

# Supreme Court of Kentucky

2022-SC-0422-KB

RICHARD DAVIS NULL

MOVANT

V.

IN SUPREME COURT

KENTUCKY BAR ASSOCIATION

RESPONDENT

## **ORDER**

The Motion to Amend the Opinion and Order, filed by the Kentucky Bar Association is GRANTED, and the Opinion and Order of the Court, rendered December 15, 2022, is amended by substitution of the attached Opinion and Order in lieu of the original. Said amendment does not affect the holding of the original Opinion and Order of this Court.

VanMeter, C.J.; Bisig, Conley, Keller, Lambert and Thompson, JJ., sitting. All concur. Nickell, J., not sitting.

ENTERED: March 23, 2023.

  
CHIEF JUSTICE

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## **OPINION AND ORDER**

Richard Davis Null<sup>1</sup> has filed a motion for suspension from the practice of law, pursuant to SCR<sup>2</sup> 3.480(2). The Kentucky Bar Association (“KBA”) has filed a response expressing no objection to the negotiated sanction. We agree and impose a one-year suspension from the practice of law, with 180 days to serve and the balance probated for two years, subject to conditions as set forth hereinafter.

### **I. Facts and Procedural Background.**

This case involves eight separate disciplinary actions, which we set out in turn.

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<sup>1</sup> Null was admitted to the practice of law in the Commonwealth of Kentucky on April 24, 1998. His bar roster address is 535 Broadway, Paducah, KY 42001, and his bar membership number is 87271.

<sup>2</sup> Kentucky Rules of Supreme Court.

**A. File 18-DIS-0135 (Payne).**

Richard M. Payne, II retained Null to represent him on a number of traffic violations and for a contempt charge for failure to appear. Payne paid Null \$1,200 in cash. Null got Attorney Emil Samson to appear at Payne's arraignment and plead Payne not guilty. The judge scheduled a pre-trial conference for a date Samson represented Null could attend. That pre-trial conference was then rescheduled and Denny Null, Null's brother, attended. He advised the judge that Null was not present because of a conflicting court appearance and requested the pre-trial conference be reset for February 1, 2018. The judge reset it for that date. Payne, a Tennessee resident, appeared for the February 1, 2018, pre-trial conference, but Null failed to show up. The judge again reset the pre-trial conference. At this final pre-trial, Samson again showed up instead of Null to represent Payne. Payne pleaded guilty to driving under the influence and a contempt charge for failure to appear.

Null's substitute attorneys appeared in court for a total of approximately fifteen minutes. Null never appeared on Payne's behalf at any court hearings in the case and did not earn the charged \$1,200 fee. In response to the bar complaint, Null claimed to have refunded almost \$500 of the fee due to Payne's unhappiness with the result of his case, but Payne denies receiving it. In response to repeated requests from Bar Counsel, Null provided no proof of the refund. Null also was unresponsive to Bar Counsel's request regarding the type of bank account into which he had deposited the fee.

In July 2019, the Inquiry Commission filed a four-count Charge against Null. Count I charges Null violated SCR 3.130(1.3) (requiring a lawyer to “act with reasonable diligence and promptness in representing a client[]”). Null admits to violating this rule by failing to show up for Payne’s pre-trial conference on February 1, 2018.

Count II charges Null violated SCR 3.130(1.16)(d) (requiring a lawyer, upon termination of representation, to “take steps to the extent reasonably practicable to protect a client’s interests, such as . . . refunding any advance payment of fee or expense that has not been earned or incurred[]”). Null admits to violating this rule by failing to refund any unearned fee upon termination of representation.

Count III charges Null violated SCR 3.130(8.1)(a) (requiring a lawyer, “in connection with a disciplinary matter, [to] not . . . knowingly make a false statement of material fact[]”). Null admits to violating this rule by knowingly and falsely stating to Bar Counsel he had refunded \$500 to Payne.

Count IV charges Null violated SCR 3.130(8.1)(b) (requiring a lawyer, in connection with a disciplinary matter, to “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 . . . [a] disciplinary authority[]”). Null admits to violating this rule by failing to correct the misapprehension he refunded \$500 to Payne, despite having no proof of the refund and Payne’s denial that he received it, and by

knowingly failing to provide the information requested by Bar Counsel regarding the type of bank account into which he deposited Payne's fee.

***B. File No. 19-DIS-0166 (Sallee).***

Gregory Sallee paid Null \$7,000 to represent him in a criminal matter in Livingston County. Null had no written fee agreement with Sallee and failed to deposit the fee into a trust account because he does not have a trust account to safeguard client funds. Null appeared at Sallee's preliminary hearing, his arraignment, and a bond revocation hearing. He also appeared in court with Sallee for his arraignment in two additional criminal matters. After Sallee's November 2018 indictment on federal drug charges, Null failed to appear at a Livingston Circuit Court pre-trial conference in December 2018 that included all three state court cases. Sallee's aunt texted Null in January 2019 that Sallee had hired another attorney and asked for Sallee's file and a partial refund. Null failed to refund any of the fee, and failed to provide a copy of Sallee's file to his new counsel.

In June 2020, the Inquiry Commission filed a two-count charge against Null. Count I charges Null violated SCR 3.13 (1.15)(a) (requiring a lawyer to "hold property of clients . . . in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account. . . ."). Null admits to violating this rule by not having a trust account in which to deposit client funds for safekeeping.

Count II charges Null violated SCR 3.130(1.16)(d) (setting forth lawyer's duties upon termination of representation to "protect a client's interests, such

as . . . surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred[]”). Null admits to violating this rule by not returning Sallee’s file and not refunding any unearned fee when the representation ended.

***C. File No. 20-DIS 0036 (Tucker).***

Gretchen and Michael Tucker paid Null \$1,600 to file a petition for custody/adoption of a foster child in McCracken County. Null prepared a petition for custody which Mr. Tucker signed in early October 2019, but Null failed to provide the Tuckers a copy of the signed petition.

Null failed to file the petition or to pursue the case on the Tuckers’ behalf and misrepresented to them on several occasions the status of the case. After the Tuckers discovered, in January 2020, that the petition had not been filed, they made several unsuccessful demands for repayment of their fee. In September 2020, Null finally refunded \$1,500 of the fee and the balance the following month.

In October 2020, the Inquiry Commission filed a three-count Charge against Null. Count I charges Null violated SCR 3.130(1.3) (requiring “reasonable diligence and promptness in representing a client[]”). Null admits he violated this rule by not filing the petition for custody or diligently prosecuting the Tuckers’ case.

Count II alleges Null violated SCR 3.130(1.16)(d) (requiring “refunding any advance payment of fee or expense that has not been earned or

incurred[ ]”). Null admits he violated this rule by not refunding the Tuckers’ unearned fee for more than seven months after the representation ended.

Count III alleges Null violated SCR 3.130(8.4)(c) (prohibiting a lawyer from engaging “in conduct involving dishonesty, fraud, deceit or misrepresentation[ ]”). Null admits to violating this rule by misrepresenting to the Tuckers he had filed the petition for custody, had sent it to the sheriff to be served on the opposing party, and was making progress in their case.

***D. File No. 20-DIS-0165 (Smith).***

Jeremy Smith paid Null a \$2,000 retainer in July 2019 to modify a visitation agreement in Marshall Circuit Court. Null failed to deposit the funds into an escrow account (because he did not maintain one). Smith attempted to meet with Null three times in August and September 2019, but each time Null either did not show up or canceled at the last minute. On October 31 and thereafter, Null texted Smith misrepresenting the status of the case. Null never, in fact, filed the motion for modification.

In late June 2020 Smith terminated the representation and asked Null to return the retainer. Null told him he would return it once he received money in the mail from a loan. Smith texted Null multiple times throughout July asking about the refund. Null did not refund the retainer.

In February 2021, the Inquiry Commission filed a five-count Charge. Count I charges Null violated SCR 3.130(1.3) (requiring “reasonable diligence and promptness in representing a client[ ]”). Null admits he violated this rule by failing to complete the work Smith paid him to perform.

Count II charges Null violated SCR 3.130(1.4)(a)(4) (requiring a lawyer to “promptly comply with reasonable requests for information[]”). Null admits to violating this rule by failing to respond to Smith’s reasonable requests for information about his case.

Count III charges Null violated SCR 3.130(1.15)(a) (requiring a lawyer to “hold property of clients . . . in a lawyer’s possession in connection with a representation separate from the lawyer’s own property. Funds shall be kept in a separate account. . . .”). Null admits to violating this rule by failing to maintain such an account to safeguard client property.

Count IV charges Null violated SCR 3.130(1.16)(d) (requiring “refunding any advance payment of fee or expense that has not been earned or incurred[]”). Null admits to violating this rule by not returning Smith’s unearned fee when the representation ended.

Count V charges Null violated SCR 3.130(8.4)(c) (prohibiting “dishonesty, fraud, deceit or misrepresentation[]”). Null admits to violating this rule by misrepresenting that he had prepared and filed the motion to modify visitation, that the child’s mother was being served, and that he would refund Smith’s fee.



***E. File No. 20-DIS-0212 (Freiberg).***

Rachele Freiberg<sup>3</sup> met with Null around February 20, 2020 to discuss expunging a 2010 criminal conviction and gave him the expungement eligibility certificate she had obtained and which was valid for 30 days. Freiberg's friend attended the meeting with her and paid Null's \$400 fee. Null told Freiberg he would get the necessary paperwork together and file the petition for expungement by the end of the week. In March 2020, Freiberg contacted Null and asked about the status of the expungement. He told her everything was ready and should be signed by March 16.

Due to the COVID-19 pandemic, the courthouse closed temporarily but reopened at the end of May 2020. When Freiberg again asked Null about the expungement, Null told her the court was going to expedite the expungement process because she had waited so long. In June, Null told her he needed extra documentation, which he would take care of obtaining.

Freiberg's friend texted Null in August 2020 to inquire about the status of the expungement. Null replied he had sent the order to be signed and would return her money due to the delay. A month later, Freiberg called the McCracken Circuit Court Clerk to check on the status of the order and was told no documents relating to expungement had been filed. That same day Freiberg texted Null and asked him to immediately return her paperwork. Her

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<sup>3</sup> Null's Motion gives this client's surname alternatively as "Frieberg" or "Freiberg." The Inquiry Commission's Charge uses the latter, so we assume that is the correct spelling.

friend's daughter went to pick up the \$400 fee and Null gave her Freiberg's file as well. Freiberg had not given Null permission to give her file to anyone but herself.

In March 2021, the Inquiry Commission filed a three-count Charge. Count I charges Null violated SCR 3.130(1.3) (requiring "reasonable diligence and promptness in representing a client[]"). Null admits to violating this rule by failing to prepare and file the petition for expungement.

Count II charges Null violated SCR 3.130(1.6)(a) (requiring a lawyer to not "reveal information relating to the representation of a client unless the client gives informed consent. . . ."). Null admits he violated this Rule by giving Freiberg's confidential file to her friend's daughter without obtaining Freiberg's informed consent to do so.

Count III charges Null violated SCR 3.130(8.4)(c) (prohibiting "conduct involving dishonesty, fraud, deceit or misrepresentation[]"). Null admits to violating this rule by misrepresenting to Freiberg he had prepared and filed her petition for expungement and the expungement order.

***F. File No. 21-DIS-0058 (Bellamy).***

Michael Bellamy, following a truck accident in April 2018, retained Null to represent him in a worker's compensation claim and by filing a personal injury action. Bellamy repeatedly tried, unsuccessfully, to meet with Null in his office. Over the next three years, he texted Null multiple times asking about the status of his cases, to which Null would sometimes reply he was

asking the court for a hearing date, but often Bellamy's texts and phone calls went unanswered.

At some point, Bellamy discovered Null had never filed suit. Bellamy was unable to retrieve his file back from Null. Bellamy terminated the relationship in early April 2021 after Null broke several office appointments Bellamy had made to pick up his file.

In February 2022, the Inquiry Commission filed a four-count Charge.<sup>4</sup> Count I charges Null violated SCR 3.130(1.3) (requiring "reasonable diligence and promptness in representing a client[]"). Null admits to violating this rule by failing to file the personal injury and worker's compensation actions he told Bellamy he would file.

Count II charges Null violated SCR 3.130(1.4)(a) (requiring a lawyer to "(3) keep the client reasonably informed about the status of the matter; [and] (4) promptly comply with reasonable requests for information[]"). Null admits to violating this rule by not keeping Bellamy informed about the true status of his legal matters and not responding to his reasonable requests for information.

Count III charges Null violated SCR 3.130(1.16)(d) (setting forth lawyer's duties upon termination of representation to "protect a client's interests, such

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<sup>4</sup> The certified mail receipt indicates the Charge was delivered to Null's bar roster address on February 7, 2022, but "C-19" is written in the signature block. Null's counsel confirmed by email that Null did receive the Charge on February 7. The parties agreed Null did not need to file an answer to the Charge since consensual discipline negotiations were underway in other pending matters and Null was willing to admit all the rule violations alleged in the Charge.

as . . . surrendering papers and property to which the client is entitled[]”). Null admits to violating this rule by failing to return Bellamy's file after Bellamy terminated the representation.

Count IV charges Null violated SCR 3.130(8.4)(c) (prohibiting “conduct involving dishonesty, fraud, deceit or misrepresentation[]”). Null admits to violating this rule by misrepresenting he had filed Bellamy’s legal actions.

***G. File No. 21-DIS-0108 (Busby).***

Crystal Busby paid Null \$1,000 in cash to file a motion for temporary custody with respect to her granddaughter. Busby attempted to meet with Null before her daughter's October 2020 court date, but he did not respond to her multiple emails and phone messages. Finally, Busby terminated the representation.

Null failed to file a motion for Busby to obtain temporary custody. He went to court on October 19 and informed the court Busby had terminated his representation. The hearing was rescheduled because the child’s mother could not attend. Busby emailed Null the following day and requested a refund of the remainder of the fee. Null failed to do so.

In December 2021, the Inquiry Commission filed a three-count charge.<sup>5</sup> Count I charges Null violated SCR 3.130(1.3) (requiring “reasonable diligence and promptness in representing a client[]”). Null admits to violating this rule

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<sup>5</sup> Null was served with the Charge by sheriff on March 3, 2022. The parties agreed Null did not need to file an answer to the Charge since consensual discipline negotiations were underway in other pending matters, and Null was willing to admit all the rule violations alleged in the Charge.

by failing to file a motion with the court or take any other action to try to obtain temporary custody of Busby's granddaughter for her.

Count II charges Null violated SCR 3.130(1.4)(a)(4) (requiring a lawyer to "promptly comply with reasonable requests for information[]"). Null admits to violating this rule by not responding to Busby's phone calls and emails requesting information.

Count III charges Null violated SCR 3.130(1.16)(d) (requiring "refunding any advance payment of fee or expense that has not been earned or incurred[]"). Null admits he violated this rule by not refunding any unearned fee after Busby terminated the representation.

***H. File No. 21-DIS-0193 (Robinson).***

In late 2019, Dawn Renee Robinson retained Null to file suit in McCracken County against a roofing company for a faulty installation. She paid Null an \$850 retainer and a \$175 filing fee. She tried to contact him for months before he finally returned her call. In August 2021, Null told Robinson he would file the case and she would have a hearing within 30 days. Null never filed the lawsuit. Robinson left him multiple messages asking him to refund the money she had paid him so she could hire another attorney, but Null did not return her calls.

In his verified response to the bar complaint, Null stated Robinson hired him to examine an insurance settlement claim for her and possibly sue a roofing company. He stated he advised her on the claim and she had received the settlement money, which is why he never filed suit. Null provided nothing

in response to several requests from Bar Counsel to provide proof of the alleged payment by the insurance company. Robinson denies ever receiving a settlement because the roofer did not have insurance, which is the reason she hired Null to file suit.

Null acknowledges his misconduct in this file would warrant a Charge being issued against him for the following rule violations, all of which he admits: SCR 3.130(1.3)(requiring “reasonable diligence and promptness in representing a client[]”). Null admits to violating this rule by not filing the lawsuit Robinson retained him to file.

SCR 3.130(1.4)(a)(3) and (4) (requiring a lawyer to “keep the client reasonably informed about the status of the matter; [and] promptly comply with reasonable requests for information[]”). Null admits to violating this rule by failing to inform Robinson about the status of the lawsuit and by failing to return her many phone calls requesting information and a return of her money.

SCR 3.130(1.16)(d) (requiring “refunding any advance payment of fee or expense that has not been earned or incurred[]”). Null admits to violating this rule by failing to refund the unearned retainer and un-incurred filing fee when the representation terminated.

SCR 3.130(8.1)(a) (prohibiting a lawyer, in a disciplinary matter, from “knowingly mak[ing] a false statement of material fact[]”). Null admits he violated this rule by knowingly falsely representing to Bar Counsel the reason he did not file a lawsuit for Robinson was that her claim had been reimbursed by an insurance company.

## II. Analysis.

Prior to this case, Null received a 61-day suspension from the practice of law probated for two years in 2013. *See Null v. Ky. Bar Ass'n*, 408 S.W.3d 76 (Ky. 2013). Null moves this Court to accept a negotiated sanction pursuant to SCR 3.480(2). As noted, the KBA has responded and expresses no objection to the proposed sanction. It cites case law supporting the sanction.

In *Kentucky Bar Association v. Howell*, 568 S.W.3d 857 (Ky. 2019), Howell had thirty-one counts of misconduct arising from ten consolidated charges. Her conduct and the number of charges and rule violations were similar to Null's. We ordered Howell to be suspended for 181 days, to continue her monitoring agreement with KYLAP, to obtain remedial education, and to refund \$7,197 in unearned fees. She had three prior private admonitions.

The attorney in *Greene v. Kentucky Bar Association*, 499 S.W.3d 687 (Ky. 2016) was charged with mismanaging client funds and failing to timely repay a \$40,000 loan from a client, which he used to cover a deficiency in his escrow account. Over an eight-year period, Green received six private admonitions, and a combined public reprimand/30-day suspension. His previous and current disciplinary actions showed he had a history of difficulty managing his clients' money. We suspended Green for 181 days with 61 days probated for one year, and subjected him to certain conditions including that he incur no further disciplinary charges.

In *Kentucky Bar Association v. Whitlock*, 318 S.W.3d 602 (Ky. 2010), the client paid Whitlock to file a lawsuit on her behalf. About a year later Whitlock told the client she had won the case and would be sending a check, less the remainder of her fee. The client never received a check and Whitlock did not return her many phone calls. The client contacted the circuit clerk's office and discovered no case existed. The client again attempted to contact Whitlock by phone but received no response to her messages. Whitlock was found guilty of failing to act with reasonable diligence and promptness in representing a client; to respond to the client's requests for information regarding the case; to provide an accounting and return the unearned portion of her fee; to protect the client's interest when the representation ended; and to respond to the bar complaint. She was also found guilty of engaging in conduct involving dishonesty, fraud, deceit and misrepresentation. Whitlock's prior discipline was considerable. In just over a year's time, Whitlock received three private admonitions, a 30-day suspension with the requirement that she attend the Ethics and Professionalism Enhancement Program (EPEP), and a 181-day suspension for misconduct related to two cases. We suspended Whitlock for one year and ordered her to refund the client's \$200 fee and return her files.

The attorney in *Kentucky Bar Association v. Quisenberry*, 275 S.W.3d 177 (Ky. 2008), failed to timely file an appellate brief or respond to the Court of Appeals' overdue notice, resulting in dismissal of the appeal. She also failed to respond to the Inquiry Commission complaint or the charge, despite being served with both. Quisenberry's history included multiple disciplinary



suspensions. In the preceding three years she had received a private admonition, a public reprimand, a 30-day suspension, a 61-day suspension, two 181-day suspensions which ran concurrently, and a non-disciplinary suspension for failure to pay her bar dues. We suspended Quisenberry for one year, to run consecutively to her previous suspensions.

The KBA represents that the Motion for Suspension from the Practice of Law along with the relevant case law has been reviewed and approved by the Chair of the Inquiry Commission and the Immediate Past President of the Kentucky Bar Association before submission to the Court, pursuant to the Office of Bar Counsel's standard procedure in consensual discipline cases.

### **III. Conclusion.**

After reviewing the facts and the broad range of imposed penalties emerging from relevant case law, we agree with the KBA that the appropriate discipline in this matter is a one-year suspension, 180 days to be served and the remaining 185 days probated for two years based on conditions, as set out in our Order below.

### **ORDER**

1. Richard Davis Null, is hereby found guilty of violating seven counts of SCR 3.130(1.3), two counts of SCR 3.130(1.4)(a)(3), four counts of SCR 1.130(1.4)(a)(4), one count of SCR 3.130(1.6)(a), two counts of SCR 3.130(1.15)(a), seven counts of SCR 3.130(1.16)(d), two counts of SCR 3.130(8.1)(a), one count of SCR 3.130(8.1)(b), and four counts of SCR 3.130(8.4)(c), and is suspended from the practice of law for one year, 180

days of which shall be served, and the balance, 185 days, shall be probated for two years, subject to the following conditions. Null shall:

- a. Have no more disciplinary charges filed against him;
- b. Refund the following unearned fees to his clients and return the specified files, providing proof of compliance to the Office of Bar Counsel within 90 days of this Order:
  - 1) Richard M. Payne, II: \$1,000;
  - 2) Gregory Sallee: \$6,000, and return file;
  - 3) Jeremy Smith: \$2,000;
  - 4) Crystal Busby: \$1,000;
  - 5) Michael Bellamy: return file; and
  - 6) Dawn Renee Robinson, \$1,025.
- c. Attend and complete the Ethics and Professionalism Enhancement Program (EPEP), hosted by the KBA in 2023, including obtaining a passing score of the exam given at the end of the EPEP;
- d. Attend and complete the next Trust Account Management Program (TAMP) offered by the Office of Bar Counsel;
- e. Timely pay his KBA membership dues;
- f. Timely satisfy all continuing legal education requirements;
- g. Pay all costs associated with the investigation and prosecution of this proceeding, pursuant to SCR 3.450(2), in the amount of \$588.01; and

- h. Notify all current clients and courts in which Null may have any matters pending of this suspension, and deliver copies of those notifications to the Director of the KBA within 10 days of this Order.
2. If Null violates any of the terms of probation stated herein or receives a charge of professional misconduct within two years of the date hereof, the KBA may file a motion with the Court requesting the issuance of a show cause order directing Null to show cause, if any, why the probated suspension should not be imposed.
3. At the expiration of the two-year probationary period, if Null has fully complied with the terms of this Order, the suspension and all probation terms shall terminate.

Minton, C.J.; Conley, Hughes, Keller, Lambert and VanMeter, JJ., sitting.

All concur. Nickell, J., not sitting.

ENTERED: December 15, 2022.

  
CHIEF JUSTICE