

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

KEVIN POSTON COX,

Respondent.

_____/

Supreme Court Case No.
SC

The Florida Bar File No.
2021-30,111(10A)

COMPLAINT

The Florida Bar, complainant, files this Complaint against Kevin Poston Cox, respondent, pursuant to the Rules Regulating The Florida Bar and alleges:

1. Respondent is and was at all times mentioned herein a member of The Florida Bar admitted on April 21, 1988 and is subject to the jurisdiction of the Supreme Court of Florida.
2. Respondent practiced law in Polk County, Florida, at all times material.
3. The Tenth Judicial Circuit Grievance Committee A found probable cause to file this complaint pursuant to Rule 3-7.4, of the Rules Regulating The Florida Bar, and this complaint was approved by the presiding member of that committee.

4. Respondent represented Justin Vickery in a violation of criminal probation.

5. On December 12, 2018, Mr. Vickery's probation was revoked, and he was sentenced to 147.4 months of incarceration on a fourth violation of probation.

6. On January 27, 2020, Mr. Vickery filed a motion to vacate, set aside or correct sentence alleging ineffective assistance of counsel.

7. In his motion, Mr. Vickery raised two claims of error: 1) Respondent misadvised Mr. Vickery that he would receive a downward departure from the court in an open plea and, if not, the plea could be withdrawn; and, 2) Respondent was ineffective due to a conflict of interest because respondent unsuccessfully propositioned defendant's fiancée, L.P. for sex.

8. In his motion, Mr. Vickery alleged that respondent failed to act with competence and diligence, failed to adequately communicate with Mr. Vickery, failed to zealously pursue Mr. Vickery's objectives, and continued to pursue L.P. for sexual favors while the case was pending.

9. Mr. Vickery also alleged respondent offered L.P. a quid pro quo arrangement of sex for the legal services provided by respondent to Mr. Vickery.

10. In or about September 2018, L.P. had a 30 to 45-minute meeting at respondent's office after business hours.

11. The explanation given to L.P. for the meeting being after business hours was because respondent would be in court earlier in the day.

12. Respondent began his conversation with L.P. by asking her, "What are you doing with a loser like Justin [Vickery]?"

13. As the conversation progressed, respondent began asking about L.P.'s intimate relationships with men.

14. Thereafter, respondent raised the issue of L.P. having a sexual relationship with respondent so that respondent could end his ongoing relationship with another woman to start one with L.P.

15. Throughout their discussion of Mr. Vickery's case, respondent repeatedly inquired about initiating a sexual relationship with L.P.

16. Respondent indicated that if L.P. engaged in a sexual relationship with respondent, it would benefit Mr. Vickery's representation by respondent in the criminal case.

17. At all future appointments with respondent, L.P. was accompanied by Mr. Vickery's mother and/or a friend.

18. In or about November or December 2018, when L.P. had another appointment with respondent, L.P. brought her friend Tracy Sherwood with her.

19. After initially waiting in the car, Mr. Sherwood entered respondent's office building and waited in respondent's waiting room that was adjacent to respondent's office.

20. During this meeting, respondent again raised the issue of having a sexual relationship with L.P.

21. After mentioning the initiation of a sexual relationship with L.P., respondent rose and appeared to be going to lock the office door.

22. When respondent reached the door, he observed Mr. Sherwood in the waiting room, and concluded the meeting with L.P.

23. On or about the following day, L.P. testified as a character witness at Mr. Vickery's motion hearing.

24. In his response to the bar, respondent denied all allegations of attorney misconduct contained in Mr. Vickery's motion to vacate, set aside or correct sentence.

25. On February 16, 2021, the court denied Mr. Vickery's motion to vacate, set aside or correct sentence.

26. As to the first claim, the court found that respondent “put forth all relevant arguments available under the circumstances.”

27. As to the second claim, the court found that “as inappropriate and potentially unethical as [respondent's] statements to [L.P.] may have been, no conflict existed nor is there evidence that any such conflict affected [respondent's] performance.”

28. On February 11, 2020, the Second District Court of Appeal issued a Mandate per curium affirming Mr. Vickery’s Judgment and Sentence.

29. By reason of the foregoing, respondent has violated the following Rules Regulating The Florida Bar:

(a) 3-4.3 Misconduct and Minor Misconduct. The standards of professional conduct to be observed by members of the bar are not limited to the observance of rules and avoidance of prohibited acts, and the enumeration herein of certain categories of misconduct as constituting grounds for discipline shall not be deemed to be all-inclusive nor shall the failure to specify any particular act of misconduct be construed as tolerance thereof. The commission by a lawyer of any act that is unlawful or contrary to honesty and justice, whether the act is committed in the course of the attorney's relations as an attorney or otherwise, whether committed within

or outside the state of Florida, and whether or not the act is a felony or misdemeanor, may constitute a cause for discipline.

(b) 4-1.1 Client-Lawyer Relationship; Competence. A lawyer must provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

(c) 4-1.2(a) Lawyer to Abide by Client's Decisions. Subject to subdivisions (c) and (d), a lawyer must abide by a client's decisions concerning the objectives of representation, and, as required by rule 4-1.4, must reasonably consult with the client as to the means by which they are to be pursued. A lawyer may take action on behalf of the client that is impliedly authorized to carry out the representation. A lawyer must abide by a client's decision whether to settle a matter. In a criminal case, the lawyer must abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial, and whether the client will testify.

(d) 4-1.3 Diligence. A lawyer shall act with reasonable diligence and promptness in representing a client.

(e) 4-1.4(a) Informing Client of Status of Representation. A lawyer shall: (1) promptly inform the client of any decision or circumstance

with respect to which the client's informed consent, as defined in terminology, is required by these rules; (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished; (3) keep the client reasonably informed about the status of the matter; (4) promptly comply with reasonable requests for information; and (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows or reasonably should know that the client expects assistance not permitted by the Rules of Professional Conduct or other law.


(f) 4-1.7(a)(2) Representing Adverse Interests. Except as provided in subdivision (b), a lawyer shall not represent a client if there is a substantial risk that the representation of 1 or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the law.

(g) 4-8.4(d) Misconduct. A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis, including, but not limited to, on account of race, ethnicity, gender, religion, national origin,

disability, marital status, sexual orientation, age, socioeconomic status, employment, or physical characteristic.

(h) 4-8.4(i) Misconduct. A lawyer shall not engage in sexual conduct with a client or a representative of a client that exploits or adversely affects the interests of the client or the lawyer-client relationship. If the sexual conduct commenced after the lawyer-client relationship was formed it shall be presumed that the sexual conduct exploits or adversely affects the interests of the client or the lawyer-client relationship. A lawyer may rebut this presumption by proving by a preponderance of the evidence that the sexual conduct did not exploit or adversely affect the interests of the client or the lawyer-client relationship. The prohibition and presumption stated in this rule do not apply to a lawyer in the same firm as another lawyer representing the client if the lawyer involved in the sexual conduct does not personally provide legal services to the client and is screened from access to the file concerning the legal representation.

WHEREFORE, The Florida Bar prays respondent will be appropriately disciplined in accordance with the provisions of the Rules Regulating The Florida Bar as amended.



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CERTIFICATE OF SERVICE

I certify that this document has been e-filed with The Honorable John A. Tomasino, Clerk of the Supreme Court of Florida; with copies provided via email to Karen Ivy Meeks, Counsel for Respondent, at karen@karenmeeks.com; by U.S. Mail via certified mail No. 7017 1450 0000 7821 1008, return receipt requested, to Karen Ivy Meeks, Counsel for Respondent, whose record bar address is P.O. Box 1598, Bartow, Florida 33831-1598; and, to Kenneth H. P. Bryk, Bar Counsel, The Florida Bar, 1000 Legion Place, Suite 1625, Orlando, Florida 32801-1050, at kbryk@floridabar.org and orlandooffice@floridabar.org, on this 22nd day of June 2021.



Patricia Ann Toro Savitz
Staff Counsel

NOTICE OF TRIAL COUNSEL AND DESIGNATION OF PRIMARY EMAIL ADDRESS

PLEASE TAKE NOTICE that the trial counsel in this matter is Kenneth H. P. Bryk, Bar Counsel, whose address, telephone number and primary email addresses are The Florida Bar, Orlando Branch Office, The Gateway Center, 1000 Legion Place, Suite 1625, Orlando, Florida 32801-1050, 407-425-5424, and, kbryk@floridabar.org, orlandooffice@floridabar.org, dsullivan@floridabar.org. Respondent need not address pleadings, correspondence, etc. in this matter to anyone other than trial counsel and to Staff Counsel, The Florida Bar, 651 E Jefferson Street, Tallahassee, Florida 32399-2300, psavitz@floridabar.org.

MANDATORY ANSWER NOTICE

RULE 3-7.6(h)(2), RULES REGULATING THE FLORIDA BAR, PROVIDES THAT A RESPONDENT SHALL ANSWER A COMPLAINT.