

**PUBLISHED OPINIONS
KENTUCKY SUPREME COURT
APRIL 2015**

I. CIVIL PROCEDURE:

**A. Kentucky Farm Bureau Mutual Insurance Company v. Keith Justin Conley, et al.
2013-SC-000252-DG April 2, 2015**

Opinion of the Court by Justice Abramson. Minton, C.J.; Cunningham, Noble, and Venters, JJ., and Special Justice Richard W. Martin and Special Justice David B. Sloan, sitting. All concur. Kentucky Farm Bureau sought discretionary review of a dismissal of its appeal of a Knott Circuit Court order declaring that a homeowner's insurance policy provided coverage for claims arising from a murder that took place in the insured's home. The Court of Appeals dismissed Kentucky Farm Bureau's appeal as untimely after concluding that a Kentucky Rule of Civil Procedure (CR) 59.05 motion to alter, amend, or vacate the trial court's order was deficient due to a lack of "particularity" and therefore failed to toll the time for filing a notice of appeal. The Supreme Court of Kentucky reversed and remanded, concluding that under the doctrine of substantial compliance, a timely CR 59.05 motion that fails to comply with CR 7.02 is still sufficient to trigger the tolling period for the filing of a notice of appeal.

II. CONTRACT LAW:

**A. Brittany Dixon, et al. v. Daymar Colleges Group, LLC, et al.
2012-SC-000687-DG April 2, 2015**

Opinion of the Court by Chief Justice Minton. All sitting; all concur. A group of students enrolled at Daymar College's Paducah, Kentucky campus brought suit against Daymar alleging various contractual claims, e.g. fraudulent inducement, violation of consumer-protection statutes, and negligent misrepresentation. The claims centered on the rather hurried enrollment process, which required students to complete various tasks within a short window of time. During the process, the students signed an Enrollment Agreement, which included an arbitration provision on the back. The students signed the Agreement, notably, on the front side only; the students did, however, initial that they had read both sides of the Agreement. Daymar sought to dismiss the case to arbitration, but the trial court denied its motion, finding instead that the arbitration provision was both procedurally and substantively unconscionable. Initially, the Court held that the trial court was the proper venue for determining the enforceability of the arbitration provision, despite the presence of a delegation provision. The Students' argument, according to the Court, went to the formation of the agreement, which is governed by state contract principles and is a proper question for the trial court, not the arbitrator. The Court went on to hold that the arbitration provision was not enforceable against the Students because it was not properly

incorporated given that the Students signature was not at the close of the Agreement as required by Kentucky Revised Statute (KRS) 446.060. The Court pointed out that the language indicating the Students had read both sides of the Agreement was insufficient to indicate assent to the terms on the back page of the Agreement and the incorporation language found in the Agreement did not apply to the terms on the back page. As a result, the Court held the Students could proceed with their suit against Daymar in trial court rather than being forced to arbitrate.

III. CRIMINAL LAW:

A. David R. Nunn v. Commonwealth of Kentucky 2013-SC-000814-MR April 2, 2015

Opinion of the Court by Justice Venters. All sitting; all concur. Appellant, David Nunn, appeals from a judgment of the Hardin Circuit Court sentencing him to twenty years' imprisonment for the crimes of fleeing and evading in the second-degree, being a felon in possession of a handgun, and being a persistent felony offender in the first-degree.

In affirming the trial court, the Court concluded that: 1) Appellant may not invoke the poisonous tree doctrine where he unlawfully fled police to avoid an illegal pat-down; 2) although Appellant's right to hybrid counsel was violated when the trial court included certain conditions in its order granting Appellant hybrid counsel status, these conditions were found to be harmless beyond a reasonable doubt because Appellant did not proffer any evidence of prejudice; 3) evidence of Appellant's possession of marijuana and a firearm was admissible under the motive prong of 404(b); 4) the prosecutor's comments concerning Appellant's post-arrest silence, while erroneously admitted, were fleeting and otherwise not emphasized, and did not warrant reversal under the palpable error standard; 5) the trial court did not abuse its discretion by denying defendant's motion for continuance based upon the pendency of his writ petition in the court of Appeals on a related matter; and 6) the trial did not err in imposing court costs because, although Appellant was indigent, nothing in the record indicated a finding that Appellant was a "poor person" as defined by KRS 453.190(2).

B. Commonwealth of Kentucky v. Samuel Terrell 2012-SC-000550-DG April 2, 2015

Opinion of the Court by Chief Justice Minton. All sitting. Abramson, Barber, Cunningham, Noble, and Venters, JJ., concur. Keller, J., dissents by separate opinion. Samuel Terrell was taken into custody by police during an investigation of his mother's murder. The interrogation was halted, however, by a circuit court order demanding the interrogation cease until Terrell was allowed access to a public defender. Terrell's father procured the order from a circuit judge, ex parte, purportedly under the authority of Kentucky Rule of Criminal Procedure (RCr)

2.14(2). The Court rejected the notion that RCr 2.14(2) somehow allows a trial court to exercise its constitutional authority to intervene pre-prosecution to enjoin police from questioning a suspect. In doing so, the Court overruled *West v. Commonwealth*, 887 S.W.2d 338 (Ky. 1994), which interpreted RCr 2.14(2) as a vehicle for appointment of counsel or the judicial branch's interference in pre-prosecution criminal investigations. The Court agreed with *West* in the general sense that an accused has a right to an attorney during interrogation. In the Court's view, however, the authority of the judicial branch does not vest until criminal prosecution is initiated, e.g. issuance of criminal citation, arrest warrant, or criminal summons—not merely interrogation. RCr 2.14(2), according to the Court, could be considered a visitation rule that prevents an attorney from being barred from meeting with the attorney's client, but does not afford trial court's the authority to appoint counsel.

IV. INSURANCE:

A. **Bonita Beaumont v. Muluken Zeru**

2013-SC-000489-DG

April 2, 2015

Opinion of the Court by Justice Keller. All sitting; all concur. Zeru ran a stop sign and struck the car being driven by Beaumont. Beaumont sought and received PIP benefits from her insurer, Cincinnati Insurance Company. Sometime after the accident, Beaumont's attorney wrote to the Cincinnati Insurance adjuster and asked when the last PIP payment had been made. The adjuster stated that a check had been sent to a medical care provider on September 25, 2009. Beaumont filed her complaint on September 21, 2011. Zeru discovered that the September 25, 2009 check was a replacement check for one that had been issued in March 2009 because the recipient medical care provider had apparently lost the March check. Furthermore, Zeru discovered that Cincinnati Insurance had sent out PIP exhaustion letters to Beaumont's medical care providers in August 2009 stating that Beaumont's benefits had been exhausted. Based on this discovery, Zeru moved to dismiss Beaumont's claim as untimely filed - it was filed more than two years after the exhaustion of PIP benefits in August 2009. The circuit court granted Zeru's motion and the Court of Appeals affirmed, based on its published and unpublished precedent.

The Supreme Court reversed. In doing so, the Court first held that a PIP check, like any other check, represents discharge of an obligation. However, the obligation is only suspended by the issuance of the check. It is not discharged until the check has been presented and either certified or honored. In the context of the MVRA, once the check has been certified or honored, the statutory "date of payment" is the date the check was issued. It is not the date of presentment or the date the check was certified or honored. The Court noted that this gives the parties certainty. They can determine when the statute of limitations begins to run by reviewing the PIP obligor's payment log without having to delve into its banking records. The Court then held that the PIP check issued in March 2009, which was never presented, honored, or certified, did not discharge Cincinnati Insurance's obligation, thus it did not represent payment. When Cincinnati

Insurance issued the replacement check in September 2009, it did so to discharge the outstanding obligation that it meant to satisfy with the March 2009 check. That obligation was discharged when the September 2009 check was presented and honored. The date of payment was the date the check that discharged the obligation was issued, September 2009, not the date the lost check was issued, because the lost check did not discharge anything.

V. TRESPASS:

**A. Harrod Concrete and Stone Co. v. B. Todd Crutcher, Etc., et al.
[2013-SC-000549-DG](#) April 2, 2015**

Opinion of the Court by Justice Cunningham. All sitting. Minton, C.J.; Abramson, Barber, Keller, and Noble, JJ., concur. Venters, J., dissents by separate opinion. While mining its own property, the Appellant, Harrod Concrete and Stone Company, trespassed and removed approximately 164,000 tons of limestone from 300 feet below the surface of the Appellees' land. A Franklin Circuit Court jury unanimously awarded the Crutchers \$36,000 in compensatory damages and \$902,000 in punitive damages. The trial court sustained the compensatory award but reduced the punitive damages to \$144,000. A unanimous Court of Appeals panel partially reversed and vacated the circuit court's decision, and remanded the case for further proceedings. The Kentucky Supreme Court held that "when measuring damages in mineral trespass cases, we eliminate any distinction between those injured parties with the ability to mine and those who do not have the ability to mine. An innocent trespasser will be responsible for the value of the minerals after extraction, less the mining operation expenses that were reasonably calculated to be beneficial and productive in producing the minerals. In willful trespass cases, the landowner is entitled to an award equal to the fair market value of the minerals without any allowance for expenses. Thus, punitive damages are not afforded." Accordingly, the Supreme Court reversed the Court of Appeals' decision, vacated the jury verdict and damages, and remanded this case to the trial court for further proceedings.

VI. WORKERS' COMPENSATION:

**A. Mosen Khani v. Alliance Chiropractic, Honorable Otto D. Wolff,
Administrative Law Judge; and Workers' Compensation Board
[2014-SC-000220-WC](#) April 2, 2015**

Opinion of the Court by Justice Keller. All sitting; all concur. Dr. Khani was the sole owner of Alliance Chiropractic. He alleged that he suffered injuries to his upper extremities, neck, low back, left lower extremity, and dental bridge while treating patients on three different dates. The Administrative Law Judge (ALJ) dismissed Dr. Khani's claim finding that Dr. Khani's conditions pre-existed the alleged work injuries. In his opinion, the ALJ stated that he did not consider Dr. Khani to be an expert witness. Dr. Khani appealed arguing that the ALJ erred by

dismissing his claim, erred by not addressing his claim to temporary income and medical expense benefits, and erred by stating that he was not treating Dr. Khani as an expert witness. The Workers' Compensation Board affirmed, holding that there was sufficient evidence to support the ALJ's dismissal of Dr. Khani's claim and that Dr. Khani had failed to preserve the expert witness issue. The Court of Appeals affirmed. In doing so, the Court agreed with the Board that there was sufficient evidence to support the ALJ's dismissal of Dr. Khani's claim. Additionally, the Court held that, because the ALJ found that Dr. Khani's testimony was evasive and self-serving, his conclusion that Dr. Khani could not be treated as an expert witness was correct.

The Supreme Court agreed with the Board and the Court of Appeals that substantial evidence supported the ALJ's dismissal of Dr. Khani's claim. The Court also held that the ALJ did not err by failing to address Dr. Khani's claim for temporary benefits. In doing so, the Court noted that entitlement to benefits is dependent on a finding of a work-related injury. Thus, once the ALJ found no work-related injury, there was no need to address entitlement to benefits.

Regarding the ALJ's failure to treat Dr. Khani as an expert, the Court stated that the question was not whether Dr. Khani was an expert, but whether he gave any expert opinions. The Court noted that the Kentucky Rules of Evidence (KRE) provide for the admissibility of both lay and expert opinions. Lay opinions, to the extent they are admissible, are those that are rationally based on the perceptions of the witness. KRE 701. Expert opinions, on the other hand, are based on scientific, technical, or other specialized knowledge. KRE 702. After reviewing Dr. Khani's testimony, the Court concluded that, to the extent Dr. Khani expressed any opinions, he did so based on his own perceptions, not based on scientific, technical, or other specialized knowledge. Therefore, whether Dr. Khani was an expert witness was essentially irrelevant. Finally, the Court noted that the factors cited by the ALJ and the Court of Appeals for not treating Dr. Khani as an expert are factors regarding the admissibility of expert opinions, not factors regarding the qualifications of an expert.

VII. WRIT OF PROHIBITION:

- A. Frank D. Marcum, et al. v. Honorable Ernesto Scorsone, Judge, Fayette Circuit Court, et al.**
[2014-SC-000172-MR](#) April 2, 2015

Opinion of the Court by Justice Noble. All sitting. Minton, C.J.; Abramson, Barber, Cunningham, Keller, JJ., concur. Venters, J., concurs in result only by separate opinion. Appellants appealed the Court of Appeals's denial of a writ of prohibition to bar enforcement of an order disqualifying their lawyers in a shareholder-derivative suit. The trial court had granted the order based on a finding of an "appearance of impropriety." In denying the writ, the Court of Appeals concluded that appellants had not satisfied the irreparable harm prerequisite for issuance of a writ. In reversing and remanding for entry of the

requested writ, the Supreme Court held that appellants' showing satisfied the "special cases" writ exception; that the trial court applied the incorrect legal standard in disqualifying the lawyers; and that, based on the current record and findings of the trial court, disqualification was improper under the correct standard requiring a showing of an actual conflict of interest. In concurring in result only, Justice Venters would have found that the erroneous disqualification of appellants' counsel constituted irreparable damage.

B. Regina D. White v. Honorable Barry Willett, Judge, Jefferson Circuit Court, et al.

[2014-SC-000403-MR](#)

April 2, 2015

Opinion of the Court by Justice Cunningham. All sitting; all concur. Pursuant to a plea agreement, Appellant, Regina White, agreed to testify truthfully and cooperate in the prosecution of former co-defendant Dominique Grier. During her plea colloquy, Appellant testified that she had been treated for various mental illnesses and drug addictions. Grier filed a motion for an in camera review of Appellant's psychotherapy records from all previous mental health providers. The trial court ordered Appellant's counsel to immediately disclose those records, directly to Grier's counsel. Appellant petitioned the Court of Appeals for a writ to preclude the circuit court from enforcing that order. The Court of Appeals denied the writ. Relying on *Commonwealth v. Barroso*, 122 S.W.3d 554 (Ky. 2003), the Kentucky Supreme Court held that the trial court's authority to order the disclosure of psychotherapy records is directed at medical personnel and institutions in possession of those records, not the testifying witness whose treatment and psychiatric history may be the subject of those records, nor the witness' current or former counsel. The Supreme Court granted the writ, therefore vacating the trial court's order compelling the disclosure of all of Appellant's psychotherapy records.

VIII. ATTORNEY DISCIPLINE:

A. Kentucky Bar Association v. Michael R. McMahan

[2014-SC-000481-KB](#)

April 2, 2015

Opinion of the Court. All sitting; all concur. McMahan agreed to represent a client in a personal injury case but failed to answer or respond to discovery requests. While the case was pending, McMahan was suspended from the practice of law for failure to pay bar dues. Subsequently, the trial court issued an order threatening to dismiss the case for lack of prosecution. McMahan's client obtained a new lawyer, who discovered that McMahan had advanced his client \$23,500.

These actions led to the filing of a bar complaint, which was properly served on McMahan, along with a letter from the Inquiry Commission requesting additional information. McMahan did not provide a response to the request for information

and did not file an answer to the bar complaint. However, he did admit to advancing his client the money.

The Inquiry Commission issued a four-count charge against McMahon, alleging violations of SCR 3.130-1.1 (failure to provide competent representation); SCR 3.130-1.3 (failure to provide diligent representation); SCR 3.130-1.8(e) (providing financial assistance to a client); and SCR 3.130-8.1(b) (failure to respond to a lawful demand for information from an admissions or disciplinary authority). The Board of Governors unanimously found McMahon guilty of violating SCR 3.130-1.8(e) and 3.130-8.1(b) and not guilty of violating SCR 3.130-1.1 and 3.130-1.3 and ultimately recommended that McMahon be suspended from the practice of law for 181 days, to run concurrently with any other discipline imposed upon him.

After reviewing the record, the Court concluded there was sufficient evidence to support the Board's findings and ordered McMahon suspended from the practice of law for 181 days.

**B. Kentucky Bar Association v. Karl Nelson Truman
2014-SC-000645-KB April 2, 2015**

Opinion of the Court. All sitting; all concur. The Indiana Supreme Court publicly reprimanded Truman for committing professional misconduct. At the request of the Kentucky Bar Association, through the Office of Bar Counsel, the Supreme Court issued an order requiring Truman to show cause, if any, why identical reciprocal discipline against him should not be imposed. Truman filed a response in which he did not dispute the need for reciprocal discipline but requested that the Court lessen the punishment to a private rather than public reprimand.

After reviewing the relevant rules and previous cases in which reciprocal discipline was imposed, the Court determined that reciprocal discipline was warranted. Accordingly, the Court publicly reprimanded Truman.

**C. James M. Cawood v. Kentucky Bar Association
2014-SC-000664-KB April 2, 2015**

Opinion of the Court. All sitting; all concur. Cawood was charged with a number of disciplinary violations arising out of two separate files. The first file involved Cawood's failure to return an unearned fee after abandoning a client's case. The Inquiry Commission issued a six-count Charge against Cawood alleging the following violations of the Rules of Professional Conduct: Count I, SCR 3.130-1.3 (failure to diligently represent client); Count II, SCR 3.130-1.4(a)(2) (failure to reasonably consult with client about the means by which the client's objectives are to be accomplished); Count III, SCR 3.130-1.4(a)(3) (failure to keep client reasonably informed); Count IV, SCR 3.130-1.16(d) (failure to protect client's interest upon termination of representation, including refunding any advanced payment or fee); Count V, SCR 3.130-8.1(b) (failure to respond to a lawful

demand for information from a disciplinary authority); and SCR 3.175(a) (failing to maintain a current address with the KBA).

Cawood's second disciplinary file was a result of his IOLTA Trust Account being overdrawn. The Office of Bar Council sent correspondence to Cawood's bar roster address requesting that he provide the KBA with written explanation as to why the account was overdrawn. The letters were returned to the KBA marked undeliverable. The Inquiry Commission issued a Charge against Cawood alleging a violation of SCR 3.130-1.15(a) (escrow account violations) and SCR 3.175(a) (failing to maintain a current address with the KBA).

Cawood admitted to the misconduct and, in an effort to resolve both disciplinary files, negotiated a sanction with the Office of Bar Counsel pursuant to SCR 3.480(2). Under the terms of the negotiated sanction, Cawood would be suspended from the practice of law for a period of one year, probated for a period of three years, subject to certain conditions. Upon reviewing previous cases and the mitigating factors involved in this matter, specifically Cawood's addiction to opiates and his progress with seeking treatment and complying with the Kentucky Lawyer Assistance Program, the Court agreed that the negotiated sanction was appropriate. Accordingly, Cawood's motion for a probated suspension was granted.

D. Kentucky Bar Association v. Christophe G. Stewart
2014-SC-000675-KB April 2, 2015

Opinion of the Court. All sitting; all concur. The KBA notified Stewart on two different occasions that his IOLTA account was overdrawn but Stewart failed to respond. The Inquiry Commission opened an investigative file on the matter and sent Stewart a letter indicating that a disciplinary investigation had been initiated and demanding a response. Stewart did not respond. The Inquiry Commission then issued a complaint against Stewart for the mishandling of escrow funds in violation of SCR 3.130-1.15 and for his failure to respond to the Office of Bar Counsel's request for information in violation of SCR 3.130-8.1(b). A copy of the complaint was mailed to Stewart at the address listed on his bar registry but it was returned as undeliverable. A copy of the complaint was then provided to the Jefferson County Sheriff's Office for service. The Sheriff's Office attempted service six separate times at Stewart's bar address and spoke with Stewart's office associate. Unable to effect service, the Sheriff's Office filed a return indicating that Stewart was "avoiding service."

Eventually, Stewart was served with a copy of the Inquiry Commission complaint by way of service on the KBA Executive Director pursuant to SCR 3.175. The letter was forwarded to Stewart's bar address on that same day. Stewart did not respond, and the letter was returned as undeliverable.

The matter came before the Board of Governors as a default case pursuant to SCR 3.210. The Board unanimously voted to find Stewart guilty of both counts

contained in the charge. After considering Stewart's prior disciplinary history, mitigating factors, and the applicable law, the Board recommended that Stewart be publicly reprimanded. The Court agreed with the recommendation and publicly reprimanded Stewart.

**E. Kentucky Bar Association v. Michael R. McMahon
2014-SC-000676-KB April 2, 2015**

Opinion of the Court. All sitting; all concur. McMahon was administratively suspended from the practice of law for nonpayment of dues. As part of his application for restoration to membership, McMahon admitted that he had not sent notice of his suspension to all of his clients. It was discovered during the investigation in connection with this application for restoration that McMahon had, in fact, been listed as counsel of record in two cases in Jefferson District Court during the time of his suspension. Because of McMahon's admission of non-compliance, the Board of Governors denied the application for restoration. McMahon filed a motion for reconsideration in which he stated that he did not send notices of his suspension to his clients because he was not representing any clients in any pending litigation during the relevant time period. He also submitted video copies of the proceedings in the cases in which he was listed as the counsel of record. In at least one of the recordings, McMahon can be clearly seen and identified as counsel for the defendant. This proceeding took place during the period of administrative suspension.

The Inquiry Commission issued a complaint that was served on McMahon personally. He filed no response. The Inquiry Commission then issued a three-count charge, which was served by certified mail and accepted by McMahon himself. McMahon filed no response to the charge. The charge alleged three violations of the Rules of Professional Conduct: (1) Rule 5.5(a), which states that a lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction; (2) Rule 3.3(a)(a), which states that a lawyer shall not knowingly make a false statement to a tribunal or fail to correct such a statement previously made; and (3) Rule 8.4(c), which states that it is misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

The matter was submitted to the Board of Governors as a default case. The Board found McMahon guilty of all three counts. Upon consideration of his disciplinary history, the Board voted to impose a 181-day suspension, to be served consecutively with any other suspension imposed. Neither the Office of Bar Counsel nor McMahon sought review by the Court under SCR 3.370(7) and the Court declined to undertake review pursuant to SCR 3.370(8). Accordingly, the Board's decision was adopted in full under SCR 3.370(9) and McMahon was suspended for 181 days.

**F. Kentucky Bar Association v. Clyde F. Johnson
2014-SC-000718-KB April 2, 2015**

Opinion of the Court. All sitting; all concur. The KBA brought separate charges against Johnson stemming from his failure to perform legal work after taking retainer fees in three cases. Johnson did not respond to any of the charges. The curator who was appointed to handle Johnson's cases indicated that Johnson had voluntarily left the jurisdiction but was probably alive and taking measures to conceal his whereabouts. Based on the recommendation of the majority of the KBA Board, the Court imposed a five year suspension, to be served consecutively with any other discipline. The Court also ordered Johnson to refund any unearned contingent fees to his clients.

**G. Dennis Michael Ritchie v. Kentucky Bar Association
2015-SC-000020-KB April 2, 2015**

Opinion of the Court. All sitting; all concur. A client paid Ritchie a \$2500 retainer to seek custody of his son. Before the action was initiated, the client died unexpectedly. Ritchie did not do any work but kept the retainer nonetheless. Thereafter, the client's wife paid Ritchie \$10,000 to seek grandparents' visitation on behalf of her deceased husband's parents. Ritchie also convinced the client's wife to give him \$50,000 to put into an escrow account for the benefit of her deceased husband's son. Instead, Ritchie spent the \$50,000 on himself. When confronted about it, Ritchie borrowed money from friends to reimburse the money to the client.

The Inquiry Commission issued a three-count complaint against Ritchie. Count One charged Ritchie with a violation of SCR 3.130-1.15(a) for failing to hold the \$50,000 and the two retainers in an account separate from his own property. Count Two alleged Ritchie violated SCR 3.130-8.4(b) by appropriating to his personal use the \$50,000 intended for the creation of an escrow account. And Count Three alleged violation of SCR 3-130-8.4(c) by charging fees for unnecessary and unperformed services and misappropriating the \$50,000 meant to be held in escrow.

Ritchie pled guilty in circuit court to two counts of second-degree possession of a forged instrument and five counts of theft by deception over \$500. He then entered a pre-trial diversion agreement that required him to pay a total of \$29,100 in restitution to four former clients at a rate of \$100 per month. This plea led to Ritchie's temporary suspension from the practice of law under SCR 3.165(1)(a) and another Inquiry Commission charge under 3.130-8.4(b) for pleading guilty to second-degree possession of a forged instrument and theft by deception over \$500. Nine more KBA disciplinary files, the substance of which were not before the Court in this action, are currently pending against Ritchie.

Ritchie admitted his conduct and conceded that it violated the Kentucky Rules of Professional Conduct. He moved the Supreme Court to allow his withdrawal from

the practice of law under terms of permanent disbarment. With no objection from the KBA, the Court agreed that Ritchie's motion to withdraw from the practice of law was appropriate under SCR 3.480(3). Accordingly, the Court ordered that Ritchie be permanently disbarred.

**H. Kentucky Bar Association v. Michael Linden Myers
2015-SC-000051-KB April 2, 2015**

Opinion of the Court. All sitting; all concur. The KBA Inquiry Commission issued a four count Charge against Myers alleging violations of the following Rules of Professional Conduct: Count I, SCR 3.130-1.3 (attorney must represent the client with reasonable diligence and promptness); Count II, SCR 3.130-1.4(a)(3) (attorney shall keep the client reasonably informed); Count III, SCR 3.130-1.4(a)(4) (attorney must promptly comply with reasonable requests for information); and Count IV, SCR 3.130-8.4(c) (attorney may not engage in . conduct involving dishonesty, fraud, deceit or misrepresentation). Myers filed his Answer and admitted to violating the first three Counts of the Charge. A hearing was held and both parties submitted memorandums. The Trial Commissioner issued his Report, finding Respondent guilty of violating all four Counts of the Charge and recommending a thirty-day suspension from the practice of law, probated conditionally for two years.

The matter came before the Supreme Court under SCR 3.360(4) because neither party appealed the Trial Commissioner's Report. The Court reviewed the Report and concluded that the findings of fact and conclusions of law were adequately supported by the record and case law. Accordingly, the Court chose not to independently review the Report under SCR 3.370(8) and instead adopted the Trial Commissioner's findings of fact, conclusions of law, and recommendations under SCR 3.370(9). The Court suspended Myers for thirty days, probated for two years, on the condition that he obtain an evaluation from the Kentucky Lawyers Assistance Program and comply with any resulting recommendations.

**I. Bethanni Forbush-Moss v. Kentucky Bar Association
2015-SC-000069-KB April 2, 2015**

Opinion of the Court. All sitting; all concur. Forbush-Moss moved the Court to suspend her from the practice of law for sixty-one days, probated for two years, for the following admitted violations: SCR 3.130(1.4)(a)(4) (failure to comply with reasonable requests for information); SCR 3.130(1.15)(e) (failure to deposit client's refundable funds into an escrow account); SCR 3.130(1.15)(a) (failure to keep client's property separate from the lawyer's property); and SCR 3.130(1.16)(d) (failure to surrender property and fees upon termination). The KBA did not object to the proposed discipline, which was negotiated under SCR 3.480(2). The Court found that the proposed sanction was appropriate and granted Forbush-Moss's motion.

J. Robert L. Horrell v. Kentucky Bar Association
[2015-SC-000081-KB](#) April 2, 2015

Opinion of the Court. All sitting; all concur. Horrell appealed his suspension for failure to pay his bar dues. In its response, the KBA noted that Horrell had been a member of the bar for 50 years and had never before been delinquent in paying his dues. Accordingly, the KBA asked the Court to grant Horrell's appeal on the condition that he pay in full his bar dues for 2014-2015, along with any late fees and costs. The Court agreed and revoked Horrell's suspension on the condition that he pay his bar dues.

K. Roderick A. Tejada v. Kentucky Bar Association
[2015-SC-000102-KB](#) April 2, 2015

Opinion of the Court. All sitting; all concur. Tejada was involved in an accident in which the driver of the other vehicle was killed. Under a plea agreement with the Commonwealth, Tejada pled guilty to an amended charge of reckless homicide, a Class D felony, KRS 507.050, based upon the grounds that he was speeding at the time of the accident. Under the plea agreement, Tejada received a five year sentence. The entire sentence was probated and Tejada was placed under the supervision of Probation and Parole.

Based upon his felony conviction of reckless homicide, the Inquiry Commission issued a charge against Tejada alleging violation of SCR 3.130- 8.4(b) for professional misconduct in committing "a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects." Tejada admitted his guilt and requested a four-year suspension from the practice of law, retroactive to the date of the automatic suspension imposed upon his felony conviction, with the additional conditions that he continue ongoing monitoring by KYLAP and follow any recommendations made by that office, and that he be released from any supervision by Probation and Parole before reinstatement. The KBA did not object to Tejada's motion.

After reviewing the allegations, Tejada's previous disciplinary record, his willingness to cooperate with KYLAP and the cases cited by the KBA, the Supreme Court concluded that the discipline proposed by Tejada, and agreed to by the KBA, was the appropriate sanction. Accordingly, the Court granted Tejada's motion and suspended him for four years, retroactive to the date of his automatic suspension.

L. Michael A. Hamilton v. Kentucky Bar Association
[2015-SC-000104-KB](#) April 2, 2015

Opinion of the Court. All sitting; all concur. Hamilton was suspended from the practice of law for non-payment of his 2014-2015 KBA dues. He moved the

Supreme Court to grant his motion for an enlargement of time in which to appeal his suspension or, in the alternative, extraordinary relief in the form of reinstatement to the practice of law. In his motion, Hamilton claimed that he was unable to pay his bar dues as the result of a series of unfortunate events, including an automobile accident that left him unable to work for five months and the closure of his law firm. Hamilton also claimed that he applied for a financial hardship waiver under SCR 3.040(4). However, Hamilton did not provide any proof that he actually submitted a request and the KBA maintained that Hamilton did not make the request.

The Board of Governors eventually voted to issue a Show Cause Notice of Delinquency, which provided Hamilton with 30 days to show cause why he should not be suspended for non-payment of dues. The notice was returned undeliverable because Hamilton had failed to update his bar roster address. The notice was mailed to Hamilton's updated address via certified mail and was again returned undeliverable. The KBA also called Hamilton on his business phone and left a voicemail, which he claimed not to have received. Finally, the KBA suspended Hamilton under SCR 3.050 for nonpayment of dues. Hamilton did not learn of the suspension for another month, at which time he filed a motion with the Court for an extension of time or extraordinary relief.

The Court determined that extraordinary relief in the form of reinstatement was not justified based on Hamilton's failure to proactively notify the KBA of his inability to pay his dues and his delinquency in paying his dues during three previous fiscal years. But the Court also determined that the KBA failed to notify Hamilton of his suspension, leaving him unaware that the thirty-day window in which to appeal under SCR 3.050 had begun. Accordingly, the Court granted Hamilton's motion for an enlargement of time in which to appeal the KBA's order suspending him from the practice of law for nonpayment of dues.