

**PUBLISHED OPINIONS
KENTUCKY SUPREME COURT
DECEMBER 2016**

I ATTORNEY FEES:

- A. Thomas K. Stone v. Pennie Dubarry (now Detorres), et al.**
2015-SC-000040-DG December 15, 2016

Opinion of the Court by Justice Noble. All sitting. Minton, C.J.; Hughes and Cunningham, JJ., concur. Venters, J., concurs by separate opinion in which Wright, J., joins. Keller, J., concurs in result only by separate opinion. The Appellant, an attorney, represented the wife in a divorce dissolution proceeding. Unbeknownst to the husband, the Appellant’s employment contract with the wife granted the Appellant a lien “on all Client’s assets, now owned and hereafter acquired to secure payment” of attorney fees and costs. With the Appellant’s assistance in negotiations, the parties eventually entered into a property-settlement agreement. It provided that the husband would retain ownership of the marital residence and pay the wife \$20,000 for her interest in the home. The agreement stipulated that those funds would come from refinancing the property. The Appellant never advised the husband during negotiations that he had a contractual lien against his client’s property as security for payment of his fee. The trial court entered a decree of dissolution incorporating the property-settlement agreement. Thereafter, the wife failed to pay the Appellant his fee, and he filed a notice of a lien in the amount of \$7,142.82 against the marital residence. The trial court granted the husband’s motion to release the lien, and the Court of Appeals affirmed.

Having granted discretionary review, the Supreme Court affirmed. It held that the statute governing attorney-fee liens, KRS 376.460, does not apply to property assigned or divided in divorce proceedings. The Court further held that although an attorney may, in the alternative, obtain a contractual lien on marital property through a contract of employment, such liens will not be effective against property belonging to third parties unless they have timely notice of the lien. Because the Appellant gave the husband no notice of his contractual lien on the wife’s interest in the marital residence, the trial court was correct to release it once the husband became the property’s sole owner.

II. CERTIFICATION OF LAW:

- A. Commonwealth of Kentucky v. James Doss**
2015-SC-000018-CL December 15, 2016

Opinion of the Court by Justice Venters. All sitting; all concur. When the jury selected for Doss’s trial included no African-Americans, defense counsel objected to the racial composition of the jury and moved for a mistrial. Despite the

compliance with all jury selection protocols, the trial court dismissed the entire panel and called for a second venire to begin the process again. The second panel contained four African Americans and also contained some of the jurors who had also been on the first panel. During the voir dire examination of that panel, the trial court barred counsel from asking prospective jurors about answers they had given in previous day's voir dire experience. *Questions presented:* 1) Whether a trial judge may dismiss a randomly selected petit jury panel because its racial composition appears to be unrepresentative of a fair cross-section of the community despite proper compliance with jury selection rules; and 2) Whether a trial court may, during voir dire examination, bar the parties from examining prospective jurors with respect to statements made during a previous voir dire experience. *Held:* 1) where the rules governing the jury selection process were properly followed, a trial court has no discretion permitting it to dismiss a jury panel because its racial composition appears to be unrepresentative; and 2) although the trial court has broad discretion in limiting the voir dire examination, a blanket rule prohibiting any questions about juror's previous statements is an abuse of discretion.

III. CRIMINAL LAW:

A. **Kenneth Goben v. Commonwealth of Kentucky**
[2014-SC-000712-MR](#) December 15, 2016

Opinion of the Court by Justice Hughes. All sitting; all concur. Defendant was convicted of manufacturing methamphetamine and first-degree trafficking in a controlled substance (methamphetamine). He was sentenced as a first-degree persistent felony offender to, respectively, life in prison and twenty years. Affirming both the convictions and the sentences, the Supreme Court unanimously rejected claims that pre-trial delays resulted in constitutional and statutory speedy-trial violations, that police officers made an illegal search of the defendant's residence, that "investigative hearsay" during a police officer's testimony rendered the trial unfair, that testimony concerning the defendant's firearms rendered the trial manifestly unjust, and that testimony during the penalty phase concerning the defendant's not-yet-final prior conviction for similar offenses was an excessive response to the defendant's having "opened the door." The case was remanded for correction of the judgment to reflect that the twenty-year sentence runs concurrently with the life sentence.

B. **Devlin Burke v. Commonwealth of Kentucky**
[2014-SC-000472-DG](#) December 15, 2016

Opinion of the Court by Justice Keller. All sitting; all concur. Burke was convicted of a number of counts of assault arising from an altercation, perhaps best described as a melee. The melee began when a car in which Burke was riding was backing out of a parking space, and several female pedestrians, who were behind the car, hit the trunk with their hands to warn the driver. The passengers and driver took exception to this and began yelling at the women using

language disparaging what they perceived to be the women's sexual orientation. Burke and another passenger struck and kicked one of the women and a crowd gathered. Burke, who testified that he was only trying to defend himself, sliced several members of the crowd with a knife. Following the jury's guilty verdicts, the trial court found that Burke's assaults of the woman and the crowd members constituted hate crimes pursuant to KRS 532.023. Burke challenged this finding, among others, as well as the constitutionality of KRS 532.023. The Court of Appeals affirmed. The Supreme Court granted discretionary review primarily to address issues related to KRS 532.023.

The Supreme Court affirmed in part and reversed in part. In doing so, the Court held that the statute is constitutional, both as written and as applied to Burke. The statute does not impose any greater penalty; it merely permits the trial court to consider the hate-crime designation in determining probation eligibility and the parole board to consider it in determining parole eligibility. Therefore, the statute has no direct impact on any constitutionally protected rights. Furthermore, the lack of notice to Burke that the Commonwealth would seek hate-crime designation and the lack of a jury finding of that designation did not render the statute unconstitutional as applied. Finally, the Court concluded that there was sufficient evidence that Burke intentionally attacked the woman based on his perception of her sexual orientation. However, there was no evidence that his attack of the crowd members was so motivated. Therefore, the Court affirmed the hate-crime designation as to the assault of the woman but reversed the hate-crime designation as to Burke's assaults on the crowd members.

**C. Joshua Hammond v. Commonwealth of Kentucky
2014-SC-000379-MR December 15, 2016**

Opinion of the Court by Justice Venters. All sitting; all concur. Criminal appeal. *Questions presented:* 1) Whether Appellant was denied a fair trial by the presence of courtroom spectators wearing t-shirts expressing sympathy for the victim; 2) Whether the first degree assault charged should have been dismissed because it merged into either the murder charge or the robbery charge; 3) Whether the trial court abused its discretion by failing to excuse four jurors for cause; 4) Whether the trial court abused its discretion by denying Appellant's request for a voluntary intoxication instruction; 5) Whether the trial abused its discretion by denying defendant's request for a duress instruction. *Held:* (1) the trial court properly denied Appellant's claim that he was denied a fair trial by the presence of spectators wearing t-shirts sympathetic to the victim because the Appellant failed to show that any jurors were exposed to the message or were even aware of their presence, and because the trial court specifically found that the t-shirts did not create "an intimidating environment for the jury." (2) Assault charge was merged into the murder charge because the evidence at trial established that the only serious physical injury suffered by the victim to sustain the assault charge was the same fatal injury that supported the homicide conviction, and therefore the assault conviction was reversed as a double jeopardy violation pursuant to *Shouse v. Commonwealth*, 481 S.W.3d 480 (Ky. 2015) ("[W]here a serious physical injury

results in death, a person cannot be convicted of both assault and homicide; the assault merges into the homicide.”); (3) the trial court did not abuse its discretion by denying defendant’s motion to dismiss four jurors for cause where the challenged jurors satisfactorily demonstrated their impartiality; (4) the trial court did not abuse its discretion by denying defendant’s request for a voluntary intoxication instruction because evidence showed that his drug use at the time of the crime did not render him so intoxicated so as to equate with insanity; and (5) the trial court did not abuse its discretion by denying Appellant’s request for a duress instruction because the evidence showed at least two occasions during the course of events that Appellant could have extricated himself from crimes.

D. Garry W. Newkirk v. Commonwealth of Kentucky
2014-SC-000749-DG December 15, 2016

Opinion of the Court by Justice Venters. All sitting. Minton, C.J.; Hughes, Noble and Wright, JJ., concur. Cunningham, J., concurs by separate opinion in which Keller, J., joins. Criminal Appeal. *Question presented:* Whether the Commonwealth can appeal interlocutory rulings *after* its own voluntary motion to dismiss the action is granted by the trial court. *Held:* The Commonwealth has no right to appeal an order of dismissal which it voluntarily requests. It is well-settled that one may only seek appellate review of an involuntary adverse judgment. Even if the trial court’s interlocutory rulings were erroneous, the Commonwealth, as the party consenting to the judgment, is presumed to have waived all errors, except those going to the court’s jurisdiction. Once the trial court dismisses a case at the Commonwealth’s request, the indictment pending against the defendant is dismissed and the litigation is terminated, rendering underlying issues moot.

IV. DOMESTIC RELATIONS:

A. Elmer Riehle v. Carolyn Riehle
2015-SC-000679-DGE December 15, 2016

Opinion of the Court by Justice Cunningham. All sitting. Minton, C.J.; Keller, and Venters, JJ., concur. Wright, J., concurs by separate opinion in which Hughes and Noble, JJ., join. Elmer and Carolyn Riehle have been married over 30 years. Elmer is now over 88 years of age. Carolyn is now approximately 72. After a jury trial in 2008, Elmer was declared incompetent in the Boone District Court. Carolyn was appointed as his guardian and conservator after Elmer was diagnosed with Frontal Lobe Dementia. Elmer filed a petition for dissolution of marriage individually and in his own right. Carolyn filed a responsive pleading objecting to the divorce and citing Elmer’s profligate wasting of marital assets by engaging in reckless and ill advised “get rich” schemes. The trial court dismissed Elmer’s petition for dissolution of marriage on the basis that in Kentucky, a person who has been declared incompetent cannot bring a legal action in this state. The Court of Appeals affirmed the dismissal. Both lower courts relied exclusively on the 1943 case of *Johnson v. Johnson*, 170 S.W.2d 889 (Ky. 1943). The Supreme

Court of Kentucky granted discretionary review, affirmed the lower courts and held that, unlike Johnson, this action was not brought by the guardian. It was brought by the judicially declared incompetent in his own name. Therefore, the requirements of CR 17.03(1) have not been satisfied.

**B. Albert W. Barber, III v. Elizabeth D. Bradley
2014-SC-000424-DG December 15, 2016**

Opinion of the Court by Justice Hughes. All sitting. Minton, C.J.; Cunningham and Keller, JJ., concur. Noble, J., concurring in part and dissenting in part by separate opinion in which Venters, J., joins. Wright, J., concurring in part and dissenting in part by separate opinion. A circuit court order dividing Barber and Bradley's property pursuant to a divorce action was affirmed in its entirety by the Court of Appeals. The Supreme Court affirmed in part, reversed in part and remanded. To finance the construction of the couple's marital residence, Barber used \$246,000 that he had received from his parents as a gift. While this gift was initially Barber's nonmarital property, his subsequent actions transferred his nonmarital interest in the home to the marital estate as a gift. As such, a majority of the Court concluded that the circuit court did not abuse its discretion in determining that the equity in the residence was marital property. Justices Noble, Venters, and Wright dissented from this portion of the opinion, concluding there was not clear and convincing evidence of Barber's donative intent. As to the remaining issues, the Court unanimously agreed that the circuit court abused its discretion by designating all household goods as marital property (when there was proof to the contrary as to certain items) and further erred in ordering those items to be divided by means of a random drawing.

**C. Kenneth Kirilenko v. Cherryl Kerilenko
2015-SC-000661-DG December 15, 2016**

Opinion of the Court by Justice Cunningham. All sitting. Hughes, Keller, and Wright, JJ., concur. Venter, J., concurs in result only by separate opinion in which Minton, C.J., and Noble, J., join. Appellant, Kenneth Kirilenko ("Kenneth"), and Appellee, Cherryl Kirilenko ("Cherryl"), were married in 1986. During the marriage, they resided in Connecticut, where Kenneth was employed by the state government until July 1, 2001, when he retired and began to receive disability benefits from the Connecticut State Employees Retirement System. Cherryl moved to Kentucky for employment reasons in 2000, and Kenneth followed soon after his retirement and disability took effect. Kenneth and Cherryl separated in 2004. Cherryl filed for a dissolution of marriage in Boyle Circuit Court in 2010. The court considered whether the plan benefits were marital property. In order to resolve this issue, the court first had to determine whether to apply Connecticut or Kentucky law. The trial court determined that, because Kentucky was the domicile of both parties at the time of dissolution, Kentucky law, rather than Connecticut law, governed the classification and distribution of the disputed asset. The Court of Appeals reversed and concluded that Connecticut has the most

significant relationship to the asset and that the characterization and distribution of those benefits should be determined under Connecticut law. The Supreme Court of Kentucky granted discretionary review, reversed the Court of Appeals and held that the classification and division of property in dissolution cases is governed by the law of forum—i.e. Kentucky. The Court remanded for the trial court to consider additional issues.

V. EMPLOYMENT LAW:

**A. Kentucky Occupational Safety and Health Review Commission v. Estill County Fiscal Court and Secretary of Labor, Etc.
2015-SC-000256-DG **December 15, 2016****

Opinion of the Court by Justice Keller. All sitting; all concur. Mary Smith worked in the Estill County 911 call center, where employees were permitted to smoke. Smith developed a smoke-related allergy and had to undergo surgery to alleviate an allergy-related sinus infection. Because of her issues with smoke in the workplace, Smith wrote the county judge executive and asked the fiscal court to ban smoking in the call center. Shortly thereafter, Smith was removed from the call center’s work schedule. Smith then filed a complaint with the Commission alleging that she had been improperly discharged for filing a complaint with the judge executive. The Commission determined that Smith had been wrongfully removed from the work schedule and ordered that she be reinstated with back pay. The fiscal court appealed to the circuit court, which affirmed. The Court of Appeals reversed, holding that the commission and fiscal court improperly relied on federal regulations. The Court also held that, because neither Kentucky’s statute nor regulation stated that communication to an employer constitutes a complaint, Smith’s letter to the judge executive was not a protected activity.

The Supreme Court reversed. In doing so, the Court held that, although the statute and regulation were silent as to what constituted a complaint, the interpretation by the commission was reasonable. Furthermore, the Court noted that neither the commission nor the circuit court “relied” on federal authority. They merely cited to that authority as support for their interpretation that “complaint” included not only formal complaints to the commission but also complaints to an employer, such as Smith’s letter.

VI. EVIDENCE:

**A. Kathy McAbee v. Darren C. Chapman, M.D.
2014-SC-000555-DG **December 15, 2016****

Opinion of the Court by Justice Hughes. All sitting; all concur. This medical malpractice action against a surgeon resulted in a jury verdict for the defendant. Upholding that result in an unanimous opinion, the Supreme Court agreed with the plaintiff/appellant that the trial court had misapplied the separation of

witnesses rule (Kentucky Rule of Evidence 615) when it excepted from the rule two of the defendant's expert witnesses without requiring an adequate showing of necessity for the expert witnesses' presence in the courtroom during the testimony of other witnesses. The Supreme Court held, however, that having reviewed the trial testimony in its entirety the error was harmless.

VII. GOVERNMENTAL IMMUNITY:

A. **Kentucky River Foothills Development Council, Inc. v. Cathy Phirman, Etc., et al.**

[2015-SC-000244-DG](#)

December 15, 2016

Opinion of the Court by Justice Keller. All sitting. Minton, C.J.; Cunningham, Noble and Wright, JJ., concur. Venters, J., concurs in result only by separate opinion in which Hughes, J., joins. Kentucky River is a community action agency which receives and distributes federal block grants in order to alleviate poverty by providing employment opportunities and improving living conditions of the poor. One of the entities Kentucky River administers is Liberty Place Recovery Center for Women, an in-house peer-based substance abuse treatment facility. Melissa Steffen, who suffered from bipolar disorder, had been approved for parole but could not be released from prison until she found a suitable residence. In order to facilitate Melissa's release from prison, her mother arranged for Melissa to be placed at Liberty Place. While Melissa was at Liberty Place, she ran out of her medication and her mental state began to deteriorate to the point that she left the facility. Following a number of alleged mis-steps by Liberty Place staff, Melissa committed suicide. Her estate filed suit against Liberty Place and Kentucky River. Kentucky River filed a motion for summary judgment arguing that it was entitled to governmental immunity. Relying on *Comair, Inc. v. Lexington-Fayette County Airport Corp.*, 295 S.W.3d 91 (Ky. 2009), the circuit court denied Kentucky River's motion. The Court of Appeals affirmed, finding that Kentucky River could not pass *Comair's* "parent test" because it had not been created by an immune parent.

The Supreme Court affirmed. The majority noted that the *Comair* test contains two parts: whether the agency is the "child" of an immune "parent;" and whether the agency performs an integral state function. The majority noted that the circuit court and the Court of Appeals focused on Kentucky River's parentage when the primary problem is Liberty Place's function. The majority noted that Kentucky River argued it was performing a governmental function – alleviating poverty. However, the majority held that, if the alleviation of poverty is a governmental function, providing drug rehabilitation is not because providing drug rehabilitation alleviates substance abuse, not poverty. Therefore, Kentucky River did not meet the second prong of the *Comair* test. In his separate concurring opinion, Justice Venters stated that none of Kentucky River's operations would be entitled to immunity because Kentucky River was performing a federal function not a state function.

VIII PERFORMANCE BONDS:

- A. **Furlong Development Co., LLC, et al. v. Georgetown-Scott County Planning and Zoning Commission, et al.**
[2014-SC-000594-DG](#) **December 15, 2016**

Opinion of the Court by Justice Cunningham. All sitting. Minton, C.J.; Hughes, Keller, Noble and Venters, JJ., concur. Wright, J., dissents by separate opinion. Furlong Development Co., LLC (“Developer”), obtained property in Scott County and began plans for a subdivision. It applied to the Georgetown-Scott County Planning and Zoning Commission for a permit to develop the subdivision. Ordinances required Developer to post a bond to ensure performance of certain work before selling any lots. Platt River Insurance Company (hereinafter “Insurer”) backed the bonds. Notably, Developer agreed to indemnify Insurer against any losses. The real estate market collapsed in 2008, leaving Developer unable to sell the lots or to borrow additional money. Eventually, Developer agreed to transfer the property to the bank’s Holding Company in exchange for the bank’s agreement to forego foreclosure proceedings. The Commission called the bonds in order to place the proceeds in escrow for the purpose of reimbursing the Bank for the completion of the necessary infrastructure projects required by the Developer’s approved plat. However, Developer and its Insurer refused to pay. Developer filed a declaratory judgment action against the Commission, the Bank, and the Holding Company in Scott Circuit Court. It alleged that the bonds were not callable and that payment on the bonds would result in the Bank receiving an unjust enrichment. The trial court ruled in favor of the Bank and the Commission. In a split decision, the Court of Appeals affirmed the trial court. The Supreme Court of Kentucky granted discretionary review and held that Developer was not released from its obligations under the Bond Agreements. The Court restricted its holding to a developer’s liability for the improvements that were required under the original bonded plat.

IX WORKERS COMPENSATION:

- A. **Eddie’s Service Center v. Donna Thomas, Administratrix of the Estate of Eddie Ray Thomas, Jr., Deceased, et al.**
[2015-SC-000676-WC](#) **December 15, 2016**

Opinion of the Court by Justice Keller. All sitting. Cunningham, Hughes, Keller, Noble, Venters, and Wright, JJ., concur. Minton, C.J., dissents by separate opinion. Eddie Thomas suffered a fatal cardiac event while attempting to tow a pickup truck out of a ditch. Based on the independent medical evaluation from the employer’s cardiologist, the ALJ found that Mr. Thomas’s death was not work-related. The Board affirmed. The Court of Appeals reversed, holding that the ALJ’s findings were not supported by the evidence. In particular, the Court held that the employer’s IME physician had an incorrect understanding of the events leading up to Mr. Thomas’s death and a misunderstanding of Kentucky workers’ compensation law.

The majority of the Supreme Court first noted that, in a death case, the death is presumed to be work-related and that the employer must present substantial evidence to the contrary to overcome the presumption. Furthermore, the Court noted that Mr. Thomas’s estate had filed a report from a cardiologist stating that the cardiac event was work related. The majority then undertook an extensive review of the employer’s IME report and concluded that it did not rise to the level of substantial evidence. In doing so, the majority noted that the employer’s physician misunderstood and/or misrepresented the amount of physical exertion/activity Mr. Thomas engaged in immediately preceding his death. The majority then noted that the physician, based on a misinterpretation of KRS 342.0011(1), failed to consider the mental stress Mr. Thomas was under in the days preceding his death. Finally, the majority noted that the physician’s report contained so many internal inconsistencies that it lacked the relevant consequence necessary to induce conviction in the minds of reasonable men. The Chief Justice dissented, stating that he believed the majority had engaged in inappropriate fact finding.

X WRIT OF PROHIBITION:

**A. Appalachian Racing, LLC, and Floyd County, Kentucky, Real Parties in Interest v. Commonwealth of Kentucky, Kentucky Horse Racing Commission, and Hon. Johnny Ray Harris, Judge, Floyd Circuit Court
2016-SC-000206-MR **December 15, 2016****

Opinion of the Court by Chief Justice Minton. All sitting. Cunningham, Hughes, Keller, Noble and Venters, JJ., concur. Wright, J., dissents by separate opinion. Appalachian Racing entered into a contract with Keeneland to purchase Thunder Ridge, a quarter-horse racing venue, in Prestonsburg, Kentucky, with Floyd County holding bonds to be paid upon Keeneland’s purchase of the track. During the contract’s pendency, Keeneland applied for licensure with the Horse Racing Commission on behalf of Cumberland Run, LLC to open a quarter-horse track in Corbin, Kentucky. In addition to claims of fraud and breach of contract, Appalachian Racing sought a temporary restraining order against the Commission to prohibit the Commission from considering this license application at its next meeting. The trial court issued the restraining order and the Commission filed an original action in the Court of Appeals seeking a writ of prohibition against enforcement of the restraining order. The Court of Appeals granted the writ and Appalachian Racing appealed as a matter of right to the Supreme Court.

Writing for the Court, Chief Justice Minton first concluded that a writ is a proper remedy in this case because a temporary restraining order is a non-appealable interlocutory order, the Commission has no adequate remedy on appeal. The Court then justified the necessity for the writ under Kentucky’s exalted separation-of-powers doctrine. The Court noted Kentucky’s rich history insulating the powers of one branch of government from the others. Because the Commission had yet to rule on Keeneland’s application, the Court determined

there was not yet a case or controversy ripe for judicial review; the court may not stop the Commission from taking the application under consideration. Hence, the circuit court's temporary restraining order ran afoul of Kentucky's separation of powers, and the Court of Appeals correctly granted the writ of prohibition against enforcement of the trial court's order.

XI. ATTORNEY DISCIPLINE:

**A. In re: Madison Sewell
2016-SC-000355-CF**

December 15, 2016

Opinion and Order of the Court. All sitting; all concur. Sewell tendered an application for admission to the Kentucky Bar without examination, relying on the provision in SCR 2.110 that allows for admission without examination for persons who have been admitted to practice law in another jurisdiction and are actively engaged in the teaching of the law. The Office of Bar Admissions denied his application, noting that Sewell's employment as a high school pre-law teacher did not satisfy the requirements of the rule. The Supreme Court held that the nature of Sewell's current employment was irrelevant because SCR 2.110 was inapplicable. Sewell had not practiced law for the requisite time period in a state that has reciprocity with Kentucky. Therefore, his application was untimely and was denied.

**B. Kentucky Bar Association v. Christina Rose Edmondson
2016-SC-000388-KB**

December 15, 2016

Opinion and Order of the Court. All sitting; all concur. The charges against Edmondson arose from her failure to respond to discovery in a breach of contract case and her failure to file suit in a loan dispute. The Board noted that Edmondson had previously been suspended for failure to pay bar dues and comply with CLE requirements, a suspension that was ongoing; had been suspended for 180 days for failing to follow through with representation in other cases, which was also ongoing; and had not responded to the current charges. Therefore, the Board recommended that Edmondson be suspended for 181 days to be served concurrently with her 180 day suspension. The Court, noting that the current charges arose during the same time period as Edmondson's prior charges, agreed with the Board and suspended Edmondson for 181 days to run concurrently with her 180 day suspension.

**C. Kentucky Bar Association v. David Thomas Sparks
2015-SC-000425-KB**

December 15, 2016

Opinion and Order of the Court. All sitting; all concur. The Supreme Court entered an order suspending Sparks for 181 days, with 61 days to serve and the remainder probated for two years, with conditions. The Office of Bar Counsel moved to revoke probation and impose the remainder of the suspension because Sparks violated several conditions. Specifically, Sparks received new disciplinary

charges and failed to attend required ethics and business-management courses or establish an IOLTA account. Sparks was ordered to show cause why his probation should not be revoked but he failed to respond. Accordingly, the Court granted the Office of Bar Counsel's motion and suspended Sparks for the remaining 120 days previously probated.

**D. Kentucky Bar Association v. Parker Lee Clifton
2016-SC-000476-KB December 15, 2016**

Opinion and Order of the Court. All sitting; all concur. Clifton was publicly reprimanded by the Supreme Court of Ohio for misconduct in a probate matter in Ohio. The Kentucky Bar Association's Office of Bar Counsel filed a petition for reciprocal discipline under SCR 3.435. Seeing no reason why Clifton should not be subjected to identical discipline in Kentucky, the Supreme Court granted the petition and publicly reprimanded him.

**E. Kentucky Bar Association v. Robert Hansford Hoskins
2016-SC-000477-KB December 15, 2016**

Opinion and Order of the Court. All sitting; all concur. Hoskins' license to practice law in Ohio was suspended indefinitely, subject to reinstatement by the Supreme Court of Ohio, due to his misconduct and violation of multiple ethics rules in several cases. The Kentucky Bar Association's Office of Bar Counsel filed a petition for reciprocal discipline under SCR 3.435. The Supreme Court noted that it does not ordinarily impose indefinite suspensions unless an attorney fails to answer a charge. In this case, Hoskins did answer the charges in Ohio but failed to participate in the proceedings in Kentucky. Nevertheless, the Court held that there was no reason why Hoskins should not be subjected to identical discipline in Kentucky and suspended him indefinitely.

**F. Kentucky Bar Association v. Delbert Keith Pruitt
2016-SC-000487-KB December 15, 2016**

Opinion and Order of the Court. All sitting; all concur. Pruitt was charged with several counts of misconduct relating to his representation of a client in a felony case. Specifically, the Inquiry Commission charged Pruitt with failing to act with reasonable diligence in representing his client; failing to keep his client updated about her case and failing to respond to her requests for information; failing to timely return any unearned portion of a fee upon termination; and failing to response to the bar complaint. The matter was eventually submitted to the Board of Governors as a default case under SCR 3.201(1). A majority of the Board found Pruitt guilty of all four charges. After considering Pruitt's disciplinary history and his lack of interest in defending himself against the current charge, the Board recommended a 61-day suspension.

Neither the Office of Bar Counsel nor Pruitt sought review by the Court under SCR 3.370(7) and the Court declined to undertake review under SCR 3.370(8).

Accordingly, the Court adopted the Board's decision in full and suspended Pruitt from the practice of law for 61 days.

G. Kentucky Bar Association v. Jason Elias Dutra
2016-SC-00490-KB December 15, 2016

Opinion and Order of the Court. All sitting; all concur. Dutra was found guilty of nine counts of misconduct in three separate disciplinary files. All of the charges related to mishandling of client funds. Dutra never filed answers to the charges and the matter was eventually submitted to the Board of Governors as a default case under SCR 3.210. The Board unanimously found Dutra guilty of all counts and, after considering his discipline history, recommended permanent disbarment. Neither the Office of Bar Counsel nor Dutra sought review and the Court declined to undertake review. Accordingly, the Court adopted the Board's decision in full and permanently disbarred Dutra from the practice of law in Kentucky.

H. Kentucky Bar Association v. Genon Ginn Hensley
2016-SC-000491-KB December 15, 2016

Opinion and Order of the Court. All sitting; all concur. Hensley was charged with several counts of misconduct stemming from four separate disciplinary files. The charges against Hensley arose from a misdemeanor conviction for failing to maintain automobile liability insurance and from three separate instances of failing to properly represent clients in bankruptcy matters. Hensley was served with all of the charges via certified mail but did not file an answer in any of the four cases. The Board of Governor voted to find Hensley guilty of all but one count and, after considering her history of discipline, a majority voted to recommend that Hensley be suspended from the practice of law for 181 days.

Neither the KBA's Office of Bar Counsel nor Hensley sought review by the Supreme Court under SCR 3.370(7) and the Court declined to undertake review under SCR 3.370(8). Accordingly, the Board's recommendation was adopted under SCR 3.370(9) and Hensley was suspended from the practice of law for 181 days.

I. Kentucky Bar Association v. James Neal Tilson
2016-SC-000532-KB December 15, 2016

Opinion and Order of the Court. All sitting; all concur. Tilson was suspended from the practice of law in Arizona for three years and the Kentucky Supreme Court imposed identical reciprocal discipline. Shortly thereafter, additional disciplinary proceedings against Tilson resulted in his permanent disbarment in Arizona. The Kentucky Bar Association's Office of Bar Counsel filed a petition for reciprocal discipline under SCR 3.435. Seeing no reason why Tilson should not be subjected to identical discipline in Kentucky, the Supreme Court granted the KBA's petition and permanent disbarred Tilson from the practice of law.

J. Brian Thomas Canupp v. Kentucky Bar Association
2016-SC-000623-KB December 15, 2016

Opinion and Order of the Court. All sitting; all concur. Canupp asked the Court to enter an order resolving the pending disciplinary proceeding against him by imposing a public reprimand. The charges against Canupp arose from his representation of a client in a wrongful death matter. Canupp admitted that his conduct violated the disciplinary rules as alleged in the charge. He reached an agreement with the Office of Bar Counsel to resolve this matter and asked the Court to enter an order in conformity with their negotiations. The Office of Bar Counsel did not object to Canupp's motion. After reviewing the allegations, the admitted facts, comparable cases, and Canupp's previous disciplinary record, the Court concluded that the proposed sanction was appropriate and publicly reprimanded Canupp.

K. Jeremy Joseph Gubin v. Kentucky Bar Association
2016-SC-000624-KB December 15, 2016

Opinion and Order of the Court. All sitting; all concur. Gubin was arrested and charged with felony first-degree possession of a controlled substance. He pled guilty and was sentenced to three years of supervised diversion and several conditions, including the condition that he not practice law during the period of diversion. Based on his conviction, Gubin was charged by the Inquiry Commission with having violated SCR 3.130-8.4(b), which state that it is professional misconduct for a lawyer to "commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects. Gubin admitted that his conduct violated the rule and reached an agreement with the Office of Bar Counsel to resolve this matter. He petitioned the Supreme Court to enter an order in conformity with the negotiated sanction, which would suspend him from the practice of law for a period of three years and require him to maintain participation in KYLAP and remain illegal-drug and alcohol free during his suspension. The Office of Bar Counsel did not object to Gubin's motion and asked that it be granted. After reviewing the allegations, the admitted facts, the comparable cases and Gubin's previous disciplinary history, the Court concluded that the negotiated sanction was adequate and suspended Gubin from the practice of law for three years, with conditions.