

**PUBLISHED OPINIONS
KENTUCKY SUPREME COURT
DECEMBER 2014**

I. ADMINISTRATIVE LAW:

- A. Jeffrey T. Pearce v. University of Louisville, By And Through its Board of Trustees**
[2011-SC-000756-DG](#) December 18, 2014
And
Stephen Derrick Hill v. City of Mt. Washington
[2012-SC-000104-DG](#) December 18, 2014

Opinion of the Court by Justice Venters. Noble and Scott, J.J. concur; Keller, J. filed concurring opinion; Minton, C.J., filed dissenting opinion in which Abramson and Cunningham, JJ., joined. Administrative Law. Upon review of KRS 15.520, the “Police Officer’s Bill of Rights” statute, and upon application of well-established principles of statutory construction, the Court concluded that the statute, which delineates the administrative due process rights of police officer subject to discipline on charge arising out of “any complaint taken from any individual alleging misconduct on the part of” police officer, was not limited only to cases arising out of a citizen complaint, but rather also encompassed complaints from persons within police department or employing agency.

II. CERTIFICATION OF LAW:

- A. In Re: Margaret MacGlashan v. ABS Lincs KY, Inc. D/B/A Cumberland Hall Hospital**
[2014-SC-000098-CL](#) December 18, 2014

Opinion of the Court by Justice Venters. All sitting; all concur. Certification of Law; Statutory Interpretation; Front Pay; General Remedies Under KRS 446.070. The following question of Kentucky law was certified to the Court by the United States District Court for the Western District of Kentucky:

Can a plaintiff who alleges that her employment was wrongfully terminated in violation of Kentucky Revised Statute 216B.165 assert a claim for the recovery of front pay, along with other damages she may have sustained, by reason of her discharge?

The Court answered this question in the affirmative: A plaintiff alleging wrongful termination in violation of KRS 216B.165 may assert a claim for recovery of front pay, along with other damages sustained by reason of the discharge. KRS 216.165B contains a type of “whistleblower” protection for health care employees. However, KRS 216.165B does not prescribe any specific civil remedies for the whistle-blowing employee who suffers retaliation for making such a report. Thus, remedies must be sought from the general remedial statute,

KRS 446.070, which states: “A person injured by the violation of any statute may recover from the offender such damages as he sustained by reason of the violation, although a penalty or forfeiture is imposed for such violation.” The Court held that front pay is within the range of “such damages . . . sustained by reason of the violation [of KRS 216.165B].” The Court reasoned that this interpretation comports with the plain language of the relevant statutes and any interpretation foreclosing the recovery of front pay would leave plaintiffs without the opportunity to fully recover damages.

III. CRIMINAL LAW:

A. Montrial Demetrius Johnson v. Commonwealth of Kentucky 2013-SC-000665-MR December 18, 2014

Opinion of the Court by Justice Noble. All sitting; all concur. Johnson was previously convicted of three felony offenses for which he was given concurrent sentences. On his direct appeal, this Court reversed one of his convictions, having concluded that he was entitled to a directed verdict of acquittal on that charge, and affirmed his remaining convictions and sentences. On remand, Johnson requested (but was denied) a new jury penalty phase, arguing that the original jury heard sentencing evidence related to the reversed conviction that it would not have otherwise heard and that this evidence affected sentencing on the other convictions. He appealed the trial court’s denial of that motion and its order sentencing him to 20 years in prison in conformity with the original sentence on the remaining convictions. The Supreme Court concluded that Johnson was not entitled to a new penalty phase on the affirmed convictions because the trial court was bound by the Court’s mandate on remand. Since Johnson did not raise in the original appeal the effect of the reversed conviction on the sentences for the other convictions, the Court held that he was barred from raising that issue in the subsequent appeal and dismissed his appeal accordingly.

B. Antonio Johnson v. Commonwealth of Kentucky 2013-SC-000209-MR December 18, 2014

Opinion of the Court by Justice Venters. Minton, C.J.; Abramson, Keller, Noble and Scott, J.J. concur; Cunningham, J. filed dissenting opinion. Criminal Law, direct appeal. Following an altercation with his girlfriend and the subsequent filing of criminal charges Appellant was incarcerated in Tennessee. Upon review the Court held (1) the Appellant’s Interstate Agreement on Detainers filing was ineffective because he erroneously designated the county attorney instead of the commonwealth’s attorney as the prosecuting authority, and thus the 180-day speedy trial provision of the Agreement was not triggered by his initial filing; (2) the responsibility for naming the proper prosecuting authority in an IAD filing rests with the detainee; (3) the prosecutor’s striking of a juror based upon his bare references to her age, vague references to his personal knowledge of her and her past associates, and his own “gut feelings” about the juror, without more, was not sufficiently race-neutral reason for exercise of peremptory strike, and so violated

Batson v. Kentucky, where the prosecutor failed to give specific example of how his knowledge of juror translated into reason other than race for exercise of strike, and thus required reversal; (4) whether the information known by the prosecutor about a prospective juror is true or false is not the test for determining whether the prosecutor's personal knowledge of the juror is a race-neutral reason for the exercise of a peremptory strike under Batson ; rather, the test is whether the prosecutor has a good-faith belief in the information and whether he can articulate the reason to the trial court in a race-neutral manner; (5) a prosecutor's or defense attorney's instinct or gut feeling can be the legitimate basis for a race-neutral reason to strike a juror of a protected class under Batson, but there must be some articulable, case-related reason attached to it (6) the prosecutor made various improper comments during closing arguments referring to facts not in evidence and characterizing Appellant as a "violent person."

C. Carl Spears v. Commonwealth of Kentucky
[2013-SC-000140-MR](#) December 18, 2014

Opinion of the Court by Justice Venters. Minton, C.J.; Abramson, Cunningham, Keller, Noble and Scott, J.J. concur. Criminal Law, direct appeal. Upon review of Appellant's double murder conviction the Court held that (1) the first responder police officer impermissibly commented on Appellant's invocation of his right to counsel by testifying that defendant had requested an attorney incident to his arrest on suspicion of two murders when in fact he never did; the Appellant never made the statement imputed to him by the officer's testimony; and it is fundamentally unfair and a deprivation of due process to allow the arrested person's silence to be used to impeach an explanation subsequently offered at trial; but these errors were harmless; (2) Appellant's expert witness was subject to witness exclusion rule, thus preventing him from sitting at defense table during Commonwealth's presentation of its expert witness, absent a showing that the defense expert was essential to the defendant's presentation of the case; on appeal, Appellant could not identify any specific contribution his expert could or would have made to his case had he been present in the courtroom during the testimony of the Commonwealth's expert witnesses, and so the trial court properly exercised his discretion in excluding the witness. KRE 615; (3) the evidence did not support a jury instruction on first-degree manslaughter based upon extreme emotional disturbance as lesser-included offense of charged offense of murder; defendant being slapped on the back of the head and later being told to leave because he had stolen a beer did not constitute enraging or inflaming events that could induce in the minds of a jury a reasonable belief that defendant's judgment was overcome causing him to act uncontrollably; (4) the trial court's unobjected-to decision to conduct the penalty phase in two stages rather than one in violation of KRS 532.025, where aggravating and mitigating circumstances were presented in a separate proceeding, did not give rise to a manifest injustice warranting relief, as the same information was presented to the jury, albeit perhaps in a slightly different order, and defendant enjoyed the full opportunity to make his arguments in favor of mitigation and mercy.

D. Aaron Basham v. Commonwealth of Kentucky
[2013-SC-000588-MR](#) December 18, 2014

Opinion of the Court by Justice Noble. All sitting. Minton, C.J.; Abramson, Keller, Scott, Venters, JJ. concur. Cunningham, J., concurs by separate opinion. Basham was convicted of first-degree rape, first-degree sexual abuse, and being a persistent felony offender. He was sentenced to life without the possibility of probation or parole for 25 years. In affirming Basham's convictions and sentence, the Court held that the trial court did not abuse its discretion in barring the defense from asking the victim whether she had previously been inadvertently exposed to websites depicting naked people or in striking a juror for cause over defense objection. With respect to the evidence of exposure to allegedly pornographic material, the Court held that although the rape-shield provision of KRE 412(a) did not apply, the evidence was nevertheless properly excluded because exposure to depictions of naked people was not relevant to explain an alternate source of the eight-year-old victim's knowledge of the sexual acts described in her allegations against Basham. In his concurrence, Justice Cunningham stated that he would find the exclusion of the evidence erroneous but harmless.

E. Samuel Crabtree v. Commonwealth of Kentucky
[2012-SC-000591-DG](#) December 18, 2014

Opinion of the Court by Justice Noble. All sitting; all concur. Crabtree was convicted of multiple counts of possession of matter portraying a sexual performance by a minor for partially downloaded videos of child-pornography found on his personal computer and for still images found in an inaccessible cache on the computer. On discretionary review, the Supreme Court concluded that the evidence related to the still images contained in the operating system's thumbcache was insufficient to show knowing possession of the images, and it reversed those convictions accordingly. In affirming the convictions for possession of the videos, the Court held that the evidence was sufficient, that Crabtree was not entitled to an innocent-possession instruction, that the trial court did not err in declining to give additional jury instructions on the meaning of knowing possession, and that the trial court did not abuse its discretion in excluding evidence of Crabtree's character for truthfulness.

F. Ross Brandon Sluss v. Commonwealth of Kentucky
[2011-SC-000318-MR](#) December 18, 2014
And
Ross Brandon Sluss v. Commonwealth of Kentucky
[2012-SC-000258-MR](#) December 18, 2014

Opinion of the Court by Justice Cunningham. All sitting; all concur. Eleven year old Destiny Brewer, a passenger in a SUV, was killed by a vehicle driven by the Appellant, Ross Brandon Sluss, who was under the influence of narcotics at the time of the collision. On return from remand, the Supreme Court held that the

trial court was required to excuse for cause a prospective juror who stated, *inter alia*, that she had heard that the person causing the accident took drugs and acted irresponsibly.

G. Commonwealth of Kentucky v. Joseph Andrews
[2013-SC-000004-DG](#) December 18, 2014

Opinion of the Court by Justice Abramson. All sitting; all concur. The Commonwealth of Kentucky appealed from a Court of Appeals decision reversing the Pulaski Circuit Court's revocation of Joseph Andrews's probation. Finding that the Pulaski Circuit Court had abused its discretion when it revoked Andrews's probation pursuant to Kentucky Revised Statute ("KRS") 439.3106, the Court of Appeals reversed and remanded the matter to the circuit court for it to impose an alternative to revocation and incarceration. On discretionary review, the Commonwealth claimed that the Court of Appeals erred in finding that KRS 439.3106, a statute that was adopted as part of HB 463 in 2011, applied to the circuit court and in failing to recognize that the lower court properly exercised its discretion on the facts before it. Concluding that KRS 439.3106 applies to trial courts, and that the trial court properly exercised its discretion, the Supreme Court reversed the appellate court's decision and reinstated the order of the circuit court.

H. Olivia Johnson v. Commonwealth of Kentucky
[2013-SC-000383-DG](#) December 18, 2014

Opinion of the Court. All sitting; Minton, C.J., Abramson, Keller, Scott, JJ., concur. Cunningham, J., concurs by separate opinion in which Venters, J., joins. Noble, J., concurs by separate opinion. Appellant is the owner of a dog named Franklin. A bench trial was held in the Jefferson District Court to determine Appellant's liability for two incidents where Franklin attacked other dogs. During both incidents, Franklin was under the care and supervision of Appellant's mother. Appellant was not present for either attack. Yet, the District Court determined that Appellant had violated Chapter 91 of the Louisville Metro County Code of Ordinances and ordered her to pay \$250 and serve a 90 day jail sentence that was conditionally discharged for two years. The Jefferson Circuit Court affirmed and the Court of Appeals denied discretionary review. The Supreme Court granted discretionary review and held that whether Franklin was "dangerous" or "potentially dangerous" was a determination that had to be made by the Director of Metro Animal Services, as condition precedent to criminal charges under the ordinances. Here, the trial court erroneously issued a post facto determination of that issue at trial. Accordingly, the Supreme Court reversed the decision of the Jefferson Circuit Court and vacated the District Court's ruling.

IV. ECCLESIASTICAL ABSTENTION DOCTRINE:

- A. St. Joseph Catholic Orphan Society, et al. v. Honorable Brian C. Edwards, Judge, Jefferson Circuit Court, et al.**
[2013-SC-000803-MR](#) December 18, 2014

Opinion of the Court by Chief Justice Minton. All sitting; all concur. Former members of St. Joseph Catholic Orphan Society's Board of Trustees brought suit against St. Joseph challenging the resolution effectuating their ouster and seeking restoration to their previously-held positions. After the trial court denied St. Joseph's motion to dismiss on the basis of the ecclesiastical-abstention doctrine, St. Joseph sought a writ requiring dismissal of the underlying suit alleging the trial court erred in declining to apply ecclesiastical abstention and was acting outside its jurisdiction as a result. Applying subject-matter jurisdiction principles to the ecclesiastical-abstention doctrine for the first time, the Court held that ecclesiastical abstention does not operate to divest Kentucky courts of subject-matter jurisdiction. So it affirmed the denial of a writ by the Court of Appeals.

The Court further held that ecclesiastical abstention operates as an affirmative defense and parties asserting the defense are entitled to an interlocutory appeal upon a trial court's denial of its application. Acknowledging that its treatment of ecclesiastical abstention was a departure from precedent, and guided by principles of equity and judicial economy, the Court reviewed the merits of St. Joseph's claim as if it were an interlocutory appeal. Due to the Appellee's failure to file a timely responsive brief the Court was required to defer to St. Joseph's version of the facts upon reaching the merits. As a result, the Court found the underlying suit presented an issue of ecclesiastical governance and concluded the ecclesiastical-abstention defense to be applicable. Therefore, the Court reversed the trial court's denial of the St. Joseph's motion to dismiss.

V. EMPLOYMENT LAW:

- A. Joseph E. Toler v. Sud-Chemie, Inc., et al.**
[2013-SC-000002-DG](#) December 18, 2014
And
Sud-Chemie, Inc., et al. v. Joseph E. Toler
[2013-SC-000007-DG](#) December 18, 2014

Opinion of the Court by Chief Justice Minton. All sitting; all concur. Süd-Chemie terminated Joseph E. Toler's employment after several co-workers reported Toler had made racist comments in the workplace. Toler challenged these allegations as false and filed a defamation claim against both the Company as well as the employees who initially reported the comments. At trial, the Company was granted a directed verdict and a jury found in favor of the employees. The Court of Appeals, however, reversed the Company's directed verdict, holding that Toler's mere allegation of falsity was enough to create a jury question, despite the Company's qualified privilege in the defamation context.

Reversing the Court of Appeals, the Court held that the qualified privilege requires more than a bare allegation of falsity. Instead, falsity and malice in fact are required to show that the qualified privilege was abused. Even if false, the defamatory statement must be made maliciously, i.e. with malevolence or ill will. Toler's simple allegation of falsity did little to indicate actual malice. The Court upheld the Court of Appeals with regard to the jury instructions and the verdict in favor of the employees. While perhaps clumsily arranged, the jury instructions were a sufficient statement of the applicable law and were not designed to mislead the jury. "Actual malice" has long been defined as reckless disregard as to the falsity of the statement or knowing the statement is false; the jury instructions included that definition.

VI. MEDICAL MALPRACTICE:

A. **Ira Branham, ETC., et al. v. Troy C. Rock, M.D. et al.** **[2012-SC-000707-DG](#) December 18, 2014**

Opinion of the Court by Justice Keller. All sitting. Minton, CJ; Abramson, Cunningham, and Noble, JJ. Concur. Venters, J., concurs in result only by separate opinion in which Scott, J. joins. Ira Branham and his wife were involved in a single vehicle accident. Following the accident, Mrs. Branham was treated initially at Mary Chiles Hospital and then, out of an abundance of caution, flown to UK Medical Center. Physicians at UK evaluated Mrs. Branham and released her. Thirty-six hours later, Mrs. Branham died from a ruptured aorta that had been caused by blunt force trauma. Ira Branham sued the UK medical center and the physicians who cared for his wife there. The jury found in favor of the defendants.

On appeal Branham argued that the trial court improperly excluded evidence of one physician's difficulties with the Kentucky Board of Medical Licensure and evidence of another physician's problem passing the medical board licensure examination. The Court held that the evidence was properly excluded as collateral to the issue of malpractice.

Branham next argued that the trial court should have limited the number of expert witnesses called by the multiple defendants. The Court held that the trial court did not abuse its discretion in permitting the defendants to call the experts they did.

The third issue raised by Branham had to do with the jury instructions. The instructions asked the jury to determine whether the physicians had violated their standard of care and whether that violation "was a substantial factor in causing" Mrs. Branham's death. Branham wanted an instruction that asked the jury to determine if any violation of the standard of care "was a substantial factor in the failure to diagnose" Mrs. Branham's aortic injury. Branham argued that, under *Deutsch v. Shein*, 597 S.W.2d 141 (Ky. 1980), he was entitled to that instruction. The Court analyzed use of the *Deutsch* instruction in prior cases and concluded that such an instruction should be used where there is a supervening intervening

cause for the injury. Here, the Court concluded that there was no evidence of a supervening intervening cause; therefore, the trial court was not required to use a *Deutsch* instruction.

Finally, the Court did not address Branham's claim that the trial court incorrectly afforded the UK Medical Center immunity because it was not necessary to do so. However, the Court indicated that, given the appropriate case, it might be inclined to revisit the immunity issue.

VII. REAL PROPERTY:

- A. Your Community Bank, Inc. v. Woodlawn Springs Homeowners Association, Inc.**
[2013-SC-000234-DG](#) December 18, 2014

Opinion of the Court by Justice Cunningham. All sitting; all concur. Bank that acquired developer's subdivision lots by deed in lieu of foreclosure following developer's death, brought a declaration-of-rights action against subdivision's homeowners' association, asserting that it was exempt from paying fees that were imposed by the association. The Nelson Circuit Court granted summary judgment in favor of the bank and the association appealed. The Court of Appeals reversed. The Supreme Court granted discretionary review and held: 1) the present action was an action at law, not an action in equity; and 2) the bank possessed all of the rights of the developer under the declarations and, thus, was not required to pay the annual fees. Accordingly, the Supreme Court reversed the Court of Appeals and reinstated the Circuit Court's decision.

VIII. WORKERS' COMPENSATION:

- A. Martin County Coal Co./Pilgrim Mining Co. v. William Goble; Honorable Douglas Wayne Gott, Administrative Law Judge; And Workers' Compensation Board**
[2013-SC-000230-WC](#) December 18, 2014

Opinion of the Court by Justice Keller. All sitting; all concur. Goble suffered a work-related low back injury with an associated psychological injury. In support of his psychological claim, Goble offered an opinion from a psychologist that he had mild depression related to the physical injury and an "estimated" AMA impairment rating of 5%. However, the psychologist opined that Goble's impairment could improve with treatment, treatment Goble never received. The ALJ awarded Goble benefits based on a 12% total impairment rating - 7% for the low back injury and 5% for the psychological injury. Martin County Coal challenged the validity of the award attributable to Goble's psychological condition. The Workers' Compensation Board, the Court of Appeals, and the Supreme Court affirmed the ALJ's award.

Martin County Coal argued that, because there was no medical opinion that Goble

had reached maximum medical improvement for his psychological condition, an award based on an "estimated" psychological impairment was inappropriate. The Supreme Court noted that the AMA Guides provides that a patient may refuse treatment and that refusal neither increases nor decreases that patient's impairment. Therefore, Goble's failure to treat did not preclude the assessment of an impairment rating.

B. US Bank Home Mortgage v. Andrea Schrecker, Honorable J. Landon Overfield, Administrative Law Judge; And Workers' Compensation Board
[2012-SC-000665-WC](#) December 18, 2014

Opinion of the Court by Justice Keller. All sitting. Minton, CJ, Abramson, Noble, and Venters, JJ., concur. Scott, J, dissents by separate opinion in which Cunningham, J., concurs. Schrecker was struck by a car and injured while crossing the street to get something to eat on her break. At the time, Schrecker was in the middle of the block and, after being waived on by the car in the outside lane, she walked in front of a car in the middle lane. The ALJ awarded Schrecker benefits and the Workers' Compensation Board and the Court of Appeals affirmed. The Supreme Court reversed.

The Court reviewed existing Kentucky law regarding the personal comfort doctrine and the going and coming rule noting that the cases dealt with employees with no fixed place of employment. The Court noted that this case differed because Schrecker had a fixed place of employment and no Kentucky law governed such situations. Therefore, the Court referred to Professor Larson's treatise on workers' compensation. Relying on that treatise, the Court stated that such cases need to be decided on a case-by-case basis. In doing so, the ALJ should consider the following non-exclusive list of factors: whether the employee is paid during the break; the length of the break; the extent to which the employer limits the employee's activities during the break; how far from the employer's premises the employee was when injured; whether the employee's activity during the break amounted to a substantial deviation from seeking personal comfort; whether the hazard encountered by the employee flowed from employment or was part of normal going and coming activities; and whether the employee's activity was expressly or impliedly prohibited by the employer. The Court determined that Schrecker's activity - crossing in the middle of the block and walking into an oncoming vehicle - took her so far outside the normal going and coming activities as to negate her entitlement to benefits.

IX. WRIT:

A. Inverultra, S.A. v. Honorable Steven A. Wilson, Judge, Warren Circuit Court, et al.
[2013-SC-000345-MR](#) December 18, 2014

Opinion of the Court by Justice Abramson. All sitting. Minton, C.J.; Keller and Noble, JJ., concur. Venters, J., dissents by separate opinion in which Cunningham

and Scott, JJ., join. Inverultra, S.A., appealed from an order of the Court of Appeals denying writs of mandamus and prohibition. Inverultra sought the lifting of a protective order and the issuance of orders compelling the real parties in interest, Union Underwear Company, Inc., and Parque Industrial Bufalo, S.A. de C.V., to respond to certain discovery requests Inverultra has propounded in a judgment-enforcement action in the Warren Circuit Court. The Court of Appeals denied relief upon finding that the trial court's protective order did not amount to an abuse of discretion. The Supreme Court agreed with the Court of Appeals that Inverultra is not entitled to the relief it seeks, and affirmed the denial of the requested writs. In affirming, the Supreme Court determined that Inverultra failed to meet any of the conditions requisite for CR 81 relief; specifically, that the alleged trial court error was subject to adequate appellate review, and even if it were not, the harm Inverultra sought avoid was not an irreparable injury.

X. ATTORNEY DISCIPLINE:

**A. Kentucky Bar Association v. Russell W. Burgin
2013-SC-000689-KB December 18, 2014**

Opinion and Order. All sitting; all concur. Burgin was found guilty of one count of professional misconduct by an Opinion and Order dated November 21, 2013. *See Kentucky Bar Ass'n v. Burgin*, 412 S.W.3d 872, 877 (Ky. 2013). As a result, he was suspended from the practice of law for 60 days with 30 days of that suspension probated for two years subject to several conditions, including that he attend and complete the Office of Bar Counsel's Ethics and Professionalism Enhancement Program as previously ordered. Upon later being advised that Burgin had not complied with any of the conditions, the Court issued an order for Burgin to show cause why his probation should not be revoked and the remainder of the 60-day suspension imposed. He failed to do so. Accordingly, the Court ordered that his probation be revoked and that Burgin be suspended from the practice of law for the remaining 30 days as previously ordered.

**B. Kentucky Bar Association v. Russell W. Burgin
2014-SC-000480-KB December 18, 2014**

Opinion and Order. All sitting; all concur. Burgin was charged with violating SCR 3.130-1.3 for failing to act with reasonable diligence and promptness in dealing with a deceased client's personal-injury matter and estate; SCR 3.130-1.4(a)(3) for failing to keep the administrator of the estate reasonably informed about the status of the matter; SCR 3.130-1.4(a)(4) for failing to promptly reply to the estate administrator's reasonable requests for information; SCR 3.130-1.16(d) for failing to give reasonable notice to the estate administrator that Burgin had abandoned the matter and thereby ended the representation; and SCR 3.130-8.1(b) for failing to respond to the bar complaint despite having been warned that doing so could result in additional charges of misconduct. Burgin did not answer the charge, and the case thus proceeded directly to the Board of Governors as a default case. The Board found Burgin guilty of all counts. After considering

Burgin's lengthy history of discipline, the Board recommended a 181-day suspension to be served concurrently with any current suspension. Neither the Office of Bar Counsel nor Burgin sought review under SCR 3.370(7), and the Court declined to undertake review under SCR 3.370(8). Accordingly, the Board's decision was adopted in full under SCR 3.370(9).

**C. Kentucky Bar Association v. Brian Patrick Curtis
2014-SC-000400-KB December 18, 2014**

Opinion and Order. All sitting; all concur. The Inquiry Commission issued a total of six charges against Curtis arising from three separate files. The charges included one count of violating SCR 3.130-1.16(d) (failure to take steps to the extent reasonably practicable to protect a client's interests upon termination of representation); two counts of violating SCR 3.130-3.4(c) (knowingly disobeying an obligation under the rules of a tribunal); and three counts of violating SCR 3.130-8.1(b) (knowingly failing to respond to a lawful demand for information from an admissions or disciplinary authority). The Board of Governors found Curtis guilty of all six charges. In determining the appropriate sanction for the pending charges, the Board reviewed Curtis's disciplinary history, which included two private admonitions; an indefinite suspension for CLE-noncompliance; an indefinite ban from practicing before the U.S. Bankruptcy Court for the Western District of Kentucky; and a 60-day suspension. The Board also considered Curtis's other pending disciplinary charges, which included four additional charges not currently before the Court. The Board ultimately recommended a one-year suspension, to run consecutively with any other disciplinary suspensions or requirements. The Court concluded that the Board's recommendation was appropriate and sanctioned Curtis accordingly.

**D. Kentucky Bar Association v. D. Steven Parks
2014-SC-000482-KB December 18, 2014**

Opinion of the Court. All sitting; all concur. A client retained Parks and paid him \$500 to obtain a title on an abandoned vehicle. The client made numerous attempts to contact Parks regarding the status of the title but received no response. Parks failed to obtain the title and never refunded the client's money. The Office of Bar Counsel attempted to resolve the matter as an alternative disposition under SCR 3.160. But Parks failed to provide the OBC with any pertinent information concerning the client's complaint. Parks also failed to respond to the OBC's formal complaint. The Inquiry Commission issued a four-count charge against Parks, alleging violations of SCR 3.130-1.3 (failure to act with reasonable diligence); SCR 3.130-1.4(a)(3) (failure to keep client reasonably informed); SCR 3.130-1.16(d) (failure to refund unearned fee); and SCR 3.130-8.1(b) (failure to respond to formal complaint and lawful requests for information). The Board of Governors found Parks guilty of all four violations and recommended that Parks be suspended for a period of thirty days and pay restitution to his client. The Court agreed with the Board's recommendation and sanctioned Parks accordingly.

D. Kentucky Bar Association v. John Scott Benton
[2014-SC-000498-KB](#) December 18, 2014

Opinion of the Court. All sitting; all concur. Benton was arrested and charged with receiving stolen property, \$10,000 or more. He entered a not guilty plea at his arraignment but failed to appear for his next hearing. He provided no explanation for his failure to appear and a bench warrant was issued for his arrest. An Inquiry Commission complaint was mailed to Benton at his bar roster address and returned undeliverable and unable to forward. Benton filed no response to the complaint.

In a separate disciplinary matter, the Supreme Court had found Benton guilty of violating SCR 3.130-8.4(b) and suspended him from the practice of law for 181 days. Benton was also ordered to complete a KYLAP referral and assessment and comply with any recommendations by KYLAP.

The Board recommended another 181-days suspension for Benton, to run consecutively to his current suspension. But the Court declined to follow the recommendation, noting that Benton's prior disciplinary history, current suspension, the seriousness of his felony offense, and his flagrant disregard for the dignity of the court in which his case is pending justified an indefinite suspension, to remain in effect until further motion from Benton or the KBA or upon the Court's own motion.

E. Kentucky Bar Association v. Daniel Edward Pridemore
[2014-SC-000559-KB](#) December 18, 2014

Opinion of the Court. All sitting; all concur. In two disciplinary files, the Board of Governors unanimously found Pridemore guilty of two counts of violating SCR 3.130-1.3; two counts of violating SCR 3.130-1.4(a)(3)&(4); and two counts of violating SCR 3.130-1.16(d). The Board also found Pridemore guilty of two counts of violating SCR 3.130-8.1(b), though that decision was not unanimous. The Board recommended that Pridemore be suspended for 181 days, to run consecutive to any other suspension. Neither the Office of Bar Counsel nor Pridemore sought review by the Court under SCR 3.370(7) and the Court declined to undertake review under SCR 3.370(8). So the Board's recommendation was adopted under SCR 3.370(9) and Pridemore was suspended from the practice of law for 181 days.