

**PUBLISHED OPINIONS  
KENTUCKY SUPREME COURT  
APRIL 2014**

**I. CORPORATIONS:**

- A. R. Dean Linden, Ph.D. v. William Tid Griffin, et al.**  
[2011-SC-000422-DG](#) April 17, 2014  
[2012-SC-000377-DG](#) April 17, 2014

Opinion of the Court by Justice Cunningham. All sitting. All concur. Plaintiff brought suit against Defendants, his former business partners, for fraud, defamation, abuse of process, breach of fiduciary duties, Blue Sky violations, mutual mistake, and/or unilateral mistake coupled with fraud in the inducement. Defendants moved the trial court to enforce an arbitration agreement found within the parties' business operating agreement. The trial court stayed the proceedings and compelled arbitration on all counts of the complaint, with the exception of the claims involving defamation and abuse of process. Pursuant to KRS 417.220(1)(a), Defendants appealed the portion of the trial court's order denying their request to compel arbitration on the claims of defamation and abuse of process. Plaintiff also appealed the trial court's order compelling arbitration and both appeals were consolidated. The Court of Appeals affirmed the trial court's order compelling arbitration in its entirety. The Kentucky Supreme Court, however, first addressed the issue of jurisdiction. After analyzing the plain language of KRS 417.220(1)(a), the Court found that the statute does not provide for an interlocutory appeal from an order compelling arbitration. Therefore, the Court lacked jurisdiction over Plaintiff's appeal since, unlike an order denying a motion to compel arbitration, an order compelling arbitration is not final and appealable. Consequently, Plaintiff's appeal was dismissed. In regards to Defendants' appeal, the Court held that the arbitration agreement did not encompass Plaintiff's abuse of process and defamation claims.

**II. CRIMINAL LAW:**

- A. William L. Minks v. Commonwealth of Kentucky**  
[2012-SC-000316-DG](#) April 17, 2014

Opinion of the Court by Justice Abramson. All sitting. All concur. Defendant appealed as a matter of right from a judgment sentencing him to a twenty-year prison term for possession of a controlled substance in the first degree, possession of drug paraphernalia, manufacturing methamphetamine, and for being a second-degree persistent felony offender. He asserted that he was denied due process of law when the trial judge who signed the search warrant for his residence presided over his suppression hearing. Defendant also claimed that the search warrant was deficient because the four-corners of the affidavit did not establish probable cause that evidence of a crime would be found at his residence. The Kentucky Supreme Court declined to adopt a rule of automatic recusal which would preclude a judge

from hearing a suppression motion directed to a search warrant that he or she issued. The Court held that pursuant to statute and the rules governing judicial ethics, there must be evidence drawing the judge's impartiality into question before an appellate court will find abuse of discretion in a judge's failure to recuse in those circumstances. The Court further held that under a totality of the circumstances assessment there were sufficient facts for the issuing judge to make a commonsense determination that contraband or evidence of a crime would be found at the defendant's residence and, hence, there was probable cause.

**B. Pleas Lucian Kavanaugh v. Commonwealth of Kentucky  
2012-SC-000820-DG April 17, 2014**

Opinion of the Court by Justice Cunningham. All sitting. All concur. This case arises from a Terry stop where Appellant refused to provide identification to the investigating officer. While being frisked for a weapon, Appellant assaulted the officer by grabbing him in a "bear hug." A search incident to a valid arrest revealed 0.5 grams of crack-cocaine in Appellant's pocket. Accordingly, Appellant was charged in the Fayette Circuit Court with one count of menacing and one count of first-degree possession of a controlled substance, first offense. The latter was amended to one count of criminal attempt to possession of a controlled substance. Appellant filed a motion to suppress evidence, which the trial court denied. He then entered a conditional guilty plea to both charges and was sentenced. The Supreme Court of Kentucky held: 1) Kentucky is not a "stop and identify" jurisdiction. However, since an officer is constitutionally permitted to request identification, any failure to comply may still be considered along with other sufficient factors demonstrating reasonable suspicion; and 2) Appellant's assault of the officer constituted an intervening act that purged the taint, if any, that resulted from any detention which may have violated the Fourth Amendment.

**C. Commonwealth of Kentucky v. Christine Goss  
2011-SC-000780-DG April 17, 2014**

Opinion of the Court by Justice Noble. All sitting. Abramson, Keller and Venters, JJ., concur. Scott, J., concurs in part and dissents in part by separate opinion in which Minton, C.J., and Cunningham, J., join. Christine Goss, Appellee, was convicted of two counts of theft of identity under KRS 514.160. One charge related to allegations she obtained a fraudulent tax return in her daughter's name. The other charge related to her obtaining credit cards and checks in her ex-husband's name. The Court of Appeals reversed both convictions for insufficient proof.

The Supreme Court found there was sufficient proof to allow a jury to decide the claim about Goss' daughter. By contrast, the Court affirmed the Court of Appeals' reversal of the charge relating to her ex-husband. Significantly, the Court noted that Goss could not be charged with a credit card crime under KRS 514.160 because KRS 514.160(4) expressly prohibited it in this case.

Justice Scott, joined by Chief Justice Minton and Justice Cunningham, concurred in part and dissented in part, on the basis that he believed it was appropriate to

remand to the trial court for Goss to be retried for identity theft related to her ex-husband on a theory of check fraud.

**D. Nikolas Staples v. Commonwealth of Kentucky  
2011-SC-000788-MR April 17, 2014**

Opinion of the Court by Justice Abramson. All sitting. Minton, C.J.; Cunningham, Keller and Scott, JJ., concur. Noble, J., concurs in part and dissents in part by separate opinion in which Venters, J., joins. Venters, J., concurs in part and dissents in part by separate opinion in which Noble, J., joins. Defendant was convicted of first-degree manslaughter and first-degree criminal abuse and was sentenced to twenty-five years in prison. He was found guilty of having injured and later killed, either alone or in complicity with his live-in girlfriend, the girlfriend's five-month-old child. Affirming the abuse conviction, the Supreme Court held that the defendant qualified as an "actual custodian" under KRS 508.100 and could be found guilty of criminal abuse, as well as complicity to manslaughter through breach of a legal duty, based on his failure to protect the child of whom he had actual custody, even where the abuser was the child's mother. The Court rejected claims that the Commonwealth's closing argument, autopsy photographs, statements made by the child's mother, or the misallocation of juror strikes rendered the trial unfair. The Court did, however, reverse the manslaughter conviction and remand for further proceedings, because an erroneous complicity instruction allowed the jury to impute the principal's mens rea to the complicitor.

**E. Commonwealth of Kentucky v. Jasper Pollini  
2012-SC-000312-DG April 17, 2014**

Opinion of the Court by Justice Scott. Minton, C.J.; Abramson, Cunningham, Noble, and Venters, JJ., concur. Keller, J., not sitting. Appellee, Jasper Pollini, was found guilty of complicity to murder, complicity to first-degree burglary, complicity to second-degree burglary, and complicity to receiving stolen property. After his sentence of life imprisonment was affirmed by the Supreme Court of Kentucky, Appellee filed an RCr 11.42 motion in the trial court alleging ineffective assistance of appellate counsel (IAAC). The circuit court denied Appellee's motion, but the Court of Appeals reversed and granted him a new trial. The Supreme Court granted discretionary review and held that: (1) Appellee did not waive his IAAC claim on appeal, and (2) the Court of Appeals erred by ruling in favor of Appellee's IAAC claim because Appellee failed to prove the prejudice component of an IAAC claim. Accordingly, we reversed the Court of Appeals and reinstated the trial court's order denying relief for IAAC.

**F. Commonwealth of Kentucky v. Derick Dulin  
2012-SC-000668-DG April 17, 2014**

Opinion of the Court by Justice Venters. All sitting. All concur. Commonwealth Appeal. The Supreme Court of Kentucky held that where, because of a probation violation, a probationer's term of probation is interrupted by a short term of

incarceration followed by reinstatement of probation, KRS 533.040(2) operates to extend the term of probation by tolling its expiration date for a period equal to the time between the violation and the reinstatement of probation, thus reversing the Court of Appeals decision to the contrary. *Conrad v. Evridge*, 315 S.W.3d 313 (2010) is distinguishable because, in *Conrad*, the circuit court expressly retained the original probation expiration date, whereas that did not occur in this case.

**G. Jonathan Young v. Commonwealth of Kentucky  
2012-SC-000491-MR April 17, 2014**

Opinion of the Court by Justice Noble. All sitting. All concur. Jonathan Young, Appellant, was convicted of murder-by-complicity, first-degree robbery by complicity, and second-degree arson by complicity. On appeal, Young argued he was entitled to a directed verdict on both his murder and robbery convictions. He also claimed that each complicity instruction in the case was fatally flawed because the instructions failed to properly incorporate the necessary mental-state.

The Court found that Young was not entitled to a directed verdict as to either his murder or robbery charge, but agreed that the jury instructions were fatally flawed and necessitated reversal of his convictions. Of significance, the Court noted that failure to properly include the defendant's mental-state in a complicity instruction rises to the level of palpable error. The case was reversed and remanded for proceedings consistent with the opinion.

**III. EMPLOYMENT:**

**A. Dr. Laurence H. Kant v. Lexington Theological Seminary  
2012-SC-000502-DG April 17, 2014**

Opinion of the Court by Chief Justice Minton. Minton, C.J.; Abramson, Cunningham, Noble, Scott and Venters, JJ., concur. Keller, J., not sitting. During an economic downturn, the Lexington Theological Seminary was forced to lay off various employees, including tenured professors. Laurence Kant, an Associate Professor of Religious Studies and practicing Jew, was among those fired. Following his termination, Kant filed suit against the Lexington Theological Seminary, alleging breach of contract and breach of the duties of good faith and fair dealing. The trial court granted summary judgment in favor of the Seminary and a divided panel of the Court of Appeals affirmed the trial court. The Court reversed the Court of Appeals and found Kant's claims could proceed because he was not a ministerial employee under the application of the ministerial exception outlined in Kirby.

Initially, the Court determined whether Kant was a minister. Applying the factors outlined in Kirby, the Court held Kant was not a ministerial employee.

Specifically, the Court held that:

- (1) Kant's formal title was not inherently, exclusively, or primarily religious.
- (2) The substance reflected in Kant's title similarly indicated an absence of any connection to the faith of the Seminary.

(3) Kant did not use his title in “any way that would indicate to the members of the faith he was a ‘representative of the religious institution authorized to speak on church doctrine.’”

(4) The record did not indicate Kant performed functions that were essentially liturgical, the Seminary’s beliefs personified, or performed in the presence of the faith community.

The Court highlighted that an employee having divergent religious views from his employer is not dispositive of the ministerial question. Instead, according to the Court, the primary focus “is on the nature of the particular employee’s work for the religious institution.” And, here, Kant’s work was chiefly secular. Based on this analysis, the Court made clear that seminaries, like any religious institution, may have nonministerial employees. The Court clearly rejected a categorical application of the ministerial exception to seminary employees.

Finally, the Court held, as it did in Kirby, that the ecclesiastical abstention doctrine does not act as a bar to Kant’s claims against the seminary. The Court reiterated “that the intent of ecclesiastical abstention is not to ‘render civil and property rights . . . unenforceable in the civil court simply because the parties involved might be the church and members, officers, or the ministry of the church.’”

**B. Jimmy Kirby v. Lexington Theological Seminary  
2012-SC-000519-DG April 17, 2014**

Opinion of the Court by Chief Justice Minton. All sitting; all concur. Opinion of the Court by Chief Justice Minton. All sitting. All concur. During an economic downturn, the Lexington Theological Seminary—a seminary closely affiliated with the Christian Church (Disciples of Christ)—was forced to lay off various employees, including tenured professors. Jimmy Kirby, a tenured professor of Christian social ethics and member of the Christian Methodist Episcopal church, was among those who were fired. Following his termination, Kirby filed suit against the Lexington Theological Seminary, alleging breach of contract, breach of the duties of good faith and fair dealing, and racial discrimination. In Kirby’s tenure contract with the Seminary, the only grounds for termination listed were “moral delinquency,” “unambiguous failure to perform the responsibilities outlined in the Handbook,” and “conduct detrimental to the Seminary.”

Ostensibly on First Amendment grounds, the trial court granted the Seminary’s motion for summary judgment. In 2012, during the pendency of Kirby’s action, the United States Supreme Court handed down its decision in *Hosanna-Tabor Evangelical Lutheran Church & School v. E.E.O.C.*, 132 S.Ct. 694 (2012), declaring the ministerial exception to be grounded in the Religion Clauses of the First Amendment and generally outlining its application. The Court of Appeals upheld the trial court’s determination, citing both the ministerial exception and ecclesiastical abstention doctrine as support. The Court, however, reversed the Court of Appeals and held summary judgment was inappropriately granted for the Seminary.

First, the Court addressed the application of the ministerial exception—a “narrow, more focused subsidiary of the ecclesiastical abstention doctrine”—to Kirby’s action. Outlining the proper application of the ministerial exception under Kentucky law, the Court agreed with the U.S. Supreme Court that a rigid formula should not be used and the totality of the circumstances should be reviewed. Applying the four factors in *Hosanna-Tabor*, the Court found Kirby to be a ministerial employee because Kirby was closely connected to the tenets of the faith, actively involved in the promotion of the Seminary’s mission, instructed on Christian principles, gave sermons on multiple occasions, served communion, opened class with prayer, and generally acted as a messenger of the Seminary’s faith.

The Court went on to determine the impact of Kirby’s ministerial status on the viability of Kirby’s claims. Following clear precedent, including *Hosanna-Tabor*, the Court found Kirby’s racial discrimination claim barred by the ministerial exception. While *Hosanna-Tabor* dealt with federal civil rights legislation, the Court held the principle espoused in that case equally applied to state civil rights legislation. Allowing Kirby’s discrimination claim to proceed, in the Court’s estimation, would “deprive the church of control over the selection of those who will personify its beliefs.” The Court, however, did not find Kirby’s contract claims barred by the ministerial exception because it was not “a situation where the government [was] inappropriately meddling in the selection of who will minister to the congregation.” Essentially, in the Court’s view, the Seminary contractually ceded a degree of its constitutional rights. “In the absence of government interference, the ministerial exception cannot act as a bar to an otherwise legitimate suit.”

Finally, the Court determined whether the ecclesiastical abstention doctrine barred the progress of Kirby’s suit against the Seminary. The Court acknowledged that Kirby failed to raise explicitly ecclesiastical abstention until his brief, but found “the applicability of the ministerial exception—the main issue in this case—is so inextricably intertwined with the ecclesiastical abstention doctrine that any attempt at resolution without dealing with ecclesiastical abstention doctrine that any attempt at resolution without dealing with ecclesiastical matters would be misguided and perhaps even incorrect.” The Court emphasized it “must be free to review comprehensively any applicable legal precedent to support the proper development of the law in the Commonwealth.” According to the Court, “when the case merely involves a church, or even a minister, but does not require the interpretation of actual church doctrine, courts need not invoke the ecclesiastical abstention doctrine.” And with Kirby’s action, no inspection or evaluation of church doctrine was necessary.

#### IV. MEDICAL MALPRACTICE:

- A. **Ambreen Fraser, M.D. v. Matthew Miller**  
[2012-SC-000829-DG](#) **April 17, 2014**

Opinion of the Court by Justice Cunningham. Minton, C.J.; Abramson, Scott and Venters, JJ., concur. Keller, J., concurs by separate opinion in which Noble, J., joins. In a medical malpractice suit, Plaintiff alleged that Defendant, who was an immediate care doctor, was negligent in administering an anti-inflammatory drug. Plaintiff also claimed that Defendant was negligent in failing to obtain his informed consent before administering the anti-inflammatory drug. As a result, Plaintiff argued that Defendant's administration of the drug induced renal failure, requiring Plaintiff to undergo a kidney transplant. The jury returned a verdict in favor of Defendant and Plaintiff appealed. The first issue before the Kentucky Supreme Court was whether the trial court erred when it denied Plaintiff's attempt to recall his expert witness. Plaintiff wanted his expert witness to testify for a second time so that he could answer or rebut a juror's question which was posed after the expert finished testifying. The Court determined that the expert's anticipated testimony did not qualify as rebuttal testimony pursuant to Civil Rule 43.02. The Court's conclusion rested on its findings that the expert's anticipated testimony did not rebut any evidence brought out by Defendant, and such testimony could have been offered in Plaintiff's case-in-chief. The second issue on appeal was whether the trial court erred in barring Plaintiff from presenting to the jury his claim of informed consent. The Court declined to address this issue because it was not properly preserved for review.

#### V. TORTS:

- A. **Joe Marson, et al. v. Sherry Thomason, etc., et al.**  
[2012-SC-000314-DG](#) **April 17, 2014**

Opinion of the Court by Justice Noble. Minton, C.J.; Abramson, Scott and Venters, JJ., concur. Cunningham, J., concurs in part and dissents in part by separate opinion. Keller, J., not sitting.

The case arose after a legally blind student fell off a set of bleachers that were not properly extended in a school gymnasium. The issue before the Court was whether two principals and a teacher were entitled to qualified governmental immunity in their individual capacities because the alleged negligence (failing to ensure the bleachers were properly extended, and inadequate supervision) consisted of a fixed, routine duty and were ministerial in nature. On this issue, the Court of Appeals found that neither party was entitled to qualified immunity. The Supreme Court found that the school principals were entitled to qualified immunity, but the teacher was not.

The Supreme Court held that the school principals had qualified immunity because the responsibility to look out student safety is a general rather than a specific duty, and requires an individual act in a discretionary manner by devising

school procedures, assigning specific tasks to other employees, and providing general supervision of those employees. By contrast, the Court found that the teacher in this matter was specifically assigned to bus duty and that his job required him to perform specific acts that were not discretionary in nature, and thus he was not entitled to qualified immunity.

Justice Cunningham dissented on the basis that he would find the teacher's duties to be purely discretionary.

## **VI. ATTORNEY DISCIPLINE:**

### **A. Kentucky Bar Association v. William Perry McCall 2013-SC-000792-KB April 17, 2014**

Opinion of the Court. All sitting; all concur. The KBA moved the Court to impose reciprocal discipline on William Perry McCall under Supreme Court Rules (SCR) 3.435. In October 2013, the Indiana Supreme Court entered an order approving a Statement of Circumstances and Conditional Agreement for Discipline between McCall and the Indiana Supreme Court Disciplinary Commission. In the Agreement, McCall admitted that he violated Indiana Professional Conduct Rule 8.4(b) by receiving two Class A misdemeanor convictions. The Indiana rule violated by McCall is substantially similar to the Kentucky Rules of Professional Conduct, SCR 3.130-8.4(b) (committing a criminal act that reflects adversely on a lawyer's honesty, trustworthiness or fitness).

The Indiana Supreme Court suspended McCall from the practice of law for 90 days but stayed the suspension subject to completion of 24 months of probation with the Indiana Judges and Lawyers Assistance Program (JLAP). The court further imposed several conditions on McCall's probation, including a prohibition against the use of any alcohol or mind-altering substances and no violations of the JLAP agreement.

In February 2014, the Supreme Court of Kentucky *sua sponte* entered an order requiring McCall to show cause why it should not impose reciprocal discipline consistent with that imposed by the Supreme Court of Indiana. McCall did not respond to the order. The Court acknowledged that, under SCR 3.3435(4), it had authority to issue reciprocal discipline. However, because the disciplinary action in Indiana had been stayed pending the satisfactory completion of conditions imposed by the Supreme Court of Indiana, the Court held that the matter must be deferred pending McCall's satisfactory completion of those conditions.

### **B. Kentucky Bar Association v. Travis Olen Myles, Jr. 2014-SC-00004-KB April 17, 2014**

Opinion of the Court. All sitting; all concur. Myles represented a client in a civil claim against an insurance company. After the client experienced difficulty communicating with Myles, she asked that he return her client file so she could retain new counsel. Myles failed to respond to the request and the client filed a

complaint with the Office of Bar Counsel (the OBC). The OBV wrote to Myles requesting confirmation of his return of the client's file. Myles responded that he sent the file via certified mail. However, the file was never returned to the client. The Inquiry Commission issued a private admonition for Myles' violation of SCR 3.130-1.16(d) and SCR 3.130-8.1(b). The admonition was conditioned upon Myles's compliance with the Inquiry Commission's order to provide Ms. Lewis with her file within twenty days. Myles eventually acknowledge receipt of the Inquiry Commission's order and stated he would return the file to the client the following week. A month later, the client still had not received the file.

The Inquiry Commission issued a complaint based on Myles's failure to comply with the conditions set forth in the private admonition. The two-count charged alleged that Myles violated SCR 3.130-3.4(c) by knowingly disobeying an obligation to a tribunal, and SCR 3.130-8.1(b) by failing to respond to a lawful demand for information from a disciplinary authority. Attempts to serve the complaint by certified mail failed and Myles was eventually served by the Jefferson County Sheriff. Myles did not respond to the complaint and the case was submitted to the Board of Governors. By a unanimous vote, the Board found Myles's guilty of violating SCR 3.130-3.4(c) and 3.130-8.1(b). Taking into account Myles's previous discipline, which included a 181-day probated suspension that was subsequently revoked and a private reprimand, the Board recommended a suspension for a period 61-days, consecutive to any other discipline, and payment of costs. Upon review of the Board's recommendation, the Court agreed with both the finding of guilty and the proposed discipline.

**C. Kentucky Bar Association v. Daniel Edward Pridemore  
2014-SC-000042-KB April 17, 2014**

Opinion of the Court. All sitting; all concur. Pridemore failed to file an appeal on behalf of his clients, despite taking a fee for the purpose of filing the appeal and assuring his clients on multiple occasions that the appeal had been filed. The clients filed a Bar Complaint and the Inquiry Commission issued a four-count charge against Pridemore. Thereafter, Pridemore communicated to the Office of Bar Counsel that he was receiving mentorship through KYLAP. Despite several phone conferences and emails with the Office of Bar Counsel, Pridemore never filed an answer to either the Bar Complaint or the Inquiry Commission's charge.

The Board of Governors unanimously voted to find Pridemore guilty of all four counts and, by an eleven-member majority, voted to suspend Pridemore from the practice of law for thirty days, probated for two years on the condition that he: 1) submit to evaluation by KYLAP; 2) attend the Ethics and Professional Enhancement Program; and 3) pay the assessed costs of the disciplinary proceedings. The Supreme Court adopted the recommendation of the Board and ordered that Pridemore be sanctioned accordingly.

**D. Kentucky Bar Association v. Clyde F. Johnson  
2014-SC-000043-KB April 17, 2014**

Opinion of the Court. Minton, C.J.; Abramson, Cunningham, Keller, Noble and Venters, JJ., concur. Scott, J., not sitting. After receiving a fee from his clients for enforcement of a tax lien, Johnson failed to take any action and failed to communicate with or respond to requests for information from his clients for over two years. The clients eventually filed a bar complaint against Johnson. Johnson responded by admitting the allegations of the complaint and outlining remedial measure to insure a similar problem would not occur again. Johnson also returned the fee to the clients.

Thereafter, the Inquiry Commission issued a charge against Johnson with three counts. Count 1 alleged Johnson violated SCR 3.130-1.3(c) by failing to diligently pursue or file his clients' case. Count II alleged Johnson violated SCR 3.130-1.4(a) by not communicating with his clients about their case. And Count III alleged Johnson violated SCR 3.130-1.16(d) by abandoning his clients' case and not refunding the unearned fee until the bar complaint was filed against him.

Johnson filed an answer and admitted the veracity of every statement in the charge. He accepted responsibility for his actions and stated his willingness to accept appropriate discipline. Shortly thereafter, Johnson disappeared. Bar Counsel filed a motion to submit briefs to the Board under SCR 3.210(2). Emergency Temporary Curators were appointed by the Floyd Circuit Court to file a response on Johnson's behalf in opposition to Bar Counsel's motion. Bar Counsel replied that the Curators did not represent Johnson in the disciplinary matter and that Johnson had already admitted the allegations against him.

The Board found that Johnson was properly served with the Inquiry Commissions charge; filed a response admitting the truth of the allegations; and was prepared to accept his discipline. Accordingly, the Board unanimously recommended that Johnson be found guilty on all three counts. Considering Johnson's previous history of discipline, the Board recommended that Johnson be suspended from the practice of law for 30 days, required to attend EPEP, and referred to KYLAP. After considering the facts and Johnson's disciplinary history, the Court adopted the recommendation of the Board and sanctioned Johnson accordingly.

**E. William David Rye v. Kentucky Bar Association  
2014-SC-000056-KB April 17, 2014**

Opinion of the Court. All sitting. All concur. Rye agreed to represent a juvenile in a criminal matter. Shortly thereafter, Rye began representing a co-defendant in the same case, allegedly without the informed consent of either party and without informing them of the potential conflict. After Rye began reviewing taped police interviews, he realized an actual conflict existed and moved to withdraw as counsel for both defendants. The court granted the motion and the juvenile defendant filed a bar complaint against Rye. Rye filed a response, indicating that he notified the juvenile of his representation of the co-defendant and discussed the

conflicts associated with dual representation. The Office of Bar Counsel then sent Rye a letter with the following question: “Did you have the informed consent, of both parties, in writing, following your meeting with them to explain the potential conflict of interest?” Rye did not respond to the question. The OBC made two subsequent attempts to obtain a response, both of which went unanswered.

The Inquiry Commission issued a formal charge containing four counts: Count I, SCR 3.130-1.4(a)(1)(failure to promptly inform client of a circumstance requiring the client’s informed consent); Count II, SCR 3.130-1.4(b) (failure to keep client reasonably informed); Count III, SCR 3.130-1.7(a) (representing clients with a concurrent conflict of interest); and Count IV, SCR 3.130-8.1(b) (failure to respond to a request for information from disciplinary authority). Rye declined to answer the charge.

The Board of Governors reviewed the charge against Rye and voted unanimously that he was not guilty of Counts I and II. By a vote of 8 to 11, the Board also found Rye not guilty of Count III. The Board unanimously found Rye guilty of Count IV and ultimately recommended that he be suspended from the practice of law for 30 days, probated for two years on the condition that he not receive any additional disciplinary charges and complete the Ethics and Professionalism Enhancement Program. The Board’s recommendation was based, in part, on Rye’s previous discipline of a private admonition and a public reprimand.

Upon review, the Court adopted the Board’s findings and recommendations under SCR 3.370(10) and sanctioned Rye accordingly.

**F. James P.S. Snyder v. Kentucky Bar Association  
2014-SC-000093-KB April 17, 2014**

Opinion of the Court. All sitting. All concur. Snyder represented a client in a bankruptcy matter and moved the bankruptcy court to approve his retainer fee. Two years later, an Assistant United States Trustee deposed Snyder. During the course of that deposition, Snyder admitted that he deposited fees received in several bankruptcy cases in either his personal or operating checking accounts and failed to obtain court approval for the fees. Snyder also admitted that he had not maintained a trust account for the previous five years. Snyder eventually entered into an agreed order in the US Bankruptcy Court in the Eastern District to return any unearned fees and disgorge fees totaling \$19,400.00. Snyder was also required to withdraw from any pending bankruptcy cases in which meetings of the creditors had not been held or confirmed plans obtained.

The Inquiry Commission issued a formal charge containing three counts: Count I, SCR 3.130-1.15(a) (failure to hold client’s property in a separate account); Count II, SCR 3.130-1.15(e) (failure to deposit advanced fees in a trust account); and Count III, SCR 3.130-3.4(c) (knowingly disobeying an obligation under rules of a tribunal). Snyder admitted to violating all three Rules of Professional Conduct and entered into a negotiated sanction with the Office of Bar Counsel for a public reprimand and monitoring by KYLAP.

Upon review of the facts and based on previous cases imposing similar discipline for analogous conduct, the Court found that the consensual discipline proposed by Snyder and agreed to by the Office of Bar counsel was appropriate. Therefore, Snyder's motion for a public reprimand was granted.

**G. Clifford Branham v. Kentucky Bar Association**  
**[2014-SC-000111-KB](#) April 17, 2014**

Opinion of the Court. All sitting; all concur. Branham was suspended from the practice of law for failing to pay a late fee associated with his 2009-10 Bar dues and had not been restored to membership. In the meantime, the Inquiry Commission charged Branham with three counts of misconduct. Counts I and II stemmed from criminal proceedings against Branham in Fayette Circuit Court, in which he pled guilty to four counts of theft by failure to make required disposition of property over \$10,000. He was sentenced to a total of eight years in prison and was ordered to pay restitution. Count III charged Branham with violating SCR 3.130-8.1(b) based on his failure to respond to the Inquiry Commission's request for information.

Branham admitted that his actions were "serious and egregious" violations of the Rules of Professional Conduct and requested leave to resign from the KBA under terms of permanent disbarment under SCR 3.480(3). The KBA did not object to Branham's motion. The Court agreed that Branham's motion to withdraw his membership was appropriate and ordered him permanently disbarred from the practice of law.