

**PUBLISHED OPINIONS
KENTUCKY SUPREME COURT
FEBRUARY 2015**

I. CERTIFICATION OF LAW:

- A. Commonwealth of Kentucky v. Shannanndoah Carman, et al.
[2013-SC-000684-CL](#) February 19, 2015**

Opinion of the Court by Justice Abramson. Minton, C.J.; Abramson, Cunningham, Keller, Noble, and Venters, JJ., sitting. All concur. The Commonwealth, by and through the Jefferson County Attorney, moved the Supreme Court to certify a question of law referring to *Commonwealth v. Wilson*, a case forbidding ex parte communications with judges for the purposes of issuing and setting aside warrants. In *Carman*, the Court concluded that the request for certification was improvidently granted given that there was no final order in the underlying case. The Court instead issued a supervisory writ pursuant to its authority in Section 110 of the Kentucky Constitution which grants the Supreme Court the authority to exercise control over the court of justice. In so doing, the Court directed all judges in the Court of Justice to cease any ex parte communications regarding a criminal defendant's conditions of release after the initial fixing of bail.

II. CRIMINAL LAW:

- A. John David Cherry v. Commonwealth of Kentucky
[2013-SC-000201-MR](#) February 19, 2015**

Opinion of the Court by Justice Noble. Minton, C.J.; Abramson, Cunningham, Keller, Noble, and Venters, JJ., sitting. Minton, C.J.; Abramson, Cunningham, and Keller, JJ., concur. Venters, J., dissents by separate opinion. Cherry was convicted of murder, first-degree wanton endangerment, second-degree unlawful imprisonment, carrying a concealed deadly weapon, and several drug-related crimes. He was sentenced to life in prison and appealed to the Supreme Court as a matter of right. *See Ky. Const. § 110(2)(b)*. In affirming, the Court held that the trial court acted within its discretion in declining to sever and try separately the properly joined murder charge from the other charges; that evidence of Cherry previously firing his gun aimlessly out of a moving automobile's passenger window while intoxicated was improper rebuttal evidence under KRE 404(b), but its admission was harmless error; that allowing a detective to testify to his opinion of Cherry's truthfulness during a post-arrest interview was harmless error; that a crime scene photograph showing the murder victim's gunshot wound was admissible; and that the cumulative effect of the harmless errors did not render the trial fundamentally unfair. In his dissent, Justice Venders would have found joinder of the murder charge to the other charges improper under RCr 6.18.

**B. John Roscoe Garland v. Commonwealth of Kentucky
2013-SC-000553-MR February 19, 2015**

Opinion of the Court by Justice Venters. Minton, C.J.; Abramson, Cunningham, Keller, Noble, and Venters, JJ., sitting. All concur. Criminal Law; DNA Testing; Bad Faith Destruction of Evidence. On remand from the Supreme Court of Kentucky, the McCreary Circuit Court held an evidentiary hearing to determine if Appellant John Roscoe Garland was deprived of due process when, immediately after his trial, police officers destroyed certain items of potential evidentiary value, rendering them unavailable for post-trial DNA testing. The circuit court found that the officers had not acted in bad faith when they destroyed the items which neither side had used as evidence at trial. Accordingly, the circuit court denied Garland's motion for relief from the conviction.

On appeal, the Supreme Court of Kentucky unanimously affirmed, holding that Garland had waived his right to subject those items to DNA tested because he failed to assert the right on the original appeal of his conviction to the Supreme Court. The Court concluded that the trial court's finding with respect to the officer's lack of bad faith in the destruction of potential evidence was adequately supported by the record and, therefore, was not clearly erroneous.

C. **Gary Steven Bond v. Commonwealth of Kentucky**
2013-SC-000833-MR February 19, 2015

Opinion of the Court by Justice Keller. Minton, C.J.; Abramson, Cunningham, Keller, Noble, and Venters, JJ., sitting. All concur. Bond confessed to sodomizing and to strangling his unconscious girlfriend. Based in large part on that confession, a jury convicted Bond of murder and sodomy in the first degree and sentenced him to life in prison without parole for 25 years. On appeal Bond argued that his confession should have been suppressed because it was not voluntary or knowing; that his confession should have been played in its entirety to the jury; and that there was insufficient evidence to support his sodomy conviction. The Supreme Court held that, while officers questioning Bond used some deceptive tactics, those tactics did not act to negate the knowingness and voluntariness of Bond's waiver of his *Miranda* rights.

As to the Commonwealth's playing of Bond's confession, the Court noted that the Commonwealth deleted portions wherein Bond professed his affection for the victim. The Court held that the trial court did not abuse its discretion by excluding those portions because they were self-serving hearsay. Furthermore, exclusion of those portions did not violate the "rule of completeness" (KRE 106) because their inclusion would not have altered the meaning of what was played to the jury.

As to the sodomy charge, Bond argued that the only evidence the victim was helpless came from his confession and, absent corroborating evidence, his confession was insufficient to support a conviction. The Court noted that, pursuant to RCr 9.60, a confession made outside court must be supported by corroborating proof. In this case, the Court held that testimony from a witness

that the victim had passed out earlier in the evening and had been left asleep on the floor, in conjunction, with how the police found her body was sufficient to corroborate Bond's confession.

**D. William Smith v. Commonwealth of Kentucky
2014-SC-000073-MR February 19, 2015**

Opinion of the Court by Justice Cunningham. Minton, C.J.; Abramson, Cunningham, Keller, Noble and Venters, JJ., sitting. All concur, except Noble, J., concurs in result only. Appellant and his co-defendant fired a barrage of gunshots into a crowd of people gathered at Shawnee Park in Louisville. One victim was killed and two others were injured. Evidence was also presented that Appellant attempted to discard and conceal the handgun used during the shooting. Accordingly, a Jefferson Circuit Court jury convicted Smith of complicity to murder, two counts of criminal attempt to commit murder, two counts of first-degree wanton endangerment, and one count of tampering with physical evidence. Appellant received a total sentence of 24 years' imprisonment. The Kentucky Supreme Court held that the gang expert testimony presented by the Commonwealth constituted proper expert testimony under KRE 702. The Court further held that the expert testimony was relevant, probative, and not unduly prejudicial. In addition, the Court determined that Appellant was properly sentenced under KRS Chapter 532 and, thus, in accordance with procedures governing sentencing for non-aggravated capital offenses.

**E. George A. Luna v. Commonwealth of Kentucky
2013-SC-000173-MR February 19, 2015**

Opinion of the Court by Chief Justice Minton. Minton, C.J.; Abramson, Cunningham, Keller, Noble, and Venters, JJ., sitting. All concur. A circuit court jury convicted George Luna of first-degree murder and first-degree arson for killing Debra Hendrickson and burning the trailer where she lived. The jury also found as a statutory aggravator that Luna murdered Hendrickson in the commission of first-degree robbery. As a result, Luna was sentenced to imprisonment for life without the possibility of probation or parole. On appeal, Luna presented a host of arguments. After rejecting the Commonwealth's assertion that the "law-of-the-case" doctrine barred consideration of a number of Luna's issues, the Court addressed each of Luna's arguments individually, holding that: 1) the trial court properly denied Luna's *Daubert* challenge to the Commonwealth's arson investigator; 2) the victim's prior statements were admissible because they were not hearsay; 3) evidence of Luna's conduct at the police station was improperly admitted; 4) the Commonwealth's cross-examination of Luna was improper but not reversible error; 5) evidence of a prior civil judgment against Luna was properly admitted; 6) Luna was improperly asked to characterize the testimony of other witnesses but the error was harmless; 7) the trial court properly rejected Luna's alleged alternative perpetrator theory; 8) Luna did not present sufficient evidence to warrant an intoxication or extreme emotional disturbance instruction; 9) Luna was entitled to a directed verdict on the first-degree arson charge; 10) Luna's trial was not unfair because of cumulative error; 11) the Commonwealth did not exhibit prosecutorial

vindictiveness by seeking statutory aggravators in Luna's second trial; and 12) Luna was entitled to a directed verdict on the robbery aggravator. Based on these conclusions, the Court reversed Luna's first-degree arson conviction and sentence but affirmed Luna's first-degree murder conviction and his sentence of life imprisonment without possibility of probation or parole.

**F. Joseph D. Martin v. Commonwealth of Kentucky
2013-SC-000519-MR February 19, 2015**

Opinion of the Court by Chief Justice Minton. Minton, C.J.; Abramson, Cunningham, Keller, Noble, and Venters, JJ., sitting. Noble and Venters, JJ., concur. Abramson, J., concurs except as to Section II.B.2., in which she concurs in result only. Keller, J., dissents by separate opinion in which Cunningham, J., joins. Martin was convicted of fourteen counts of first-degree unlawful transaction with a minor, fourteen counts of incest, and one count of use of a minor in a sexual performance, among other, non-sexual charges.

Martin argued on appeal that the jury instructions used to convict him of the sexual crimes violated his right to a unanimous verdict. The Court agreed, finding that each of the challenged instructions violated one of the two archetypal unanimous-verdict violations by either (1) failing to draw a sufficient distinction between identical instructions, or (2) allowing multiple instances of criminal offenses to satisfy the instruction. The Court also concluded that unanimous-verdict violations constitute palpable error as a matter of law, even where there is overwhelming evidence of guilt, due to the constitutional roots and due-process implications of the unanimous-verdict right. Therefore, the Court reversed Martin's convictions for the sexual crimes.

The Court also distinguished between the application of the present-memory-refreshed and past-recollection-recorded evidentiary rules. The Court found the victim's use of notes to refresh her memory during testimony to be proper because the writing was used only to refresh her memory and was not read or admitted into evidence. Therefore, the present-memory-refreshed rule applied requiring a lesser evidentiary foundation necessary for admission of evidence under the similar past-recollection-recorded exception to the hearsay rule.

**G. Jonathan Brock Stansbury v. Commonwealth of Kentucky
2013-SC-000592-MR February 19, 2015**

Opinion of the Court by Justice Keller. Minton, C.J.; Abramson, Cunningham, Keller, Noble, and Venters, JJ., sitting. Minton, C.J.; Abramson, Noble, and Venters, JJ., concur. Cunningham, J., concurs in part and dissents in part by separate opinion. Stansbury waited until his girlfriend fell asleep. He then set the house on fire, taking his Xbox, video games, BB gun, clothes and other personal items with him as he fled. The girlfriend awoke, smelled smoke, and got out of the house alive. A jury convicted Stansbury of attempted murder, first-degree arson, and of being a PFO in the first degree. On appeal, Stansbury argued the trial court: admitted impermissible evidence of prior bad acts; prejudicially limited his cross-examination of the Commonwealth's expert witness; engaged in

prosecutorial misconduct by appealing to juror prejudice regarding mental health issues; and admitted improper evidence during the penalty phase. The Supreme Court affirmed on the first three issues but reversed on the fourth.

The victim had a number of pets, several of which perished in the fire. On cross-examination, Stansbury elicited testimony from the victim that he had occasionally cared for the pets. On re-direct examination, the victim testified that Stansbury had viciously abused her pets on several occasions. Stansbury did not object. The Court held that Stansbury, by asking the victim about how he cared for the pets opened the door to this evidence. Therefore, he could not complain if the Commonwealth walked through that door.

The Commonwealth introduced evidence that Stansbury was not originally from Bell County, that he had anger management issues, and that he suffered from a mental illness. Stansbury argued this amounted to prosecutorial misconduct but had not preserved the issue. The Court noted that Stansbury had opened the door to most of the evidence and the remaining evidence and/or comments by the Commonwealth, even if impermissible, did not rise to the level of prosecutorial misconduct or to the level of palpable error.

During the penalty phase, the Commonwealth introduced judgments from three previous crimes Stansbury had committed. Two of the judgments identified the victims of the crimes and the third contained charges that had been dismissed. The Court reiterated previous holdings that introducing such evidence is egregious and amounts to manifest injustice. Therefore, although the Court affirmed Stansbury's convictions, it reversed and remanded for a new penalty phase trial.

**H. Stephen Sykes v. Commonwealth of Kentucky
2014-SC-000036-MR February 19, 2015**

Opinion of the Court by Justice Cunningham. Minton, C.J.; Abramson, Cunningham, Keller, Noble, and Venters, JJ., sitting. All concur. A Jefferson Circuit Court jury convicted Appellant of criminal attempt to commit murder, two counts of first-degree robbery, possession of a hand gun by a convicted felon, wanton endangerment, and tampering with physical evidence. He received a total sentence of 30 years' imprisonment. The Kentucky Supreme Court affirmed the trial court's denial of Appellant's motion to suppress his confession. However, the Court held that the trial court abused its discretion under KRE 106 by not admitting additional portions of Appellant's recorded confession that demonstrated a lack of intent to kill. Because Appellant was convicted of attempted murder—a charge where proving intent to kill is paramount—the error here was not harmless. Lastly, the Court determined that the felony possession of hand gun jury instruction was proper, and did not violate Appellant's right to a unanimous verdict.

**I. Michael D. St. Clair v. Commonwealth of Kentucky
2012-SC-000130-MR February 19, 2015**

Opinion of the Court by Justice Noble. Minton, C.J.; Abramson, Cunningham, Keller, Noble, and Venters, JJ., sitting. All concur. St. Clair was convicted of capital murder and other crimes. He was sentenced to death, and his matter-of-right appeal was conducted concurrently with the Supreme Court's mandatory review of his death sentence. The Court held that reversal of his convictions and sentence was required as a result of non-harmless errors in the admission of evidence of a prior murder by St. Clair, which involved matters either irrelevant or of only limited probative value that was substantially outweighed by the danger of undue prejudice, confusion of the issues, and misleading the jury; and in the admission of irrelevant testimony from the widow of the victim of the prior murder. The Court also held that double jeopardy had not barred St. Clair's re-trial after a previous trial had resulted in a mistrial.

**J. Commonwealth of Kentucky v. Gary Gamble, Sr.
2013-SC-000141-DG February 19, 2015**

Opinion of the Court by Justice Cunningham. Minton, C.J.; Abramson, Cunningham, Keller, Noble, and Venters, JJ., sitting. All concur. The Appellee was convicted of trafficking in a controlled substance in the second degree, as proscribed in KRS 218A.1413(1)(c), and being a persistent felony offender in the first degree. The Appellee argued that his sentence could not be enhanced by his persistent felony offender status because House Bill 463 capped the maximum sentence of a conviction based on KRS 218A.1413(1)(c) to three years imprisonment. The Court held that House Bill 463's three-year sentencing cap, delineated in KRS 218A.1413(2)(b)(1), does not prevent a second-degree trafficking conviction from being enhanced beyond three years imprisonment by virtue of the offender's status as a persistent felony offender.

**K. Cole Douglas Ross v. Commonwealth of Kentucky
2012-SC-000775-MR February 19, 2015**

Opinion of the Court by Chief Justice Minton. Minton, C.J.; Abramson, Cunningham, Keller, Noble, and Venters, JJ., sitting. All concur. Ross was convicted of murder and first-degree arson. At his trial, Ross raised a *Batson* challenge alleging gender discrimination in jury selection. Ross easily established a prime facie case of discrimination, but the trial court found the Commonwealth's proffered justifications for striking the challenged jurors to be satisfactory and denied Ross's motion. On appeal, the Court concluded the trial court erred in denying Ross's *Batson* challenge because the Commonwealth's justification for striking two of the putative female jurors—that it chose the jurors it liked and struck the rest—was not sufficiently gender neutral to satisfy *Batson*'s second prong. The Court reasoned that for a wholly subjective rationale, such as the one provided by the Commonwealth, to satisfy *Batson* its proponent must articulate a “clear and reasonably specific” basis for the subjective strike so the opponent may show pretext and the court can assess the credibility of the proffered justification. Because the Commonwealth did not provide an adequate

gender-neutral justification for striking two female jurors from the venire, the Court reversed Ross's convictions.

III. DECLARATORY JUDGMENT:

A. Commonwealth of Kentucky, Finance and Administration Cabinet, et al. v. Honorable Thomas D. Wingate, Judge, Franklin Circuit Court, et al. [2014-SC-000355-MR](#) February 19, 2015

Opinion of the Court by Justice Venters. Minton, C.J.; Abramson, Cunningham, Keller, Noble, and Venters, JJ., sitting. All concur. In Medicaid contract dispute between the Finance Cabinet and Kentucky Spirit, after entry of a partial summary judgment, the trial court stayed all further discovery while during the pendency of the appeal of the partial summary judgment, even though other issues remained before the trial court. The Court of Appeals subsequently granted a writ allowing Kentucky Spirit to proceed with discovery in the trial court, based upon its conclusion that the trial court's stay resulted in an indefinite stay without a pressing need. Held: (1) the appeal of the partial summary judgment to the Court of Appeals did not divest the circuit court of jurisdiction over the case under *City of Devondale v. Stallings*, 795 S.W.2d 954, 957 (Ky. 1990) because unresolved issues remained pending in the circuit court; (2) while the trial court had authority to permit ongoing discovery relating to the unresolved issues, its decision to abate all discovery during the appeal was not an abuse of discretion; (3) the Court of Appeals erred in relying upon the *Estate of Cline v. Weddle*, 250 S.W.3d 330 (Ky. 2008) and *Rehm v. Clayton*, 132 S.W.3d 864 (Ky. 2004), where the "pressing need" for ongoing discovery arose because of the realistic concern that the discovery material was subject to loss or destruction during appeal. Here, trial court's discretion was supported by the fact that the discovery material consisted of secure government documents not realistically subject to loss or destruction.

IV. EMPLOYMENT LAW:

A. Pennyrile Allied Community Services, Inc. v. Katricia Rogers [2013-SC-000012-DG](#) February 19, 2015

Opinion of the Court by Justice Venters. Minton, C.J.; Abramson, Cunningham, Keller, Noble and Venters, JJ., sitting. Minton, C.J.; Abramson, Cunningham, Keller, and Venters, JJ., concur. Noble, J., dissents by separate opinion. Statutory construction; employment law. Questions presented are: (1) whether reports and disclosures protected under the Kentucky whistleblower must "touch present a matter of public concern," and (2) whether the plaintiff's conduct constituted the kind of activity protected by KRS 61.102. Katricia Rogers brought suit against her former employer, Pennyrile Allied Community Services, Inc. (PACS), alleging violation of KRS 61.102, Kentucky's whistleblower statute. Rogers, whose job often required her to travel about her district, claimed that she was fired in retaliation for reporting that her supervisor had committed trespass by visiting her residence to determine if she was actually working. The trial court dismissed the suit because that report did not "touch upon a matter of public concern." The Court of Appeals reversed, reasoning that the statute contains no explicit language

requiring that disclosures protected under the statute must touch on a matter of public concern. On discretionary review, The Supreme Court reversed and on other grounds, reinstated the trial court's dismissal. The Court held that, while KRS 61.102 is unambiguous in its omission of a "public concern" requirement, Rogers's conduct (seeking legal advice from a deputy sheriff about her supervisor's trespass on her land and complaining to the supervisor at a public meeting about his trespass) did not amount to a disclosure that was afforded protection by the statute.

V. EVIDENCE:

A. Richard C. Oliphant, M.D., et al. v. Billy Jo Reis, Etc., et al.
2013-SC-000059-DG

February 19, 2015

Opinion of the Court by Justice Keller. Minton, C.J.; Abramson, Cunningham, Keller, Noble, and Venters, JJ., sitting. Minton, C.J.; Abramson, Cunningham and Noble, JJ., concur. Venters, J., concurs in result only by separate opinion. Billie Jo Reis, who was 36 weeks pregnant, began bleeding. She went to the hospital where she underwent a c-section. Unfortunately, prior to birth, Reis's daughter lost a significant amount of blood and suffered significant birth defects. Reis filed a medical malpractice claim against the hospital, the physician who delivered the baby (Oliphant), and the baby's neonatologist. The primary issue was whether the majority of Reis's blood loss occurred before or after she arrived at the hospital. A defense expert, relying on sheep studies, devised a mathematical formula and testified that the blood loss occurred while Reis was still at home. The jury found in favor of the defendants. On appeal, Reis argued that the defense expert's testimony should have been excluded as not medically or scientifically reliable. The Court of Appeals agreed with Reis and reversed, holding that the defense expert's testimony did not meet the *Daubert* requirements for admission.

The Supreme Court reversed the Court of Appeals. In doing so, the Court noted, as did the Court of Appeals, that the expert's theory had never been tested on a human fetus, although it had been tested on sheep. However, the Court also noted that testing on a human fetus would result in its death; therefore, such testing could never take place. Because of such limitations, an expert's extrapolation from animal studies to human applications does not automatically render an opinion based on the extrapolation unreliable. A trial court should look to other evidence to determine if the contested evidence is scientifically reliable. Here, other physicians gave similar testimony, although not using a mathematical formula, and the defendants filed peer-reviewed articles supporting the expert's premise. That was sufficient to support the trial court's admission of the evidence.

VI. ATTORNEY DISCIPLINE:

A. Kentucky Bar Association v. Suzanne Prieur Land
2014-SC-000300-KB

February 19, 2015

Opinion of the Court. Minton, C.J.; Abramson, Cunningham, Keller, Noble, and Venters, JJ., sitting. All concur. Based on her actions in the handling of three

estates, Land pled guilty in federal court to corruptly endeavoring to obstruct and impede the due administration of the Internal Revenue Code. She was sentenced to five years probation. The Ohio Supreme Court initially imposed an interim felony suspension. Thereafter, the Ohio disciplinary counsel filed a complaint alleging Land had violated a number of the Ohio Rules of Professional Conduct. Following a hearing, the Board of Commissioners found Land should be indefinitely suspended from the practice of law and should not be permitted to apply for reinstatement of her license until completion of her federal probation. The Ohio Supreme Court adopted the Board of Commissioner's findings and imposed the recommended discipline.

Under SCR 3.166, the KBA notified the Kentucky Supreme Court of Land's felony conviction and she was automatically suspended. Land notified the KBA of the order of the Ohio Supreme Court indefinitely suspending her license. The KBA then moved the Kentucky Supreme Court under SCR 3.435 to impose reciprocal discipline. The Court issued a show cause order and Land did not respond. Therefore, the Court granted the KBA's petition and imposed reciprocal discipline, suspending Land from the practice of law until she demonstrates that her suspension from the Ohio Supreme Court has been lifted.

**B. Kentucky Bar Association v. Steven F. Claypoole
2013-SC-000469-KB February 19, 2015**

Order of the Court. Minton, C.J.; Abramson, Cunningham, Keller, Noble, and Venters, JJ., sitting. All concur. In September 2013, the Kentucky Supreme Court suspended Claypoole for six months, with the suspension probated for two years subject to the conditions that Claypoole complete the Ethics and Professionalism Enhancement Program (“EPEP”), complete an additional three hours of remedial ethics education at his own expense, and pay the costs of the disciplinary proceedings. In September 2014, the KBA filed a motion to show cause for Claypoole’s failure to comply with the conditions of probation. According to the KBA, Claypoole failed to attend and complete EPEP within the deadline scheduled by the Court and failed to pay \$2,903.81 in costs. The Court granted the KBA’s motion and a show cause order was issued giving Claypoole thirty days to respond. Claypoole failed to respond. Accordingly, the Court determined that Claypoole had violated the terms of his probation and suspended him from the practice of law for six months.

C. Kentucky Bar Association v. Daniel Warren James
2014-SC-000499-KB February 19, 2015

Order of the Court. Minton, C.J.; Abramson, Cunningham, Keller, Noble, and Venters, JJ., sitting. All concur. In December 2012, James pled guilty to the felony charge of flagrant non-support and was sentenced to five years in prison, probated for ten years. He was ordered to pay restitution in the amount of \$233,000, at the rate of \$800 per month. After learning of the felony guilty plea, the Inquiry Commission filed a formal complaint against James under SCR 3.160(2). The complaint alleged that James violated SCR 3.130-8.4(b) (lawyer shall not commit a criminal act that reflects adversely on the lawyer's honesty,

trustworthiness, or fitness as a lawyer in other respects.” James was properly served and notified bar counsel that he planned to file a response. However, he did not do so.

In March 2014, the Inquiry Commission filed a formal charge against James for violating both SCR 3.130-8.4(b) and SCR 3.130-8.1(b). Again, James was properly served but failed to respond. The case was submitted to the Board of Governors as a default case under SCR 3.210(1). The Board filed its Findings of Facts, Conclusions of Law and Recommendations with the Court, noting that in addition to the facts of this disciplinary case, James had received private admonitions in 2002 and 2007 and was suspended from the practice of law by this Court for five years in 2013. Based on the substantial amount of child support arrearages James amassed and his prior disciplinary actions – the majority of which involved misuse of client funds and being nonresponsive to clients and the KBA – the Board unanimously recommended that James be permanently disbarred. The Court agreed and ordered that James be permanently disbarred.

**D. Kentucky Bar Association v. Robert H. Hoskins
2014-SC-000614-KB February 19, 2015**

Order of the Court. Minton, C.J.; Abramson, Cunningham, Keller, Noble, and Venters, JJ., sitting. All concur. Hoskins was charged with nine counts in two separate disciplinary actions. In the first case, Hoskins was charged with violating SCR 3.130-1.3(2); SCR 3.130-1.4(a)(4); SCR 3.130-1.16(d); and SCR 3.130-8.1(b). In the second case, Hoskins was charged with violating SCR 3.130-1.3 ; SCR 3.130-1.4(a)(3); SCR 3.130-1.15(a); SCR 3.130-1.15(b); and SCR 3.130-1.6(d).

The Board of Governors did not unanimously find Hoskins guilty of all charges. But the Board did unanimously recommend that Hoskins be suspended from the practice of law for 60 days, pay restitution to his clients in the amount of \$1,275, attend the Ethics and Professionalism Enhancement Program and pay all associated costs.

Neither party filed a notice of review with the Court. Noting the significance of Hoskins' violations and the fact that, aside from filing an initial response to one of the cases, Hoskins had failed to respond to any correspondence, the Court adopted the Board's recommended sanction.

**E. Kentucky Bar Association v. Nathaniel T. Pendleton
2014-SC-000719-KB February 19, 2015**

Order of the Court. Minton, C.J.; Abramson, Cunningham, Keller, Noble, and Venters, JJ., sitting. All concur. Pendleton was suspended from the practice of law for nonpayment of bar dues in January 2013. Nevertheless, he continued to practice law, represent clients, and make court appearances and file documents on their behalf. He was charged in three separate files with violating a number of disciplinary rules, including SCR 3.130-1.3 (failing to act with reasonable diligence and promptness in representing a client); SCR 3.130-1.4 (failing to keep

a client reasonably informed about the status of the case and to promptly comply with reasonable requests for information); SCR 3.130-1.16(d) (failing to promptly return a client's file); SCR 3.130-3.3 (making a false statement to a tribunal); SCR 3.130-3.4(b) (falsifying a court filing); SCR 3.130-3.4(c) (knowingly disobeying an obligation under the rules of a tribunal); SCR 3.130-5.5(a) (practicing law on a suspended license); and SCR 3.130-8.1(b) (knowingly failing to respond to a lawful demand for information); and SCR 3.130-8.4(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation).

Following the initiation of the disciplinary complaint, Pendleton filed to respond in any manner. The Board of Governors unanimously found Pendleton guilty of all counts and recommended that he be permanently disbarred. Neither the KBA's Office of Bar Counsel nor Pendleton sought review by the Court under SCR 3.370(7) and the Court declined to undertake review under SCR 3.370(8). Therefore, the Court adopted the Board's recommendation under SCR 3.370(9) and permanently disbarred Pendleton from the practice of law in Kentucky.