville Frame & Fender Shop to be repaired. The owner told Zimmerman that for repairs totaling over \$2500, he only accepted checks issued by insurance companies. Zimmerman lied to the owner and told him that he had misplaced his insurance check. *467 Zimmerman had in fact deposited the check into a personal account the day before. Relying on this false information, the owner accepted Zimmerman's personal check. The check did not clear. The owner hired an attorney who contacted Zimmerman in an effort to collect the \$2,500 he was owed for the repairs. Zimmerman responded by letter. He stated that he would send the shop a certified check, but he also threatened to sue the shop and inform Louisville-based consumer groups that the shop did shoddy work. No check was ever sent, nor was suit ever filed. Count I of this file charges Zimmerman with engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of SCR 3.130-8.3(c). Count II charges Zimmerman with failure to respond to a complaint in violation of SCR 3.130-8.1(b). The Board found Zimmerman guilty of both counts by a vote of 12 to 0, with one member abstaining.

FILE NO. 7887

Zimmerman represented four co-defendants in an action in U.S. District Court. Zimmerman repeatedly failed to comply with discovery orders by the court and was eventually fined \$5,000 for his behavior. Count I of this file charges Zimmerman with failure to make reasonable efforts to expedite litigation in violation of SCR 3.130-3.2. Count II charges Zimmerman with failure to make a reasonable effort to comply with legally proper discovery requests in violation of SCR 3.130-3.4(d). Count III charges Zimmerman with failure to respond to a lawful demand by a disciplinary authority in violation of SCR 3.130-8.1(a). The Board found Zimmerman guilty of all three counts by a vote of 13 to 0.

FILE NO. 8024

Louis Holston retained Zimmerman to represent him in a lawsuit against the city of Muldraugh, Kentucky. Zimmerman filed a complaint on Holston's behalf. The complaint was eventually dismissed for failure to prosecute, but Zimmerman repeatedly told Holston that the case was

progressing nicely. Holston learned from a third party that the case had been dismissed about nine months after the dismissal occurred. Count I of this file charges Zimmerman with lack of diligence in violation of SCR 3.130-1.3. Count II charges Zimmerman with failure to adequately communicate with his client in violation of SCR 3.130-1.4(a). Count III charges Zimmerman with engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of SCR 3.130-8.3(c). Count IV charges Zimmerman with failure to respond to a disciplinary matter in violation of SCR 3.130-8.1(b). The Board found Zimmerman guilty of all four counts by a vote of 13 to 0.

FILE NO. 8305

Charles Wood hired Zimmerman to represent him in a land dispute in Marion County, Kentucky, in January 2000. Zimmerman was suspended from the practice of law in February 2000, but he continued to represent Wood. In April 2000, Zimmerman told Wood that he had hired a survey- or named Pence. This statement was false. Wood asked Zimmerman to attempt to settle the matter in October 2000. Zimmerman asked for an additional \$500 and apparently did nothing more. Wood eventually contacted opposing counsel and learned that no settlement offer had ever been made. Wood also learned that, with trial date fast approaching, Zimmerman had filed a motion to withdraw as counsel. *468 Zimmerman did not inform Wood about the motion to withdraw. This file charges Zimmerman with failure to act with reasonable promptness in the representation of his client in violation of SCR 3.130-1.3. Count II charges Zimmerman with failure to reasonably inform his client in response to information requests in violation of SCR 3.130-1.4(a). Count III charges Zimmerman with failure to give adequate notice of withdrawal in violation of SCR 3.130 — 1.16(d). Count IV charges Zimmerman with representing a client while being suspended in violation of SCR 3.130-5.5(a). Count V charges Zimmerman with engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of SCR 3.130-8.3(c). Count VI charges Zimmerman with failure to respond to a disciplinary matter in violation of SCR 3.130-8.1(b). The Board found Zimmerman guilty of all six counts by a vote of 13 to 0. As to punishment on the above charges, the Board voted 11 to 1 to recommend that Zimmerman should be permanently disbarred from the practice of law, with one member abstaining. One Board member voted to recommend that Zimmerman should be suspended for five years. Upon consideration of the record and recommendation of the Board of Governors, this Court orders that Charles H. Zimmerman be and is hereby permanently disbarred from the practice of law in Kentucky, and he shall not be permitted to apply for reinstatement of his license to practice law. The period of disbarment shall begin on the date of the entry of this order. Pursuant to SCR 3.450, Zimmerman is required to pay all costs associated with these disciplinary proceedings in the amount of \$1,235.29, and for which execution may issue from this Court upon finality of this Opinion and Order. Pursuant to SCR 3.390, Zimmerman shall, within ten (10) days from the entry of this Opinion and Order, notify in writing all courts in which he has matters pending and all clients of his inability to provide further legal services and to furnish the Director of the Kentucky Bar Association with a copy of all such

letters, or to provide the Director of the KBA with a certificate that he has no active clients. All
concur. Entered: November 21, 2001. /s/ Joseph E. Lambert CHIEF JUSTICE

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