PUBLISHED OPINIONS
KENTUCKY SUPREME COURT
AUGUST 2010

I. ADMINISTRATIVE LAW

a. Louisville Gas and Electric Company, et al. v. Hardin & Meade County Property Owners For Co-Location, et al.

2008-SC-000348-DG
2008-SC-000354-DG **August 26, 2010**

Opinion of the Court by Justice Schroder. All sitting; all concur. Property owners filed an action in the circuit court seeking judicial review of a PSC order granting an application for construction of a power line. Thereafter, the property owners failed to designate the record or move for enlargement of time to designate the record within the ten-day period in KRS 278.420(2). The circuit court dismissed the action for failure to comply with KRS 278.420(2), and the Court of Appeals reversed the dismissal. The Supreme Court reversed the Court of Appeals, holding that the circuit court did not have jurisdiction to adjudicate the claim due to the failure to timely designate the record or move for enlargement of time.

b. Louisville Metro Health Department v. Highview Manor Association, LLC

2008-SC-000599-DG **August 26, 2010**

Opinion of the Court by Justice Schroder. All sitting; all concur. Property owners appealed citations and fines for violations of no-smoking ordinance to local Code Enforcement Board, which affirmed the citations and fines. Property owners appealed to the District Court pursuant to KRS 65.8831(1). On review before the Supreme Court, the sole issue was the scope of a district court's review of a decision of a local code enforcement board, i.e. whether that review is *de novo* or of the record for an abuse of discretion in the form of an administrative appeal. In resolving the conflict between Section 113 of the Kentucky Constitution and KRS 24A.010(3), and KRS 65.8831(1), the Supreme Court held that district courts have no appellate jurisdiction and must conduct a *de novo* trial as to the final order of the Code Enforcement Board.

c. The Public Service Commission v. Commonwealth of Kentucky

2008-SC000483-DG **August 26, 2010**
2008-SC-000489-DG **August 26, 2010**

Opinion of the Court by Justice Abramson. All sitting; all concur. KRS Chapter 278 permits the Public Service Commission to authorize economic development rates (EDRs) which, in this case, are reduced rates for customers who either

satisfy minimum job creation and capital investment levels or who are willing to locate in abandoned urban properties or brownfields.

II. CONDEMNATION

a. Baston v. County of Kenton

2008-SC-000319-DG **August 26, 2010**

In this condemnation action, the Court reinstates the jury's award and holds that KRS 416.660 requires that market value be determined apart from the project's effects, not necessarily that evidence of those effects be excluded. The jury's highest-and-best-use determination was supported by the evidence and was not tainted by improper argument.

III. CRIMINAL LAW

a. Christopher Shiloh Gamble v. Commonwealth of Kentucky

2008-SC-000669-DG **August 26, 2010**

Opinion of the Court by Justice Schroder. All sitting; all concur. The defendant was convicted of first-degree robbery under KRS 515.020(1)(c) for threatening the immediate use of a dangerous instrument. The defendant entered a bank, said he had a gun, and wrote in a note that he had a gun. The Court of Appeals affirmed the denial of a directed verdict on the charge of first-degree robbery. The Supreme Court affirmed, holding that threatening the use of a gun qualifies as threatening the use of a dangerous instrument under KRS 515.020(c). The defendant made specific references to a gun, and the jury could have reasonably believed that he was armed at the time of the robbery.

b. Cameron Hunt v. Commonwealth of Kentucky

2009-SC-000312-DG **August 26, 2010**

Opinion of the Court by Justice Schroder. All sitting; Justice Cunningham dissented by separate opinion. Defendant's probation was revoked following a thirteen-minute hearing where no witnesses were sworn and the defendant was asked to "show cause" why his probation should not be revoked. The defendant's arguments on appeal were unpreserved, and the Court of Appeals affirmed, finding no palpable error. The Supreme Court reversed the Court of Appeals, concluding that the hearing had failed to comply with the minimum requirements of due process, and thus resulted in palpable error.

c. Ricky France v. Commonwealth of Kentucky
2009-SC-000249-MR **August 26, 2010**

Opinion of the Court by Justice Venters. All sitting; all concur. Questions Presented: Criminal; Sex Offender Registration. Whether the use of prior sex offense felony as both predicate for requiring registration as sex offender and for PFO enhancement is permissible; ex-post facto effect of 2000 amendments to sex offender statue increasing penalty for failure to register from misdemeanor to felony; jury strike challenges under *Batson*. Held – The double-use of the prior felony to both trigger registration and for PFO enhancement is prohibited; no ex post facto violation; no *Batson* violation.

d. Frederick Jackson v. Commonwealth of Kentucky
2009-SC-000003-MR **August 26, 2010**

Opinion by Justice Cunningham. All sitting; all concur. Jackson was convicted of first-degree trafficking in controlled substance, possession of drug paraphernalia, possession of marijuana, and of being a persistent felony offender in the second-degree. Evidence was introduced to support the enhancement of the trafficking in a controlled substance to a second offense as defined by KRS 218A.010(35), and Jackson was sentenced to twenty-five years in prison. The Supreme Court affirmed the conviction, holding that Jackson failed to show reasonable grounds that would alert the trial court to *sua sponte* order an updated competency evaluation. The Court held that because Jackson could not show that he was incompetent to stand trial, he also failed to prove that he could not validly waive his right to counsel. The Court also found that KRS 218A.010(35) does not require that the underlying prior drug trafficking offense be a felony conviction in order for it to enhance a future conviction as a "second or subsequent offense" under KRS 218A.1412(2).

e. Mitchell Jackson v. Commonwealth of Kentucky
2009-SC-000046-MR **August 26, 2010**

Opinion of the Court by Justice Abramson. All sitting; all concur. A probation revocation order does not constitute a judgment imposing sentence for purposes of Ky. Const. § 110(2)(b). As such, a probation revocation order is not directly appealable to the Supreme Court under the constitutional provision regardless of the length of the sentence that must be served pursuant to that order.

f. Kristy Rene Lawless v. Commonwealth of Kentucky
2009-SC-000032-MR **August 26, 2010**

Opinion of the Court by Justice Abramson. All sitting. The Court reversed appellant's first-degree robbery conviction because her hand-in-the-pocket gesture as she approached victim satisfied neither KRS 515.020(b) (use of deadly weapon) nor (c) (threatened use of dangerous instrument). Appellant was not

entitled to duress or theft-by-unlawful taking instructions. Chief Justice Minton and Justice Scott concurred in result only.

g. Commonwealth of Kentucky v. Nabryan Marshall
2008-SC-000894-DG **August 26, 2010**

Opinion by Justice Scott. All sitting; all concur. This case involves the constitutionality of a strip search conducted on an arrestee while in the field. At trial, Appellant moved to suppress certain evidence procured from a strip search. He argued that the search was unconstitutional because it was conducted without probable cause and because the strip search was conducted in the field. The trial court found that the contraband was immediately apparent to the officer and denied his motion to suppress. Marshall then appealed to the Kentucky Court of Appeals, which reversed and held the search exceeded that which is allowed under *Terry v. Ohio*, 392 U.S. 1 (1968). Furthermore, applying *Bell v. Wolfish*, 441 U.S. 520 (1979), the court found that the search was unreasonable under the circumstances.

The Kentucky Supreme Court granted discretionary review and reversed, holding that the trial court's findings of fact were not clearly erroneous and that it did not abuse its discretion in refusing to suppress the subject evidence. Applying *Terry,* the Kentucky Supreme Court found the search supported by reasonable suspicion and probable cause. Additionally, the Kentucky Supreme Court found the strip search, even though conducted in the field, reasonable pursuant to the factors outlined in *Bell.*

h. Antwan Ladale Hayes v. Commonwealth of Kentucky
2009-SC-000087-MR **August 26, 2010**

Opinion by Justice Scott. All sitting; all concur. This case addresses the question of whether a trial court errs when it adds jury members from another circuit division after voir dire has commenced; whether the trial court abused its discretion by seating a juror who suffered crimes "related" to that which the defendant was accused; and the constitutionality of a search warrant that allegedly contained false or intentionally misleading statements.

In affirming the trial court, the Court held that there is no deviation from the established jury selection rules when a trial court supplements its panel with jurors from another division. Furthermore, the Court held that the additions did not affect the defendant's constitutional right to a randomly selected jury.

With regard to the trial court's alleged abuse of discretion in seating a juror, the Court held that a trial court does not err by seating a juror who suffers a prior incident similar to that which the defendant is accused as long as the trial court determines that the juror's experiences would not create bias against the

defendant. The Court held that an unequivocal statement to this effect is not necessary as long as substantial evidence supports the trial court's findings.

The Court also addressed whether the trial court erred when it refused to suppress evidence procured from a search warrant that was procured via an affidavit which allegedly contained false or misleading information. In affirming the trial court, the Kentucky Supreme Court held that suppression is not merited where a defendant fails to prove the falsity of the statements in the affidavit supporting the search warrant.

i. Charles D. Oakes v. Commonwealth of Kentucky
2009-SC-000186-MR **August 26, 2010**

Opinion of the Court by Justice Noble. All sitting; all concur. Defendant was convicted of second-degree robbery and being a second-degree PFO. On appeal, he alleged that the trial court erred in not allowing him to introduce a KASPER report to impeach a witness, violated his right of confrontation at a pretrial hearing, allowed admission of an impermissibly suggestive pretrial photo lineup, and failed to instruct on a lesser included offense of theft. The Court held that the KASPER report was inadmissible because it was simply an attempt to prove an instance of conduct by extrinsic evidence in violation of KRE 608; that there is no right to confrontation as a pretrial hearing, the right being only a trial right; that the photo array was admissible because it was not unduly suggestive and there were sufficient independent indicia of reliability; and that the lesser-included instruction was unnecessary as the evidence at trial only supported a finding of guilty under the given instruction or not guilty.

j. Norman Graham v. Commonwealth of Kentucky
2009-SC-000069-MR **August 26, 2010**

Opinion of the Court by Justice Noble. All sitting; all concur. The defendant was convicted in 2008 for a murder that occurred in 1980 after modern DNA testing in 2003 linked him to the crime. The defendant had been tried for the murder in 1981, but the trial ended in a mistrial. The defendant challenged his conviction on multiple grounds. The Court affirmed, holding that he was not entitled to a *Daubert* hearing on the DNA evidence; that a juror's failure to disclose casual acquaintanceship with the victim and her family, absent a showing of bias, was not reversible misconduct; that juror's brief interactions with victims family and another juror were improper but harmless; that the prosecutor's factual inferences about what happened prior to the murder were not misconduct; and that 26 year gap between the mistrial and the reinstatement of charges was not undue delay because there had been no showing of substantial prejudice or intentional delay to gain a tactical advantage.

k. Commonwealth of Kentucky v. Larry Joe Stambaugh
Larry Joe Stambaugh v. Commonwealth of Kentucky
2008-SC-000600-MR
2008-SC-000622-MR **August 26, 2010**

Opinion of the Court by Justice Noble. All sitting. The defendant was convicted of multiple sex crimes. The trial court ran his sentence consecutively but only up to the limit found in KRS 532.110(1)(c). The Court held that the sentence was proper because there was no conflict between that mandatory consecutive sentencing provision, KRS 532.110(1)(d), and the sentencing cap in KRS 532.110(1)(c). The Court also affirmed the convictions, holding that there was no reversible error in the trial court refusing to admit a letter to the defendant from one of the victims that referred to the former as "Dad" and "Daddy" because the letter was not direct impeachment of the victim's testimony about the crimes and any error was harmless. Chief Justice Minton wrote a dissenting opinion, in which Justice Cunningham joined.

l. Brandon J. Ballard v. Commonwealth of Kentucky

2009-SC-000341-DG **August 26, 2010**

Where Commonwealth moved circuit court to revoke pretrial diversion during period of diversion, the trial court retained jurisdiction to rule on the motion despite the fact that hearing was not conducted until after diversion period had ended. The Supreme Court further held that KRS 22A.020(4), allowing the Commonwealth to appeal from interlocutory orders, is constitutional.

m. Shawn Windsor v. Commonwealth of Kentucky

2008-SC-000383-MR **August 26, 2010**

The Supreme Court affirmed the imposition of two death sentences. The accused's stated desire to plead guilty and to accept the death penalty does not, standing alone, create reasonable grounds, within in the meaning of KRS 504.100(1), to question competency. The Supreme Court further held that there is no constitutional right to jury sentencing.

IV. CORPORATE LAW

a. Racing Investment Fund 2000, LLC v. Clay Ward Agency
2009-SC-000007-DG **August 26, 2010**

Opinion of the Court by Justice Abramson. Justice Noble not sitting. Trial court could not invoke a capital call provision in a limited liability company agreement in order to obtain funds from the LLC's members needed to satisfy a judgment against the LLC.

V. EMPLOYMENT/LABOR

a. Emmett E. Coomer v. CSX Transportation, Inc.
2008-SC-000784-DG **August 26, 2010**

Opinion of the Court by Justice Schroder. All sitting; all concur. Coomer filed a FELA action against his employer in Jefferson Circuit Court, alleging negligence resulting in occupational trauma to his hands, wrists, and arms. The Jefferson Circuit Court granted summary judgment for CSX. Before summary judgment in the Jefferson Circuit Case, Coomer filed a second FELA action in Perry Circuit Court for neck, back, shoulder, and knee pain. The Perry Circuit Court concluded that Coomer's claim was barred by res judicata and granted summary judgment for CSX. The Court of Appeals affirmed.

The Supreme Court reversed the Court of Appeals, holding that Coomer's Perry Circuit Court claim was not barred by res judicata if his cause of action accrued after the filing of his Jefferson Circuit Court case. When the cause of action accrued was a question of fact to be determined by a jury in the Perry Circuit case.

VI. INSURANCE

a. Ernst & Young, LLP v. Sharon P. Clarke; and Ernst & Young, LLP v. Appalachian Regional Healthcare, Inc.
2007-SC-000936-TG **August 26, 2010**
2007-SC-000770-TG **August 26, 2010**

Opinion of the Court by Justice Venters. All sitting; all concur. Questions Presented: Insurance, Arbitration. Whether the McCarran-Ferguson Act, (15 U.S.C. § 1011, *et. seq*.) "reverse-preempts" the provisions of the Federal Arbitration Act favoring arbitration to the extent they conflict with Kentucky's "Insurers Rehabilitation and Liquidation Law" (KRS 304.33-010 *et. seq.*) Held: Despite contractual provisions requiring arbitration, claims asserted by the state insurance rehabilitator must be adjudicated in the Franklin Circuit Court rather than being submitted to arbitration. Federal arbitration policy is preempted by state law regulating insurance. However, the related claims of other parties that are not part of the insurance rehabilitation process are not preempted, and thus under the federal policy favoring arbitration, those claims must be arbitrated.

b. Commonwealth of Kentucky v. E. John Reinhold, et al.
2007-SC-000839-DG **August 26, 2010**

Opinion of the Court by Justice Venters. All sitting. Question Presented: Insurance. Whether the medical expense sharing arrangement established by Appellees constitutes a "contract for insurance" under KRS 304.1-030, and is thereby subject to insurance regulations; and if so, whether the arrangement

qualifies for exemption under the religious publication exception provided by KRS 304.1-120(7). Held: The Medi-Share program offered by Appellee is a "contract of insurance" as defined in Kentucky statutes; the religious publication exception does not apply. Justice Scott wrote a dissenting opinion, joined by Justice Cunningham.

VII. MALPRACTICE

a. Davis v. Scott
2009-SC-000159-DG **August 26, 2010**
2009-SC-000391-DG **August 26, 2010**

In a legal malpractice action, it was determined that settlement agreement purporting to assign merely proceeds of malpractice action actually constituted assignment of entire claim. The assignment of legal malpractice claims is prohibited in Kentucky, and therefore the action could not proceed. However, an invalid assignment does not extinguish the underlying claim and, therefore, the matter was remanded to the trial court with directions to dismiss the legal malpractice action without prejudice.

VIII. TORTS

a. Elaine T. Henson v. David Klein
2007-SC-000795-DG **August 26, 2010**
2008-SC-000204-DG **August 26, 2010**

Opinion of the Court by Justice Venters. All sitting; all concur. Question presented: Negligence, Sudden Emergency. Whether the adoption of comparative fault requires the abolition or modification of the sudden emergency doctrine. Held: The sudden emergency doctrine is unaffected by the adoption of comparative negligence, reaffirming *Regenstreif v. Phelps*, 142 S.W. 3d 1 (Ky. 2004). The Court also declines to modify the sudden emergency doctrine so that it would apply only when the party invoking it would be entitled to a directed verdict.

b. Kentucky River Medical Center v. McIntosh
2008-SC-000464-DG **August 26, 2010**

Opinion of the Court by Justice Noble. All sitting. A paramedic tripped over a curb and was injured while entering a hospital emergency room and attending to a patient. The issue presented was whether the open-and-obvious doctrine barred her claim now that Kentucky has the comparative fault doctrine. The Court held that an open and obvious nature of a danger does not automatically bar a claim in the era of comparative fault. A land owner still owes a duty of reasonable care against foreseeable harm stemming from an open and obvious danger. Rather than being a complete defense, that a danger is open and obvious is simply a

factor in assigning fault between the parties. Justice Schroder wrote a dissenting opinion, in which Justice Scott joined.

c. Mary Beth Calor v. Ashland Hospital Corp.
2007-SC-000573-DG **August 26, 2010**
2008-SC-000317-DG **August 26, 2010**

Opinion of the Court by Justice Noble. Justice Abramson not sitting. The plaintiff physician worked for a *locum tenens* staffing company, which contracted with the defendant hospital. The hospital became suspicious that the physician was overstating the hours she worked and began an internal investigation. Despite not being able to account for some of the physician's hours, the hospital told the staffing company that the physician was overstating her hours and thus over billing the hospital. The physician sued the hospital for defamation and intentional interference with her contract. The hospital tried to claim a privilege but was denied a jury instruction on the matter. The Court held that the hospital was entitled to a jury instruction on a qualified privilege stemming from a common business interest between the hospital and the staffing company.

IX. WORKERS' COMPENSATION

a. Harold Turner v. Bluegrass Tire Co., Inc., et al.
2009-SC-000653-WC **August 26, 2010**

Opinion of the Court. All sitting; all concur. An Administrative Law Judge dismissed the claimant's motion to reopen his workers' compensation claim on the ground that he failed to make a *prima facie* showing of fraud to justify reopening. The Workers' Compensation Board affirmed. The Court of Appeals also affirmed, finding no abuse of the ALJ's discretion because the evidence supporting the motion failed to make the required *prima facie* showing of fraud, mistake, or newly-discovered evidence. The Supreme Court affirmed, holding that even if the claimant supported the motion with what KRS 342.125(1) considered to be newly-discovered evidence, the evidence failed to show a substantial possibility that he would be able to prevail on the merits.

b. American Greetings Corp. v. Sheila Bunch, et al.
2010-SC-000179-WC **August 26, 2010**

Opinion of the Court. All sitting; Justice Schroder dissented without opinion. An Administrative Law Judge dismissed the claimant's application for benefits, having concluded that a knee injury sustained while participating in a relay race that was part of a workplace charity fundraising campaign did not occur within the course and scope of her employment. The Workers' Compensation Board reversed the decision on the grounds that the ALJ misapplied the law to the facts and that the evidence compelled a favorable finding when the law was applied correctly. The Court of Appeals found no error and affirmed. The Supreme Court affirmed, holding that the ALJ misapplied the law because the evidence

compelled legal conclusions that the annual charitable campaign was a regular incident of the employment; that the employer exercised sufficient control over the campaign to bring the injury within the orbit of the employment; and that the injury was work-related.

X. WRITS

a. Geneva Mahoney v. Hon. Judith McDonald Burkman, Judge, et al.
2009-SC-000578-MR August 26, 2010

Opinion of the Court by Justice Venters. Question presented: Writ of Mandamus/ Prohibition, "great and irreparable injury:" Whether Plaintiff in a medical malpractice case suffers "great and irreparable injury" that would justify issuance of a writ of mandamus when trial judge allows Defendants to use at trial the depositions of Plaintiff's experts. Held: The burden and expense of trial is not "great and irreparable harm" justifying the issuance of a writ; claims of evidentiary error at trial may be remedied on appeal.

b. Karu White v. Hon. Gary D. Payne, Judge et al.
2010-SC-000280-OA August 26, 2010

Opinion of the Court by Justice Venteres. All sitting; all concur. Questions Presented: Writ of Prohibition. Should trial court be prohibited from enforcing its order for death row inmate to be evaluated by KCPC in connection with inmate's effort to avoid execution under *Atkins v. Virginia*. Held – standard for writ not met; adequate remedy by appeal; writ denied

c. E. David Marshall, et al v. Hon. Pamela R. Goodwine, Judge et al.
2009-SC-000495-MR August 26, 2010

Opinion of the Court by Justice Abramson. All sitting; all concur. In this Writ action, the Court held that a trial court loses jurisdiction to "vindicate" its judgment once that judgment is reversed on appeal. A writ will issue here, therefore, to prohibit contempt proceedings meant to sanction parties alleged to have resisted collection under a judgment which was subsequently reversed.

d. Jessie C. Gilbert v. Hon. Judith McDonald-Burkman, Judge et al.
2010-SC-000035-MR August 26, 2010

Opinion of the Court by Justice Noble. All sitting; all concur. Defendant sought a writ of mandamus against trial judge to compel the opening of discovery documents that had been filed with the court under seal in another criminal case. The Court denied the writ, holding that the defendant had misinterpreted the recently announced writ standard and that he could not satisfy that standard's requirements because he had not shown entitlement to the material either in the other criminal case or in his own case. The Court focused on the fact that the defendant, if he could make the necessary showing, could obtain the material

directly from the Commonwealth; thus it was unnecessary to get the material from a sealed record in another criminal case. The Court also noted that the Commonwealth had a continuing duty to provide any exculpatory evidence in its possession.

e. C. Wesley Collins v. Hon. Sara Combs, Chief Judge, Kentucky Court of Appeals
2010-SC-000151-OA **August 26, 2010**

Because a court has jurisdiction and inherent authority to manage its affairs and assist the administration of justice, it may place reasonable restraints on a person's physical access to court buildings where legitimate safety concerns justify such restrictions and provisions are otherwise made to ensure the person's continued access to the courts for the purpose of conducting legitimate business. A court may judicially notice public records, including prior court decisions.

XI. JUDICIAL CONDUCT

a. Hon. Tamra Gormley, Family Court Judge, Fourteenth Judicial Circuit v. Judicial Conduct Commission
2009-SC-000736-RR **August 26, 2010**
2010-SC-000010-RR **August 26, 2010**

Opinion of the Court by Justice Schroder; Justice Noble not sitting. Judicial Conduct Commission found that Family Court Judge engaged in three counts of misconduct for violations of the Kentucky Code of Judicial Conduct, imposing as a penalty public reprimands and a 45-day suspension. The Supreme Court affirmed the findings and penalties imposed in all respects. Justice Scott concurred in result only.

XII. ATTORNEY DISCIPLINE

a. Inquiry Commission v. David Alan Friedman
2009-SC-000801-KB **August 26, 2010**

Supreme Court granted Inquiry Commission's petition to temporarily suspend attorney from the practice of law. In the Fall of 2009 two bar complaints were filed against attorney for converting tens of thousands of dollars of client money for his own purposes. Clients requested payment for months after an award was granted but attorney continued to give false statements as to why he could not pay them in full. Eventually Attorney admitted to converting the funds for his own use and promised to pay back the money converted but did not do so for another two months. The Commission's petition stated that the attorney's conduct posed a significant harm to his clients or the public and the Supreme Court agreed.

b. Lester Burns v. Kentucky Bar Association
2004-SC-000004-KB **August 26, 2010**

Supreme Court denied Burns's application for reinstatement following non-permanent disbarment to the practice of law in accord with the recommendations of the Character and Fitness Committee and the Board of Bar Governors, despite Burns's argument that the Committee and Board improperly focused on events from more than a decade ago rather than more recent events. The Court held that there was no requirement than only recent events could be considered on applications for reinstatement, but also noted that the Committee and Board had found that Burns presently lacked the requisite good moral character to practice law. Furthermore, these findings were supported by ample evidence of lack of candor, inconsistency in sworn statements, and failure to take full responsibility for prior misconduct. Thus, given these findings and the high standard an applicant for reinstatement must meet (a higher standard than that for initial bar applicants), the Court concurred with the Committee's and the Board's recommendations that Burns's application be denied.

c. Kentucky Bar Association v. Charles C. Leadingham
2009-SC-000815-KB **August 26, 2010**

The Supreme Court suspended an attorney from the practice of law for 181 days for violations of the Rules of Professional Conduct, including failing to pursue two clients' appeals.

d. Kentucky Bar Association v. Katz
2010-SC-000092-KB **August 26, 2010**

Attorney was disciplined in Delaware for violating several provisions of the Delaware code of conduct. Kentucky instituted recipricol discipline. Because the attorney failed to inform the KY Bar of his diciplineary action in Deleware and did not respond to the show cause order the Supreme Court began attorney's suspension from the date of the order and not from the date of the Delaware order. Attorney was suspended for three months with one year probation following his reinstatement.

e. Kentucky Bar Association v. Jennifer Sue Whitlock
2010-SC-000238-KB **August 26, 2010**

Supreme Court adopted the findings of the trial commissioner and adopts the recommendations of the Board that attorney be suspended from the practice of law for one year. Attorney had multiple disciplinary actions filed against her in the past three years which the Court has already acted upon. This case involved the failure to withdraw a case from small claims court and re-file in District Court

after accepting money from client to do so and then failing to inform client of any of the proceedings of the case.

f. Kentucky Bar Association v. Marc Ashley Bryant
2010-SC-000258-KB **August 26, 2010**

Attorney is suspended from the practice of law for 60 days. Attorney failed to keep client informed of dates and deadlines, failed to meet deadlines in a personal injury case and in a social security disability case and therefore cause both actions to be dismissed. Attorney did not answer the charges and the Board acted on the charges as a default proceeding. The Court adopted the Boards finding without review.

g. Kentucky Bar Association v. Charles C. Leadingham
2010-SC-000262-KB **August 26, 2010**

The Supreme Court suspended an attorney form the practice of law for 181 days for violations of the Rules of Professional Conduct, including failing to return an unearned $500 fee.

h. Kentucky Bar Association v. James B. Gray
2010-SC-000381-KB **August 26, 2010**

Attorney is suspended for five years, two to serve followed by three years probation. Attorney was caught stealing pain medication from a client and previously suspended for same, while on suspension he was participating in KYLAP and drug testing. He failed to appear for eight of his drug tests and tested positive for alcohol at four of the six test he did take.

i. Eric Lamar Emerson v. Kentucky Bar Association
2010-SC-000398-KB **August 26, 2010**

Attorney suspended for 30 days to begin at the end of his current 2 year suspension. Attorney had a bar complaint filed against him, during the course of the proceedings it was discovered that the attorney failed to up date his address information and attorney failed to respond to complaint. Attorney filed motion to file and untimely answer to the complaint which was granted. Upon review the charges brought by the client were dismissed but attorney failed to address why he did not update his address information or answer the bar complaint in a timely manner. The Attorney and Board negotiated the 30 days additional suspension which the court here adopts.

j. Kentucky Bar Association v. Charles C. Leadingham
2010-SC-000420-KB **August 26, 2010**

The Supreme Court suspended an attorney from the practice of law for three years for violations of the Rules of Professional Conduct, including failing to perform work for clients and failing to return unearned fees in two cases.