TO BE PUBLISHED

Supreme Court of Kentucky

2020-SC-000117-KB

KENTUCKY BAR ASSOCIATION — MOVANT

V. — IN SUPREME COURT

GERRY L. CALVERT II — RESPONDENT

OPINION AND ORDER

I. BACKGROUND

Respondent, Gerry L. Calvert II, was licensed to practice law in the Commonwealth of Kentucky on October 13, 1995. His current bar roster address is 2401 Regency Road, Suite 300, Lexington, Kentucky 40503, and his Kentucky Bar Association (KBA) Member Number is 85998. In 1996, Calvert was appointed as Trustee of the R.C. Ford Jr. Trust and continued in that fiduciary position until 2014. Calvert's father, Gerry Calvert Sr., is also an attorney. Calvert Sr. both drafted the Trust instrument and served as the Trust's attorney.

Calvert's fees as Trustee were detailed in Article 4 of the Trust, which reads:

> [f]or its services hereunder, the Trustee shall be compensated by receiving an amount equal to five percent (5%) of all principal when added to principal (including but not limited to this transfer,

> disbursements from my estate, additions to principal, and any gains or appreciation which is designated as principal) and by receiving six percent (6%) of all income when received.

When Ford died in 1998, the Trust took equitable title of a 150-acre tract of real estate located within the city limits of Owenton, Kentucky. This parcel of land was the Trust's principal asset. In May 2009, a five-acre tract of the 150-acre parcel was sold for almost $400,000 and the Owen County Judicial Center was eventually built there. A minority percentage of the property was owned by other relatives outside the Trust, leaving more than $319,000 as an asset to the Trust. Calvert agreed to a lower Trustee fee than the terms of the Trust allowed in order to move the sale along. In light of that agreement, Calvert paid himself a Trustee fee of $9,158.86 from the transaction. He used the remaining proceeds from the sale to open an account for the Trust at Traditional Bank in June 2009.

In July 2009, Calvert sent a letter to the Trust beneficiaries explaining the status of the Trust and including an accounting of the proceeds from the sale. In the letter, Calvert also stated: "I plan on taking steps to prevent the kinds of misunderstandings and/or miscommunications complained of in the past." To this end, he assured the beneficiaries he planned "to send a detailed written report and financial accounting" quarterly and "to conduct an in-person meeting with all beneficiaries in Owenton" yearly. Calvert neither provided a single financial accounting nor had any meetings with the beneficiaries. There were no further actions involving the Trust property while

Calvert acted as Trustee. He failed to communicate with the beneficiaries even after one of them accused him of stealing funds from the Trust.

Between March and November 2012, the beneficiaries or their attorneys sent Calvert at least seven letters requesting him to provide an accounting of the Trust funds or resign as Trustee. He did not answer any of those letters. Finally, one of the beneficiaries, Lucy Ford Sutherland, hired attorney Michael Hawkins to represent her regarding her interest under the Trust. Hawkins sent Calvert six letters between August 2013 and January 2014 asking Calvert to resign as Trustee. Calvert failed to answer any of the letters.

In June 2014, Hawkins filed a petition to remove Calvert as Trustee, to appoint a successor trustee, and for an accounting of the Trust in Owen District Court. Calvert did not respond. He now claims he did not receive a summons in the case. The trial court sustained the petition and removed Calvert as Trustee, appointing James Latimer in his place. The court found that Calvert "failed to be prudent in his activities [as required by KRS 386.710] and has otherwise completely failed to comply with all requirements of KRS Chapter 386, *et seq.*"

In order to fulfill his responsibilities as Trustee, Latimer needed an accounting from Calvert. However, Calvert failed to provide the financial information about the Trust to either Latimer or the beneficiaries. The court sustained Sutherland's motion to compel and ordered Calvert to "provide a full and complete accounting of all his activities as Trustee; a full and complete accounting of all assets coming into his hands as Trustee; a full and complete

accounting of all assets distributed from the Trust; and a full and complete accounting of the current assets remaining in the Trust." The court ordered Calvert to provide the accounting to the court, beneficiaries, and Latimer by August 29, 2014. Calvert did not provide the accounting.

In September 2014, Hawkins filed a motion on behalf of Sutherland, asking the court to hold Calvert in contempt for failing to comply with its order. In response, Calvert's mother, Lois Prewitt (also an attorney), filed an entry of appearance and motion to dismiss for lack of jurisdiction. Before the court ruled on the various motions, Prewitt sent Hawkins a letter seeking to settle the action. According to Prewitt's letter, Calvert asserted he was still owed $20,000 in earned fees. She did not explain what the fees were for or how Calvert had arrived at this calculation. In the letter, Prewitt proposed the terms of the settlement would include Calvert resigning as Trustee, waiving his claim for remaining fees, and convey all Trust property, including $27,436.52 cash on hand. As part of the settlement, Calvert Sr. would also waive the legal fees still owed him by the Trust. In spite of Prewitt's contention in the letter, the Trust actually had no cash on hand, as the Trust's account at Traditional Bank had been closed out with a zero balance a year earlier. In fact, Prewitt's husband wrote Calvert a check for the exact amount of the purported cash on hand in case the beneficiaries accepted the settlement offer.

In return, Prewitt asked that the beneficiaries release both Calvert and Calvert Sr. from all claims related to the Trust and that they agree not to make or participate in any KBA complaints concerning the events covered by the

settlement. The beneficiaries declined the settlement offer. The court denied Calvert's motion to dismiss and his motion to set aside the order requiring an accounting. The court ordered Calvert to comply with the order requiring a full accounting by January 16, 2015. On that date, Prewitt filed a partial accounting covering June 2009 (when the Traditional Bank account was opened following the sale of a parcel of the Trust's real property) and November 2013 (when the account was closed following the payment of $84.01 to cover outstanding overdraft fees). Calvert provided no accounting regarding the Trust from his time as Trustee between 1996 and June 2009 or after November 2013.

When Calvert filed the partial accounting, Latimer examined the bank records and prepared a transaction report. In creating the report, Latimer discovered $91,771 in unsubstantiated transfers from the Trust's account to Calvert for his personal use. There were no correlating transfers of Trust property or income-generating events to justify these transfers. Most of the transfers were made directly to Calvert, however, one transfer was to Calvert Law Group (which Calvert controlled), two transactions were to Verizon to pay Calvert's cell phone bill (which Calvert claims were mistakes), and one deduction was made to pay Calvert's personal Visa card.

Calvert has never provided the Owen District Court, the beneficiaries, Latimer, the KBA, the Trial Commissioner, the Board of Governors, or this Court with a basis for these transfers other than his claim that he was entitled to additional fees as Trustee as a result of the alleged appreciation in value of

the remaining real property belonging to the Trust. He claims this appreciation even though he cannot pinpoint an actual amount and even though the Trust has not realized the appreciation, as the majority of the tract of real property remains unsold.

Before the partial accounting was provided and Latimer created his report, the Trust beneficiaries were unaware that Calvert had entirely depleted the Traditional Bank account of all cash on hand. When Calvert failed to pay the 2014 property taxes, Hawkins began to question the liquidity of the Trust account. However, until Latimer received the bank records and generated the transaction report, Calvert—aided by Prewitt's assertion in her letter to the beneficiaries dated November 6, 2014, that the Trust had a current cash balance of $27,436.52—had successfully concealed his misuse of Trust funds.

After discovering the extent of the unsubstantiated funds missing from the Trust account, Hawkins sent Prewitt a demand letter, seeking a full reimbursement to the Trust in order to resolve the matter with no further litigation. Prewitt responded, offering $32,000. She stated that her son was "unable to satisfy any judgment which might flow against him from these or other proceedings related to this Trust" and that "[b]ecause of his own current financial situation, he is also unable to borrow any money personally in order to either settle this matter or satisfy a judgment." Prewitt went on to explain that she would loan Calvert the money for the settlement, but only "under conditions which guarantee his ability to continue practicing law in order that he can repay the loan." The beneficiaries declined the offer.

Prewitt sent Hawkins another offer to settle the matter—this time offering $55,000. She emphasized that her son was judgment proof, as he had "no regular income, no real property, no car, no liability insurance, [and] no life insurance." She also stated that he had child support obligations that would take priority over any judgment the beneficiaries may receive. She emphasized that she had "NO INCENTIVE whatsoever to borrow all this money UNLESS the [beneficiaries] sign the release agreement." Part of this offer also included Calvert Sr.'s agreement to waive more than $15,000 in legal fees it was undisputed the Trust owed him. The beneficiaries accepted the offer and signed the release. The case was dismissed in July 2015.

Based on Calvert's actions and inactions as Trustee, the Inquiry Commission filed a charge against him in June 2016. The charge alleged Calvert had committed two counts of professional misconduct. Namely, the Commission charged Calvert with violating Supreme Court Rule (SCR) 3.130-3.4(c) when he failed to provide an accounting for the Trust as ordered by the Owen District Court and SCR 3.130-8.4(c) when he fraudulently transferred Trust funds to himself for his personal use. After a hearing, the KBA Trial Commissioner found Calvert had violated the charged rules. She recommended that Calvert be suspended from the practice of law in the Commonwealth for five years for his violations, participate in Kentucky Lawyers Assistance Program (KYLAP) and comply with its conditions, and pay the costs associated with the disciplinary proceeding pursuant to SCR 3.450(2).

Calvert filed a notice of appeal to the Board of Governors pursuant to SCR 3.360(4) and SCR 3.365. After hearing the parties' oral arguments, the Board of Governors adopted the Trial Commissioner's recommendations by a vote of 19-0, noting that her findings were supported by substantial evidence. Thereafter, Calvert filed a notice of review pursuant to SCR 3.370(7), [1] arguing to this Court that the sanction recommended by the Board was excessive. After careful review of Calvert's file, we see no reason to upset the Trial Commissioner's recommendation or the Board's findings of facts and conclusions of law.

II. ANALYSIS

A. Trustee/Attorney

Before delving into our analysis of the other issues in this case, we point to this Court's prior opinions involving an attorney's service as fiduciary. Longstanding case law holds that an attorney who serves as fiduciary and as attorney may only receive one fee for his services. *Clay v. Eager*, 444 S.W.2d 124, 127 (Ky. 1969); *Slusher v. Weller*, 151 Ky. 203, 205, 151 S.W. 684, 685 (1912). More recently, this Court imposed a three-year suspension on an attorney who charged excessive fees as an executor and attorney for an estate. *Ky. Bar Ass'n v. Profumo*, 931 S.W.2d 149 (Ky. 1996). We reaffirmed the

[1] SCR 3.370(7) provides: "[w]ithin thirty days after the Board's decision is filed with the Disciplinary Clerk, Bar Counsel or the Respondent may file with the Court a Notice for the Court to review the Board's decision stating reasons for review."

prohibition set out in *Clay* against "double-dipping" both a fiduciary fee and an attorney fee. *Id.* at 151. We also stated:

> [A]ny abuse of a fiduciary position can and should lead to disciplinary action by this Court when an attorney is involved.
>
> This Court punished unprofessional conduct as a result of an attorney's actions as executor of an estate, albeit not with regard to excessive fees, in *Kentucky Bar Ass'n v. Harris*, Ky., 636 S.W.2d 646 (1982). We believe that when acting in a dual capacity such as executor/attorney, a member of the bar should not be allowed to claim that excessive fees received as a result of the work, while perhaps "non-legal" in some sense, are not subject to scrutiny by this Court.

Id.

In the case at bar, Calvert did not act in a dual capacity as both Trust attorney and Trustee. However, Calvert was employed by his father, Calvert Sr. when he was named Trustee. His father served as the Trust's attorney. Therefore, from the creation of the Trust in 1996 until Calvert left his father's employ in 2002, Calvert Sr.'s law practice employed both the Trust's fiduciary and attorney.

The opinions in *Profumo* and *Clay* both express an exception to the double-dipping prohibition: when the testator or settlor explicitly names the attorney to serve as both fiduciary and attorney. Both opinions hold that a double fee is permitted in those circumstances. *Profumo*, 931 S.W.2d at 152; *Clay*, 444 S.W.2d at 127. While we agree that a testator or settlor's right to name the same attorney to serve as both a trust's trustee and attorney, we disagree that the attorney may receive fees for both. Therefore, we overrule the aspect of both opinions allowing the attorney/trustee double compensation.

Calvert was not charged in relation to any double dipping from the Trust—and we do not have any potential bar complaints against his father in this case. But, to be clear, we hold that double-dipping is *never* permitted. Doing so in future cases may subject an offending attorney to severe discipline.

B. Count One

SCR 3.130-3.4 states, in pertinent part, that "[a] lawyer shall not . . . (c) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists." The Trial Commissioner and the Board of Governors both found Calvert violated this rule when he failed to comply with the Owen District Court's orders to provide a full and complete accounting for the Trust. As the Trial Commissioner observed in her recommendation, "[t]he record indicates repeated attempts by the Trust beneficiaries to contact [Calvert] via various means—all of which were ignored—prior to" the court ordering Calvert to provide the accounting.

In July 2014, the district court issued its first order requiring Calvert to provide a full and complete accounting of the Trust by the next month. On November 6, 2014, Prewitt provided an accounting that, as of two days earlier, the Trust had a balance of $27,436.52. However, Calvert knew this information to be not only incomplete, but also inaccurate, as he had closed out the account a year earlier, when he brought its balance to zero after paying overdraft charges. In December 2014, the district court entered yet another order requiring Calvert to provide the accounting. On January 16, 2015, Prewitt filed the Traditional Bank account records spanning from June 2009

through August 2013. This was far from a complete accounting, as Calvert had been Trustee of the Trust since 1996 and remained such until removed in 2014.

Calvert attempts to explain away his withdrawals from the Trust as being proper pursuant to the Trust's article providing for the events triggering the Trustee's entitlement to income. However, he has *never* provided the complete accounting ordered. What he has provided are excuses for his failure to comply with the court's orders. He claims that records prior to 2009 were destroyed in a storage unit flood and that the bank no longer had the records. However, this claim is belied in two ways. First, Calvert provided some of the past records in the binders full of exhibits he presented. Second, he admitted in testimony that the bank was going to charge for the older records and that he abandoned his efforts to obtain them once the case was dismissed.

The evidence supports the Trial Commissioner's and the Board's findings that Calvert violated SCR 3.130-3.4(c) when he failed to provide the accounting ordered *twice* by the Owen District Court.

C. Count Two

SCR 3.130-8.4(c) provides, "[i]t is professional misconduct for a lawyer to . . . engage in conduct involving dishonesty, fraud, deceit or misrepresentation." The Trial Commissioner and Board both found Calvert violated SCR 3.130-8.4(c) when he fraudulently used his position as Trustee to transfer Trust funds to himself for his personal use without justification to do so. Calvert argues that his actions were not fraudulent, as they were not

intentional. However, even if we were to accept his contention that he *believed* he was entitled to the funds and, therefore, his actions did not constitute fraud, his behavior certainly violated the rule, as it involved dishonesty, deceit, or misrepresentation.

From June 2009 to May 2013, the evidence from the Traditional Bank account records shows that Calvert took over $91,000 from the Trust for personal use without justification. It is undisputed that he used Trust funds to pay his cell phone bill on two different occasions. The Trial Commissioner described this as "a deliberate act that cannot logically be characterized as negligence." Calvert also provided an accounting in November 2014 which indicated the Trust contained real estate valued at $233,250 and $27,436.52 cash on hand. This was an intentional misrepresentation, as Calvert knew he had closed the Trust account a year before after completely emptying the account of all funds and incurring overdraft fees.

As an explanation for why he took more than $91,000 from the Trust, Calvert insists that the Trust did not have sufficient funds to fully compensate him based on the increase he estimates the Trust's real property has attained. However, the Trust document does not allow compensation to the Trustee based on an *estimated* appreciation to real property. This is not a "gain or appreciation which is designated as principal." Calvert himself admitted that he could not get appraisers to give him a baseline value for the property to calculate his fee. According to Calvert, appraisers told him, "we can't really tell you exactly what this thing's worth. They are too unique . . . . So, it's going to

be what a willing buyer will pay and a willing seller for all or part of it . . . at any particular point in time." Calvert admitted his inability to value the Trust real property in a 2003 letter to Sutherland. He stated, "[l]et me first say that I am hesitant to express any opinion as to the value of the Trust property, just because it remains somewhat uncertain." He then provided her with an estimated value of the real property between $110,490 and $1,931,690.

To justify Calvert's argument that the Trust owed him more than $90,000 he took in "fees" between 2009 and 2013, the KBA's Office of Bar Counsel points out that "the Trust would have to have generated nearly $1,800,000.00 in appreciated principal added to the principal or income." Calvert did not present any evidence to confirm such an increase—and, by his own admission, *could not* present such evidence, as it did not exist.

The misrepresentations Calvert made were not limited to the time period covered by the Traditional Bank Records. Calvert represented to the beneficiaries that he had received just over $27,000 in Trustee fees from 1998 through 2002. In fact, he had paid himself almost $45,000 during that time period.

After a thorough examination of the extensive record in this case, we find the evidence supports the Trial Commissioner's and Board's conclusions that Calvert violated SCR 3.130-8.4(c) by engaging "in conduct involving dishonesty, fraud, deceit or misrepresentation."

D. Sanctions

The Trial Commissioner and Board of Governors (by a vote of 19-0) both recommended that Calvert be suspended from the practice of law for five years, be ordered to participate in KYLAP, and pay the costs associated with his disciplinary file. The Office of Bar Counsel asserts this is the proper sanction given the gravity of Calvert's misconduct. Calvert, however, insists that the recommended sanction is excessive. In his notice of review, he argues this Court should suspend him from the practice of law for 181 days "with 91 days probated and 60 days to serve." We note that his suggestion leaves 30 days of his suggested 181-day suspension unaccounted for. "The Court is aware that a particularly severe stance is taken against financial misconduct by attorneys . . . ." *Kentucky Bar Ass'n v. Maze*, 397 S.W.3d 891, 898 (Ky. 2013). We turn to our precedent to determine the appropriate sanction in this matter.

In *Kentucky Bar Ass'n v. Chenault*, 600 S.W.3d 247, 248 (Ky. 2018), the Board recommended Chenault be suspended from the practice of law for four years, with the last eighteen months of her suspension probated. Chenault had over-paid herself $60,000 while serving as Master Commissioner. She was criminally charged with abuse of public trust (a class-C felony) and entered an *Alford* plea. Chenault's two-year sentence was diverted and she reimbursed the Administrative Office of the Courts the $60,000 she had taken. The Office of Bar Counsel filed a notice of review in Chenault's case, asking this Court to impose a harsher (either a five-year suspension or permanent disbarment). Noting that "Chenault's conduct neither occurred over an extended period of

time, nor impacted any clients," we adopted the Board's recommendation. *Id.* at 251. Here, Calvert's misconduct did stretch over an extended period of time and involved breaching fiduciary obligations.

While we did not permanently disbar Chenault, we noted three other cases in which we did find permanent disbarment as the appropriate discipline for attorneys who misappropriated funds while serving as master commissioners. *See King v. Kentucky Bar Ass'n,* 162 S.W.3d 462 (Ky. 2005); *Kentucky Bar Ass'n v. Layton,* 97 S.W.3d 452 (Ky. 2003); *Polk v. Kentucky Bar Ass'n,* 885 S.W.2d 691 (Ky. 1994). Similarly, we also permanently disbarred Christian in *Kentucky Bar Ass'n v. Christian,* 320 S.W.3d 687 (Ky. 2010) for misconduct in serving as the executor and attorney for an estate. There, Christian took fees he had not earned and failed to return them. Here, Calvert was not charged with any criminal activity related to his misappropriation of trust funds and he did refund some of the funds he inappropriately took from the Trust.

We find the case of *Kentucky Bar Ass'n v. Goble,* 424 S.W.3d 423, 428 (Ky. 2014), instructive. There, in acting as a fiduciary for a business, Goble withheld more than $16,000 in employees' pay, which he indicated was to go into a 401(k) account for the employees. He never deposited those funds in the account. In suspending Goble from the practice of law for five years for violating SCR 3.130 8.4(b) and (c), we pointed out:

> In *Kentucky Bar Ass'n v. Hawkins,* 260 S.W.3d 337, 338 (Ky. 2008), Hawkins took several settlement checks made payable to his client and converted them to his own use. We suspended

> Hawkins from the practice of law for five years. In *Elliott v. Kentucky Bar Ass'n,* 341 S.W.3d 119, 120 (Ky. 2011), we suspended Elliott from the practice of law for two years after he pled guilty to issuing a check for $8,124.95 when he knew there were not sufficient funds in the account. In *Kentucky Bar Ass'n v. Hammond,* 241 S.W.3d 310, 316 (Ky. 2007), we suspended Hammond's license to practice law for five years when, among other things, he failed to return unearned retainer fees to four clients.

Id.

Here, Calvert's conduct was in line with our holdings in *Goble, Hawkins, Elliot,* and *Hammond* where we suspended each of the attorneys for five years for various levels of financial misconduct.

In mitigation, we note Calvert has had no disciplinary problems except regarding this Trust. He began working on the Trust and established the pattern of how he handled it when his father (and a senior member of the firm in which Calvert worked) assigned him the fiduciary duties associated with being the Trustee of the Trust. When Calvert Sr. named Calvert as Trustee, Calvert had been licensed to practice law for less than a year. Calvert trusted Calvert Sr. both as his father and as his boss. However, in actuality, Calvert Sr. set his new-attorney son up for failure as Trustee, then Calvert Sr. set up a situation in which he and Calvert double dipped from the Trust, with the firm receiving both Trustee fees and Trust Attorney fees.

In addition to those mitigating circumstances, Calvert experienced trouble coping with his life at the time of the misconduct. He presented various mental health and medical records concerning portions of the time period in question. Calvert asserts that his mental health issues began when

he faced childhood trauma as an adolescent. His mental health issues accelerated in 2008 when he encountered his abuser on the street. Calvert indicates that he had blocked out memories of the abuse until that encounter with his abuser.

Calvert sought care from several mental healthcare facilities from 2008 to 2016. When Calvert told his family of the childhood abuse in 2008, he received inpatient mental health treatment. Calvert also points to a history of dissociative episodes during which he has engaged in conduct of which he has no recollection. For example, when Calvert was 16, he took someone's car and drove for hours, eventually ending up in St. Louis with no memory of having driven there. By 2008, Calvert's medical records indicate his dissociative episodes were more frequent. In October 2008, he was hospitalized in a psychiatric hospital for several days after he was found by a Park Ranger in Red River Gorge and had no idea how he had gotten there.

After receiving mental health treatment, Calvert was diagnosed with depressive disorder with a history of post-traumatic stress. By the end of 2013, Calvert's mother discovered he was not leaving the house or communicating with others. He was hospitalized again in 2014 for mental health treatment. Following that hospitalization, Calvert sought mental health counselling and attended weekly counseling sessions from September 2014 through early 2016. Calvert asserts that he learned coping strategies through counseling and can now recognize when things are not going well and seek

help, as demonstrated by his return to his family doctor in 2018 for medication to help him deal with his anxiety.

While Calvert presented this medical evidence, he presented no evidence as to how his mental state at the time contributed to his various actions constituting misconduct as Trustee. Calvert also fails to point to any current mental health treatment plans apart from his assertion that he gained coping skills through his therapy sessions. Any mitigation this provides would only lessen Calvert's sanction for extensive, long-term misconduct concerning the Trust from permanent disbarment to the five-year suspension recommended by the Trial Commission and a unanimous Board. We impose that sanction today and require Calvert to participate in KYLAP and pay the costs of this action.

ORDER

Therefore, it is ordered:

1. Respondent, Gerry L. Calvert II, KBA Member No. 85998, is suspended from the practice of law in Kentucky for a period of five years;
2. The period of suspension shall continue until he is reinstated to the practice of law by Order of this Court pursuant to SCR 3.510;
3. Pursuant to SCR 3.390, Calvert shall promptly take all reasonable steps to protect the interests of his clients, including, within ten days after the issuance of this order, notifying by letter all clients of his inability to represent them and of the necessity and urgency of promptly retaining new counsel and notifying all courts or other

tribunals in which Calvert has matters pending. Calvert shall simultaneously provide a copy of all such letters to the Office of Bar Counsel.

4. Pursuant to SCR 3.390, Calvert shall immediately cancel any pending advertisements; shall terminate any advertising activity for the duration of the term of suspension; and shall not allow his name to be used by a law firm in any manner until he is reinstated;
5. Pursuant to SCR 3.390, Calvert shall not, during the term of suspension, accept new clients or collect unearned fees;
6. During the pendency of his suspension, Calvert shall enter into a monitoring agreement with KYLAP and shall comply with its terms; and
7. In accordance with SCR 3.450, Calvert is directed to pay the costs of this action in the amount of $3,420.61 for which execution may issue from this Court upon finality of this Opinion and Order.

All sitting. Minton, C.J.; Hughes, Keller, Lambert, and Wright concur. VanMeter, J., concurring in part and dissenting in part by a separate opinion, in which Nickell, J., joins.

VANMETER, J., CONCURRING IN PART/DISSENTING IN PART: I agree with the majority opinion that sanctions are in order, but I disagree as to the sanction called for. The record demonstrates that permanent disbarment is not only appropriate but required. *See Ky. Bar Ass'n v. Edwards*, 377 S.W.3d 557 (Ky. 2012) (permanently disbarring attorney serving in a fiduciary capacity

for taking $78,000 of his ward's funds); *Ky. Bar Ass'n v. Christian*, 320 S.W.3d 687 (Ky. 2010) (permanently disbarring attorney who took $13,000 from estate and failed to comply with statutory obligations as executor of estate). The misappropriation of funds justifies permanent disbarment, and in addition Calvert failed to comply with the basic requirements of his statutory fiduciary obligations. KRS 386.175. Attorneys are clearly permitted to serve in fiduciary capacities. But if they do so, they should be on notice that we will require exact and unwavering compliance with statutory duties of fiduciaries and require that all fees charged to a trust or estate be reasonable.

I also agree completely that an attorney double-dipping fees for services as a fiduciary and as an attorney is never permitted, even when the testator or settlor explicitly names the attorney to serve as both fiduciary and attorney. To be clear, an attorney may serve in both in both capacities, but may not take double fees.

ENTERED: September 24, 2020.

CHIEF JUSTICE