PUBLISHED OPINIONS
KENTUCKY SUPREME COURT
JANUARY 2009

I. ADMINISTRATIVE LAW

A. David Wilkins v. Kentucky Retirement Systems Board of Trustees

2007-SC-000950-DG **1/22/2009**

Opinion by Justice Schroder. All sitting; all concur. Pursuant to KRS 13B.140, Wilkins had 30 days to appeal the Franklin Circuit Court's denial of disability retirement benefits. The 30th day fell on a Sunday and the following day was Columbus Day—however, Kentucky courts were open that day. Wilkins filed his appeal the next day (Tuesday) and it was subsequently denied as untimely. The Court of Appeals affirmed the dismissal, holding that because the Kentucky Court of Justice did not designate Columbus Day as a legal holiday, the appeal was filed a day late. The Supreme Court reversed, holding that under KRS 2.110 Columbus Day is a legal holiday, and that status is not affected by the Court of Justice's decision not to close the courts. The Court further held that since KRS 446.030 permits an extra day for legal holidays when computing deadlines, Wilkins' appeal was filed timely.

II. ANNEXATION

A. Louisville/Jefferson County Metro Government v. City of Prospect, Ky.

2006-SC-000903-DG **1/22/2009**

Opinion by Justice Schroder. All sitting; all concur. Louisville initiated annexation proceedings over the property at issue in 1984. However, the annexation process was never completed. In 2002, Prospect-- a city of the fourth class-- purported to annex the property. Louisville Metro brought suit to have the Prospect annexation deemed void *ab initio*. The trial court granted summary judgment to Prospect, ruling Louisville Metro had failed to complete annexation within a reasonable amount of time and thus lost priority over Prospect's annexation. The Court of Appeals affirmed. The Supreme Court reversed, holding that Prospect's annexation was void since the Louisville/Jefferson County Cooperative Compact, created in 1986 and authorized by the General Assembly provided a 22-year exclusive window, during which Louisville had exclusive priority on all annexations.

III. CIVIL PROCEDURE

A. Board of Regents of Western Kentucky University v. Randall Bennett Clark

2008-SC-000435-I 1/22/2009

All concur; Chief Justice Minton not sitting. In a condemnation action, the Warren Circuit Court entered an interlocutory order awarding Clark's property to WKU and granting Clark $204,500 in compensation. The order stated that if exceptions to the report were not filed within 30 days, the judgment would become final. (Note: KRS 416.620(1) prohibits the owner of the condemned property from including in his or her statement of exceptions a challenge to the trial court's finding that the condemnor had a right to condemn the property.) After 20 days, Clark filed a notice of appeal under CR 73.02. WKU sought dismissal of the appeal, claiming that since Clark was seeking interlocutory relief, he was required to appeal, if at all, under CR 65.07, not CR 73.02 which is reserved for final judgments. The Court of Appeals denied WKU's request for dismissal, and WKU filed an interlocutory appeal to the Supreme Court. The Supreme Court denied interlocutory relief to WKU, holding that under Johnson v. Smith, Clark's notice of appeal "can relate forward to the time when the trial court's interlocutory judgment became final and can be properly heard and decided by the Court of Appeals."

IV. CRIMINAL LAW

A. Raymond Anderson, Jr. v. Com.

2006-SC-000563 1/22/2009
2006-SC-000894-TG 1/22/2009

Opinion by Chief Justice Minton; all sitting. During his trial on charges of firearm possession by a felon and being a persistent felony offender, Anderson sought to stipulate to his status as a felon, arguing that disclosing the specific nature of his prior convictions would be overly prejudicial. The trial court refused Anderson's request and the prosecution was allowed to introduce the previous judgment against Anderson for receiving stolen property and escape. Anderson was found guilty and sentenced to five years for the firearm violation, enhanced to the maximum 20 years for being a PFO I. In affirming the conviction, the Court adopted the holding of the U.S. Supreme Court in Old Chief: a defendant charged with being a felon in possession of a firearm may stipulate or admit to having a prior felony conviction without

the prosecutor's consent. The Court, emphasized that the holding was limited to cases involving firearm possession by a felon only and did not extend to other cases where the defendant's status as a convicted felon is relevant—such as PFO cases. The Court further held that the trial court's refusal to allow Anderson's stipulation in this instance was harmless error since there was no reasonable possibility that it contributed to Anderson's conviction. The Court noted that Anderson's prior convictions did not involve firearms or violence and that if the details had been redacted, the jury might well have speculated that the prior convictions were more heinous than they actually were.

Justice Cunningham (joined by Justice Scott) concurred in result only, arguing that the ruling in Old Chief was based on the federal felon in possession of a firearm statute which is not the same as Kentucky's version; and that the case could have been resolved by simply applying KRE 403 (relevant evidence may be excluded if its probative value is substantially outweighed by the danger of undue prejudice). Justice Schroder also concurred in result only, disagreeing with the majority's conclusion that Old Chief was not grounded in constitutional principles and thus not binding on the Kentucky Supreme Court.

B. Mark Cuzick v. Com.
2007-SC-000466-MR 1/22/2009

Opinion by Justice Scott (joined by Justice Venters); all sitting. The Supreme Court affirmed Cuzick's convictions for first degree fleeing and evading, resisting arrest, DUI and being a persistent felony offender. The Court held that narrative style testimony, wherein the prosecutor questioned police officers while dashboard camera video played for jury, comported with the Rules of Evidence since it was based on officers' personal knowledge and was helpful to the j ury.

Appellant also argued that during the sentencing phase, evidence was admitted regarding his prior offenses exceeding the scope permitted under Kentucky's Truth in Sentencing Act, KRS 532.055. The trial court allowed the prosecutor to read the citation from Appellant's previous burglary conviction—including his use of a baseball bat to rob Autosound in Lexington. The Court held that the description was not excessive and protracted and was within the "general description" of the offense permitted under Robinson.

Justice Noble (joined by Chief Justice Minton and Justice Abramson) dissented in part, arguing that nothing more than the

previous offense and sentence should have been disclosed to the jury. Further, the dissenters wrote that the reference to the baseball bat prejudicially "implied violence" and that mentioning the name of the burglarized business, could have inflamed the jury enough to enhance the five-year sentence on the underlying offense to the maximum 20 years allowed under the PFO statute. Justice Cunningham (joined by Justice Schroder) concurred in the result only; stating while they shared the concerns raised by the dissenters, the reading of the citation in this instance did not prejudice the Appellant and any error was harmless.

C. Jeffrey Leonard v. Com.
2007-SC-000531-MR 1/22/2009

Opinion by Justice Noble; all citing; all concur. In 1983, Leonard was convicted of murder and robbery and was sentenced to death. The conviction was affirmed on direct appeal and his subsequent RCr 11.42 motion was denied following a 3-day hearing. In 2006, the Kentucky Supreme Court held in Martin that errors raised for the first time on appeal and found not to rise to the level of palpable error under RCr 10.26 could nonetheless be the source of a subsequent ineffective assistance of counsel claim. Leonard then filed a CR 60.02 motion to reopen his RCr 11.42 proceeding, arguing that Martin had removed the procedural bar that had previously prevented his claims from being decided on their merits. The trial court denied the motion and Leonard appealed to the Supreme Court. However, before briefs were submitted, Gov. Fletcher commuted Leonard's sentence to life imprisonment. As a preliminary matter, the Supreme Court addressed their jurisdiction to hear the case. The Supreme Court has exclusive appellate jurisdiction over collateral attacks of death penalty convictions, whereas all other appeal of collateral attacks must start in the Court of Appeals. Even though Leonard was no longer facing the death penalty, the Supreme Court held that they nevertheless retained jurisdiction since jurisdiction was proper at the time the appeal was filed. The Supreme Court affirmed the trial court's denial of the 60.02 motion to reopen the 11.42 proceeding, holding that it was a procedural rule that cannot be applied retroactively-- as set forth in the U.S. Supreme Court's decision in Teague.

D. Ricky King, a/k/a Ricky Neal v. Com.
2007-SC-00713-MR 1/22/2009

Opinion by Justice Venters. All sitting; all concur. Appellant challenged his conviction on charges of complicity to murder and first-degree robbery. In affirming the conviction, the Court

recognized a narrow exception to the rule in the Shane case. Shane states it is reversible error if a trial court improperly fails to strike a juror for cause and the defendant had to use all his or her peremptory challenges to remove the juror from the panel. In this case, it was known which jurors Appellant would have struck if he had not been forced to used his peremptory challenge to remove the juror who should haven been removed for cause. The Supreme Court held that since neither of those jurors actually served on the final jury, Appellant received the jury he wanted-- thus curing the trial court's error of failing to remove for cause a juror who was married to a state trooper and a good friend of the lead detective.

E. William Alexander Major v. Com.
2007-SC-000734-MR 1/22/2009

Opinion by Justice Scott. All sitting; all concur. Major was convicted of murder and tampering with physical evidence. On appeal the Supreme Court reversed and ordered a new trial. Major was convicted again, and this appeal followed. The Supreme Court affirmed the conviction which was in part based on an incriminating telephone call taped by state police with the assistance of Major's father. The call was placed to Massachusetts where Major lived at the time and originated from Nova Scotia where Kentucky police taped the call with the father's knowledge, consent and assistance. Major argued that the trial court violated his Fourth Amendment rights by allowing the taped call into evidence since Massachusetts has a "two-party consent" law regarding eavesdropping. The Supreme Court rejected this argument on two grounds: First, that the Court's ruling that the taped conversation was lawfully admitted in the first trial was "the law of the case" and was binding and precluded reconsideration on the latest appeal. Second, the Supreme Court held that the trial court did not err in choosing to apply Kentucky law (which only requires one-party consent) since Kentucky has the most significant relationship to the conversation. The Court noted that Nova Scotia, were the call was actually recorded, like Kentucky only requires one-party's consent.

The Court also held the trial court did not commit error by denying Major's request to completely control his defense and co-counsel during trial. The trial court conducted a hearing and determined that Major, due to a prior stroke, lacked capacity to conduct all trial functions by himself because he could not quickly analyze and respond to information. However, the trial court determined Major could conduct direct examinations on his own since he could prepare the questions in advance.

When it ordered a retrial in the first appeal, the Supreme Court held that the trial court had improperly admitted firearms into evidence where there was no connection established between the weapons and the crimes with which Major was charged. On this second appeal, the Supreme Court held that testimony related to firearms owned by Major was properly admitted by the trial court as being relevant to specific threats made by Major before the victim's disappearance.

F. Eddie Cardine and Michael Curry v. Com.
2006-SC-000677-MR 1/22/2009
2006-SC-000680-MR 1/22/2009

Opinion by Justice Noble; Justice Abramson not sitting. On the morning of Appellants' murder trial and after a jury had been sworn, the prosecution informed the trial court they had learned of a newly-discovered witness whose testimony was essential to the Commonwealth's case. The defense objected and requested that the witness be excluded from testifying, or in the alternative, that the court grant a continuance. The trial court denied the motion to exclude the witness's testimony and instead *sua sponte* declared a mistrial "pursuant to manifest necessity." The Appellants were subsequently retried, convicted, and sentenced to 30 years imprisonment. The Supreme Court reversed the convictions, holding retrial was barred by double jeopardy.

As a preliminary issue, the Court noted the discrepancy between KRS 505.030(4), which states double jeopardy attaches once the first witness is sworn, and the U.S. Supreme Court decision in Crist which states jeopardy attaches upon the swearing of the jury. The Kentucky Supreme Court overruled KRS 505.030(4) and cases interpreting the statute to the extent they guarantee anything less than Crist.

Having determined double jeopardy had attached during Appellants' first trial, the Court then turned its attention to determining whether there was "manifest necessity" for the mistrial. The Supreme Court held there was no such manifest necessity, since the trial court could have either excluded the witness's testimony or continued the trial rather than granting a mistrial. The Court rejected the notion that the witness's testimony was essential to the prosecution's case, noting the prosecution had enough evidence to go to trial when it proceeded with jury selection prior to learning of the existence of the newly-found witness. Lastly, the Court rejected Appellee's argument that Appellants waived or failed to preserve the double jeopardy issue for appeal by failing to object

to the mistrial. Justice Cunningham (joined by Justice Scott) dissented, writing that the minority did not share the majority's belief that the trial court's finding of a manifest necessity warranting mistrial was an abuse of its discretion. The dissenters noted that the prohibition against double jeopardy is intended to protect against the "arbitrary power of the state" and not to be "a gratuity to criminal defendants when the judiciary, in good faith, blunders."

V. EMPLOYMENT LAW

A. Methodist Hospital of Kentucky, Inc. v. Wesley Gilliam

2007-SC-000817-DG 1/22/2009

Opinion by Justice Schroder. All sitting; all concur. Gilliam sued Methodist Hospital in Pike Circuit Court alleging it wrongfully fired him for participating in union organizing activities. The circuit court granted Methodist Hospital's motion to dismiss which argued that the conduct alleged by Gilliam was under the exclusive jurisdiction of the National Labor Relations Board. The Court of Appeals reversed holding the state action was not preempted by federal law since the claims did not fall within the "conduct that is actually or arguably prohibited or protected" by the federal act and noted that Gilliam's claims "fell squarely within the parameters of [the] Pari-Mutuel and Simpson County" decisions. The Supreme Court reversed the Court of Appeals and reinstated the circuit court's dismissal, holding that "wrongful discharge based on participation in union-organizing activities is clearly impermissible discrimination under 29 USC §158" and subject to federal preemption. Further, the Court noted that the Pari-Mutuel and Simpson County decisions relied upon by the Court of Appeals both concerned labor disputes in the horse racing field—an industry over which the NLRB has declined to exercise jurisdiction.

VI. INSURANCE

A. Debra Gilbert v. Nationwide Mutual Insurance Co.

2007-SC-000078-DG 1/22/2009

Opinion by Justice Abramson. All sitting; all concur. In 2000, a tractor trailer tipped over and fell on the automobile driven by Gilbert's daughter. Gilbert, the Appellant, gave prompt notice to her insurance carrier, Nationwide-- the Appellee. Although the tortfeasor's insurer, Prime, initially accepted liability for Gilbert's property claim and her daughter's bodily injury claim, the daughter eventually had to sue Prime. Gilbert did not join her property claim to the suit, but assumed her loss would be paid when her

daughter's claim was resolved. The suit settled in late 2003 and Gilbert demanded reimbursement for the loss of her automobile. After Prime asserted a statute of limitations and denied payment, Gilbert was permitted to intervene in her daughter's lawsuit. She also filed a claim with Nationwide, who too refused payment. Gilbert then added Nationwide as a defendant to the suit. The circuit court granted summary judgment in favor of Nationwide on the grounds that Gilbert had violated the provision of her policy requiring that she "do nothing to prejudice" Nationwide's subrogation rights by allowing the statute of limitations to lapse on her property damage claim. On appeal, the Court of Appeal affirmed summary judgment. The Supreme Court reversed and remanded, holding that provision of the policy did not require Gilbert to initiate a lawsuit on Nationwide's behalf. Further the Court held that Appellant's timely notice to Nationwide of her loss and potential claim satisfied her duty. Once Nationwide had notice, the Court held, it was afforded adequate opportunity to take steps to preserve its subrogation rights.

VII. TORTS – PREMISES LIABILTY- DUTY TO WARN

A. Charles E. Brewster v. Colgate-Palmolive Co. & Jewish Hospital Healthcare Services

2006-SC-00584-DG **1/22/2009**

Jewish Hospital Healthcare Services v. Charles Brewster

2007-SC-000366-DG **1/22/2009**

Opinion by Chief Justice Minton; Justice Abramson not sitting. Brewster worked as an independent contractor during the 1970's doing construction work at Jewish Hospital in Louisville and the Colgate-Palmolive plant in Jeffersonville, Indiana. In 2001, Brewster was diagnosed with asbestosis and filed suit against Jewish Hospital and Colgate-Palmolive claiming they had breached their duty to warn independent contractors of the presence and dangers of asbestos. The trial court granted summary judgment in favor of the defendants, which was upheld by the Court of Appeals.

The Supreme Court affirmed, holding that because Brewster failed to offer affirmative evidence establishing a genuine issue of material fact concerning the premises owners' actual knowledge of the presence and dangers of asbestos, summary judgment was appropriate. The Court reaffirmed Owens v. Clary, stating that a duty to warn exists only where the premises owner has actual knowledge of the danger and the independent contractor has neither actual or constructive knowledge of the danger. The Court

declined to adopt either the "superior knowledge" approach (where duty to warn is imposed only where premises owner had superior knowledge of the danger at time of exposure) or a business invitee burden-shifting approach (as used in slip-and-fall cases). In Justice Venters' dissent (joined by Justice Scott) he agrees with the rule reaffirmed by the majority, but felt that the premise owners were not entitled to summary judgment because they did not "negate the realistic possibility that [Brewster] could produce at trial, evidence sufficient to meet his burden of proof."

VIII. TRUSTS

A. JP Morgan Chase Bank, N.A. v. John M. Longmeyer (Executor & Trustee of Estate of Ollie W. Skonberg)
2005-SC-000313-DG 1/22/2009

Opinion by Chief Justice Minton; Justice Abramson, Justice Scott and Justice Venters not sitting; Special Justice Whittinghill and Special Justice Johnson sitting. In 1987, Ms. Skonberg created a revocable trust, naming several charities as the primary beneficiaries and designating Bank One as trustee. In 1997, Ms. Skonberg, 93 , with the assistance of her caregiver, retained Appellee to make drastic revisions to the trust under circumstances that would later call into question Ms. Skonberg's testamentary capacity. These changes included removal of the charities as beneficiaries and a 25-fold increase in the bequest to the caregiver. Appellee was named as the new trustee and he entered into an "investment agency agreement," delegating management of the trust's assets to former trustee Bank One.

Shortly after Ms. Skonberg's death, Appellee terminated the agreement with Bank One, who then notified the former beneficiaries of the changes to the trust and surrounding circumstances. The charities then filed a will contest claiming undue influence. Appellee settled the suit for $1.875 million on the eve of trial. Appellee then filed suit against Bank One to recover the amount of the settlement. Appellant claimed Bank One breached its fiduciary duty when it disclosed confidential information about the trust to the former beneficiaries. The circuit court granted summary judgment in favor of Bank One, concluding it had a fiduciary duty to inform the adversely affected beneficiaries of its suspicions about the revisions to the trust. The Court of Appeals reversed, holding that under KRS 386.810, Bank One had but two options when the trust was revoked: 1) defend the trust in its own name; or 2) deem the revocation valid and surrender the

trust assets, therein forfeiting its right to challenge revocation or inform the former beneficiaries.

The Supreme Court reversed the Court of Appeals and reinstated the award of summary judgment to Bank One, holding that the trustee's duty under KRS 386.715 is to "keep the beneficiaries of the trust reasonably informed of the trust and its administration." The Supreme Court, while recognizing there may have been a "sour grapes" motivation behind Bank One's decision to notify the former beneficiaries after the investment agency agreement was terminated, noted that the legislature could have limited KRS 386.715 to irrevocable trusts but opted not to do so. In his dissent, Justice Schroder wrote that once Bank One closed out the trust account, the revocation was honored and the trust ceased-- along with any further duty to notify the former beneficiaries.

IX. WARNING ORDER ATTORNEY -- FEE

A. Stanley K. Spees v. Kentucky Legal Aid and Esmeralda Marie Vasquez-Orosco

2006-SC-000506-DG 1/22/2009

Appellant was appointed warning order attorney in a divorce action filed by Appellee. Appellant executed his duties as warning order attorney and moved the court to allow a fee to be paid by Appellee or Kentucky Legal Aid-- her attorney's employer. The Family Court denied the request on the grounds that Appellee had been previously granted *in forma pauperis* status. The Court of Appeals affirmed denial of the claim for a fee. The Supreme Court affirmed the Court of Appeals' dismissal of Appellant's claim against Kentucky Legal Aid on the grounds that an appeal may not be taken against someone who was not a party to the proceedings in which the judgment was rendered. Further, the Supreme Court held that Appellant had not shown any theory that Kentucky Legal Aid could be held liable for the warning order attorney fee even if they were properly made party to the action. However, the Supreme Court reversed the trial court's refusal to allow a fee for the Appellant to be paid by the Appellee. The Supreme Court held that granting a fee to Appellant would in no way restrict Appellee's right to access the court or legal process. The Court remanded to the Family Court to determine the amount of the fee to be awarded to Appellee, noting the Family Court also has authority to set a reasonable repayment schedule and to allocate the burden of the fees to other parties via allocation of court costs.

X. WRITS, ARBITRATION AGREEMENTS

A. Ally Cat, LLC (d/b/a Kidzlife Pediatrics, et al v. Hon A.C. McKay Chauvin (Judge. Jefferson Circuit Court, Division 8), et al

2008-SC-000377-MR **1/22/2009**

Opinion by Justice Venters. All sitting; all concur. Appellants through principal Dr. Stephanie Russell purchased a condominium unit from NC Legacy for use as a medical clinic. Shortly after opening her practice in the unit, the roof began to leak, causing a mold contamination problem. After being unable to resolve the situation with the seller and the condo owners association, Appellants filed a declaratory judgment action in Jefferson Circuit Court. The Appellees filed a motion to compel arbitration based on a clause in the condominium's warranty. The Circuit Court entered an order compelling arbitration. The Court of Appeals then denied Appellants' request for a writ of prohibition, holding that the mold contamination did not amount to an irreparable injury, which is r equired before a reviewing court can grant a writ.

The Supreme Court reversed, holding that the arbitration clause failed to satisfy the requirements of KRS 417.200 and KRS 417.050. The Supreme Court noted that KRS 417.200 has been interpreted to require that an arbitration clause include language that the arbitration is to be held in Kentucky in order to confer subject matter jurisdiction upon a Kentucky Court. The arbitration clause *sub judice* contained no such language. The warranty identified the warrantor as "Legacy Dev Corp" who was not a party to the declaratory judgment action. Therefore, the Court held, the warranty was not an agreement "between the parties" as required under KRS 417.050. Furthermore, the signature of Dr. Russell on the warranty was on its face merely an acknowledgment of her receipt of the warranty and not an acceptance of its terms. The Court concluded that since the trial court was proceeding outside its jurisdiction in granting the order to compel arbitration and Appellants were without adequate remedy through application to an intermediate court, Appellants were entitled to writ of prohibition prohibiting the Circuit Court from enforcing the arbitration order.

XI. WORKERS' COMPENSATION

A. Alcan Aluminum Corp. v. Jackie Stone; Hon. Lawrence F. Smith, ALJ; and Workers' Compensation Board

2008-SC-000179-WC **1/22/2009**

Memorandum opinion of the court. All sitting; all concur. KRS 342.730(6) permits certain employer-funded disability benefits to offset workers' compensation income benefits. Injured employee chose to retire under employer's disability retirement plan because the benefits were 15% greater than the employer's early retirement benefits. During his workers' compensation proceedings, the employer asserted that its payment of disability retirement benefits should offset its liability for workers' compensation income benefits. The Supreme Court affirmed the Court of Appeals, holding that "income benefits" under KRS 342.730(6) does not include retirement benefits. Therefore, the employers could only offset the amount representing the difference between the disability retirement benefit and the early retirement benefit.

B. Susan Mitchell v. The TFE Group; Hon. Sheila C. Lowther, ALJ; and Workers' Compensation Board
2008-SC-00148-WC 1/22/2009

Memorandum opinion of the court; all sitting; all concur. Mitchell appealed the ALJ's ruling that she was not entitled to an award of attorney's fees for the employer's violation for the workers' compensation unfair claim settlement practices act, arguing that no statute prohibited attorney fees and that public policy demanded such an award. The Supreme Court affirmed, holding there was no statutory authority for an award of attorney's fees in a proceeding under KRS 342.267. The Supreme Court noted that KRS 342.267 does not create a private cause of action or additional means of recovery for an employee.

XII. ATTORNEY DISCIPLINE

A. Burgess L. Doan v. KBA
2008-SC-000930-KB 12/22/2008

An attorney was sued civilly regarding his actions as trustee of a family trust. Once the lawsuit was settled he withdrew from the Ohio bar rather than face disciplinary proceedings. After the KBA initiated disciplinary proceedings of its own, the attorney moved to withdraw from the Kentucky bar as well. The Supreme Court granted the attorney's motion to withdraw membership under terms of permanent disbarment.

B. Michael L. James v. KBA
2003-SC-000715-KB

The Supreme Court ordered attorney reinstated to Kentucky bar. In 1998, the Court suspended attorney for a total of 25 months for four separate disciplinary actions. The KBA's Character and Fitness Committee determined that the attorney had established by clear and convincing evidence that he met the qualifications for readmission. The Court noted the attorney had waited long after the time he was eligible to apply for reinstatement in order to sufficiently rehabilitate himself.

C. KBA v. Eric Lamar Emerson
2008-SC-000487-KB **1/22/2009**

The Supreme Court determined that attorney is guilty of violating SCR 3.130-8.1(b) by failing to respond to a bar complaint against him. The complaint was filed by attorney's former client who claimed that attorney would not communicate with him, lost documents to be used in client's defense, and after termination of representation refused to respond to client's demand for a refund of his fee. In light of the attorney's "numerous recent ethical violations," the Court ruled that the KBA's proposed 30-day suspension was too lenient and ordered the attorney suspended from the practice of law for 181 days.