

**KENTUCKY SUPREME COURT
SEPTEMBER 2024**

CIRCUIT COURT CLERK REMOVAL:

IN RE: DWIGHT HOPKINS, LINCOLN COUNTY CIRCUIT COURT CLERK

2023-SC-0495-OA

September 26, 2024

Opinion and Order. All sitting. All concur.

Original action to determine whether Dwight Hopkins, Lincoln Circuit Court Clerk, should be removed from office or otherwise disciplined pursuant to Section 114(3) of the Kentucky Constitution. Approximately four months following his election as Circuit Clerk, the Administrative Office of the Courts (AOC) received complaints against Hopkins from seven of the eight employees of his office alleging acts of unprofessionalism, impropriety, and workplace harassment which created a hostile work environment. Hopkins was placed on administrative leave pending the outcome of an investigation by AOC.

At the conclusion of the investigation, the Director of AOC concluded Hopkins's conduct constituted discrimination and unlawful workplace harassment, resulting in a hostile work environment. Upon review of the Director's conclusions, supporting documentation, and a response from Hopkins, the Circuit Court Clerk Conduct Commission concluded Hopkins violated multiple sections of the Code of Conduct, recommended a public reprimand and remedial measures, and referred the allegations to the Supreme Court for further proceedings. Hopkins elected a public hearing before the full Supreme Court. Removal proceedings were instituted, and a Special Commissioner was appointed to hold an evidentiary hearing, develop a factual record, and make findings of fact and recommendations. The Attorney General served as Special Advocate and bore the burden of proving good cause for removal.

Following a two-day hearing, the Special Commissioner issued findings of fact, conclusions of law, and recommendations. The Special Commissioner determined the Special Advocate had established by clear and convincing evidence that Hopkins had engaged in unlawful harassment, created a hostile working environment on the basis of sex, his actions served no legitimate work purpose, and he routinely failed to perform his duties with courtesy and respect toward his employees.

On a de novo review of the entirety of the record, the Supreme Court concluded clear and convincing evidence was presented showing Hopkins created a hostile work environment which constitutes a legal cause affecting his ability and fitness to perform the duties of his office, thereby establishing good cause

for his removal. Further, Hopkins’s repeated inappropriate statements and actions directed at his employees were unquestionably a violation of his obligation to perform his duties with courtesy and respect. His blatant and repeated violations of the Workplace Policies and Circuit Court Clerk Code were inconsistent with the high standards of integrity, impartiality, and independence required of an elected clerk. Hopkins was removed as Lincoln Circuit Court Clerk and the office was declared vacant.

CRIMINAL LAW:

SCOTT EDWARD BITTER V. COMMONWEALTH OF KENTUCKY

2022-SC-0382-MR

September 26, 2024

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

Scott Bitter alleged that the trial court erred in denying his motion to suppress because a responding officer, who had not yet obtained a warrant, violated his constitutional rights be free from unreasonable searches and seizures when the officer came to his apartment and testified to seeing drug paraphernalia in plain view immediately after the door was opened.

After granting oral argument, the Supreme Court concludes there was no violation of Bitter’s constitutional rights under U.S. Const. amend. IV and Ky. Const. § 10, and it was not clearly erroneous for the trial court to have determined, based on both the officer’s testimony and his body camera footage, that the officer did not unlawfully enter Bitter’s apartment prior to seeing drug paraphernalia in plain view from outside the door.

OPEN RECORDS ACT:

SHIVELY POLICE DEPARTMENT V. COURIER JOURNAL, INC.

2023-SC-0033-DG

September 26, 2024

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

The Shively Police Department (SPD) appealed from an adverse decision of the Court of Appeals, partially vacating the Jefferson Circuit Court’s order granting

summary judgment in favor of SPD. Issues include whether SPD properly complied with the Open Records Act when it denied the Courier Journal's request for public records on the sole basis that those records pertained to an ongoing law enforcement investigation.

Pursuant to the Open Records Act, the Courier Journal requested several public records from SPD related to a July 2020 police pursuit that ended in fatality. SPD denied the Courier Journal's request in full, relying on multiple exceptions to the Open Records Act's mandatory disclosure provisions. Specifically, SPD contended that the requested records were exempt pursuant to KRS 61.878(1)(h), the Open Records Act's "law enforcement exemption." SPD also argued that a separate statute, KRS 17.150(2) allowed it to withhold the requested records because those records pertained to an ongoing criminal prosecution. Last, SPD argued that certain video records were exempt from disclosure pursuant to KRS 61.878(1)(a), the "personal privacy exemption" to the Open Records Act.

The Supreme Court of Kentucky held that SPD had failed to meet its burden of proof under the law enforcement exemption because it did not adequately prove that the release of the requested records would pose "a concrete risk of harm to the agency in the prospective action." *City of Fort Thomas v. Cincinnati Enquirer*, 406 S.W.3d 842, 851 (Ky. 2013). The Supreme Court further held that SPD had prematurely relied on KRS 17.150(2) to withhold its public records because that statute governs only the mandatory disclosure of "intelligence and investigative reports" *after* the related criminal prosecution has been completed or a determination not to prosecute has been made. Finally, the Supreme Court held that SPD had failed to prove that certain portions of the requested video records were exempt pursuant to the personal privacy exemption. The Supreme Court remanded to the Jefferson Circuit Court for further proceedings regarding the release of the requested records.

TORTS:

T & J LAND CO., LLC V. DAKOTA MILLER

2023-SC-0051-DG

September 26, 2024

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

Appellee Miller was patronizing a business in a building owned by Appellant T & J Land Co. when a vehicle left the parking lot and entered the building, causing injury to Miller. After receiving basic reparations benefits from the driver's insurer, Miller brought suit against T & J Land Co. for negligence. The

Knox Circuit Court dismissed the suit as untimely under KRS 413.140's one-year statute of limitations for personal injury claims. The Court of Appeals reversed, finding Miller was entitled to the two-year statute of limitations period set forth in the Motor Vehicle Reparations Act (MVRA). The Supreme Court granted discretionary review, reversed the Court of Appeals, and reinstated the ruling of the Knox Circuit Court. The Supreme Court held that although Miller was injured by an automobile, his claim was not within the scope of the MVRA because neither he nor the building owner he sued were involved in the ownership or operation of a motor vehicle at the time of the accident. Rather, Miller's claim was in the nature of a premises liability action, and thus subject to the one-year statute of limitations for personal injury claims.

ATTORNEY DISCIPLINE:

BENJAMIN GERALD DUSING V. KENTUCKY BAR ASSOCIATION

2023-SC-0483-KB

September 26, 2024

Opinion and Order. VanMeter, C.J.; Bisig, Conley, Keller, Lambert, and Thompson, JJ., sitting. VanMeter, C.J.; Keller, Lambert, and Thompson, JJ., concur. Bisig, J., concurs in part and dissents in part by separate opinion in which Conley, J., joins. Nickell, J., not sitting.

Benjamin Gerald Dusing both represented himself and was represented by counsel in two separate matters before the Kenton Family Court. The Kentucky Bar Association brought three sets of charges against Dusing related to his Family Court cases.

Regarding the first family court case, Dusing was charged with five counts of professional misconduct. Count I alleged Dusing violated SCR 3.130(3.5)(d) by filing repeated and frivolous motions and appeals, all with the intent to disrupt the tribunal. Counts II and III alleged Dusing violated SCR 3.130(3.4)(f) when he threatened or presented criminal or disciplinary charges against the judge in the family court case and opposing counsel solely to obtain an advantage in the proceedings. Count IV alleged Dusing violated SCR 3.130(3.4)(b) and SCR 3.130(8.4)(a) when he assisted or induced his attorney to offer \$5,000 to a consulting expert to change his custodial evaluation. Finally, Count V alleged Dusing violated SCR 3.130(8.2)(a) when he made numerous knowingly or recklessly false statements in pleadings concerning the qualifications or integrity of the family court judge.

Regarding the second family court case, Dusing was charged with three counts of professional misconduct. Count I alleged Dusing violated SCR 3.130(3.1) by filing multiple motions and pleadings that lacked a basis in law or fact. Count

He alleged Dusing violated SCR 3.130(3.5)(d) by filing numerous frivolous motions and appeals and by repeatedly emailing the guardian ad litem, all for the purpose of disrupting the tribunal. Count III alleged Dusing violated SCR 3.130(4.4)(a) because he also engaged in this same conduct for no substantial purpose other than to delay, embarrass, or burden a third person.

The third case the KBA brought against Dusing concerned a profanity-laced, threatening diatribe Dusing posted to Facebook naming both the family court judge's staff attorney and opposing counsel in one of the family court cases. The KBA alleges Dusing's posting of this video violated SCR 3.130(3.5)(d).

The Supreme Court found Dusing guilty of all ten charged rule violations and suspended him from the practice of law for three years with no credit given for the time he had already been suspended from the practice of law pursuant to a temporary suspension.

IN RE: TERRY RISNER

2024-SC-0174-KB

September 26, 2024

Opinion and Order. All sitting. All concur.

Terry Risner was publicly censured by the Board of Professional Responsibility of the Supreme Court of Tennessee and the Kentucky Bar Association filed a petition to the Supreme Court of Kentucky seeking reciprocal discipline pursuant to SCR 3.435. Risner was found guilty of violating Tennessee Rule of Professional Conduct (RPC) 3.4 (fairness to opposing party), 1.3 (diligence), and 8.4(d) (prejudice to the administration of justice). A client had hired Risner to provide representation in a criminal appeal, but Risner failed to file an appellate brief. Risner failed to show cause by reciprocal discipline should not be imposed and the Supreme Court of Kentucky publicly reprimanded him.

IN RE: JAMES EDWARD DAVIS

2024-SC-0227-KB

September 26, 2024

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

James Edward Davis visited an inmate who was in custody at a county detention center on behalf of his client. Davis brought an affidavit containing numerous statements purportedly made by the inmate. The inmate ultimately refused to sign the affidavit. Unbeknownst to the inmate, Davis was secretly recording the conversation. Davis moved the Supreme Court to enter a negotiated sanction to resolve charges brought by the Kentucky Bar

Association related to the above conduct, pursuant to SCR 3.480(2). The Court found Davis violated SCR 3.130(4.3) by having discussions with the inmate in which the inmate may have viewed him as providing her with legal advice during a time in which she was unrepresented and vulnerable. The Court found Davis did not violate SCR 3.130(4.4)(a) by recording his conversation with the inmate without her consent. Davis sought the imposition of a public reprimand and the KBA had no objection. The Court agreed this sanction was appropriate and publicly reprimanded Davis for his misconduct.

IN RE: JAMES T. JAMESON

2024-SC-0294-KB

September 26, 2024

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

James T. Jameson failed to pay his Kentucky Bar Association dues and was suspended from the practice of law accordingly. The Character and Fitness Committee and Jameson came to an agreement regarding his reinstatement to the KBA. The joint stipulation requires Jameson to obtain treatment for his diagnosed Attention Deficit Hyperactivity Disorder (ADHD). The Court adopted the joint stipulations and reinstated Jameson to the practice of law in the Commonwealth.

IN RE: BRENDAN JOSEPH MCLEOD

2024-SC-0330-KB

September 26, 2024

Opinion and Order. All sitting. All concur.

Brendan Joseph McLeod spoke with a codefendant in a criminal matter who was represented by other counsel. The codefendant's counsel had specifically told McLeod not to speak with her client. McLeod admits to knowingly violating SCR 3.130(4.2) by communicating with a represented litigant without permission of the court or litigant's counsel and to violating SCR 3.130(3.4)(c) by knowingly disobeying an obligation under the rules of a tribunal.

In another case, McLeod represented a client at trial and then filed his notice of appeal. However, McLeod failed to timely file a brief and failed to show cause why the case should not be dismissed. McLeod claims the client had failed to pay \$15,000 in attorney's fees and had expressed that he no longer wished to pursue the appeal since he was out of jail. McLeod took no action to directly dismiss the appeal. McLeod admits to violating SCR 3.130(3.4)(c) in knowingly disobeying an obligation under the rules of a tribunal as to this case.

The Supreme Court accepted the KBA's and McLeod's negotiated sanction pursuant to SCR 3.480(2) and imposed the agreed-upon thirty-day suspension, probated for one year subject to conditions, including the McLeod's completion of the Ethics and Professionalism Enhancement Program.

IN RE: WILLIAM DAVID RYE

2024-SC-0375-KB

September 26, 2024

Opinion and Order. All sitting. All concur.

William David Rye admits to several violations in respect to the current case. He admits: (1) his failure to file an appellant's brief on his client's behalf constitutes a violation of SCR 3.130(1.3) concerning diligence; (2) when he lied to his client about having filed an appellant's brief, he violated SCR 3.130(8.4)(c) concerning conduct involving dishonesty, fraud, deceit, or misrepresentation; (3) in failing to inform his client that his appeal had been dismissed, he violated SCR 3.130(1.4)(a)(3) regarding keeping the client reasonably informed; (4) in failing to notify his client of his intention to terminate representation and failing to return his client's file to him, he violated SCR 3.130(1.16)(d) regarding protecting a client's interests upon the termination of representation; and (5) when he failed to reply to emails from the Office of Bar Counsel regarding information lacking in his response to his bar complaint, he violated SCR 3.130(8.1)(b) regarding failing to respond to a lawful demand for information from an admissions or disciplinary authority.

Rye and the Kentucky Bar Association entered into a negotiated sanction pursuant to SCR 3.480(2). Rye moved the Supreme Court to impose a two-year suspension from the practice of law for his violations of the Rules of Professional Conduct. The Court granted the motion and imposed the sanction. Rye has a prior disciplinary history including multiple suspensions from the practice of law, a private admonition, and two public reprimands.

IN RE: ROBERT ANDREW ROWLAND

2024-SC-0409-KB

September 26, 2024

Opinion and Order. All sitting. All concur.

Robert Andrew Rowland was suspended from the practice of law for 180 days in October 2020. He filed his first application for reinstatement in September 2021. Since his suspension had lasted 181 days or more, his reinstatement process proceeded pursuant to SCR 3.502. In accordance with that rule, the Character and Fitness Committee had to review Rowland's application for reinstatement. Rowland submitted a Character and Fitness questionnaire but

did not further pursue his first application. Eventually, the Character and Fitness Committee deemed his first application withdrawn.

In August 2023, Rowland filed a second application for reinstatement and the Inquiry Commission deemed his application complete the next month. The Office of Bar Counsel investigated the application and then the Committee reviewed Rowland's application. The Office of Bar Counsel determined Rowland had satisfied the criteria and that it had no objection to Rowland's reinstatement to the practice of law. The Supreme Court found no reason to review the case further and reinstated Rowland to the practice of law.