

Supreme Court of Kentucky

2021-SC-0549-KB

JOHN COLEMAN KIRK

MOVANT

V.

IN SUPREME COURT

KENTUCKY BAR ASSOCIATION

RESPONDENT

OPINION AND ORDER

Pursuant to SCR¹ 3.480(2), John Coleman Kirk moves this Court to enter an Order resolving the pending disciplinary proceeding against him by imposing a Public Reprimand for his admitted violations of SCR 3.130(3.3)(a)(1), (5.7)(b), (8.1)(a), (8.1)(b), and (8.4)(c). The Kentucky Bar Association (“KBA”)’s response to his motion indicates that it has no objection to this discipline. Finding the consensual disciplinary sanction to be appropriate under the facts of this case, we grant Kirk’s motion.

Kirk’s misconduct involves his submission of false evidence, false statements, and other deceptive practices during a separate, original disciplinary proceeding against Kirk Law Firm’s employee, Gretchen Nunn, who was employed by the firm prior to, during, and after her January 15, 2016,

¹ Kentucky Rules of the Supreme Court.

suspension from the practice of law for her failure to comply with CLE requirements. At the time of Nunn’s suspension, Kirk was managing and supervising member of Kirk Law Firm and has remained in those roles since. Apparently, Nunn did not become aware of her suspension until September 2019 and, after also learning of it at that time, Kirk removed Nunn from office letterhead, website, advertising, and any other suggestion that she was a practicing attorney with the firm.

However, despite Nunn’s suspension, Kirk continued to employ her at Kirk Law Firm for paralegal work. In February 2020, the Inquiry Commission issued a Complaint against Kirk (KBA File 20-DIS-0021) for his potential violation of SCR 3.130(5.7)(b) by continuing to employ, and associate professionally with, Nunn during her suspension period.² In his March 2020 Verified Response to that Complaint, Kirk stated “after I received the Inquiry Commission Complaint of February 3, 2020, I ended any kind of professional relationship with my good friend, Gretchen Nunn Gullett, in order to make sure of being in compliance with SCR 3.130(5.7)(b).”

That disciplinary proceeding was closed in May 2020 with Kirk receiving a private admonishment for his violation of SCR 3.130(5.7)(b); the admonition specifically stated “after receiving the Bar Complaint in this case, [Kirk] ended

² SCR 3.130(5.7)(b) provides: “A lawyer shall not employ, associate professionally with or aid a person a lawyer knows or reasonable should know has been suspended to do any of the preceding described acts during a suspended lawyer's period of suspension. Further, a lawyer shall not employ or associate professionally with a member whose license to practice law has been suspended if the suspended lawyer was associated with such lawyer or law firm at the time of such member's suspension.”

Ms. Nunn’s employment at Kirk Law Firm.” Yet, Kirk did not entirely end his employment of, or professional relationship with, Nunn as he had represented to the Inquiry Commission in that proceeding. Kirk Law Firm continued to employ Nunn during her suspension, as Nunn indicated in her November 2020 Application for Restoration, in which she described her duties with Kirk Law Firm after September 2019 as paralegal work.

Upon receiving Nunn’s Application for Restoration containing this information, the Office of Bar Counsel (“OBC”) emailed Kirk on November 12, 2020 asking him to explain the inconsistencies between his Verified Response in KBA File 20-DIS-0021 and Nunn’s Application for Restoration. Kirk did not respond to that email. On November 20, 2020, the Board of Governors approved Nunn’s Application for Restoration; evidently, Kirk became aware of the OBC’s November 12 email on that day but still did not reply because he believed the issue was moot.³

In his current Motion for Public Reprimand, Kirk admits his misconduct violated the following Kentucky Supreme Court Rules, as charged by the Inquiry Commission:

1. SCR 3.130(5.7)(b), as stated above, when he continued to associate professionally with Nunn after she was suspended;
2. SCR 3.130(3.3)(a)(1), which provides: (a) A lawyer shall not knowingly: (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer[,]” when, in

³ After being suspended, and prior to her reinstatement, Nunn worked less than 20 hours per week at Kirk Law Firm but did not receive steady pay or benefits until her restoration. Notably, on November 20, 2020, Kirk Law Firm paid her \$26,832.60 gross for the pay period beginning November 16, 2020 and ending November 30, 2020.

his Verified Response to the Inquiry Commission's Complaint in KBA File 20-DIS-0021, he represented to the Inquiry Commission that he "ended any kind of professional relationship" with Nunn even though he did not;

3. SCR 3.130(8.1)(a), which provides, ". . . a lawyer . . . in connection with a disciplinary matter, shall not: (a) knowingly make a false statement of material fact[,]" when, in his Verified Response to the Inquiry Commission's Complaint in KBA File 20-DIS-0021, he represented to the Inquiry Commission that he "ended any kind of professional relationship" with Nunn even though he did not;
4. SCR 3.130(8.1)(b), which provides, ". . . a lawyer . . . in connection with a disciplinary matter, shall not: fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6[,]" when, after receiving the Private Admonition issued in KBA File 20-DIS-0021 which stated that Kirk had ceased employing Nunn at Kirk Law Firm, Kirk failed to correct the Inquiry Commission to clarify that he had not ended Nunn's employment and when Kirk knowingly failed to respond to the November 12, 2020 email from the OBC;
5. SCR 3.130(8.4)(c), which provides, "[i]t is professional misconduct for a lawyer to: . . . engage in conduct involving dishonesty, fraud, deceit or misrepresentation[,]" when he stated in his Verified Response to the Inquiry Commission's Complaint in KBA File 20-DIS-0021, he represented to the Inquiry Commission that he "ended any kind of professional relationship" with Nunn even though he had not.

In mitigation of Kirk's misconduct, the KBA considered that since Kirk's 2003 admission to practice law in Kentucky, he has received no prior discipline, other than the Private Admonition he received for his violation of SCR 3.130(5.7)(b) in the original file. The KBA further considered that Kirk has been cooperative during this disciplinary proceeding and has admitted his misconduct violated the Rules.

While no precedent appears directly on point with these facts and Rule violations, *Kentucky Bar Association v. Rye*, 336 S.W.3d 462 (Ky. 2011), also involved complaints of lack of candor and failure to respond to a demand for information from the KBA. In that case, Rye received a public reprimand for the following Rule violations: SCR 3.130(3.3)(a)(1) when he told the circuit court that he was unaware his client had moved out of state (when he was aware); SCR 3.130(8.1)(a) when he informed Bar Counsel that he was attempting to retrieve his client's file from his former employer (when he actually had not made such a request); and SCR 3.130(8.1)(b) when he failed to respond to a letter from Bar Counsel requesting additional information. *Id.* at 464. Like Kirk, Rye admitted violating the Rules.

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 is within this Court's discretion.

Considering the facts of this case, the relevant case law, Kirk's lack of prior discipline, his cooperation in this disciplinary process, 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. Kirk is found guilty of the above-described and admitted violations of the Rules of Professional Conduct.
2. Kirk is publicly reprimanded.
3. In accordance with SCR 3.450, Kirk 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: January 20, 2021


CHIEF JUSTICE