

# Supreme Court of Kentucky

2022-SC-0144-KB

CLARA ROGALINSKI

MOVANT

V.

IN SUPREME COURT

KENTUCKY BAR ASSOCIATION

RESPONDENT

## **OPINION AND ORDER**

Clara Rogalinski (Rogalinski) moves this Court pursuant to Supreme Court Rule (SCR) 3.480(2) to impose a sanction of a Public Reprimand for her violation of the Kentucky Supreme Court Rules of Professional Conduct. The Kentucky Bar Association (KBA) has no objection to Rogalinski's request. For the following reasons, the motion is granted.

### **I. BACKGROUND**

In October of 2020, Rogalinski took and passed Ohio's October 2020 bar examination.<sup>1</sup> In December of 2020, Rogalinski became licensed to practice law in the state of Ohio. She is not and has never been licensed to practice law in Kentucky. In August of 2021, Rogalinski filed an application with the Kentucky Office of Bar Admission (KOBA) seeking admission by her transferred score

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<sup>1</sup>*Bar Exam Results, October 2020*, <https://www.supremecourt.ohio.gov/AttySvcs/admissions/Results/1052020.pdf> (last accessed June 7, 2022).

from her 2020 Ohio bar examination.<sup>2</sup> State supreme courts and bar licensing agencies, including Kentucky and Ohio, had entered into Reciprocity Agreements by which October 2020 bar examinees, like Rogalinski, could submit their October 2020 scores from one jurisdiction to another and be credited with that result.

From April to October of 2021, Rogalinski was employed as a staff attorney by the Kentucky Department of Public Advocacy (DPA). While employed as a DPA attorney and despite being unauthorized to practice law in this state, Rogalinski represented clients in court and provided legal advice. DPA appears to have believed Rogalinski either had a limited license to practice law or was authorized to practice with the supervision of a licensed attorney. Rogalinski indicates that she was confused about her ability to practice law in Kentucky and believed she was acting appropriately. She attributes this confusion to the following circumstances: she had a limited license to practice law in Ohio during her final year of law school; she was seeking admission to the Kentucky bar; and she was permitted to represent clients by her superiors at DPA.

On October 18, 2021, the KBA Office of Bar Counsel sent Rogalinski an Investigative File letter alleging that she was practicing law in Kentucky

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<sup>2</sup> Rogalinski's Verified Motion contains an inaccurate statement as to the bar examination she actually took which appears to contribute to the confusion at the heart of her case. Technically, the October 2020 bar examination was not the Uniform Bar Exam (UBE), but a truncated version, approximately one-half, of the National Conference of Bar Examiners' (NCBE) standardized tests.

without a license based on the above facts. Rogalinski communicated this information to her supervisors at DPA and resigned from that agency on October 22, 2021. She states that since that time she has not practiced law in Kentucky or in Ohio.

According to Rogalinski, she has notified the KOBA of the status of this pending disciplinary proceeding, and her application has been held in abeyance by the KOBA during the pendency of this disciplinary case. She understands that her actions while employed at DPA will be an area of inquiry by the KOBA Character and Fitness Committee. She hopes to return to her employment at DPA if and when she is admitted to the practice of law in Kentucky.

On January 11, 2022, the Inquiry Commission issued a one-count complaint alleging Rogalinski violated SCR 3.130(5.5)(a) which states, “A lawyer shall not practice law in the jurisdiction in violation of the regulation of the legal profession in that jurisdiction or assist another in doing so.” Rogalinski admits she violated this rule by representing clients and providing legal advice when she was not licensed to do so in Kentucky.

Rogalinski requests that this Court impose a public reprimand to dispense of any further proceedings for this violation. She agrees to pay all costs associated with the investigation and prosecution of this proceeding, pursuant to SCR 3.450. The KBA has no objection to Rogalinski’s proposed resolution of this matter.

## II. ANALYSIS

Rogalinski admits that she violated SCR 3.130(5.5)(a). She requests a public reprimand as the appropriate sanction. The KBA has no objection to the imposition of a public reprimand and direction to pay all costs of these proceedings pursuant to SCR 3.450.

Our rules permit the KBA and a member of the bar to agree to a negotiated sanction.

Any member who is under investigation pursuant to SCR 3.160(2) or who has a complaint or charge pending in this jurisdiction, and who desires to terminate such investigation or disciplinary proceedings at any stage of it may request Bar Counsel to consider a negotiated sanction. If the member and Bar Counsel agree upon the specifics of the facts, the rules violated, and the appropriate sanction, the member shall file a motion with the Court which states such agreement, and serve a copy upon Bar Counsel, who shall, within 10 days of the Clerk's notice that the motion has been docketed, respond to its merits and confirm its agreement . . . . The Court may approve the sanction agreed to by the parties, or may remand the case for hearing or other proceedings specified in the order of remand.

SCR 3.480(2).

The KBA consents to a public reprimand. In support of the negotiated sanction, the KBA cites four cases, all of which involved a public reprimand imposed as a negotiated sanction. First, in *Hoff v. Kentucky Bar Ass'n*, 537 S.W.3d 817 (Ky. 2018), Hoff received a public reprimand for practicing law after being suspended for failing to pay his KBA dues. Hoff never received notice of his suspension because he failed to update his bar roster address when he changed employers. *Id.* at 818. He admitted to violating SCR 3.130(3.4)(c) (failure to obey an obligation under the Rules of a tribunal), SCR 3.130(5.5)(a)

(unauthorized practice of law), SCR 3.130(5.5)(b) (falsely holding out or representing that he was admitted to practice), and SCR 3.130(5.7)(a) (performing specifically prohibited acts while suspended). *Id.*

In *Wright v. Kentucky Bar Ass'n*, 169 S.W.3d 858 (Ky. 2005), Wright received a public reprimand for practicing law after being suspended for failing to fulfill her CLE requirements. She also was required to complete remedial ethics education. *Id.* at 860. Wright received a notice from the Court of Appeals that a pleading she had filed was being returned because she was not authorized to practice law in Kentucky. *Id.* at 859. After receiving this notice and despite knowing there was a question about the status of her license to practice law, Wright appeared in circuit court without informing the court that her law license may have been suspended. *Id.* She claimed that she had not received the notice of her suspension before she received the notice from the Court of Appeals. *Id.* Wright admitted she violated SCR 3.130(5.5)(a) (unauthorized practice of law) and SCR 3.3(a)(2) (failure to disclose a material fact to the tribunal when disclosure is necessary to avoid a fraud being perpetrated on the tribunal). *Id.*

In *Smith v. Kentucky Bar Ass'n*, 250 S.W.3d 601 (Ky. 2008), Smith received a public reprimand for practicing law while suspended from the practice of law. He also was required to attend the Ethics and Professional Enhancement Program presented by the Office of Bar Counsel and pass the examination given at the end of the program. *Id.* at 602. Smith was suspended for fifteen days. *Id.* This suspension was ordered to continue until Smith

complied with SCR 3.510 and was reinstated. *Id.* Smith appeared in court twice prior to his compliance with SCR 3.510. *Id.* He asserted these court appearances occurred before he was informed of the continuing nature of his suspension, after which he ceased practicing law. *Id.* Smith admitted violating SCR 3.130(4.1) (knowingly making a false statement) and SCR 3.130(5.5) (unauthorized practice of law). *Id.*

Finally, in *Burden v. Kentucky Bar Ass'n*, 487 S.W.3d 448 (Ky. 2016), Burden received a public reprimand for practicing law while suspended for failing to comply with CLE requirements. Burden's unauthorized practice spanned three disciplinary files, but he asserted he was not aware of his suspension when he appeared in court. *Id.* at 448. Burden had a prior disciplinary history that included a private reprimand and a thirty-day suspension that had been probated. *Id.* at 449. Burden admitted to violating SCR 3.130(5.5)(a) (unauthorized practice of law) and SCR 3.130(5.5)(b) (improperly holding himself out as authorized to practice). *Id.*

The KBA cites these cases to demonstrate that a public reprimand is an appropriate sanction. The KBA further notes that Rogalinski was confused about her ability to practice law in Kentucky and that this confusion appears to have been shared by her supervisor at DPA. This confusion is understandable, given that 2020 was the first year of the COVID-19 pandemic and all state supreme courts and bar admissions offices struggled with balancing public health and safety with the ongoing need to license recent law school graduates. This Court adopted supervised practice provisions to permit

recent law graduates to practice under the supervision of a licensed attorney during the bar examination process, and these orders were issued and amended several times.<sup>3</sup> Finally, the KBA notes that there is insufficient evidence to determine that Rogalinski affirmatively misrepresented to DPA that she was authorized to practice law.

We have thoroughly reviewed the facts and relevant caselaw. Although the cases cited by the KBA all involve attorneys who were licensed to practice law in Kentucky but whose licenses were suspended, we find this distinction of little consequence. We agree with Rogalinski and the KBA that a public reprimand is appropriate here. The Character and Fitness Committee will consider Rogalinski's actions in deciding whether she meets the good character and fitness standards required to obtain admission to the Kentucky bar. We urge the committee to act swiftly on Rogalinski's application and to strongly consider in mitigation the unique situation within which Rogalinski found herself.

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

1. Clara Rogalinski is found guilty of violating SCR 3.130(5.5)(a) and is hereby publicly reprimanded for unprofessional conduct.
2. In accordance with SCR 3.450, Rogalinski is directed to pay the costs of this action in the amount of \$68.75 for which execution may issue from

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<sup>3</sup> See Supreme Court Admin. Order Nos. 2020-35, 2020-50, and 2020-61, *In re: Administration of 2020 Bar Examinations*; Supreme Court Admin. Order Nos. 2020-37, 2020-51, 2020-57, and 2020-79, *In re: Temporary Rule Permitting Supervised Practice of Law Pending Admission*.

this Court upon finality of this Opinion and Order.

All sitting. All concur.

ENTERED: June 16, 2022.

  
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CHIEF JUSTICE MINTON