

# Supreme Court of Kentucky

2023-SC-0444-KB

RICHARD BOLING

MOVANT

IN SUPREME COURT

V.

KENTUCKY BAR ASSOCIATION

RESPONDENT

## **OPINION AND ORDER**

Richard Boling, KBA Member No. 86116, moves this Court to enter a negotiated sanction pursuant to Supreme Court Rule (SCR) 3.480(2) to resolve a pending disciplinary proceeding against him. The Kentucky Bar Association (KBA) has no objection. After consideration, we conclude that the proposed sanction is adequate. We note preliminarily that Boling was admitted to practice law in this Commonwealth on October 16, 1995. His bar roster address is 512 South Abbey Way, Hopkinsville, Kentucky 42240.

## **BACKGROUND**

On July 9, 2021, the Christian County Commonwealth's Attorney Richard Boling presented information to a grand jury in the matter of *Commonwealth v. Seth Henderson*, 21-CR-00399. Henderson and his co-defendant, Joshua Long, were ultimately indicted on one count of complicity to manslaughter, second degree, in connection with the overdose death of Corbin

Bowling (Corbin). The Commonwealth alleged that Henderson sold pills laced with fentanyl to Long the evening before Corbin's death. The relevant portion of Boling's presentation, when questioning one of the detectives that investigated Corbin's death, was as follows:

Boling: On or about January 9, 2021, Joshua Long contacted Seth Henderson to obtain some pills, is that correct?

Detective: Yes, sir.

Boling: Long purchased four pills for \$92 from Henderson.

Detective: Yes, sir.

Boling: The purchased pills contained fentanyl. **Long and Henderson texted each other** saying, "Y'all be careful man and don't let her take that whole thing. I K, I guess I don't know, uh, she grown, but care about her too." And the response was, "I won't."

Detective: Yes, sir.

(Emphasis added). Boling then explained that Long ingested the drugs, felt sick, then fell asleep. Long woke up to hear Corbin make a gurgling sound and observed vomit on her face and in the bed. Long called Henderson and told him about Corbin, then Henderson called 911 and drove to Corbin's residence. Corbin was transported to the hospital where an autopsy revealed her cause of death as "multiple drug intoxication—fentanyl." Boling then asked the detective the following questions:

Boling: Detective, you interviewed Long and Henderson. Long admitted to buying the four pills and having them in his possession. Long admitted that he and [Corbin] consumed some of the purchased pills. **Henderson's phone contained text messages between him and Long about getting the pills and being careful with them. Is that correct?**

Detective: Yes, sir.

Boling: As a result we are seeking an indictment against Joshua Long and Seth Henderson for complicity to Manslaughter, second degree, resulting in the death of Corbin . . . .

Detective: Yes, sir.

(Emphasis added). Grand jurors asked the detective a few questions about the type of drugs and whether Long and Corbin used the same drugs previously.

Then, Boling stated:

Boling: To me, the most important part about this one is the fact that **Henderson gives the warning about how to use them. So he either has previously used them and has knowledge or whoever he got them from told him these aren't your ordinary pills. You have to treat them differently. I think, to me, when you give somebody that warning, obviously you know there is something going on here.**

(Emphasis added). Henderson and Long were subsequently indicted on one count each of complicity to manslaughter, second degree, in connection with Corbin's death.

Henderson filed a motion to dismiss the indictment. In a May 4, 2022 order, the Christian County Circuit Court explained that during Henderson's grand jury proceedings, the Commonwealth relied on two text messages, purportedly from Henderson to Long, in an effort to show that Henderson was aware of, and consciously disregarded, the risk of Corbin consuming the pills he sold to Long. But the circuit court noted that the Commonwealth knew, prior to its presentation to the grand jury, that the text messages from Henderson's phone were not sent to Long's known cell phone number, and that the messages were sent two days after Corbin's death. The messages therefore

could not form a basis for an allegation that Henderson acted wantonly with regard to Corbin.

The court explained that the Commonwealth nevertheless presented false and misleading testimony to the grand jury by indicating that the text message exchange occurred “on or about January 9, 2021,” the day before Corbin’s death. The Commonwealth did not clarify that the messages were transmitted two days after her death nor that there was no evidence that the text message sent by Henderson was to Long. Boling then made the unsolicited statement about Henderson warning Long about the pills when there was no evidence that Henderson gave a warning to Long or anyone else about the pills **prior to Corbin’s death**. The circuit court concluded that Boling “intentionally elicited and presented false testimony in order to elevate the degree of the offense with which Henderson was to be charged. This conduct was a flagrant abuse of the grand jury process.” The circuit court dismissed Henderson’s indictment without prejudice.

On September 9, 2022, the Inquiry Commission issued a four-count Charge against Boling based on the May 4, 2022 circuit court order. Count I alleged violation of SCR 3.130(3.3)(a)(1) by knowingly making a false statement to the grand jury regarding the date of Henderson’s text messages and/or by failing to correct that same false statement of material fact as described in the circuit court’s May 4 order. Count II alleged violation of SCR 3.130(3.3)(a)(3) for knowingly offering evidence a lawyer knows to be false, and failing to take remedial measures if the lawyer learns of its falsity. Count III alleged violation

of SCR 3.130(3.8)(a) for prosecuting a charge that the prosecutor knows is not supported by probable cause. Count IV alleged violation of SCR 3.130(8.4)(c) by engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation.

Boling responded to the Charge and asserted that the detective did not tell Boling when the text messages were sent, that Boling did not know the messages were sent after Corbin's death until nine months after the grand jury proceeding, and that probable cause existed before the grand jury even without the text messages. Additionally, detectives did not attempt to determine the identity of the recipient of Henderson's text message. Nevertheless, Boling acknowledged that the information presented to the grand jury about the text messages was false.

The parties to the disciplinary charge participated in a pre-hearing telephonic conference on December 7, 2022 and scheduled a trial for March 27, 2023. On February 14, 2023, the parties tendered an agreed order stating that Boling was resigning as Commonwealth's Attorney, effective February 28, 2023. Thereafter the parties began negotiating an appropriate sanction. During those discussions the parties acknowledged the then-pending disciplinary proceedings against Boling in KRS Files 20-DIS-0010 and 20-DIS-0056, discussed in further detail below.

On June 19, 2023, Boling filed a motion for consensual discipline. SCR 3.480(2) states that the Court may consider negotiated sanctions prior to a hearing before a Trial Commissioner and "may approve the sanction agreed to

by the parties, or may remand the case for hearing or other proceedings . . . .” Boling’s motion proposed a one-year suspension to run concurrently with the five-year sanction imposed in *Kentucky Bar Association v. Boling*, 670 S.W.3d 845 (Ky. 2023). In that case, a Trial Commissioner recommended a five-year suspension to resolve two disciplinary proceedings against Boling. *Id.* at 854. The first disciplinary proceeding stemmed from Boling writing a pardon letter on his official Commonwealth’s Attorney letterhead on behalf of Dayton Jones, who pled guilty to first-degree sodomy, first-degree wanton endangerment, and first-degree distribution of matter portraying a sexual performance by a minor after he and others sexually assaulted a fifteen-year-old boy who passed out at a party. *Id.* at 847. That letter made numerous unfounded and sweeping allegations about alleged improprieties within the local justice system, with statements like the prosecution did not “pass the smell test,” the Democratic Party controlled the case, and alleging that there was corruption between the local Democratic Party and the Attorney General’s office. *Id.* at 847-48.

The other disciplinary proceeding originated from *Brafman v. Commonwealth*, 612 S.W.3d 850, 861 (Ky. 2020), in which this Court held that Boling committed prosecutorial misconduct when he, despite knowing that Brafman was intoxicated at the time of the crime based on a lunch break conversation with the investigating detective, suggested to the jury that Brafman was sober and that no one saw her intoxicated. Boling also opposed a voluntary intoxication jury instruction. In addition, Boling argued to the trial court that the only evidence of the defendant’s intoxication was her own

uncorroborated testimony and reiterated to the jury in closing argument that there was no evidence of the defendant's intoxication. *Id.* at 860.

In adopting the five-year suspension, this Court recognized the egregious nature of Boling's misconduct given his position as the Christian County Commonwealth's Attorney and his broad duty to the public and justice system. *Boling*, 670 S.W.3d at 855-56. We concluded

Boling misused his current position of trust, attacked the prosecutorial discretion of the predecessor Commonwealth's Attorney and cast doubt on the integrity of the former prosecutor, the Christian Circuit Court and Jones's defense counsel. It is immaterial that Boling believed, given the eleventh-hour submission of the letter, that then-Governor Bevin would not see the letter, or that the pardon would not be granted. In addition, although Boling now attributes the political and subjective statements to the Joneses, even time constraints seem an unlikely reason for his failure to distinguish those from his own legal analysis in a relatively brief letter. As for the Brafman matter, we are likewise troubled by Boling's actions that led this Court to conclude the trial was "fundamentally unfair" and characterize Boling's conduct as "unnecessarily exploitative and dishonest."

*Id.* at 856-57 (quoting *Brafman*, 612 S.W.3d at 863).

In addressing Boling's motion for consensual discipline in *Boling*, 670 S.W.3d 845, the Court determined that a one-year suspension is an appropriate sanction for Boling's misconduct in the Henderson matter but rejected the proposition that the one-year sanction should run concurrently with the previously imposed five-year suspension. *Boling v. Kentucky Bar Ass'n*, 677 S.W.3d 369 (Ky. 2023). The case was remanded to the KBA for further disciplinary proceedings.

Following entry of the August 2023 Opinion and Order the parties conferred. Consistent with that Opinion and Order, in a motion for consensual discipline filed September 21, 2023, Boling now proposes that the one-year suspension run consecutive to the previously imposed five-year suspension. The KBA has no objection to the motion.

In his motion for consensual discipline, Boling acknowledges that he failed to fully and properly review the evidence and testimony available to him prior to his presentation to the grand jury regarding Henderson's case. He also admits that his conduct "fell below that required of an attorney" and admits the violations in the Charge. In mitigation, Boling asserts that shortly after the grand jury presentation, defendant Henderson was interviewed by law enforcement and stated that he knew of the serious dangers of the drugs Corbin took. After consideration, we conclude that the proposed sanction of a one-year suspension to run consecutively to the previously imposed five-year suspension is appropriate.

### **ANALYSIS**

In considering Boling's first motion proposing a one-year suspension, we determined that a one-year suspension was appropriate based on caselaw and guidelines from the *ABA Standards for Imposing Lawyer Sanctions*.<sup>1</sup> In *Kentucky Bar Association v. James*, 575 S.W.3d 687, 688 (Ky. 2019), the Court suspended an attorney for three years for his violations of multiple rules,

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<sup>1</sup> American Bar Association, *Standards for Imposing Lawyer Sanctions* (2d ed. 2019).



including SCR 3.130 (3.3)(a)(1) by knowingly making a false statement of fact or law to a tribunal when he made false statements to the Supreme Court of Indiana about his reinstatement status. James, who had a lengthy disciplinary history, continued practicing law in Indiana while suspended, violated the order prohibiting him from practicing law, and falsely told the court he had been readmitted to practice in Indiana. *Id.* at 688-89. The Court reasoned that a three-year suspension was consistent with other disciplinary cases and considered the *ABA Standards*, acknowledging that five aggravating factors applied to James's case. *Id.* at 693. While James was not a Commonwealth's Attorney, his similar misconduct of making false statements before a tribunal likewise warranted considerable discipline.

Further analysis using the *ABA Standards* supports a one-year suspension. While the *ABA Standards* are not binding, we note the aggravating factors present here:

- (1) Violated ethical duties owed to the public – failure to maintain personal integrity and failure to maintain public trust;
- (2) Violated ethical duties owed to the legal system – false statements, fraud and misrepresentation;
- (3) Intentionally, or at a minimum, knowingly violated the Supreme Court Rules; and
- (4) Caused injury because the indictment was dismissed and new counsel had to take over the Henderson matter.

See *ABA Standards* §§ 6.0 and 6.1. Further, the following aggravating circumstances are present: Boling's substantial experience in the practice of law, and that Boling committed misconduct while serving as a public official.

See, e.g., *Gentry v. Kentucky Bar Ass’n*, 644 S.W.3d 502 (Ky. 2022); *Kentucky Bar Ass’n v. Ballard*, 349 S.W.3d 922 (Ky. 2011).<sup>2</sup>

In *Kentucky Bar Association v. Calilung*, 671 S.W.3d 109, 112 (Ky. 2023), this Court recently considered whether an attorney’s near thirty years of experience practicing law should serve as an aggravating factor “given that he should know that much more is expected of seasoned lawyers than the lack of diligence, honesty, and candor which he displayed towards both his clients and the Probate Court.” Likewise, Boling had nearly twenty-six years of experience practicing law when he committed the misconduct in the present case, and eight of those years were spent serving as the Commonwealth’s Attorney in Christian County.

This Court’s Opinion in *Boling*, 670 S.W.3d 845, was rendered three days after the KBA filed its response to Boling’s motion for consensual discipline in this case. Therefore, we must also consider the aggravating factors of prior disciplinary offenses and a pattern of misconduct. *ABA Standards* § 9.22(a) and (c). While Boling had not been formally disciplined by this Court at the time he committed misconduct in this case, the Inquiry Commission issued a complaint in the Jones misconduct matter on February 28, 2020, and the

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<sup>2</sup> In its response to Boling’s motion to impose a one-year suspension concurrent to the previously imposed five-year suspension, the KBA also listed “imposition of other penalties or sanctions,” *ABA Standards* § 9.32(a), as a mitigating factor here because Boling resigned as the Commonwealth’s Attorney under threat of impeachment. However, Boling’s decision to resign as the Commonwealth’s Attorney was not a penalty or sanction **imposed** on him. Rather, that decision was of his own volition.

Court rendered its Opinion in *Brafman* on December 17, 2020. Further, Boling filed a motion for consensual discipline to resolve both disciplinary cases on February 5, 2021, and presented the Henderson matter to the grand jury on July 9, 2021. Therefore, Boling was aware that his actions in writing the Jones pardon letter and his representation of the Commonwealth in *Brafman* were being scrutinized by the KBA and this Court well before he presented to the grand jury in the Henderson matter.

We found Boling's prior misconduct cases particularly difficult given his position as a Commonwealth's Attorney and the serious nature of his misconduct. "A prosecuting attorney has a broader duty to the public and to our system of justice than to obtain convictions." *Brafman*, 612 S.W.3d at 862. The Commonwealth's Attorney for Christian County is in a position of trust and represents the people of that county. Boling's actions here undoubtedly undermined the integrity of the Commonwealth's Attorney's office and potentially casted doubt on the justice system as a whole. In *Kentucky Bar Association v. Carmichael*, 244 S.W.3d 111, 112 (Ky. 2008), the Court permanently disbarred a Commonwealth's Attorney who extorted money from criminal defendants in exchange for agreeing not to prosecute. In considering aggravating factors, the Court was particularly troubled by Carmichael's position of authority and influence as a Commonwealth's Attorney. *Id.* at 115. While Carmichael's conduct was certainly more egregious than what is

presented here, we consider Boling’s position as Commonwealth’s Attorney a relevant factor in assessing the appropriate discipline.<sup>3</sup>

Boling’s misconduct in the Henderson matter was serious and deserves its own punishment, rather than a punishment running concurrently with a previously imposed punishment. Again, Boling was aware of the misconduct proceedings against him at the time he presented the Henderson matter to the grand jury and nevertheless presented false testimony to secure an indictment, actions that contravened our rules of professional conduct. After considerable deliberation, we accept the negotiated one-year sanction to run consecutively with the previously imposed discipline.

ACCORDINGLY, IT IS ORDERED THAT:

1. Richard Boling is suspended from the practice of law in the Commonwealth of Kentucky for one year. This one-year suspension shall be consecutive with the suspension imposed by this Court’s Opinion and Order dated June 15, 2023, for a total suspension of six years.
2. Boling resigned as Commonwealth's Attorney, effective February 28, 2023. If he has engaged or attempted to engage in the practice of law in

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<sup>3</sup> See also *Kentucky Bar Association v. Dixon*, 373 S.W.3d 444, 451 (Ky. 2012), in which Dixon, a County Attorney, requested a private reprimand for his misconduct. The Court determined that the misconduct warranted a greater sanction, in part because Dixon, as an elected official, was “entrusted by the citizens of Knox County to act as Knox County Attorney.” *Id.*

any capacity outside of his role as Commonwealth's Attorney, the following shall apply:

a. If he has not already done so, pursuant to SCR 3.390, Boling shall promptly take all reasonable steps to protect the interests of his clients, including, within ten days after the issuance of this order, notifying by letter all clients of his inability to represent them and of the necessity and urgency of promptly retaining new counsel and notifying all courts or other tribunals in which Boling has matters pending. Boling shall simultaneously provide a copy of all such letters to the Office of Bar Counsel;

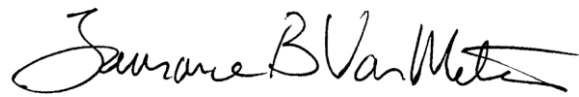
b. If he has not already done so, pursuant to SCR 3.390, Boling shall immediately cancel any pending advertisements, shall terminate any advertising activity for the duration of the term of suspension, and shall not allow his name to be used by a law firm in any manner until he is reinstated.

3. Pursuant to SCR 3.390, Boling shall not, during the term of suspension and until reinstatement, accept new clients or collect unearned fees;

4. In accordance with SCR 3.450, Boling shall 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. VanMeter, C.J.; Bisig, Conley, Keller, Lambert, and  
Nickell, JJ., concur. Thompson, J., concurs in result only.

ENTERED: December 14, 2023.

A handwritten signature in black ink, reading "Justine B. VanMeter". The signature is written in a cursive style with a prominent initial "J".

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CHIEF JUSTICE