

Supreme Court of Kentucky

2024-SC-0179-KB

IN RE: MICHAEL GARY BYERS

IN SUPREME COURT

OPINION AND ORDER

Michael Gary Byers moves this Court, pursuant to Supreme Court Rule (SCR) 3.480(2), to impose a negotiated sanction of a public reprimand with conditions for his violation of the Rules of Professional Conduct (SCR). The Kentucky Bar Association (KBA) has no objection to Byers’s motion. For the following reasons, the motion is granted, and the following sanctions imposed.

I. FACTS AND BACKGROUND

Byers was admitted to the practice of law in this Commonwealth on July 30, 2007. His KBA membership number is 91862, and his bar roster address is listed as 3908 Hinkleville Road, Paducah, Kentucky, 42001.

Lisa Mead is the sole member of L&J Development, LLC (L&J) and was a member of the now defunct Paducah Cigar Company, LLC (PCC) with fellow members Megan and Kip Kessler. In March 2019, Mead hired Byers to “wind down,” or dissolve, the failing PCC, beginning with evicting PCC from a building owned by L&J. In return for the services he would render, Byers accepted a \$3,000 retainer payment from Mead, however, Byers failed to execute an agreement outlining the scope of his representation or the hourly rate he would

charge Mead. Mead's husband, Joaquin Hilton, was actually the individual who had first consulted Byers and delivered the \$3,000 retainer check to Byers on Mead's behalf.

For the next eight months, Byers engaged in work on behalf of Mead and Hilton in an effort to dissolve PCC. Byers sent a demand letter to PCC instructing it to vacate L&J's premises, initiated eviction proceedings, and engaged in settlement negotiations with counsel for the Kesslers, the other members of PCC. Byers's representation related to the dissolution of PCC ended on June 1. Byers provided a billing statement that he had earned \$2,607.50 of the \$3,000 retainer between March 16 and June 1, leaving a balance of \$392.50 owed to Mead. However, Byers did not return that unearned portion of his retainer to Mead.

In August 2019, Mead's husband, Hilton, contacted Byers to explore the operation of a new business, a cigar bar, in the building owned by L&J. At the time, Paducah city ordinances prohibited tobacco use and alcohol sales by the drink at the same location. Byers gave Mead and Hilton a proposal of several services he could offer in assisting them in the new venture, as well as accompanying price points. At one point, Byers offered to perform services and receive payment in the form of equity in the proposed new company. Eventually, Mead hired Byers to assist in changing the local ordinances to allow for the proposed cigar bar. Byers accepted payment in the form of a check for \$5,000, without a written advance fee agreement, and deposited the sum in his operating account rather than his escrow account. Ultimately, the

representation was successful; the Paducah City Council passed the necessary ordinances to allow for the operation of Mead and Hilton's cigar bar. Byers later drafted and filed the proper documents with the Kentucky Secretary of State to incorporate the Old Fashioned Cigar Bar, LLC (OFCB). By agreement, Byers retained a 40% interest in OFCB, however, he failed to advise Mead or Hilton to consider consulting independent counsel before entering into a business relationship with him. Nor did Byers obtain documentation of Mead or Hilton's informed consent to the terms of the transaction.

The business relationship between the parties soon deteriorated and, in August 2020, Byers sent Mead a letter informing her that he wished to terminate their partnership in OFCB. In October 2020, OFCB sought an injunction against Byers, and Byers then filed suit against Mead, Hilton, and L&J two months later. Both cases were dismissed by agreement in September 2021. Mead later filed a bar complaint against Byers, and in March 2023, the KBA Inquiry Commission charged Byers with violations of SCR 3.130(1.5)(b) (failure to communicate the scope of representation and basis for fee); SCR 3.130(1.5)(f) (failure to execute a written advance fee agreement); SCR 3.130(1.8)(a) (failure to advise client to consult independent counsel before entering into business relationship); SCR 3.130(1.15)(e) (failure to deposit unearned fees into an escrow account); and SCR 3.130(1.16)(d) (failure to refund unearned fees upon termination of representation).

Byers now admits to all charges against him except for an alleged violation of SCR 3.130(1.5)(b), which he requests be dismissed. The KBA has no

objection to the dismissal of this charge. Byers requests that this Court impose a public reprimand and order him to pay restitution to Mead in the sum of \$392.50. Byers also agrees that he will attend, at his own expense, the Ethics and Professional Enhancement Program (EPEP) and Trust Account Management Program (TAMP) offered by the KBA Office of Bar Counsel.

II. ANALYSIS

Pursuant to SCR 3.480(2), Byers and the KBA have agreed to a negotiated sanction of a public reprimand with conditions. As support for its negotiated sanction, the KBA cites a number of cases involving violations of SCR 3.130(1.8), which states:

- (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 in a manner that can be reasonably understood by the client;
 - (2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and
 - (3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

In *Underhill v. Kentucky Bar Association*, 937 S.W.2d 193 (Ky. 1997), this Court imposed a sanction of a public reprimand for an attorney's violation of SCR 3.130(1.8)(a). There, Underhill and his partners sold a laundromat business to his client Miller for \$150,000. *Id.* To finance the transaction,

however, Miller was forced to borrow a sum of \$110,000 from a bank, and Underhill and his partners agreed to guarantee the loan to Miller. *Id.* To insure their loan, Underhill and his partners required Miller to grant them a mortgage on his house. *Id.* at 193–94. When Miller later defaulted, Underhill and his partners sued Miller and requested that he sell his home to pay his obligation. *Id.* at 194. Underhill did not advise Miller to consult with independent counsel or receive Miller’s informed consent in writing to the terms of their transaction. *Id.*

We imposed a harsher sanction in *Jackson v. Kentucky Bar Association*, 632 S.W.3d 331 (Ky. 2021). There, Jackson obtained a \$100,000 unsecured loan from his client without first advising her to consult an independent attorney or receiving her informed consent. *Id.* at 332. The client eventually had to sue Jackson for repayment of the loan. *Id.* This Court imposed a sanction of 61 days’ suspension from the practice of law, probated for two years, with conditions, including repayment of the loan in accordance with the civil judgment against him. *Id.* at 334.

In *Unnamed Attorney v. Kentucky Bar Association*, 269 S.W.3d 407 (Ky. 2008), an attorney violated the Rules of Professional Conduct by entering into a mortgage agreement with his client, whom he was representing in a divorce matter, without first advising her to seek the advice of independent counsel. The attorney was also charged with other ethical violations, and this Court issued a private reprimand. *Id.* at 408–09. Public reprimand is currently the least severe sanction that may be imposed by this Court. *See* SCR 3.380

“Upon findings of a violation of these rules, discipline may be administered by way of public reprimand, suspension from practice for a definite time, all of which may be with or without such conditions as the Court may impose, or permanent disbarment.”)

This Court also notes that Byers has no prior disciplinary history in his 17 years of legal practice in this Commonwealth.

Having reviewed the record and relevant caselaw, we agree with Byers and the KBA that a public reprimand with conditions is an appropriate sanction.

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

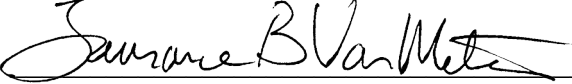
1. Michael Gary Byers is found guilty of violating SCR 3.130(1.5)(f), SCR 3.130(1.8)(a), SCR 3.130(1.15)(e), and SCR 3.130(1.16)(d) and is hereby publicly reprimanded for his unprofessional conduct.
2. Count I alleging a violation of SCR 3.130(1.5)(b) is hereby dismissed.
3. Byers shall attend, at his own expense, and successfully complete, within 12 months of entry of this Order, the Ethics and Professional Enhancement and Trust Account Management Programs offered by the KBA Office of Bar Counsel for purposes of remedial education regarding his ethical obligations.
4. Byers will not apply for Continuing Legal Education (CLE) credit of any kind for his attendance at EPEP or TAMP. Moreover, Byers will furnish a release and waiver to the OBC to review his records of the CLE Department that might otherwise be confidential. Such release will

remain in effect until after he completes remedial education so OBC may verify that he has not reported any hours to the CLE Commission taken as remedial education.

5. Byers shall pay, in restitution, to his former client, Lisa Mead, the sum of \$392.50 within one month of entry of this Order.
6. Byers shall pay all costs associated with the investigation and prosecution of this proceeding totaling \$92.78.
7. If Byers fails to comply with any of the terms of discipline as set forth herein, the OBC may immediately move this Court to impose a sanction more significant than a public reprimand.

All sitting. All concur.

ENTERED: JUNE 13, 2024.


CHIEF JUSTICE