KENTUCKY SUPREME COURT
DECEMBER 2023

CRIMINAL:

WILLIAM KENNETH RIGGLE, SR. V. COMMONWEALTH OF KENTUCKY

2021-SC-0510-MR **December 14, 2023**

Opinion of the Court by Justice Keller. All sitting. VanMeter, C.J.; Bisig, Conley, Lambert, and Thompson, JJ., concur. Nickell, J., concurs in part, concurs in result only in part, and dissents in part by separate opinion.

Riggle, Sr. (Senior), was convicted of three counts of sodomy in the first degree, eight counts of sexual abuse in the first degree, and three counts of intimidating a participant in the legal process stemming from years of inappropriate sexual conduct perpetrated on his three minor nieces. The Supreme Court held: (1) The trial court did not err in admitting testimony from other minor victims that Senior had similarly abused them. This testimony tended to prove that Senior had committed prior bad acts in furtherance of a common scheme or plan to cultivate a culture of unreported abuse in his household. Such evidence was admissible under the exceptions to the rule barring character evidence in KRE 404(b). (2) Testimony from one victim's school counselor confirming that the victim had previously reported Senior's abuse to the counselor did not amount to improper hearsay but was rather non-hearsay admissible for rehabilitative purposes. (3) Two of the trial court's jury instructions did present unanimous verdict issues, but those errors did not result in manifest injustice. (4) The trial court did not err in denying Senior's motion for a directed verdict because there existed sufficient evidence that Senior had made a "threat" under KRS 524.010(8) to support an intimidating a participant in the legal process charge. Senior's demand that the victim "swear on [her] little sister" not to tell anyone about his abuse constituted a "threat." (5) The trial court did not err in failing to sua sponte direct a verdict on one count of first-degree sexual abuse because the Commonwealth presented more than a scintilla of evidence that Senior had touched one of the victim's breasts.

ERIC BERRY V. COMMONWEALTH OF KENTUCKY

2022-SC-0181-MR **December 14, 2023**

Opinion of the Court by Justice Conley. VanMeter, C.J.; Conley, Keller, Lambert, Nickell, and Thompson, JJ., sitting. VanMeter, C.J.; Conley, Keller, and Lambert, JJ., concur. Thompson, J., concurs in result only. Nickell, J., concurs in part and dissents in part by separate opinion. Bisig, J., not sitting.

Eric Berry broke into the house of his ex-girlfriend, Alford, and assaulted both she and her then-boyfriend. Berry searched throughout the house looking for Alford while she hid in her daughter's closet. Berry, though drunk, was able to communicate and repeatedly asked Alford's boyfriend and daughter where she was. When Berry finally found Alford, he began to strike her face repeatedly, pulled off her pants and underwear, and only ceased his attack when police announced their presence at the front door. Berry was apprehended while attempting to flee. After his arrest, Berry was incarcerated for approximately 50 months between arrest and trial, including during the Covid-19 pandemic. After trial concluded, Berry sought an intoxication instruction for the jury, but it was denied. On appeal, Berry alleged his speedy trial right was violated; the trial court erred in refusing to give the intoxication instruction; and other minor issues.

The Court affirmed Berry's convictions in a five-to-one ruling with Justice Conley writing for the Court. Justice Nickell dissented on the intoxication instruction issue. Bisig, J., did not sit. The Court held there was no violation of Berry's speedy trial right because all the delays of his trial were due to valid reasons; namely, Berry's own motion practice and trial strategy, including a motion to retain private counsel, as well as the Covid-19 pandemic orders of the Supreme Court. The Court found no abuse of discretion in refusing to give the intoxication instruction because to merit such an instruction there must be some evidence supporting the inference that the defendant was not merely drunk, but so drunk as to not know what he was doing. The testimony was unanimous that Berry was looking for Alford in the house and that he intended to assault her. Although Alford's daughter did state that she did not believe Berry knew what he was doing, she immediately qualified that statement by testifying he was she looking for her mom. The Court held one piece of out-of-context testimony did not satisfy Berry's burden of proof, since intoxication is an affirmative defense. The Court held the trial court did not err in failing to sever a sexual abuse charge from a prior incident since Berry could not demonstrate prejudice. Finally, the Court also held the trial court did not err in refusing to allow prior testimony of Berry from a domestic violence hearing since KRE 804(b)(1) precludes that testimony where the party the testimony is offered against did not have a similar motive and opportunity to cross-examine Berry. The Commonwealth was not a party in the domestic violence hearing.

RUBEN JOHNSON, IV V. COMMONWEALTH OF KENTUCKY

2022-SC-0185-MR **December 14, 2023**

Opinion of the Court by Justice Conley. All sitting. VanMeter, C.J.; Bisig, Keller, Lambert, and Nickell, JJ., concur. Thompson, J., concurs in result only.

In a case presenting numerous charges and extensive facts, Ruben Johnson challenged his convictions arguing the trial court erred in allowing the Commonwealth to cross-examine him about three prior misdemeanor battery convictions to rebut his testimony that he is a kindhearted person; that the trial court erred when it allowed police body cam footage showing an interview with a neighbor; that the trial court erred in not polling the jury; and the trial court erred in not giving directed verdicts on several counts.

In a six-to-one ruling, with Justice Conley writing for the Court, and Justice Thompson concurring in result only, the Court affirmed in part and reversed in part Johnson's convictions. It held that Johnson's testimony of being kindhearted was an impermissibly broad claim to moral virtue that the Commonwealth was entitled to rebut with evidence that would otherwise be impermissible under the rule of curative admissibility. It held there was no constitutional error in showing the police body cam footage because the interview of the witness at the scene was not testimonial under the Sixth Amendment. The Court assumed without deciding that the testimony, under the Kentucky Rules of Evidence, was hearsay but concluded the erroneous admission was harmless. It held there was no error in refusing to poll the jury because Johnson did not assert that right at the trial court, and his trial counsel twice told the trial court that he did not believe polling the jury was necessary. Finally, the Court agreed that one charge of complicity to first-degree robbery merited a directed verdict since the trial court concluded that a lesser-included offense of fourth-degree assault was not proven for failure to show physical injury. Under the facts of this case, physical injury was a shared element with first-degree robbery so its absence in the lesser-included offense meant it was also absent for the greater offense. The Court reversed this conviction, as well as another fourth-degree assault conviction based on double jeopardy grounds. As to the other charges on which Johnson claimed he was entitled to a directed verdict, the Court disagreed and affirmed his convictions.

JAIKORIAN J. JOHNSON V. COMMONWEALTH OF KENTUCKY

2022-SC-0236-MR **December 14, 2023**

Opinion of the Court by Justice Conley. All sitting. All concur.

Jaikorian Johnson was walking with a friend when two young men on a moped approached them from behind. One of them, Corban Henry, brandished an airsoft pistol at him. Believing it was a real gun, Johnson drew his own pistol, fled in the opposite direction, and aimlessly fired five shots behind him. One of these bullets struck Henry and passed through him, also striking the moped's driver, Pittman. Henry later died from his wounds. At trial, Johnson was acquitted of murder and convicted of second-degree manslaughter as well as fourth-degree assault. He was also convicted of four counts of first-degree

wanton endangerment. In the penalty phase, Henry's mother gave a victim impact statement in which she accused Johnson of several additional crimes, including another act of wanton endangerment by shooting a gun over a candlelight vigil and acts of intimidation against her own person. She also accused Johnson of bragging on social media about killing her son. On appeal, Johnson argued the trial court erred by excluding witness testimony that would have put before the jury that the two victims were on their way to rob another man when the shooting occurred; the trial court erred in refusing to give a directed verdict on the wanton endangerment counts since there was no person in the vicinity of Johnson when he fired his pistol four additional times; and the victim impact testimony of Henry's mother was palpable error.

In a unanimous opinion with Justice Conley writing for the Court, the Court upheld Johnson's convictions. It held that the trial court properly excluded the testimony regarding the alleged robbery scheme of the victims because Johnson introduced no evidence that he was aware prior to the shooting that the victims intended to rob him. Since Johnson was not aware of the alleged robbery scheme, it was irrelevant to demonstrating his fear of the victim. The Court also held that the trial court did not err in refusing the directed verdicts on the wanton endangerment counts. Although the Court agreed with Johnson's argument that the Commonwealth must demonstrate with evidence that an actual person was in the vicinity for first-degree wanton endangerment, the Court also held that Pittman was in the vicinity of Johnson when he fired the shots, as evidenced by the fact that he was on the same moped when Henry was struck with a bullet, and in fact was also struck with that same bullet himself. It was not clearly unreasonable for the jury to conclude Pittman was in the vicinity of the other four shots based on this evidence. Finally, the Court reversed Johnson's sentence. It concluded that uncharged acts of misconduct are not admissible in the penalty phase and nothing in Section 26A of the Kentucky Constitution altered that rule. The Court concluded that the accusations of criminal conduct made by Henry's mother surely caused the jury to question its previous conclusion that Johnson had acted with imperfect self-defense as evidenced by its recommendation of the maximum sentence, therefore there was palpable error. The Court remanded for a new penalty phase.

GREGORY STEPHENS V. COMMONWEALTH OF KENTUCKY

2022-SC-0244-MR **December 14, 2023**

Opinion of the Court by Justice Thompson. All sitting. All concur.

The Court reversed and remanded a rape conviction because the Commonwealth's pervasive vouching and bolstering evidence rendered the trial fundamentally unfair. In this "he said/she said" case, which was devoid of any physical evidence, allowing other witnesses to testify to the child victim's

hearsay statements and to their belief in her veracity constituted palpable error. Such testimony encouraged the jury to render its decision based on what others believed, rather than to exercise independent judgment. It was also improper to allow victim impact evidence to be admitted during the guilt phase of the trial.

COMMONWEALTH OF KENTUCKY V. PARADISE BURKHEAD

2022-SC-0304-DG **December 14, 2023**

Opinion of the Court by Justice Bisig. All sitting. All concur.

Paradise Burkhead was charged with crimes committed while she was a juvenile and her case was transferred to Jefferson Circuit Court for prosecution as an adult pursuant to a then-existing statute which required mandatory transfer. Subsequently, a new juvenile transfer statute took effect which eliminated the mandatory transfer requirement and instead vested district courts with sole discretion to determine, based on prescribed factors, whether a juvenile firearm case should be transferred to a circuit court. Kentucky Revised Statute (KRS) 635.020(4). Burkhead sought to take advantage of this new statute by a motion to transfer her case back to district court for a second transfer hearing. Over the Commonwealth's objection, the circuit court granted the motion. The Commonwealth filed an interlocutory appeal from the district court's transfer order and the Court of Appeals affirmed.

The Supreme Court concluded that the interlocutory appeal was proper because all conditions of KRS 22A.020(4), which permits an interlocutory appeal in criminal cases, were satisfied. The appeal did not suspend the proceedings, was taken under the normal rules, and was approved by the Attorney General as "important to the correct and uniform administration of the law." KRS 22A.020(4). The Court also determined that the circuit court erred by ordering a second transfer hearing. KRS 446.110 states that no new law shall be construed to repeal a former law, except that "the proceedings thereafter had shall conform, so far as practicable, to the laws in force at the time of such proceedings. . .." The Court construed "proceedings" as used in KRS 446.110 narrowly and as referring to the distinct phases of a case, i.e., arraignment, sentencing, suppression hearings, etc. A trial court must always look to current procedural law when making procedural decisions in a case. Because Burkhead's juvenile transfer hearing occurred when the prior statute was in effect, that prior statute applied to that stage of the proceedings. The Court reversed the Court of Appeals and remanded the case to Jefferson Circuit Court where Burkhead will have a full resolution of her legal issue.

JOSE SANCHEZ V. COMMONWEALTH OF KENTUCKY

2022-SC-0385-MR **December 14, 2023**

Opinion of the Court by Justice Lambert. All sitting. All concur.

Jose Sanchez was convicted of five counts of first-degree rape and four counts of third-degree rape—all of which were perpetrated against his longtime live-in girlfriend's daughter, who was under the age of sixteen at the time of the offenses. Sanchez appealed his resulting seventy year conviction, arguing: (1) that the trial court erred by permitting a nurse that examined the victim to repeat the victim's statement that "my dad made me have sex with him"; (2) that the Commonwealth failed to authenticate text messages between Sanchez and the victim and failed to authenticate videos the victim recorded of Sanchez raping her; (3) that the trial court erred by failing to provide a missing evidence instruction for Sanchez's cellphone; (4) that the jury instructions for each of the first-degree rape instructions contained a unanimous verdict violation; (5) that the trial court erred by imposing public defender fees; and (5) that cumulative error occurred.

The Supreme Court held, first, that although the trial court erred by allowing the nurse to repeat the victim's statement identifying Sanchez as the perpetrator, the error was harmless. Second, the Court held that the text messages between Sanchez and the victim and the videos recorded by the victim were properly authenticated. Third, the Court held Sanchez was not entitled to a missing evidence instruction for his cellphone. Fourth, the Court held that Sanchez waived his ability to challenge the first-degree rape instructions on appeal, but nevertheless concluded he would not be entitled to relief under review for palpable error. Fifth, the Court held that the trial court did err by imposing public defender fees and vacated its order. And, last, the Court held that no cumulative error occurred.

CONSTITUTIONAL LAW:

DERRICK GRAHAM, ET AL. V. SECRETARY OF STATE MICHAEL ADAMS, ET AL.

2022-SC-0522-TG **December 14, 2023**

AND

COMMONWEALTH OF KENTUCKY V. DERRICK GRAHAM, ET AL.

2023-SC-0139-TG **December 14, 2023**

Opinion of the Court by Justice Bisig. All sitting. Opinion of the Court Affirming. Nickell, J., concurs in part, dissents in part by separate opinion. Keller, J., concurs in part, dissents in part by separate opinion. Conley, J., dissents by separate opinion, in which Lambert, J., joins.

Rep. Derrick Graham, the Kentucky Democratic Party, and four voters appealed a Franklin Circuit Court judgment finding the General Assembly's 2022 legislative and Congressional apportionment plans constitutional. The Supreme Court granted transfer. Appellants argued on appeal that the apportionment plans were an unconstitutionally partisan gerrymander and violate Sections 1, 2, and 3 (equal protection, freedoms of speech and assembly), 6 (free and equal elections), and 33 (population equality and county integrity) of the Kentucky Constitution. The Supreme Court held that Appellants had standing to pursue their claims and that the question of whether an apportionment plan is unconstitutionally partisan is justiciable. The Court set forth the constitutional guardrails for consideration of such claims, and further held that the 2022 apportionment plans were not unconstitutionally partisan because they did not involve partisanship either rising to the level of a clear, flagrant, and unwarranted violation of constitutional rights or so severe as to threaten the democratic form of government. The Court also held the apportionment plans did not violate equal protection guarantees, the freedoms of speech or assembly, or the right to free and equal elections. Finally, the Court held that the apportionment plans also did not violate the population equality and county integrity provisions of Section 33. The Court noted that where actual compliance with that provision is possible, it is required. The Court further held that where actual compliance is not possible, even unnecessary deviations from Section 33 may be allowable, provided the deviations do not clearly and flagrantly disregard the purpose of that Section or threaten the democratic form of government. The Court thus affirmed the judgment of the Franklin Circuit Court.

FAMILY LAW:

CABINET FOR HEALTH AND FAMILY SERVICES, COMMONWEALTH OF KENTUCKY V. D.W., ET AL.

2022-SC-0521-DGE **December 14, 2023**

Opinion of the Court by Justice Conley. All sitting. VanMeter, C.J.; Bisig and Nickell, JJ., concur. Keller, J., concurs in part and dissents in part by separate opinion. Thompson, J., dissents by separate opinion in which Lambert, J., joins.

In a split decision, the Court ruled the Court of Appeals had no jurisdiction to hear D.W.'s appeal of the termination of his parental rights because his attorney intentionally filed an electronic notice of appeal in a related dependency, neglect, and abuse case, when the controlling statute and eFiling rules unambiguously state that a notice of appeal must be conventionally filed for TPR cases once they are sealed.

The Court's reasoning was based on the operative language of KRS 625.108(2) which directs a clerk of the circuit court to seal TPR cases upon entry of the final order. The Court held a final order is the order of the trial court resolving the issues in the case and determining whether the plaintiff has or has not proven himself entitled to the relief sought. As such, the circuit clerk acted properly in sealing the TPR case after entry of the final order terminating D.W.'s parental rights. D.W. had thirty days from entry of that order to file his appeal. Based on the relevant Administrative Order, eFiling is not allowed for sealed cases. Therefore, D.W. had to file his notice of appeal conventionally. Instead, his attorney eFiled the notice of appeal in a related DNA case with a notation to the proper TPR case. The Court held this was not good enough, as there is no substantial compliance rule for timely filing a notice of appeal in a correct case. Because no notice of appeal was ever filed in the TPR case, the Court of Appeals had no jurisdiction, and it was reversed.

IMMUNITY:

VALETTA BROWNE V. TIMOTHY POOLE

2022-SC-0412-DG **December 14, 2023**

Opinion of the Court by Chief Justice VanMeter. All sitting. All concur.

On appeal from the Court of Appeals' decision vacating the Fayette Circuit Court's judgment dismissing Timothy Poole's complaint, the Supreme Court reversed, and affirmed the circuit court, albeit on different grounds. Poole, the plaintiff and appellee in this matter, was one of eighteen individuals who, on November 30, 2020, received an incorrect bar exam result. In Poole's case, he was told he had passed the bar exam. Three days later, Valetta Browne, Executive Director of the KYOBA, notified Poole that, due to a data entry error, Poole's exam result notification was erroneous, and that Poole had not passed the bar examination. In April 2021, Poole, through counsel, filed the instant action in Fayette Circuit Court, alleging Browne had negligently performed her duties and caused Poole damages from "emotional duress and suffering, loss of employment opportunities, loss of income, humiliation, embarrassment, out of pocket expenses [and] other damages[.]" Poole's prayer for relief sought compensatory damages in an amount to be shown at trial, costs and reasonable attorney fees, and prejudgment and postjudgment interest. Browne moved to dismiss, citing the circuit court's lack of jurisdiction and her entitlement to official immunity. The circuit court granted dismissal on jurisdictional grounds, noting that the Supreme Court of Kentucky is vested with sole jurisdiction over all controversies surrounding its authority to supervise the legal profession, including the conduct at bar. On appeal, the Court of Appeals reversed, acknowledging this Court's sole authority over bar admissions under Kentucky Constitution § 116, but holding that our constitution limits this Court to "appellate jurisdiction only," KY. CONST. §

110(2)(a), and correspondingly grants to circuit courts "original jurisdiction of all justiciable causes not vested in some other court." KY. CONST. § 112(5). The Court of Appeals concluded these provisions necessitated that a negligence action arising from the execution of bar admissions be brought in circuit court. The Court of Appeals did not address Browne's alternative arguments for affirmance based on immunity, merely noting that Poole's arguments related to immunity were moot. On discretionary review, the Supreme Court emphasized its plenary power over bar admissions, KY. CONST. § 116, and that the acts Poole complains of were performed by Browne in obedience to duties imposed upon her by this Court, pursuant to our sole constitutional authority to "govern admission to the bar." Accordingly, the Court concluded Browne was entitled to absolute immunity in performing these judicial functions at the Court's direction and thus affirmed the circuit court's dismissal of Poole's complaint.

ATTORNEY DISCIPLINE:

RICHARD BOLING V. KENTUCKY BAR ASSOCIATION

2023-SC-0444-KB **December 14, 2023**

All sitting. VanMeter, C.J.; Bisig, Conley, Keller, Lambert, and Nickell, JJ., concur. Thompson, J., concurs in result only.

Richard Boling moved the Supreme Court to impose a sanction to resolve a pending disciplinary proceeding against him. The KBA did not object to the sanction. The Court granted the motion.

Boling was the Christian County Commonwealth's Attorney at the time of the underlying conduct. He has since resigned. In presenting a case to a grand jury seeking an indictment for manslaughter in a drug-related death, Boling knowingly represented text messages had been sent between the two individuals for which he sought indictments prior to drug overdose of another individual. The messages seemed to acknowledge the pills in question should be handled with care and discussed whether someone should use all of them at once. Boling used these messages as evidence that the individuals he sought to indict knew of the potency of the drugs before giving them to the deceased individual. However, Boling knew these messages were not actually sent until two days after the individual's death. Therefore, they could not have been evidence of wanton conduct related to the death. In dismissing the indictment, the circuit court concluded 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."

Based on the circuit court order, the Kentucky Bar Association Inquiry Commission issued a four-count charge against Boling alleging he violated: (1) SCR 3.130(3.3)(a)(1) by knowingly making a false statement to the grand jury regarding the date of the text messages and/or by failing to correct that same false statement; (2) SCR 3.130(3.3)(a)(3) for knowingly offering evidence he knew to be false and failing to take remedial measures once he knew of its falsity; (3) SCR 3.130(3.8)(a) for prosecuting a charge that he knew was not supported by probable cause; and (4) SCR 3.130(8.4)(c) by engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation.

Boling filed a motion for consensual discipline pursuant to SCR 3.480(2). Boling sought a one-year suspension to run concurrently with the five-year sanction already imposed in the factually unrelated case of *Kentucky Bar Ass'n v. Boling*, 670 S.W.3d 845 (Ky. 2023). The Court determined the sanction should not run concurrently with the previously-imposed five-year suspension and remanded to the KBA for further disciplinary proceedings in *Boling v. Kentucky Bar Ass'n*, 677 S.W.3d 369 (Ky. 2023).

In a second motion for consensual discipline, the KBA and Boling now agree a one-year suspension to run consecutive to the previous five-year suspension is the proper sanction. The Court agreed the sanction was appropriate and imposed the discipline.

INQUIRY COMMISSION V. GARY ALAN TABLER

2023-SC-0461-KB **December 14, 2023**

All sitting. All concur.

The Kentucky Bar Association Inquiry Commission petitioned the Supreme Court for an order temporarily suspending Gary Alan Tabler from the practice of law. The Inquiry Commission presented evidence of probable cause to believe Tabler was or had been misappropriating funds he held for others for his own use and that this conduct poses a substantial threat of harm to his clients or the public. Tabler did not respond to the petition. SCR 3.165(1)(a) permits the temporary suspension of an attorney if "[i]t appears that probable cause exists to believe that an attorney is or has been misappropriating funds the attorney holds for others to his/her own use or has been otherwise improperly dealing with said funds." Further, SCR 3.165(1)(b) permits the Inquiry Commission to petition this Court for an order of temporary suspension if "[i]t appears that probable cause exists to believe that an attorney's conduct poses a substantial threat of harm to his clients or to the public." The Court found probable cause existed and temporarily suspended Tabler from the practice of law.

ANDREW NICHOLAS CLOONEY V. KENTUCKY BAR ASSOCIATION

2023-SC-0478-KB **December 14, 2023**

All sitting. All concur.

Andrew Nicholas Clooney filed a motion to resign from the Kentucky Bar Association under terms of permanent disbarment. SCR 3.480(3) allows "[a]ny member who has been engaged in unethical or unprofessional conduct . . . to withdraw his membership under terms of permanent disbarment . . .." The KBA expressed no objection.

In 2019, the Supreme Court suspended Clooney in two separate cases. In 2019-SC-000114-KB, the Court suspended Clooney indefinitely for failing to answer a Bar Complaint. The Court also suspended him temporarily in 2021-SC-000595-KB because it found probable cause Clooney was misappropriating client funds and posed a risk to clients or the public.

In 2023, Clooney pleaded guilty to one count of wire fraud and one count of willful failure to pay taxes, both felonies. He was sentenced to serve two years and nine months in federal prison. Clooney admits the victims listed in his plea agreement include those listed in the Court's temporary suspension order.

Clooney admits he violated SCR 3.130(8.4)(b) which states "[i]t is professional misconduct for a lawyer to . . . commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects." He also admits to violating SCR 3.130(8.4)(c) which states "[i]t is professional misconduct for a lawyer to . . . engage in conduct involving dishonesty, fraud, deceit or misrepresentation." The Court granted Clooney's motion to withdraw under terms or permanent disbarment.

MARY ANN MIRANDA V. KENTUCKY BAR ASSOCIATION

2023-SC-0480-KB **December 14, 2023**

All sitting. All concur.

Mary Ann Miranda moved the Supreme Court to impose a negotiated sanction pursuant to SCR 3.480(2). The Kentucky Bar Association did not oppose the motion and the Supreme Court granted it.

Miranda filed a federal employment discrimination suit against the University of Kentucky. UK filed a motion for summary judgment and Miranda failed to respond. After the federal court granted summary judgment, Miranda filed a motion requesting the court to reconsider due to excusable neglect. The court granted relief on equitable grounds and ordered Miranda to respond "with specificity" to the analysis underlying the order of summary judgment.

Miranda again failed to respond. The federal court entered an order requiring Miranda to show cause why she should not be subject to discipline under the federal local rules of civil practice. Miranda untimely filed a response to the order and a response to the motion for summary judgment. Miranda failed to keep her client reasonably informed about the case and failed to reply to requests for information. The client eventually asked for her file, which Miranda never returned. The client filed a complaint to which Miranda did not respond.

The Inquiry Commission charged Miranda for failing to: (1) act with reasonable diligence and promptness in representing a client in violation of SCR 3.130(1.3); (2) keep the client reasonably informed about the status of the matter in violation of SCR 3.130(1.4)(a)(3); (3) return the client's file upon request in violation of SCR 3.130(1.16)(d); and (4) respond to a lawful demand for information from an admissions or disciplinary authority in violation of SCR 3.130(8.1)(b).

In a separate case, Miranda was paid $1,000 by a client to probate the client's father's will and prepare a quitclaim deed. Miranda told the client she would hold the check until the representation was complete but cashed the check. Miranda stopped responding to messages sent from the client until the client requested a refund and threatened contacting the KBA. After Miranda again failed to communicate with the client, the client sent Miranda a letter terminating the representation and requesting Miranda return the advance fee and any documents in her possession. Miranda neither replied to the letter nor returned the fee or documents.

The Inquiry Commission charged Miranda for failing to: (1) act with reasonable diligence and promptness in representing a client in violation of SCR 3.130(1.3); (2) promptly comply with reasonable requests for information in violation SCR 3.130(1.4(a)(4); (3) return documentation and any unearned portion of her prepaid fee in violation of SCR 3.130(1.16)(d); and (4) respond to a lawful demand for information for an admissions or disciplinary authority in violation of SCR 3.130(8.1)(b).

Miranda and the KBA negotiated a sanction pursuant to SCR 3.480(2). The Court determined the negotiated sanction of a 181-day suspension probated for two years appropriate for violating SCR 3.130(1.4)(a)(3), (1.4)(a)(4), (1.16)(d) and (8.1)(b) and granted the motion to impose the sanction.