

**PUBLISHED OPINIONS  
KENTUCKY SUPREME COURT  
FEBRUARY 2013**

**I. APPELLATE PROCEDURE:**

**A. Ben Browning v. Jefferson Preece  
[2011-SC-000459-DG](#)**

**February 21, 2013**

Opinion of the Court by Justice Venters. Minton, C.J.; Abramson, Cunningham, Noble, Scott and Venters, JJ., sitting. All concur. Civil Procedure, indispensable parties; Questions presented: 1) Whether the owners of property bordering easement were indispensable parties to appeal of judgment affecting the width of the easement; and alternatively 2) Whether one of the owners was properly joined as a party to the appeal. Held: 1) The adjoining property owners were indispensable parties to the appeal because their interest in the servient estate would be affected, either favorably or adversely, by the decision of the Court of Appeals on the width of the easement; and 2) Including the name of an individual in the caption of the Notice of Appeal adequately identified that person as a party to the appeal; failure to include an individual's name in either the caption or the body of the Notice of Appeal fails to include that person as a party to the appeal.

**II. CONTRACTS:**

**A. MHC Kenworth-Knoxville/Nashville v. M&H Trucking, LLC:  
and Mike Hall  
[2011-SC-000441-DG](#)**

**February 21, 2013**

Opinion of the Court by Justice Noble. Minton, C.J.; Abramson, Cunningham, Noble, Scott and Venters, JJ., sitting. All concur. Appellant MHC Kenworth-Knoxville/Nashville and Appellee M&H Trucking entered into a contract of sale that contained an arbitration provision for a new truck. Dissatisfied with the truck, Appellee filed suit in circuit court alleging fraud and intentional misrepresentation. Appellant moved to stay litigation and compel arbitration pursuant to the arbitration clause in the contract. The trial court denied the motion and allowed litigation to proceed. The Court of Appeals affirmed the trial court's decision.

The Court granted discretionary review to examine the issue of whether an arbitration agreement providing that it is controlled by the Federal Arbitration Act is enforceable in the Kentucky courts. The Court held that the arbitration agreement was enforceable in Kentucky courts because it explicitly required disputes to be governed by the Federal Arbitration Act, and consideration of the Kentucky Arbitration Act was unnecessary.

**B. Ramesh Patel v. Tuttle Properties, LLC., et al.**

**[2011-SC-000415-DG](#)**

**February 21, 2013**

Opinion of the Court by Justice Scott. Minton, C.J.; Abramson, Cunningham, Noble, Scott and Venters, JJ., sitting. All concur. Appellant entered into a commercial real estate transaction with Appellees for the purchase of a convenience store and associated real property. Upon the signing of the contract, Appellant placed \$125,000 into the escrow account of Appellee's attorney to be applied toward the \$450,000 purchase price. However, Appellant was unable to obtain adequate financing and Appellees retained the earnest money deposit. Appellant brought suit and the trial court granted summary judgment, which the Court of Appeals affirmed. Appellant appealed to this court arguing: (1) the Court of Appeals should have reviewed the trial court's ruling to determine whether the earnest money clause constituted a proper liquidated damages provision; (2) the earnest money clause was an unenforceable penalty; and (3) the lower court should have imposed a constructive trust upon Appellees for the earnest money deposit. The Court made the determination that summary judgment was inappropriate in this case given that there was a genuine issue of material fact regarding whether the earnest money deposit constitutes an appropriate amount of liquidated damages or is an unenforceable penalty. The Court therefore remanded the case back to the trial court in order to make this determination based upon the facts. Furthermore, the Court instructed the trial court that if it finds the earnest money deposit was in fact an unenforceable penalty then a constructive trust should have been established.

**III. CRIMINAL:**

**A. Joshua Peacher v. Commonwealth of Kentucky and**

**Nereida Allen v. Commonwealth of Kentucky**

**[2011-SC-000248-MR](#)**

**[2011-SC-000254-MR](#)**

**February 21, 2013**

**February 21, 2013**

Opinion of the Court by Justice Abramson. Minton, C.J.; Abramson, Cunningham, Noble, Scott and Venters, JJ., sitting. All concur. Following a joint trial, the defendants were both convicted of assaulting and murdering one child and of abusing another. Affirming both convictions, the Supreme Court held that joinder of the two defendants was proper and that joinder of the charges relating to the two children was erroneous but the error was harmless. The Court also held that Peacher was not entitled to the suppression of his police statement; that Allen was not entitled to a directed verdict; that the jury instructions adequately distinguished the alleged murder, the alleged assault, and the alleged abuse, and adequately defined the alleged complicity; and that the prosecutor's closing argument did not necessitate a mistrial.

**B. Darby Ashley Barnes v. Commonwealth of Kentucky**  
**[2011-SC-000325-DG](#) February 21, 2013**

Opinion of the Court by Justice Cunningham. Minton, C.J.; Abramson, Cunningham, Noble, Scott and Venters, JJ., sitting. All concur. Witness' identification of defendant was not suggestive. The witness did not identify anyone in the first photo line-up that did not contain a picture of the defendant. She identified the defendant in a second photo line-up conducted three weeks after the crime. All other photographs contained pictures of men in the same age range as the defendant, with similar hair styles, expressions, and facial hair.

**C. Said Ali Biyad v. Commonwealth of Kentucky**  
**[2011-SC-000409-MR](#) February 21, 2013**

Opinion of the Court by Justice Noble. Minton, C.J.; Abramson, Cunningham, Noble, Scott and Venters, JJ., sitting. All concur. Appellant was tried by bench trial and convicted of four counts of murder, one count of attempted murder, one count of second-degree assault, one count of first-degree rape, and three counts of tampering with physical evidence. He appealed on the grounds that once he presented evidence of insanity, the Commonwealth failed to meet its burden to present evidence that he was not insane at the time of the offenses.

The Court noted that the burden never shifts to the Commonwealth to disprove an insanity defense and that the burden always remains with the defendant under KRS 504.020. Because the Appellant did not adequately prove that he was insane, the convictions were not reversible.

**D. Malcolm Blount v. Commonwealth of Kentucky**  
**[2012-SC-000002-MR](#) February 21, 2013**

Opinion of the Court by Justice Venters. Minton, C.J.; Abramson, Cunningham, Noble, Scott and Venters, JJ., sitting. All concur. Criminal Direct Appeal. Question Presented – Whether the trial court erred by allowing testimony from the victim's mother and father regarding changes in the victim's behavior, which the mother implied were symptomatic of child sexual abuse based upon discussions she had with a clinical psychologist who counseled Sally and her family, and whether this testimony amounted to inadmissible evidence of "child sexual abuse accommodation syndrome." Held: The trial court erred by allowing testimony from the victim's mother and father regarding changes in the victim's behavior, which amounted to inadmissible "child sexual abuse accommodation syndrome" evidence; however, the defendant had waived his right to a reversal by specifically declining a mistrial after the evidence was introduced.

**E. Elmer David Miller v. Commonwealth of Kentucky**  
**[2011-SC-000030-DG](#) February 21, 2013**

Opinion of the Court by Justice Noble. Minton, C.J.; Abramson, Cunningham,

Noble, Scott and Venters, JJ., sitting. All concur, except Abramson, J., concurs in result only. The Appellant plead guilty to criminal attempt to commit first-degree unlawful transaction with a minor, which, because of the victim's actual age, was only a Class A misdemeanor. Appellant was probated for the two-year statutory maximum on the condition that he attend counseling recommended by the Office of Probation and Parole. That office recommended that he enroll in the state's three-year sex offender treatment program required for felony sex offenders. The Court considered whether his probation can be revoked for failing to complete the program before his probation ended, and whether there were other options, such as extension of the probationary period, available. This Court concluded that Miller could not be required to complete a program that extends beyond his period of probation, that he had completed his probation, and was discharged from it as a matter of law.

**F. Joseph Goncalves v. Commonwealth of Kentucky**  
**2010-SC-000142-MR** **February 21, 2013**

Opinion of the Court by Justice Abramson. Minton, C.J.; Abramson, Cunningham, Noble, Scott and Venters, JJ., sitting. All concur. Appellant Joseph Goncalves was sentenced to thirty-five years in prison after a Nelson County jury convicted him of robbery in the first degree and PFO 1. Goncalves argued thirteen issues on appeal: (1) the trial court erred when it denied his suppression motion relating to evidence seized from his apartment; (2) the tendered complicity instructions violated his due process rights; (3) the Commonwealth improperly shifted the burden of proof during its closing argument; (4) the Commonwealth allowed exculpatory evidence to be destroyed in violation of Brady v. U.S.; (5) the trial court erred when it refused to allow him to examine the prosecutor regarding alleged prosecutorial misconduct; (6) the pretrial delay violated his rights to a speedy trial; (7) his constitutional rights to confrontation were violated when the trial court refused to allow him to play video-recorded testimony to the jury to impeach two witnesses; (8) as a pro se litigant, his due process rights were violated when he was granted insufficient access to legal materials; (9) his due process rights were violated when he received inadequate access to a law library; (10) the trial court erred when it denied his motion for a directed verdict based on the unreliability of the Commonwealth's witnesses; (11) his constitutional rights were violated when he failed to receive a sufficient trial record to prepare for this appeal; (12) the fifty-page limit on appellate briefs imposed by this Court violated his constitutional rights; and (13) the trial court erroneously ordered the payment of public defender fees and court costs. The Supreme Court found no error as to the first twelve issues, but reversed and remanded the portion of the judgment imposing public defender fees and court costs.

A defendant's indigent status does not automatically prohibit a trial court from imposing court costs and if the trial court determines that the defendant is able to afford to pay such costs. Also, a trial court may require an indigent defendant to contribute to their defense if they are able make such payments. In this case, however, the trial court erroneously granted itself continuing jurisdiction in the matter by requiring a review of Goncalves's ability to pay court costs and a partial

public defender fee upon his release from prison.

The Supreme Court also articulated a standard of measuring delay in a speedy trial analysis in cases where the defendant is tried multiple times. In such cases, the pertinent period of delay shall be measured from the time of arrest to the time of the final trial, treating mistrials as reasons for delay to be considered in the speedy trial calculus.

**G. John Miller v. Commonwealth of Kentucky  
2011-SC-000340-MR**

**February 21, 2013**

Opinion of the Court by Justice Noble. Minton, C.J.; Abramson, Cunningham, Noble, Scott and Venters, JJ., sitting. All concur. Appellant was convicted of three counts of incest, one count of second-degree rape, one count of third-degree rape, and one count of third-degree sodomy. Appellant appealed his convictions on the grounds of prosecutorial misconduct and that two of his incest convictions violated the ex post facto clauses of the United States and Kentucky constitutions. He also claimed that the trial court improperly sentenced him because he received a sentence for Class B incest, but claimed he had only been convicted of Class C incest. Finally, he appealed the trial court's imposition of court costs and a partial public defender fee.

The Court held that two jury instructions for incest violated ex post facto principles because they allowed the jury to consider dates before the amendment to the incest statute that increased the penalty for incest against a minor. The Court noted that this was not a true ex post facto violation because the jury instruction was erroneous as applied, rather than on its face, but followed U.S. Supreme Court precedent that this was a due process violation.

The Court also held that the jury's failure to find that a victim was under eighteen years old, as required for Class B incest, was harmless error because it had previously made a finding that the victim was under fourteen years old in a previous instruction.

The Court also held that the trial court erred in retaining jurisdiction to determine court costs and a partial public defender fee, and vacated those costs and fees because Appellant was deemed to be a "poor person."

**H. Samantha Monahan Acosta v. Commonwealth of Kentucky  
2011-SC-000097-DG**

**February 21, 2013**

Opinion of the Court by Justice Noble. Minton, C.J.; Abramson, Cunningham, Noble, Scott and Venters, JJ., sitting. All concur, except Scott, J., concurs in result only. Appellant was convicted of first-degree criminal abuse and challenged the conviction on the grounds that the Commonwealth did not present sufficient evidence of her guilt. The Court noted that the only evidence presented at trial was that Appellant had the opportunity to commit the abuse. The Court held that

evidence of opportunity alone is not sufficient to withstand a motion for a directed verdict.

**I. Carlos Lamont Ordway v. Commonwealth of Kentucky**  
**2010-SC-000783-MR** February 21, 2013

Opinion of the Court by Justice Venters. Minton, C.J.; Abramson, Cunningham, Noble, Scott and Venters, JJ., sitting. All concur, except Scott, J. concurs in result only one on issue and Cunningham, J. concurs in result only on two issues. Criminal Direct Appeal. Questions Presented – Among the issues presented were: (1) was evidence regarding how guilty persons act improperly admitted; (2) did the prosecutor improperly refer to the defendant’s spontaneous invocation of his right to remain silent; (3) did the trial court improperly exclude statements made by the victim’s just prior to the shooting; (4) did the trial court err by failing to strike a potential juror who was the sibling of the victim’s advocate in the case; (5) did the trial court err by permitting a witness to testify regarding her opinion of whether the testimony of another witness was not true; (6) did the trial court err by permitting testimony regarding the defendant’s effort to flee immediately following the shootings; (7) did the trial court err by permitting testimony concerning evidence that was lost; and (8) did the prosecutor improperly argue to the jury that it should consider community expectations during its deliberations. Held: (1) evidence regarding how guilty persons act after engaging in self-defense was improperly admitted; (2) the prosecutor improperly referred to the defendant’s spontaneous invocation of his right to remain silent; (3) the trial court improperly exclude statements made by the victim’s just prior to the shooting; (4) the trial court erred by failing to strike a potential juror who was the sibling of the victim’s advocate in the case; (5) the trial court erred by permitting a witness to testify regarding her opinion of whether the testimony of another witness was not true; (6) the trial court did not err by permitting evidence of defendant’s flight immediately following the shootings; (7) the trial court did not err by permitting testimony concerning evidence that was lost, or in failing to give a lost evidence instruction; and (8) the prosecutor improperly argued to the jury that it should consider community expectations during its deliberations.

**IV. IMMUNITY:**

**A. Dennis Stilger v. Edward H. Flint**  
**2010-SC-000120-DG** February 21, 2013

Opinion of the Court by Justice Scott. Cunningham, Noble, Scott and Venters, JJ.; Brad Rhoads and John S. Reed, Special Justices, sitting. All concur. Appellee is the owner of a condominium managed by the Coach House, and is accordingly a member of the condominium owners’ association. Appellee became suspicious that the Coach House Board of Directors was misappropriating funds, and he therefore requested to review the financial records and Board meeting minutes spanning a period of 2005 to 2007. Appellant, who was the attorney for the Board, informed Appellee that his requests were unreasonable. Appellee wrote a letter to the Attorney General’s (AG) office urging him to look into the matter,

and in response Appellant wrote a letter to the AG that was unflattering to the Appellee. Appellee filed suit against Appellant alleging that his letter was defamatory and slanderous per se. The trial court determined that Appellant's letter to the AG, while unflattering, was part of a judicial proceeding and thus entitled to absolute privilege. The Court of Appeals reversed the grant of summary judgment and we affirm the Court of Appeals reversal. The Supreme Court found that there was a genuine issue of material fact that needed to be resolved, whether communications with the AG are entitled to absolute or qualified privilege. The Court further held that the AG is an investigatory body, and thus the communication in question would only be entitled to a qualified privilege. Therefore, on remand, the trial court was directed to make a determination as to whether or not the defamatory statements made in Appellant's letter to the AG's office were made with a malicious intent.

**V. WRIT OF PROHIBITION:**

- A. Connie Robertson (Administratrix of the Estate of Ina Faye Wilson Harris) v. Honorable Jeffrey T. Burdette, Judge, Pulaski Circuit Court, Division II, et al.**  
**[2012-SC-000387-MR](#) February 21, 2013**

Opinion of the Court by Justice Noble. Minton, C.J.; Abramson, Cunningham, Noble, Scott and Venters, JJ., sitting. All concur. The trial court in this case disqualified the Appellant Connie Robertson's chosen counsel and his law firm because he had previously represented the Appellee and Real Party in Interest Lake Cumberland Regional Hospital. The Appellant sought a writ of prohibition barring enforcement of the disqualification order, which was denied by the Court of Appeals.

The Court affirmed the denial of the writ because Appellant failed to show that great injustice and irreparable injury will result if the petition was not granted.

**VI. YOUTHFUL OFFENDERS:**

- A. Anthony Edwards v. Melissa Harrod, Administrator, Offender Information Services, and Ladonna Thompson, Commissioner, Department of Corrections**  
**[2010-SC-000770-DG](#) February 21, 2013**

Opinion of the Court by Chief Justice Minton. Minton, C.J.; Abramson, Cunningham, Noble, Scott and Venters, JJ., sitting. All concur. Edwards filed a declaration of rights action in the Franklin Circuit Court arguing that the Department of Corrections erred in classifying him as a violent offender because he was a youthful offender. In considering the issue, the Court addressed the holding in *Commonwealth v. Merriman*, 265 S.W.3d 196 (Ky. 2008), that the probation-eligibility restriction of the Violent Offender Statute does not apply to youthful offenders. The Court clarified that the holding in *Merriman* does not extend to the parole limitations of the Violent Offender Statute because of the

difference between probation and parole and the dissimilar statutory requirements for granting probation and parole to youthful offenders. The Court held that youthful offenders who are convicted and sentenced in circuit court can also be classified as violent offenders subject to the parole-eligibility restrictions imposed by Kentucky's Violent Offender Statute.

## **VII. ATTORNEY DISCIPLINE:**

### **A. Kentucky Bar Association v. Brian Patrick Curtis 2012-SC-000672-KB February 21, 2013**

Opinion of the Court. Minton, C.J.; Abramson, Cunningham, Noble, Scott and Venters, JJ., sitting. All concur. The Board of Governors found Curtis guilty of violating SCR 3.130-1.4(a)(4) (failure to comply with client's reasonable requests for information); SCR 3.130-1.15(b) (failure to provide an accounting of client funds); SCR 3.130-1.16(d) (failure to refund the unearned portion of the advance fee payment upon termination of representation); and SCR 3.130-8.1(b) (failure to respond to bar complaint). The Board took Curtis' current charges and his prior discipline into consideration and recommended a 60-day suspension from the practice of law. Neither the KBA nor Curtis sought review by the Court. Accordingly, the Court adopted the Board's recommendation.

### **B. Kentucky Bar Association v. Gail Smith Slone 2012-SC-000673-KB February 21, 2013**

Opinion of the Court. Minton, C.J.; Abramson, Cunningham, Noble, Scott and Venters, JJ., sitting. All concur. The Board of Governors found Slone guilty of violating SCR 3.130-1.3 (failure to act with reasonable diligence); SCR 3.130-1.4(a)(4) (failure to comply with client's reasonable requests for information); and SCR 3.130-1.16(d) (failure to refund the unearned portion of the advance fee payment upon termination of representation). The Board took into consideration Slone's current charges and her prior discipline, which included a current suspension for non-payment of dues and a prior, 30-day suspension for failing to competently represent and communicate with clients, and recommended that she be suspended from the practice of law for a period of 61 days. Neither the KBA nor Slone sought review by the Court. Accordingly, the Court adopted the Board's recommendation.

### **C. Kentucky Bar Association v. Andrew L. Holton 2012-SC-000710-KB February 21, 2013**

Opinion of the Court. Minton, C.J.; Abramson, Cunningham, Noble, Scott and Venters, JJ., sitting. All concur. The Board of Governors found Holton guilty of violating SCR 3.130-1.1 (failure to provide competent representation); SCR 3.130-1.3 (failure to act with reasonable diligence); SCR 3.130-1.4(a)(3)(failure to keep the client reasonably informed); SCR 3.130-1.4(a)(4) (failure to respond to requests for information); and SCR 3.130-8.1(b) (failure to respond to bar complaint), all arising out Respondent's representation of parties in a contract



dispute. The Board took into consideration Holton's current charges and his prior discipline and recommended that he be suspended from the practice of law in the Commonwealth for 30 days. Neither the KBA nor Holton sought review by the Court. Accordingly, the Court adopted the Board's recommendation.

**D. Timothy A. Parker v. Kentucky Bar Association**  
**[2012-SC-000778-KB](#) February 21, 2013**

Opinion of the Court. Minton, C.J.; Abramson, Cunningham, Noble, Scott and Venters, JJ., sitting. All concur. Parker moved the Court to issue a public reprimand with conditions for his admitted violation of SCR 3.130-1.3 (failure to diligently provide the agreed-upon legal services after he was paid by a client); SCR 3.130-1.4(a)(4) (failure to comply with client's reasonable requests for information); SCR 3.130-1.15(a) (failure to deposit the advance fee payment paid by his client into an escrow account until earned); and SCR 3.130-1.16(d) (failure to refund the unearned portion of the advance fee payment upon termination of representation). The KBA did not object to the sanction, which was negotiated pursuant to SCR 3.480(2). The Court agreed that a public reprimand was an appropriate punishment for Parker's misconduct and declined further review.

**E. Brandon L. Lawrence v. Kentucky Bar Association**  
**[2012-SC-000779-KB](#) February 21, 2013**

Opinion of the Court. Minton, C.J.; Abramson, Cunningham, Noble, Scott and Venters, JJ., sitting. All concur. Lawrence moved the Court to enter an Order resolving pending disciplinary matters against him, including his admitted violation of SCR 3.130-1.4(a)(4) (reasonable requests for information); SCR 3.120-1.15(a) (safekeeping of property), and SCR 3.130-7.09(1) (contact with prospective clients). The motion was the result of a negotiated agreement between Lawrence and the KBA and the parties agreed that a 30-day suspension was an appropriate sanction. The Court agreed and suspended Lawrence accordingly.

**F. Kentucky Bar Association v. William R. Palmer, Jr.**  
**[2012-SC-000787-KB](#) February 21, 2013**

Opinion of the Court. Minton, C.J.; Abramson, Cunningham, Noble, Scott and Venters, JJ., sitting. All concur. The trial commissioner recommended that Palmer be suspended from the practice of law for five years for misconduct addressed in four disciplinary files. Neither the KBA nor Palmer filed a notice of appeal so the matter was forwarded to the Court for entry of a final order. The Court found the trial commissioner's report to be supported by the record and the law and adopted the recommendation for a five-year suspension and permanent monitoring by the Kentucky Lawyers' Assistance Program thereafter.

**G. Robert F. Wright v. Kentucky Bar Association**  
**[2012-SC-000813-KB](#) February 21, 2013**

Opinion of the Court. Minton, C.J.; Abramson, Cunningham, Noble, Scott and Venters, JJ., sitting. All concur. Wright petitioned the Court to impose the sanction of a 30-day suspension probated for three years for his violation of SCR 3.130-1.1 (failure to competently represent a client); SCR 3.130-3.5(c) (engaging in conduct intended to disrupt a tribunal); and SCR 3.130-8.3(b) (committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer). The KBA did not object to the proposed negotiated sanction and the Court granted Wright's motion.

**H. Kentucky Bar Association v. Jack F. Durie, Jr.**  
**[2012-SC-000824-KB](#) February 21, 2013**

Opinion of the Court. Minton, C.J.; Abramson, Cunningham, Noble, Scott and Venters, JJ., sitting. All concur. Durie was charged with violating SCR 3.130-8.3(b) and SCR 3.130-8.3(c) as a result of a conviction on a felony theft charge in Florida. The Board of Governors recommended that he be permanently disbarred. Neither the KBA nor Durie filed for review and the Court adopted the Board's recommendation.

**I. Clifford Alan Branham v. Kentucky Bar Association**  
**[2013-SC-000027-KB](#) February 21, 2013**

Opinion of the Court. Minton, C.J.; Abramson, Cunningham, Noble, Scott and Venters, JJ., sitting. All concur. Branham applied for restoration to membership. He was suspended from the practice of law on December 28, 2009, for failure to pay the late fee associated with the late payment of his 2008/2009 bar dues. Branham's application for restoration was rejected by the Board of Governors and referred to the Character and Fitness Committee for further proceedings under SCR 2.011 and 2.040. In April 2010, the Character and Fitness Committee sent Branham a questionnaire, which he failed to return. Branham failed to further communicate with the KBA or the Committee and in October 2012 his application for restoration was denied as incomplete and that he had failed to meet his burden of proof to establish his present qualifications to practice law pursuant to SCR 3.500(5). The Board of Governors also recommended that the application for restoration be disapproved and that the Court enter an Order denying the application. The Court adopted the recommendation and decision of the Board and Branham's application for restoration was denied.

**J. Travis Olen Myles, Jr. v. Kentucky Bar Association**  
**[2013-SC-000045-KB](#) February 21, 2013**

Opinion of the Court. Minton, C.J.; Abramson, Cunningham, Noble, Scott and Venters, JJ., sitting. All concur. Myles was hired by Sharon Walker to represent her in a disability matter. Walker was awarded partial benefits and Myles filed an appeal on her behalf. Myles acknowledged that, though it was his belief that he sent notice to her, Walker may not have received notice of the outcome. Furthermore, Myles acknowledged taking a job with the Social Security Administration, which precluded him from representing Walker any further.

Myles, however, failed to notify Walker of his new employment, and failed to return her medical records and other paperwork upon ending his representation. Myles was served with a Bar Complaint along with a letter advising him of the need to submit a written response. After Myles failed to respond, he was served with a reminder letter and a second copy of the complaint, and was again notified of his need to respond. Myles admitted that he failed to submit a written response to the complaint and the Inquiry Commission charged him with two counts: Count I, violating SCR 3.130-1.16(d) (failure to refund the unearned portion of the advance fee payment upon termination of representation); and Count II, violating SCR 3.130-8.1(b) (failure to respond to bar complaint). Myles acknowledged that he engaged in the misconduct in violation of the Rules of Professional Conduct and agreed to the imposition of discipline for his violations. In light of his admissions, Myles and the KBA agreed to a negotiated sanction pursuant to SCR 3.480(2) which would impose a public reprimand. The Court held that the negotiated sanction was consistent with discipline imposed in similar cases and ordered Myles be publicly reprimanded.

**K. Kentucky Bar Association v. Steven O. Thornton  
2012-SC-000024-KB February 21, 2013**

Opinion of the Court. Minton, C.J.; Abramson, Cunningham, Noble, Scott and Venters, JJ., sitting. All concur. The Inquiry Commission consolidated three separate disciplinary cases against Thornton, involving fourteen alleged violations of the Kentucky Rules of Professional Conduct. The Trial Commissioner found that Thornton had committed eleven of the fourteen alleged violations and recommended a 180-day suspension from the practice of law and that Thornton refund over \$7,000 in fees to two clients. The Board of Governors adopted the Trial Commissioner's recommendations and the Court adopted the Board of Governor's recommendations, suspending Thornton from the practice of law for 180 days and requiring him to refund fees to two of his clients.