

Supreme Court of Kentucky

2012-SC-000226-KB

TO BE PUBLISHED
FINAL

DATE 7-3-12 Eul Granger, Jr.

KENTUCKY BAR ASSOCIATION

MOVANT

V.

IN SUPREME COURT

MARK PATRICK NIEMI
KBA Member No. 87573

RESPONDENT

OPINION AND ORDER

The Kentucky Bar Association (KBA) recommends disciplinary action against Respondent, Mark Patrick Niemi. Respondent was admitted to the practice of law in the Commonwealth of Kentucky on October 20, 1998. His bar roster address is 2408 Vale Drive, Lexington, KY 40514, and his KBA Member Number is 87573.

KBA File 19814

In 2009, Kenneth N. Jones, Jr. hired Respondent to pursue a workers' compensation claim. On August 31, 2009, Respondent sent a letter to Jones, who was incarcerated in West Virginia at the time, stating that he would represent him. Jones then made several attempts to contact Respondent concerning the case, but was unable to get a response or any additional information. Jones's father, acting with power of attorney for Jones, also attempted to contact Respondent, but received no response as well.

On May 9, 2011, Jones filed a complaint with the KBA against the Respondent. On May 12, 2011, the Office of Bar Counsel opened the matter for alternative dispute resolution pursuant to SCR 3.160(3)(C), which allows informal resolutions. Further attempts to contact the Respondent through phone or email were met with no response. Deputy Bar Counsel also attempted to contact Respondent through his cell phone number, but no response was made.

On June 8, 2011, the file was opened as a regular bar complaint. The complaint was sent via certified mail to Respondent's bar roster address, but was returned on June 27, 2011 marked as "unclaimed." The complaint was then sent to the Fayette County Sheriff's Office on June 30, 2011 for personal service on the Respondent. A complaint was also sent to the Executive Director on August 10, 2011 for service permitted under SCR 3.175(2). After no response, a letter reminding the Respondent of his obligation to respond to the bar complaint was sent on September 1, 2011.

On November 10, 2011, the Inquiry Commission sent a letter of notice to Respondent listing the formal charges issued by the Commission. Respondent was charged with violating the following three Rules of the Supreme Court:

- I. SCR 3.130.1.4(a) by failing to keep the client reasonably informed as to the progress of the case and failing to respond to reasonable requests for information;

- II. SCR 3.130-1.16(d) by failing to give reasonable notice to the client, return any unearned fees, or reasonably protect the client's interests upon the termination of the attorney-client relationship;
- III. SCR 3.130-8.1(b) by failing to respond to a lawful and reasonable demand for information from a disciplinary authority.

The Respondent failed to respond to multiple attempts of contact and did not appear before the Board of Governors. After no response from Respondent was submitted, the Board of Governors reviewed this bar complaint on March 16, 2012. Pursuant to SCR 3.370(9), a default order was entered on April 5, 2012. The Board, by a unanimous vote (18-0; one recusal), found Respondent guilty of the violations set forth in Counts I, II, and III of KBA File No. 19814.

Based on the foregoing facts and prior discipline, the Board of Governors of the Kentucky Bar Association recommends that Respondent be suspended from the practice of law in the Commonwealth of Kentucky for thirty (30) days, to run consecutively with his current suspension.¹ Additionally, the Board recommends that Respondent be required to attend and complete the Ethics and Professionalism Enhancement Program (EHEP). The Board also recommends that Respondent be required to pay the full costs of these proceedings as calculated and certified by the Disciplinary Clerk pursuant to SCR 3.450, which amounts to \$203.07.

¹ On March 7, 2011, the Respondent was suspended from practicing law for his failure to complete the required hours of continuing legal education. No prior discipline on Respondent exists.

Pursuant to SCR 3.370(9), the Supreme Court of Kentucky hereby adopts the recommendations set forth by the Board of Governors and ORDERS that:

- (1) Respondent, Mark Patrick Niemi, KBA Member No. 87573, is found guilty of violating SCR 3.130.1.4(a), SCR 3.130-1.16(d), and SCR 3.130-8.1(b);
- (2) In accordance with SCR 3.390, Respondent is hereby suspended from the practice of law in the Commonwealth of Kentucky for thirty (30) days, effective ten (10) days after the issuance of this Order;
- (3) Respondent is hereby directed to attend and complete all requirements and conditions necessary to complete the Ethics and Professionalism Enhancement Program (EHEP); and
- (4) Respondent is hereby directed to pay the costs of these proceedings as calculated and certified by the Disciplinary Clerk in the amount of \$203.07.

All sitting. All concur.

ENTERED: JUNE 21, 2012.


CHIEF JUSTICE