

Supreme Court of Kentucky

2021-SC-0419-KB

WILLIAM DAVID RYE

MOVANT

V.

IN SUPREME COURT

KENTUCKY BAR ASSOCIATION

RESPONDENT

OPINION AND ORDER

Pursuant to SCR¹ 3.480(2), William David Rye moves this Court to enter an Order resolving the pending disciplinary proceeding against him by imposing a 181-day suspension from the practice of law, probated for three years, subject to conditions. This motion is the result of an agreement negotiated between Rye and the Kentucky Bar Association (“KBA”). Finding the consensual disciplinary sanction to be appropriate under the facts of this case, we grant Rye’s motion.

Rye was admitted to practice law in Kentucky on October 23, 2000. His bar roster address is P.O. Box 1039, Hopkinsville, Kentucky 42241. The disciplinary proceeding at issue arises out of Rye’s admitted violations of the Rules of Professional Conduct as charged in KBA File 19-DIS-0298. Those

¹ Kentucky Rule of the Supreme Court.

charges resulted from Rye's legal representation, or lack thereof, of Cornelius Harris on certain criminal charges. In March 2018, Harris's girlfriend, Demetria Board, paid Rye \$300 of the agreed-upon \$1,500 legal fee to represent Harris in Christian Circuit Court on charges of Assault, Third Degree (two counts); Resisting Arrest; and Fleeing or Evading Police, Second Degree. Rye did not enter into any written agreement relating to his representation of Harris. At that time, Harris was incarcerated on unrelated matters in federal court in the Western District of Kentucky. Rye informed the Board that he would begin his representation of Harris after Harris completed his term of incarceration, which had not yet been determined.

Rye did not make any attempt to determine the status of Harris's case or initiate any communication with Harris about the representation. In March 2019, Harris wrote the Christian Circuit Court explaining his federal incarceration status and asking that his state court case be docketed, and he be transported to Christian County and held there until the case was resolved. Harris also wrote in his letter that he may need a court-appointed attorney given that he had yet to hear from Rye.

When Harris appeared in Christian Circuit Court in April 2019 on these charges, he was appointed a public defender to represent him. The public defender represented Harris at all stages of the case and performed all work involved. In August 2019, Harris entered a guilty plea to two counts of Assault, Third Degree (police/probation officer) and received a sentence of five years' imprisonment on each count.

Rye states that he only became aware that Harris had appeared in court on the Christian Circuit Court charges, and that the case was active, when this disciplinary proceeding was initiated against Rye in January 2020. Rye claims that he was never notified by Harris, Board, or a court clerk that Harris was ever transported to Christian County. He says that had he been notified, he would have begun representing Harris. However, Rye acknowledges that he had a professional obligation to determine the status of Harris's case and to initiate communication with him about the representation, which he never did. Rye admits that the only work he performed toward the representation was in March 2018, when he spoke with several of Harris's family members, including Board; copied Harris's criminal file at the Christian County Detention Center; reviewed that file; and spoke briefly with the Commonwealth Attorney's Office regarding the status of the case. The last time Rye had any communication with anyone on Harris's behalf was in May 2018. In March 2020, after Rye became aware of the status of Harris's case and this disciplinary action, Rye purchased a cashier's check and refunded the \$300 prepaid fee to Board.

For his misconduct, Rye admits he violated the following Rules as charged by the Inquiry Commission:

SCR 3.130(1.1), which provides, "[a] lawyer shall provide competent representation to a client." The Rule further provides, "[c]ompetent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." Rye admits he violated this Rule when he failed to determine the status of Harris's case, as was reasonably necessary to commence representation.

SCR 3.130(1.3), which provides, "[a] lawyer shall act with reasonable diligence and promptness in representing a client." Rye

admits he violated this Rule when he failed to provide sufficient work to represent Harris, as he was hired to do.

SCR 3.130(1.4)(a)(2), which provides, “[a] lawyer shall . . . reasonably consult with the client about the means by which the client’s objectives are to be accomplished.” Rye admits he violated this Rule when he failed to meet or communicate in any way with Harris.

The KBA and Rye negotiated the following discipline in this matter: a 181-day suspension probated for three years on conditions of (1) Rye’s attendance and completion of the next-scheduled Ethics and Professionalism Enhancement Program (EPEP), (2) Rye’s receipt of no new disciplinary charges during the three-year probationary period, (3) Rye’s compliance with all KBA dues and CLE obligations, and (4) Rye’s payments of all costs associated with this disciplinary matter. If Rye fails to comply with any of the conditions of the probated sentence, the KBA may file a motion to impose the 181-day suspension.

In negotiating this sanction, the KBA took into account Rye’s mitigation efforts, including refunding Board the \$300 prepaid legal fee soon after he became aware of his errors and this disciplinary action. Further, Rye has acknowledged his misconduct and been cooperative during this disciplinary process. The KBA also considered Rye’s disciplinary history, including a Private Admonition from 2007 for violations of SCR 3.130(1.1), 1.3, 1.4(a), 3.4(c), and 8.1(b); a Private Reprimand from 2011 for violations of SCR 3.130(3.3)(a)(1) and (2), 8.1(a), and 8.1(b); a Private Reprimand from 2013 for violations of SCR 3.130(1.3), 1.4(a)(3), and 8.1(b), and in 2014, a 30-day suspension, probated for two years, conditioned on completing EPEP and not

receiving any future formal disciplinary charges for violation of SCR 3.130(8.1)(b).

The KBA maintains that the negotiated sanction is supported by relevant case law and cites three cases in support. First, in *Kentucky Bar Ass'n v. Martin*, the Court imposed a Public Reprimand and order to attend and complete EPEP for attorney Martin's violations of SCR 3.130(1.1) (competence), 1.3 (diligence), and 8.1(b) (failure to respond to a lawful demand for information from a disciplinary authority). 618 S.W.3d 484 (Ky. 2020). Martin was retained to represent a client in a probate matter, but final settlement was not approved and the estate was not closed until nearly four years later. *Id.* at 485. Like Rye, Martin failed to provide prompt, diligent, and competent representation to his client. Unlike Rye, Martin failed to participate in his disciplinary process. Moreover, Rye has a disciplinary history and utterly failed to complete the representation for which he was hired, whereas Martin had no disciplinary history and ultimately did complete his representation.

Second, in *Lutes v. Kentucky Bar Ass'n*, the Court imposed a Public Reprimand and order to attend and complete EPEP for attorney Lutes' violations of SCR 3.130(1.3) (diligence), 1.4(a) (communication) (now 1.5(a) (safeguarding client funds), 1.15 (returning client funds and rendering an accounting) and 1.16(d) (termination of representation). 338 S.W.3d 278 (Ky. 2011). In that case, Lutes had taken no action on his client's case for several months, failed to communicate with his client, placed the unearned prepaid fee into his own account, failed to refund the fee upon request, and failed to refund

the unearned fee upon termination of representation. *Id.* at 278. While Lutes did have a disciplinary history (a private reprimand approximately two years earlier for similar misconduct and an ongoing suspension for failure to pay bar dues), Rye's disciplinary history is more extensive than Lutes.

Lastly, in *Kentucky Bar Ass'n v. Teater*, the Court imposed a 30-day suspension with a referral to KYLAP and order to attend and complete EPEP for attorney Teater's violations of SCR 3.130(1.1) (competence), 1.3 (diligence), 1.4(a)(3) (communication regarding the status of the matter), 1.4(a)(4) (compliance with reasonable requests for information), and 8.1(b) (failure to respond to the bar complaint). 585 S.W.3d 759 (Ky. 2019). In that case, while representing a client in a deportation matter, Teater failed to prepare her client for any questions he may be asked on cross-examination, failed to call one of her client's character witnesses, and called her client's minor son to testify without preparing him. *Id.* at 761. Teater also failed to return the client's communications and did not inform him of the results of the deportation hearing. *Id.* Like Rye, Teater failed to act as required to provide competent and diligent representation to her client and also had a disciplinary history (including two Private Admonitions and a current suspension for CLE deficiency). However, unlike Teater, Rye has been cooperative in this disciplinary proceeding and is not presently suspended.

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.

Considering these facts, the relevant case law, Rye’s disciplinary history, his cooperation in this disciplinary process and his mitigating behavior, and the KBA’s representation that the Chair of the Inquiry Commission and a Past President of the KBA have reviewed and approved the proposed sanction, this Court concludes that the proposed discipline is adequate. *See Dutra v. Kentucky Bar Ass’n*, 440 S.W.3d 374 (Ky. 2014).

Accordingly, it is hereby ORDERED that:

1. Rye is found guilty of the above-described and admitted violations of the Rules of Professional Conduct.
2. Rye is suspended from the practice of law for 181 days, with such suspension probated for three years, conditioned upon (1) Rye’s attendance and completion of the next-scheduled Ethics and Professionalism Enhancement Program (EPEP), (2) Rye’s receipt of no new disciplinary charges during the three-year probationary period, (3) Rye’s compliance with all KBA dues and CLE obligations, and (4) Rye’s payments of all costs associated with this disciplinary matter. If Rye fails

to comply with any of the conditions of the probated sentence, the KBA may file a motion to impose the 181-day suspension.

3. In accordance with SCR 3.450, Rye 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.

All sitting. All concur.

ENTERED: December 16, 2021



CHIEF JUSTICE