

TO BE PUBLISHED

Supreme Court of Kentucky

2019-SC-000382-KB

FINAL

INQUIRY COMMISSION

MOVANT
DATE 10-15-19 DyG11

V.

IN SUPREME COURT

TIMOTHY D. BELCHER

RESPONDENT

OPINION AND ORDER

The Kentucky Bar Association (“KBA”) Inquiry Commission petitions this Court to enter an order temporarily suspending Timothy D. Belcher (“Respondent”) from the practice of law pursuant to Supreme Court Rule 3.165(1)(b) and (d) until such time as the merits of a disciplinary proceeding can be determined. Respondent, Timothy D. Belcher, Kentucky Bar Association Member No. 83667, was charged in KBA File 19-DIS-0086 for alleged misappropriation of funds. We hereby grant the Inquiry Commission’s request for temporary suspension under SCR¹ 3.165(1) for Belcher’s alleged misappropriation of a minor’s settlement funds believed to be at least \$600,000. During his suspension, Belcher shall not accept any new clients or

¹ Supreme Court Rule.

collect unearned fees and shall take reasonable steps to protect the interests of his clients.

Facts

In 2001, Samuel Johnson was killed in a motor vehicle accident in Pike County, Kentucky. Belcher was retained by Olivia Harvey (formerly Johnson), the victim's widow, to pursue a wrongful death claim, loss of spousal consortium, and an additional claim on behalf of McKenna Johnson for the loss of her father. Belcher filed the actions in Pike County Circuit Court on May 14, 2002.

Based upon the Affidavit filed with this Court it is believed that all claims against the tortfeasors were settled, settlement proceeds owed to Olivia Johnson Harvey were disbursed, and the Letcher District Court entered three orders approving settlement on behalf of the all the minor children, including McKenna Johnson who is now an adult. At the time the funds were distributed for the minor children of Samuel Johnson, Belcher set up an account in the name of "Timothy D. Belcher, P.S.C., Escrow for the children of Samuel Johnson."

In April 2018, McKenna Johnson turned 18. She and her mother, Olivia Johnson Harvey, subsequently attempted to contact Belcher by telephone to inquire about her funds. After several months of attempting to contact Belcher, they reached out to an attorney, Angie Hatton. Hatton contacted attorney Ray S. Jones, II, who had worked with Belcher on the original case in 2002.

Ray S. Jones, II, via affidavit, stated that he was able to get in contact with Belcher in April of 2019, and that Belcher claimed he was uncertain about the escrow funds and would need to go back in his records. According to Jones, when he pressed Belcher again about the funds, Belcher admitted that he had spent the money and stated he was now “sick and broke.” When asked how he was able to access the monies, Belcher admitted that his name was put on the account. Jones then informed Belcher he would be reporting his conduct. Jones stated that Belcher estimated that he had taken about \$600,000 from the escrow account. However, Jones noted that after speaking with Belcher and various law enforcement officials, it is believed that the account was depleted of substantially more than \$600,000.

After a meeting held between the clients, the client’s attorney, Jones, counsel for Community Trust Bank, and the Commonwealth’s Attorney, a joint bar complaint was filed against Belcher. The office of bar counsel initially served Belcher with the bar complaint on July 10, 2019, at his bar roster address.

SCR 3.165

The rule governing temporary suspensions is found in SCR 3.165. The rule states, in pertinent part, the following:

- (1) On petition of the Inquiry Commission...an attorney may be temporarily suspended from the practice of law [when]...(b) It appears that probable cause exists to believe that an attorney’s conduct poses a substantial threat of harm to his clients or to the public; or...(d) It appears that

probable cause exists to believe that an attorney is mentally disabled or is addicted to intoxicants or drugs and probable cause exists to believe he/she does not have the physical or mental fitness to continue to practice law.

(1)(b) – Substantial Threat of Harm

After evaluating the facts as alleged in the petition and the supporting documents attached thereto, we find a reasonable basis to conclude that Respondent's conduct poses a substantial threat of harm to his clients as required by subsection (1)(b) of SCR 3.165. This Court has ordered temporary suspensions in numerous cases like the one presented here. *Inquiry Com'n v. Orr*, 336 S.W.3d 458 (Ky. 2011) (attorney temporarily suspended after admitting he used client funds from escrow account to pay personal debts and invented a company to cover his misappropriation of client funds); *Inquiry Com'n v. Richardson*, 324 S.W.3d 739, 740 (Ky. 2010) (attorney was temporarily suspended for using escrow funds to purchase property and pay personal debts).

(1)(d) – Mental Fitness

We now turn to subsection (1)(d) of SCR 3.165. Pursuant to the Affidavit filed by Jones, Belcher admitted to him when questioned about the misappropriation of funds that he was "sick and broke." No further information was provided to determine if Belcher was suffering from a mental or physical illness. Consequently, we agree with Inquiry Commission that, when coupled with SCR 3.165(1)(b), Respondent's license to practice law

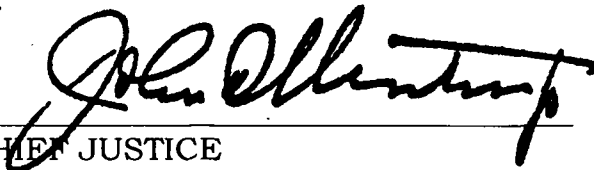
should be temporarily suspended pending disciplinary proceedings pursuant to SCR 3.165(1).

ACCORDINGLY, IT IS HEREBY ORDERED as follows:

1. Respondent is temporarily suspended from the practice of law in the Commonwealth of Kentucky, effective upon the date of entry of this order, pending further orders from this Court;
2. Disciplinary proceedings against Respondent may be initiated by the Inquiry Commission pursuant to SCR 3.160, unless already begun or unless Respondent resigns under terms of disbarment;
3. Pursuant to SCR 3.165(5), Respondent shall, within twenty (20) days from the date of the entry of this Opinion and Order, notify in writing all clients of his inability to provide further legal services and furnish the Director of the Kentucky Bar Association with copies of all such letters;
4. Pursuant to SCR 3.165(6), Respondent shall immediately, to the extent reasonably possible, cancel and cease any advertising activities in which he is engaged.

All sitting. All concur.

ENTERED: September 26, 2019.


CHIEF JUSTICE