PUBLISHED OPINIONS
KENTUCKY SUPREME COURT
AUGUST 2009

I. ADMINISTRATIVE LAW

A. Mitchell Metzinger v. Kentucky Retirement Systems, et al.

2007-SC-000363-DG **August 27, 2009**

Opinion by Justice Scott. All sitting; all concur. Metzinger, an electrician employed by the city of Louisville, was injured on the job. He applied for disability retirement and workers' compensation benefits and filed a civil suit against the tortfeasor--Louisville Gas & Electric. As part of a global settlement, LG&E and the city agreed to purchase an annuity for Metzinger. Later, when Kentucky Retirement Systems calculated Metzinger's monthly disability retirement award, it reduced the award by the amount on the monthly annuity payment. Metzinger objected, but the award was upheld by the Board, the circuit court and the Court of Appeals. On appeal, Kentucky Retirement Systems argued that KRS 61.607 permits it to take into account monthly workers' compensation benefits therefore, any payments that were voluntarily exchanged for a right to payment to monthly workers' compensation benefits should also be taken into account. The Supreme Court reversed, holding that Kentucky Retirement Systems' interpretation of the statute was contrary to its plain language. The Court noted that if the General Assembly has intended to broaden the scope of the agency's consideration of workers' compensation benefits under KRS 61.607, it could have done so.

II. CONTRACTS

A. Barbara Lucinda Sawyer v. Melbourne Mills, Jr.

2007-SC-000296-DG **August 27, 2009**

Opinion by Justice Noble. All sitting; all concur. Sawyer was formerly employed by Mills—a lawyer representing clients in a class action suit. Sawyer helped recruit members for the class and the lawyer promised her a "big payday" when the case settled. After the case settled, Mills verbally agreed to pay Sawyer a million dollars in monthly installments of $10,000. After her employment was terminated, Sawyer sued to enforce the agreement and the jury returned a verdict in Sawyer's favor. The trial court granted Mills' motion for a JNOV on the grounds that the Statute of Frauds barred Sawyer's claim. The Court of Appeals affirmed. The Supreme Court affirmed the Court of Appeals, holding that since there was no writing between the parties and the agreement could not be completed within one year, the Statute of Frauds precluded enforcement of the agreement. The Court rejected Sawyer's argument that a secret

recording of the parties making the agreement combined with canceled checks constituted a writing for the purposes of the Statute of Frauds. Further, the Court held that Sawyer's past performance could not amount to consideration to support a binding agreement.

III. CRIMINAL LAW

A. Keith Owens v. Commonwealth of Kentucky

2006-SC-000037-MR **August 27, 2009**

Opinion by Chief Justice Minton. All sitting; all concur. The United States Supreme Court remanded this case for reconsideration in light of its recent decision in Gant. In Gant, it narrowed the scope of permissible warrantless searches of automobiles following an arrest to instances where the arrestee is within reaching distance of the passenger compartment at the time of the search or when it is reasonable to believe the vehicle contains evidence of the offense of arrest. In this case, Owens had been a passenger in a vehicle whose driver was arrested for a traffic offense. The driver was searched and found to be carrying narcotics. The officer then ordered Owens out of the car and while conducting a Terry search, discovered narcotics on Owens' person.

The trial court denied Owens' motion to suppress and he was subsequently convicted. On remand, the Kentucky Supreme Court held that Gant did not affect the conviction. Further, the Court adopted the "automatic companion rule," which states that all companions of the arrested driver within the immediate vicinity, capable of accomplishing a harmful assault on the officer, are constitutionally subjected to a cursory "pat-down" reasonably necessary to give assurance that they are unarmed.

B. Commonwealth of Kentucky v. Michael Stone

2007-SC-000107-DG **August 27, 2009**
2007-SC-000576-DG **August 27, 2009**

Opinion by Justice Venters. All sitting; all concur. After a trial with his four co-defendants, Stone was convicted of manslaughter. The Court of Appeals reversed the conviction, holding that Stone's Sixth Amendment right to confront evidence against him under Bruton and Richardson was violated when the trial court admitted a co-defendant's redacted statement to police that the victim was "backing away" when he was stabbed by Stone. The Supreme Court affirmed the Court of Appeals and ordered a new trial. However, the Court determined Bruton was inapplicable since the statement was being used against someone other than the declarant. The Court stated that Crawford applies in instances like this, where the out-of-court statement is being used against a defendant other than the declarant. The Court concluded that since Stone was not afforded an

opportunity to cross-examine the declarant, the use of the statement violated Stone's Sixth Amendment rights.

C. Commonwealth of Kentucky v. Richard Wayne Terry
2007-SC-000796-DG August 27, 2009

Opinion by Justice Noble. All sitting; all concur. On the day of his trial on drug charges, defendant asked the trial court for permission to represent himself and expressed his dissatisfaction with his court-appointed attorney. The trial court granted the request without a Faretta colloquy or otherwise making a finding of fact that the defendant's waiver of counsel was knowing, voluntary and intelligent. The defendant's subsequent conviction was reversed by the Court of Appeals. The Supreme Court affirmed the Court of Appeals, re-emphasizing that trial courts must comply with Faretta. While repeating that there are no "magic words" or standardized litany that courts must use, the Supreme Court noted with approval a list of 15 model Faretta hearing questions used in federal courts.

D. Charles Lamar Johnson v. Commonwealth of Kentucky
2007-SC-000952-MR August 27, 2009

Opinion by Justice Scott. All sitting; all concur. Johnson was sentenced to life imprisonment after being convicted of rape, incest, sexual abuse and sodomy. On appeal, Johnson's claim that the venire did not represent a fair cross-section of the community was rejected by the Court, who found that Johnson did not supplement the record with statistical information to make a *prima facie* showing of a violation. The Court held that Johnson's claim that African-Americans were systematically excluded from the grand jury was not properly preserved since Johnson made no objection before trial. The Court also rejected Johnson's argument that his conviction amounted to double jeopardy because he was being convicted of both rape and incest for the same acts against his daughters. The Court noted that each offense required proof of a fact that the other did not—thus satisfying the Blockburger test. The Court rejected Johnson's claim of prosecutorial misconduct, holding that merely because witnesses made inconsistent statements did not mean the prosecution knowingly presented perjurious testimony as to a material issue. Lastly, the Court rejected Johnson's argument he should have been granted a directed verdict on the first and second degree rape charges since the prosecution failed to present evidence of his age when the acts were committed. The Court held that enough evidence existed for the jury to reasonably infer Johnson must have been 21 or older at the time of the acts since his children—among the victims—were shown to have been 15 and 12 at the time. The conviction was affirmed.

E. Timothy Shemwell v. Commonwealth of Kentucky
2008-SC-000102-TG August 27, 2009

Opinion by Justice Venters. All sitting; all concur. Shemwell was convicted on various charges arising out of a methamphetamine operation discovered at his residence. On appeal, he argued that convicting him of both manufacturing and possession violated the constitutional prohibition on double jeopardy. The Supreme Court affirmed the conviction, holding that each offense required proof of a fact that the other did not. Further the Court concluded that the jury instructions for possession of methamphetamine clearly stated it was based on different methamphetamine than that which Shemwell manufactured. Therefore no double jeopardy violation occurred. The Court also held that Shemwell waived any objection to a detective's statement that Shemwell had been a drug suspect for years since the statement was directly responsive to a question from Shemwell's counsel. Next, the Court ruled that the prosecution's irrelevant reference to a sawed-off shotgun found at Shemwell's residence was harmless error. Lastly, the Court held that the trial court did not abuse its discretion in refusing to grant a mistrial because of the prosecution's questioning of his co-defendant. Shemwell had argued that questioning the co-defendant about her knowledge of drugs and prior drug use was prejudicial in that it caused the jury to find him guilty by association.

F. Commonwealth of Kentucky v. Lennie G. House
2008-SC-000114-DG August 27, 2009

Opinion by Justice Abramson. All sitting; all concur. House entered a conditional guilty plea to DUI charges, reserving his right to appeal the district court's ruling that quashed his *subpoena duces tecum* for the computer source code of the Intoxilyzer 5000—the device used by police to measure alcohol concentration in the bloodstream. The Court of Appeals reversed the conviction. On appeal to the Supreme Court, House argued that his expert should be allowed to review the source code for programming "bugs" that could lead to inaccurate results. The Supreme Court reversed the Court of Appeals and reinstated the conviction, holding that House had produced no evidence whatsoever to suggest the source code was flawed and that the subpoena amounted to an impermissible "fishing expedition." Because House did not file a cross-motion for discretionary review, the Court declined to address his argument that the Confrontation Clause of the Sixth Amendment entitled him to access the source code.

G. Commonwealth of Kentucky v. Tommy Lopez
2008-SC-000308-DG August 27, 2009

Opinion by Chief Justice Minton. All sitting; all concur. While he was serving in Iraq, the Army charged Lopez with viewing child pornography on a computer. At the time, Lopez was on probation in Kentucky for attempted first degree sexual abuse. In lieu of a court-martial, Lopez sought and received a voluntary discharge from the Army. In his request for the discharge, Lopez admitted his guilt. Upon his return to Kentucky, Lopez's probation officer initiated revocation proceedings. The circuit court revoked Lopez's probation, but the Court of Appeals reversed, holding that "an admission to the violation of a general order under [Unified Code of Military Justice] Article 92, by itself, is insufficient to justify a revocation of probation." The Supreme Court noted that under KRS 533.030 probation may be revoked upon commission of "another offense." Therefore, the Court reasoned, Lopez's probation could only be revoked if his violation of UCMJ Article 92 was punishable by imprisonment or fine. The Court concluded that since infractions of Article 92 are punishable by up to two years confinement, the trial court did not abuse its discretion in revoking Lopez's probation. However, the Court cautioned that its holding "should not be construed to mean that a trial court *must* revoke probation each time a person on probation serving in the armed forces violates a military law. Rather, we simply hold that under Kentucky law, a trial court *may* revoke probation if a person on probation serving in the armed forces violates a military law and the possible punishment for that violation includes a fine or imprisonment."

H. Mark Lee Crossland v. Commonwealth of Kentucky
2007-SC-000689-MR August 27, 2009

Opinion by Chief Justice Minton. All sitting; all concur. Crossland appealed his conviction on burglary and arson charges, claiming he was entitled to reversal because the trial court excused a juror and replaced him with a discharged alternate after the case had already been submitted to the jury. The Court held that consistent with Woods and Thurman, post-submission juror substitutions constitute reversible error. However, the Court held that the issue was subject to harmless error analysis. The Court did not find the error to be harmless in this particular instance since the trial court did not engage in a colloquy to determine if the substitute juror had been subjected to outside influence which could compromise his ability to act impartially after being released from the jury. Also, the trial court failed to instruct the jury that they must begin deliberations afresh once the substitute juror rejoined their ranks.

I. Frankie Covington v. Commonwealth of Kentucky
2007-SC-000773-MR August 27, 2009

Opinion by Justice Venters; all sitting. On the day of trial, Covington's counsel was advised by the prosecutor that he would recommend a 20 year

sentence in exchange for a plea of guilty. The trial judge advised Covington that under the local rules, all pleas entered on the day of trial were considered "open pleas" or "blind pleas." Prior to sentencing, Covington requested to withdraw his plea, claiming medication rendered him incompetent when the plea was entered. The trial court conducted a competency hearing, after which Covington was found to be competent. He was subsequently sentenced to life imprisonment. While finding no fault with the determination that Covington was competent and his plea voluntary, the Supreme Court reversed for a new sentencing hearing, holding that under RCr 8.10, Covington had a right to withdraw his plea once the judge declined to impose the agreed upon 20 year sentence.

The Court held that Covington's arrangement with the prosecutor was a plea agreement, and the trial court's designation as a "blind plea" made no difference because the decision to accept or reject a plea agreement is always within the provenance of the trial court. Justice Cunningham, joined by Justice Scott and Justice Schroder, dissented, asserting that the arrangement was not a plea agreement as contemplated under RCr 8.10 and predicted in the future, prosecutors may be reluctant to make sentence recommendations for guilty pleas entered on the day of trial. The minority also noted that the local rules mandate all plea agreement be in writing—a requirement not met in this case. Justice Abramson joined the majority opinion, but agreed with the dissenters that the Supreme Court should require all felony plea agreements be in writing and signed by the prosecutor, defendant and defense attorney.

J. Jimmy L. Epps v. Commonwealth of Kentucky
2007-SC-000312-DG August 27, 2009

Opinion by Justice Noble. All sitting; all concur. A motorist was stopped by police for a traffic offense. Police called for a narcotic detection dog. The dog "hit" on the area where Epps, a passenger, was seated. The officer detected an object during his second Terry search of Epps, and he admitted to carrying crack cocaine. From the time of the stop until the time of Epps' arrest, 90 minutes elapsed. Epps entered a conditional guilty plea. The Supreme Court reversed the conviction and remanded for a new trial, holding that the seizure violated Epps' Fourth Amendment rights because it was unreasonably long. As a preliminary matter, the Court decided that Epps could properly challenge the stop of the driver's car since Epps reasonably believed he was not free to leave without the officer's permission (Brendlin). The Court went on to hold that while it was not unconstitutional for the police to call in the narcotic detection dog, the stop exceeded the time necessary to effectuate the original purpose of the stop. The Court distinguished this case from Meghoo—which involved a commercial truck driver stopped at a weigh station for a regulatory inspection. The Court noted such inspections, by their nature,

involve a longer detention period than routine traffic stops of noncommercial vehicles.

K. Melissa Helton v. Commonwealth of Kentucky
2008-SC-000141-MR **August 27, 2009**

Opinion by Justice Noble; all sitting. Helton entered a conditional guilty plea to wanton murder and DUI charges that stemmed from a car accident where four children were killed. After the accident, police took a blood sample from an unconscious Helton without a warrant. On appeal, Helton argued that KRS 189A.105(2)(b), which requires police to seek a warrant for blood, breath and urine testing in all motor vehicle accidents involving fatalities, trumped KRS 189A.103(3)(a)—Kentucky's implied consent law. The Court rejected this argument, holding that the fact that Helton was unconscious did not nullify her statutorily implied consent. The Court noted that 189A.105(2)(b) requires a warrant only where testing has not already been done by consent.

The Court then turned its attention to the constitutional issue: does a warrantless blood test of an unconscious suspect violate the right against unreasonable searches and seizures. After discussing leading United States Supreme Court opinions on the subject, the Court concluded that so long as authorities have reasonable grounds to believe alcohol was involved in the accident, there is no constitutional bar to testing an unconscious person without giving them an opportunity to refuse the test. However, the Court held that in this instance, there had been no proof taken at the suppression hearing on the issue of whether the police had reasonable grounds for the blood test. The Court reversed the conviction and remanded to the trial court for a new suppression hearing. Justice Scott dissented, agreeing with the majority on the all issues except that a new suppression hearing was warranted, asserting that Helton's own subsequent admissions combined with the evidence on record was sufficient to establish reasonable grounds.

IV. DOMESTIC RELATIONS

A. George Mauldin; and Joyce Mauldin v. Rebecca Bearden
2008-SC-000557-DGE **August 27, 2009**

Opinion by Justice Noble; all sitting. In 2005, the Jefferson Family Court awarded paternal grandparents temporary, and later permanent, custody of an infant whose parents were deemed to be abusive and alcoholic. The grandparents took the child to Alabama where they resided. In 2006, the grandparents filed a petition in Alabama to adopt the child. The child's mother filed a CR 60.02 motion in Jefferson Family Court to set aside the permanent custody award, alleging the grandparents and the child's father

conspired to fraudulently keep her away from the custody proceedings. The family court denied the CR 60.02 motion and declined to exercise jurisdiction over the mother's subsequent motion for visitation—deferring to the Alabama courts. The Court of Appeals reversed and remanded back to the family court for a full evidentiary hearing on the CR 60.02 motion.

The Supreme Court reversed and reinstated the family court's decision, holding it was not an abuse of discretion for the family court to take the allegations in the affidavit on their face and not hold a hearing. The Court noted that testimony on the issues would not have fundamentally changed the allegations. Further, the Court noted that the family court had dealt with the parties extensively and was in a position to judge the parties' credibility without holding a hearing. Furthermore, the Court ruled that the mother had not identified a meritorious defense--a prerequisite for vacating a judgment under CR 60.02. The Court noted that the mother never appealed the family court's custody ruling and could not now substitute a CR 60.02 motion for an appeal. Finally, the Court held that even though the family court mistakenly allowed the grandparents to pursue custody under KRS Chapter 403 rather than Chapter 620, it had correctly deferred jurisdiction on the visitation issue to the Alabama courts. Chief Justice Minton concurred in result only.

V. GOVERNMENTAL IMMUNITY

A. Breathitt County Board of Education v. Dot Prater

2008-SC-000041-DG **August 27, 2009**

Opinion by Justice Abramson; all sitting. As part of her compensation for providing security and maintenance services at an elementary school, the school board allowed an employee to live in a house located on school grounds. Prater was visiting the employee at the house when she suffered a permanent injury. Prater sued the school board, alleging negligence in the maintenance of the house. The board moved for dismissal, claiming it was absolutely immune from damage claims brought in court. The trial court denied the motion on the grounds that the board's maintenance of the house served a proprietary function rather than a governmental function. The Supreme Court noted that denials of motions to dismiss are typically not final and thus not subject to appellate review. However, since immunity is meant to shield its possessor not just from liability, but from the costs and burdens of litigation as well, a denial of immunity is subject to interlocutory appeal. The Court also concluded that the board's furnishing of a residence was a governmental function because it furthered the board's educational mission and was thus within the scope of governmental immunity. Justice Venters dissented, taking the position that "maintaining the personal, private house for the use of a school

maintenance worker and her social guests has nothing to do with the school district's educational mission."

VI. TAXATION

A. Jonathan Miller, Secretary of the Finance & Administration Cabinet, et al. v. Johnson Controls, Inc. et al.

2006-SC-000416-DG **August 27, 2009**
2007-SC-000819-DG **August 27, 2009**

Opinion by Justice Noble. Chief Justice Minton not sitting. The Court upheld the constitutionality of KRS 141.120 and 142.200 which retroactively prohibited the filing of combined tax return under the unitary business model (a means by which a multi state cooperate entity can apportion its state income taxes). The Court held that the amendments, including the seven year retroactivity window, were rationally related to the legitimate government purpose of regulating revenue. Justice Abramson, joined by Justice Cunningham, dissented, contending that the statutes violate the Due Process Clause by withdrawing the ability to contest illegally collected taxes. Justice Schroder concurred in result only.

VII. WORKERS' COMPENSATION

A. Radco Asbestos Specialists, Inc. v. Thomas B. Lyons; Hon. Marcel Smith, ALJ; & Workers' Compensation Board

2008-SC-000777-WC **August 27, 2009**

Opinion of the Court. All sitting; all concur. Workers' compensation claimant sought to reopen his award in order to obtain temporary total disability ("TTD") benefits. The ALJ dismissed the motion as untimely. The Board reversed and the Court of Appeals affirmed the Board. On appeal, the employer argued that KRS 342.125(3) states an award may only be reopened by a claimant seeking TTD "during the period of award." Since claimant was no longer receiving weekly income benefits, the employer contended he could not now seek benefits. The Court disagreed, holding that "period of award" included medical benefits since the statute did not specify that the "period of award" was limited to the time the claimant received income benefits.

VIII. WRITS

A. William Goldstein, Executor v. Judge Timothy J. Feeley & Ruby Joann Young-Layer (Real Party in Interest)

2008-SC-000597-MR **August 27, 2009**

Opinion by Justice Venters. All sitting; all concur. Before the circuit court could rule on the property division in dissolution action, the ex-husband passed away. The circuit court substituted the estate as party to the dissolution and entered a restraining order prohibiting transfer of marital assets. The executor filed for a writ of prohibition and mandamus, arguing the trial court lacked personal jurisdiction. The Court of Appeals denied the writ. On appeal, the executor argued that a writ was proper since the trial court was proceeding outside its jurisdiction, which he contended was a proper basis for the issuance of a writ. The executor asserted he had not been properly served with process, therefore the circuit court lacked personal jurisdiction over him. The Court affirmed the Court of Appeal's denial of the writ, holding the "lack of jurisdiction" in writ cases as referred to in Hoskins means a lack of subject matter jurisdiction —not personal jurisdiction. Furthermore, the Court held that the ex-husband's death "did not divest the circuit court of jurisdiction over the marital property, nor did it eliminate the necessity of equitably dividing the marital property."

IX. ATTORNEY DISCIPLINE

A. James Wiley Craft v. Kentucky Bar Association

2002-SC-000273-KB **August 27, 2009**

The Supreme Court reinstated attorney to the practice of law. The attorney had previously resigned under terms of disbarment after a felony conviction. The Court noted that the attorney had shown by clear and convincing evidence that he possessed sufficient professional capabilities and moral character.

B. Gregory A. Gabbard v. Kentucky Bar Association

2007-SC-000459-KB **August 27, 2009**

The Supreme Court reinstated attorney to the practice of law. The attorney had been suspended in 2004 for professional misconduct. The reinstatement was conditional on the attorney entering into a supervision agreement with KYLAP.

C. Kentucky Bar Association, CLE Commission v. Michael Ray McDonner

2008-SC-000963-KB **August 27, 2009**

The Supreme Court suspended attorney from the practice of law for failure to complete required CLE. Further the attorney did not respond to the CLE Commission's attempts to communicate with the attorney.

D. Kentucky Bar Association v. George Martin Streckfus
2009-SC-000184-KB August 27, 2009

The Supreme Court imposed reciprocal discipline against attorney suspended in another jurisdiction. The Indiana Supreme Court had previously suspended the attorney for failing to respond to a complaint lodged against him and otherwise refusing to cooperate with the disciplinary process.

E. Kentucky Bar Association v. James Kevin Mathews
2009-SC-000266-KB August 27, 2009

The Supreme Court suspended attorney from the practice of law for 181 days for violating SCR 3.130-1.15(a) by failing to keep his clients' money separate from his own after the KBA received 13 overdraft notices regarding attorney's escrow account. The attorney was also found guilty of failing to respond to a lawful request for information from a disciplinary authority.

F. Kentucky Bar Association v. Leo A. Marcum
2009-SC-000267-KB August 27, 2009

The Supreme Court suspended attorney from the practice of law for 181 days. Attorney was found to have violated SCR 3.130-1.15(a), which requires lawyers to hold his or her own property separate from that of a client. Attorney also violated the rule against engaging in conduct involving fraud, dishonesty or deceit (SCR 3.130(8.4)(c)).

G. Kim Allen Clay v. Kentucky Bar Association
2009-SC-000272-KB August 27, 2009

The Supreme Court granted attorney's motion to resign under terms of permanent disbarment. The attorney previously pled guilty to federal charges of conspiracy to commit mail, wire and bank fraud. The attorney also admitted that he kept money given to him by his clients intended for their creditors.

H. Judy W. Sipes v. Kentucky Bar Association
2009-SC-000304-KB August 27, 2009

The Supreme Court granted attorney's motion for Court to impose sanction of public reprimand. Attorney admitted to violating SCR 3.130(4.2) during the course of her representation in a suit against the City of Elizabethtown. The attorney interviewed a city employee who was represented by city attorneys without first obtaining the attorneys' permission.

I. James Blake Hornal v. Kentucky Bar Association
2009-SC-000320-KB August 27, 2009

The Supreme Court reinstated attorney to the practice of law. The attorney was suspended in 2008 for failure to pay KBA dues.

J. Richard Erpenbeck v. Kentucky Bar Association
2009-SC-000354-KB August 27, 2009

The Supreme Court granted attorney's motion for Court to impose a two year suspension from the practice of law. Attorney admitted that he failed to competently and diligently represent the bank that employed him to perform title searches. Attorney also admitted to failing to disclose to the U.S. Bankruptcy Court that his brother, while indebted to several creditors, transferred stock without any consideration to a company managed by the attorney.

K. Pamela C. Bratcher v. Kentucky Bar Association
2009-SC-000358-KB August 27, 2009

Chief Justice Minton not sitting. The Supreme Court granted attorney's motion for Court to impose sanction of public reprimand. Attorney admitted to violating SCR 3.130(4.2) which prohibits a lawyer from communicating about the subject of the representation with a party the lawyer knows to be represented by counsel. The attorney, while representing a client in a wrongful termination case, hired an agency to find out the type of reference the former employer was giving about her client. The agency contacted the former employer on the pretense of being a prospective employer. The attorney then attempted to use this information in the lawsuit. The trial court suppressed the information and disqualified the attorney from the case.

L. James R. Gregory, Sr. v. Kentucky Bar Association
2009-SC-000369-KB August 27, 2009

The Supreme Court granted attorney's motion for a three year suspension from the practice of law retroactive to January 2007. In 2004, attorney was suspended for 30 days, but failed to inform at least five clients of his suspension, to their detriment. The attorney also admitted to not refunding unearned fees and not appearing on behalf of his clients at crucial hearings. The attorney attributed these violations to his former substance abuse problem. Attorney's reinstatement was made contingent on paying restitution to his clients and complying with a KYLAP supervision agreement.