

# Supreme Court of Kentucky

2021-SC-0232-KB

DEAN STUART JACKSON

MOVANT

V.

IN SUPREME COURT

KENTUCKY BAR ASSOCIATION

RESPONDENT

## **OPINION AND ORDER**

Pursuant to SCR<sup>1</sup> 3.480(2), Dean Stuart Jackson,<sup>2</sup> moves this Court to enter an order resolving the pending disciplinary proceeding against him<sup>3</sup> by imposing a 61-day suspension, probated for two years, subject to conditions. This motion is the result of an agreement negotiated between Jackson and the Kentucky Bar Association (“KBA”), pursuant to SCR 3.480(2). Finding the consensual disciplinary sanction to be appropriate under the facts of this case, we grant Jackson’s Motion.

Jackson has been admitted to practice law in Kentucky for over twenty-seven years and has no history of prior discipline. The disciplinary proceeding

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<sup>1</sup> Kentucky Rules of the Supreme Court.

<sup>2</sup> Jackson’s KBA Member No. is 84692. He maintains a bar roster address of P.O. Box 770, Paducah, KY 42002. He was admitted to practice law on May 21, 1993.

<sup>3</sup> The disciplinary matter at issue is contained in KBA File 18-DIS-0078.

at issue arises out of Jackson's admitted violation of former SCR 3.130(1.8)(a) (in effect through July 14, 2009), which governs conflicts of interest between attorneys and their clients. Specifically, Jackson admits he violated this Rule by obtaining a loan from his client, Diann Haile, on June 21, 2006, as evidenced by the promissory note executed on that date. Former SCR 3.130(1.8)(a) provides, in relevant part:

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which can be reasonably understood by the client;

(2) the client is given a reasonable opportunity to seek the advice of independent legal counsel in the transaction; and

(3) the client consents in writing thereto.

Jackson represented Diann Haile in a probate matter in which Ms. Haile was the personal representative of her deceased husband's estate. During the representation, Jackson obtained a \$100,000 unsecured loan from Ms. Haile and signed a promissory note to that effect. Ms. Haile later sued Jackson on the promissory note and the matter was settled by an Agreed Judgment entered October 8, 2020.<sup>4</sup> Jackson and the KBA represent that he is current with his repayment obligations as set forth in that Agreed Judgment.

In this disciplinary case, the KBA and Jackson negotiated, and request this Court's approval of, the following sanction for Jackson's violation of the Rules:

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<sup>4</sup> *Haile v. Jackson*, Marshall Circuit Court Action No. 17-CI-408.

A sixty-one (61) day suspension, probated for two (2) years, with the following conditions:

- (1) Jackson will not be the subject of any new Charges within the two-year period;
- (2) Jackson will maintain his compliance with CLE requirements and payments of dues during the probationary period;
- (3) Jackson will complete the Ethics and Professionalism Enhancement Program (EPEP), that was scheduled for approximately spring 2021;
- (4) During the probationary period, Jackson will remain compliant with his repayment obligations pursuant to the Agreed Judgment of October 8, 2020; and
- (5) Jackson will pay the costs of this proceeding as provided by SCR 3.450.

If Jackson fails to comply with the above conditions, he acknowledges that the Office of Bar Counsel can move the Court to revoke his probation and impose the full sixty-one-day suspension.

With respect to the negotiated sanction, we note that in *Greene v. Kentucky Bar Association*, the attorney received a 181-day suspension, 61 days probated for one year (120 to serve), subject to conditions, for numerous Rule violations, including SCR 3.130(1.8)(a), for obtaining a loan from a client. 499 S.W.3d 687 (Ky. 2016). However, the attorney in that case had an extensive history of prior discipline. *See also Ky. Bar Ass'n v. Moore*, 498 S.W.3d 786 (Ky. 2016) (imposing one-year suspension, probated for all but 61 days, for variety of Rule violations, including SCR 3.130(1.8)(a); attorney ultimately

suspended indefinitely for other Rule violations). In *Thompson v. Kentucky Bar Association*, this Court suspended an attorney for 181 days, 120 days probated for two years on the condition that the Respondent receive no further charges from the Inquiry Commission during the probationary period. 494 S.W.3d 488 (Ky. 2016). In that case, the attorney's Rule violations included failure to properly supervise a non-attorney assistant, resulting in loss of client funds. Unlike Jackson, however, Thompson also misrepresented the status of the funds to the clients and violated other Rules.

Here, the KBA favors probating Jackson's 61-day suspension, subject to conditions, in light of his cooperation in resolving this matter, his compliance with the terms of the Agreed Judgment to make timely restitution to Ms. Haile, and his history of no past discipline. According to the KBA, the Chair of the Inquiry Commission and a Past President of the KBA have reviewed and approved the proposed sanction.

The negotiated sanction rule provides that "[t]he Court may consider negotiated sanctions of disciplinary investigations, complaints or charges" if the parties agree. SCR 3.480(2). Specifically, "the member and Bar Counsel [must] agree upon the specifics of the facts, the rules violated, and the appropriate sanction[.]" *Id.* Upon receiving a motion under this Rule, "[t]he Court may approve the sanction agreed to by the parties, or may remand the case for hearing or other proceedings specified in the order of remand." *Id.* Thus, acceptance of the proposed negotiated sanction still falls within the discretion of the Court.

Upon review of the facts of this case, the relevant case law, and Jackson's lack of disciplinary history, this Court concludes that the proposed discipline is adequate. *See Ky. Bar Ass'n v. Schaffner*, 2015-SC-000108-KB, 2015 WL 1544453 (Ky. 2015); *Dutra v. Ky. Bar Ass'n*, 440 S.W.3d 374 (Ky. 2014).

Accordingly, it is hereby ORDERED that:


1. Jackson is found guilty of the above-described and admitted violation of the Rules of Professional Conduct.
2. Jackson is suspended from the practice of law for 61 days, with the entirety of the suspension probated for two years, upon the following conditions:
  - a. Jackson will not be the subject of any new Charges from the KBA Inquiry Commission within the two-year period. Issuance of any Disciplinary Charge, or Charges, from the Inquiry Commission during the probationary period may be grounds for this Court to impose the 61-day suspension.
  - b. Jackson will maintain his compliance with CLE requirements and payments of dues during the probationary period;
  - c. Jackson will complete the Ethics and Professionalism Enhancement Program (EPEP), that was scheduled for approximately spring 2021;

- d. During the probationary period, Jackson will remain compliant with his repayment obligations pursuant to the Agreed Judgment of October 8, 2020; and
- e. In accordance with SCR 3.450, Jackson is directed to pay all costs associated with these disciplinary proceedings against him, for which execution may issue from this Court upon finality of this Opinion and Order.

If Jackson fails to comply with the above conditions, he acknowledges that the Office of Bar Counsel can move the Court to revoke his probation and impose the full 61-day suspension.

All sitting. All concur.

ENTERED: September 30, 2021

  
CHIEF JUSTICE