KENTUCKY SUPREME COURT
JUNE 2019

I. CERTIFICATION OF LAW:

A. In re: Kathy Miller, as Next Friend of her Minor Child, E.M. v. House of Boom Kentucky, LLC

2018-SC-000625-CL **June 13, 2019**

Opinion of the Court by Justice VanMeter. All sitting; all concur. Kathy Miller sued House of Boom for alleged negligence after her daughter was injured at the trampoline park House of Boom operates. Beforehand, when purchasing tickets online, Miller checked that contained a waiver of liability that would release any claims against House of Boom by Miller or her child. House of Boom filed a motion to dismiss the lawsuit based on the language of the waiver. The Western District of Kentucky asked for certification by the Kentucky Supreme Court to determine whether "a pre-injury liability waiver signed by a parent on behalf of a minor child [is] enforceable under Kentucky law." The Court granted certification and held that "[t]he general common law rule in Kentucky is that 'parents ha[ve] no right to compromise or settle' their child's cause of action as that 'right exist[s] in the child alone,' and parents have no right to enter into contracts on behalf of their children absent special circumstances." The Court further held that "no relevant public policy [exists] to justify abrogating the common law to enforce an exculpatory agreement between a for-profit entity and a parent on behalf of her minor child."

II. CONSTITUTIONAL LAW:

A. Commonwealth of Kentucky ex rel. Andy Beshear, etc. v. Matthew G. Bevin in his Official Capacity as Governor of Kentucky, et al.

2017-SC-000647-TG **June 13, 2019**

Opinion of the Court by Chief Justice Minton. All sitting. Minton, C.J.; Hughes, Keller, Lambert, and Wright, JJ., concur. VanMeter, J., concurs in result only by separate opinion, which Buckingham, J., joins. The Attorney General challenged the Governor's use of Kentucky Revised Statute 12.028 to effectuate changes to various state education boards. The Court upheld the validity of the Governor's use of this legislatively-sanctioned temporary reorganization power.

The Court first rejected the Attorney General's statutory arguments claiming that the state education boards fall outside of the reorganization statute, as the state education boards constitute "organizational unit[s]" and "administrative bod[ies,]" the lynchpin for application of the reorganization statute.

The Court also rejected the Attorney General's constitutional claims. The reorganization power did not violate Section 15 of the Kentucky Constitution

because the General Assembly specifically designated the Governor as its "authority" for "suspend[ing the] laws." Neither did the reorganization power violate Section 183 of the Kentucky Constitution because granting the Governor reorganization power was deemed by the General Assembly as a matter of policy to further the betterment of the state's education system. Finally, the Court did not find a violation of the separation of powers doctrine because the General Assembly retained significant control over the Governor's use of the temporary reorganization power.

B. Whitney Westerfield, in his Official Capacity as Senator, et al. v. David M. Ward, et al.
AND
David M. Ward, et al. v. Whitney Westerfield, in his Official Capacity as Senator, et al.
2018-SC-000583-TG **June 13, 2019**
2018-SC-000585-TG **June 13, 2019**

Opinion of the Court by Chief Justice Minton. All sitting; all concur. The Kentucky Supreme Court examined the procedural validity of a proposed constitutional amendment known as "Marsy's Law." The proposed amendment was approved by the voters during the November 2018 election. The Court first determined that the question of whether a constitutional amendment was properly adopted under constitutionally mandated procedures was justiciable and that it therefore had authority to hear the challenge. The Court construed Section 256 of the Kentucky Constitution and determined that it required the full text of a proposed constitutional amendment to appear on the ballot to be submitted to the people for a vote. Likewise, the Court determined that Section 257 of the Kentucky Constitution required the Secretary of State to cause to be published the full text of the proposed amendment at least 90 days before the vote. Because the full text of the proposed amendment had not been included on the ballot during the November 2018 election or published 90 days before the election, the proposed amendment violated both Section 256 and 257.

III. CRIMINAL LAW:

A. Donald G. Adams v. Commonwealth of Kentucky
2017-SC-000599-DG **June 13, 2019**

Opinion of the Court by Chief Justice Minton. Buckingham, Hughes, Keller, VanMeter, and Wright, JJ, sitting. All concur. Lambert, J., not sitting. The Kentucky Supreme Court adopted an opinion by the Court of Appeals interpreting the scope of KRS 431.073, which allows any person convicted of certain Class D felony violations "arising from a single incident" to file an application to have the judgment vacated. The court considered whether Adam's four separate felony convictions for theft by unlawful taking, which stemmed from his stealing a total of thirty-four Holstein heifers from a single farm in Daviess County on four separate occasions between August 1994 and February 1995, qualified as

violations "arising from a single incident." In construing the statute, the court determined that whether a series of crimes arose out of the same incident depends largely on the temporal proximity of the separate crimes and therefore the statute referred only to criminal offenses that were performed in the furtherance of an individual criminal episode and that were closely compressed in terms of time. The court noted that each of Adams' convictions involved a temporally discrete criminal episode in which he formed a new criminal intent and completed a separate and distinct theft. Accordingly, the court concluded that Adams' convictions did not arise out of the same incident and the circuit court erred in granting his petition for expungement.

B. Suzanne Marie Whitlow v. Commonwealth of Kentucky
2018-SC-000188-MR **June 13, 2019**

Opinion of the Court by Justice Hughes. All sitting; all concur. Whitlow was sentenced to twenty years in prison after driving under the influence and striking and killing two pedestrians in Lexington, Kentucky. After the incident, Whitlow was transported to the hospital for minor injuries and a police officer obtained a court order directing the hospital to test her blood for drugs and alcohol. The officer prepared a petition and affidavit for a court-ordered blood test, and mistakenly cited to Kentucky Revised Statute 189A.105(3)(b), which does not exist, instead of KRS 189A.105(2)(b). A document labeled "court order" was signed by a district judge, and the blood test was performed. After the test revealed her blood alcohol content was nearly three times the legal limit, Whitlow moved to suppress the blood test results and argued that a "court order" was not a search warrant. The trial court denied the motion, determining that the failure to obtain a document titled "search warrant" was not a fundamental flaw because the officer's affidavit accurately established probable cause and that the good faith exception to the exclusionary rule outlined in *United States v. Leon*, 468 U.S. 897 (1984) applied. Whitlow then entered a conditional guilty plea, specifically preserving her right to appeal the denial of the suppression motion.

On appeal, Whitlow argued that the trial court erred in holding that the officer was not required to obtain a search warrant, and that the affidavit and resulting court order were defective due to the citation of improper legal authority. The Court determined that all essential elements of a search warrant were present, and that probable cause was never contested. Additionally, the Court did not find Whitlow's mis-citation and mislabeling arguments to be bases for invalidating an otherwise proper search warrant. Finally, the *Leon* exception need not be invoked because the officer's affidavit and the ensuing order were not deficient. Because no violations of Whitlow's Fourth Amendment rights occurred, the Court affirmed the judgment of the Fayette Circuit Court.

C. Troy M. Martin v. Commonwealth of Kentucky
2018-SC-000317-DG **June 13, 2019**

Opinion of the Court by Chief Justice Minton. Minton, C.J.; Buckingham, Hughes, Keller, VanMeter, and Wright, JJ., sitting. Minton, C.J.; Buckingham, Hughes, Keller, VanMeter, and Wright, JJ., concur. Lambert, J., not sitting. The defendant, Troy Martin, filed a belated motion for shock probation, but the Commonwealth failed to object to the trial court's exercise of jurisdiction over the motion. The Commonwealth's failure to object to the trial court's exercise of jurisdiction over Martin's motion led the Court to deem the Commonwealth's argument on that issue waived. As such, the Court declined to reach the merits of the Commonwealth's argument that the trial court erroneously exercised jurisdiction over Martin's motion.

D. Lara Paige Conley v. Commonwealth of Kentucky
2017-SC-000291-MR **June 13, 2019**

Opinion of the Court by Justice Buckingham. All sitting. Minton, C.J.; Hughes, Keller, Lambert, and VanMeter, JJ., concur. Wright, J., concurs in part and dissents in part by separate opinion. Defendant was convicted of killing her mother by inflicting over 100 knife wounds on her. Defendant also had a history of various mental illnesses, including bipolar disorder, disassociation, depression, post-traumatic stress disorder, anxiety, and panic attacks. Based upon the extreme circumstances compelling the conclusion that mental health issues would be of substantial significance at trial, the Court held that the trial court erred by failing to appoint an independent mental health expert to assist the Defendant as required under *Ake v. Oklahoma*, 470 U.S. 68 (1985). The Court also discussed the role of KCPC under circumstances such as those here. Other issues were addressed as necessary for guidance upon retrial, including that the probative value of testimony by medical experts as to whether or not defendant was aware of the criminality of her conduct or appreciated the consequences of her acts, was substantially outweighed by the prejudice and confusion that would likely result when insanity was not an issue; evidence of two prior assaults by defendant against her live-in boyfriend were admissible and could be considered by the jury as it related to the Commonwealth's claim on defendant's motive, intent, opportunity, preparation, and modus operandi; jail phone calls and video chats between defendant and her live-in boyfriend were admissible as a prior inconsistent statement by the boyfriend; evidence in the form of a portion of a video that showed defendant taking a pen from the table and putting it in her pants when left alone in police interrogation room merely reflected on defendant's character, and thus, was inadmissible; and initial aggressor instruction diminishing self-protection defense was not warranted.

IV. FAMILY LAW:

A. Commonwealth of Kentucky, Cabinet for Health and Family Services v. N.B.D.

2018-SC-000592-DGE **June 13, 2019**

Opinion of the Court by Justice Lambert. All sitting. Buckingham, Keller, Lambert and Wright, JJ., concur. VanMeter, JJ., concurs in result only. Minton, C.J., dissents by separate opinion in which Hughes, J., joins. Family law case wherein the Court addressed the sole issue of whether family courts, and district courts in jurisdictions without a family court, are required to make a finding on Special Immigrant Juvenile (SIJ) status under federal statute 8 U.S.C. Section 1101(a)(27)(J). The Court held that the General Assembly has not specifically directed Kentucky courts to make SIJ findings. Therefore, our courts are not required to make additional findings related to SIJ classification unless the court first determines that the evidence to be gleaned from such a supplemental hearing is relevant to determining the child's best interests.

V. INTERLOCUTORY APPEAL:

A. Angela Maggard, M.D. v. Bruce Kinney, M.D.

2018-SC-000153-DG **June 13, 2019**

Opinion of the Court by Justice Hughes. All sitting; all concur. Dr. Maggard and Dr. Kinney practiced obstetrics and gynecology at the same hospital but worked for different medical practices and competed for patients. Dr. Maggard filed suit in Floyd Circuit Court asserting that Dr. Kinney libeled and slandered her in a federal tort case, to the Kentucky Board of Medical Licensure (KBML), and made false statements to her colleagues, patients and hospital administrators to damage her reputation and lure patients to his own practice. After his motions to dismiss the complaint based on the judicial statements privilege and claims of immunity were denied, Dr. Kinney filed an interlocutory appeal in the Court of Appeals. A divided Court of Appeals panel held that, pursuant to *Breathitt Cty. Bd. of Educ. v. Prater*, 292 S.W.3d 883 (Ky. 2009), the denial of a substantial claim of immunity entitled Dr. Kinney to an immediate appeal and that the judicial statements privilege immunized Dr. Kinney from statements made in the federal tort case, extending the privilege deemed applicable to Kentucky Bar Association (KBA) proceedings in *Morgan & Pottinger, Attorneys, P.S.C. v. Botts*, 348 S.W.3d 599 (Ky. 2011) to KBML proceedings.

Reiterating its holding in *Commonwealth v. Farmer*, 423 S.W.3d 690 (Ky. 2014), the Supreme Court held that the collateral order doctrine authorizes immediate appeal of orders that conclusively determine an important issue separate from the merits of the action and that is effectively unreviewable on appeal from a final judgment but only if a substantial public interest is involved. The Court held that an order disallowing the judicial statements privilege is not a denial of immunity. Such a ruling allows statements previously made in a judicial proceeding to be

used for some purpose in later legal proceedings and does not merit immediate appellate review. The Court of Appeals erred by equating the judicial statements privilege with immunity and deeming the trial court's order reviewable under the collateral order doctrine for interlocutory appellate jurisdiction. Additionally, Botts focuses on the unique area of KBA disciplinary proceedings and is of minimal precedential impact beyond that area. Accordingly, the Court vacated the Court of Appeals' opinion and remanded the case to the Floyd Circuit Court for further proceedings.

B. Allyalign Health, Inc. v. Signature Advantage, LLC
2019-SC-000001-I **June 13, 2019**

Opinion and Order of the Court. Minton, C.J.; Buckingham, Hughes, Keller, Lambert, and VanMeter, JJ., concur. Wright, J., dissents by separate opinion. AllyAlign possessed a contract with Signature Advantage whereby all disputes arising between them would be governed by the Commercial Arbitration Rules and Arbitration Procedures of the American Arbitration Association. Rule 7(a) of those rules states, "The arbitrator shall have the power to rule on . . . the arbitrability of any claim or counterclaim." So although the contract possessed a clause providing for judicial review of claims involving equitable relief, the Court nonetheless compelled arbitration. The Court recognized the supermajority position of courts nationwide that incorporation of the Commercial Arbitration Rules provides the "clear and unmistakable" evidence necessary for a court to conclude that the parties agreed to arbitrate the issue of arbitrability of a claim. The Court also recognized that the carve-out provision in the contract provided no impediment to compelling arbitration of the arbitrability of a claim, as the opposite conclusion would conflate the two separate and distinct determinations of (1) what claims get arbitrated versus (2) who decides what claims get arbitrated.

VI. JUDICIAL CONDUCT COMMISSION:

A. Beth Lewis Maze, Circuit Judge v. Kentucky Judicial Conduct Commission
2018-SC-000633-RR **June 13, 2019**

Opinion and Order of the Court. All sitting. Minton, C.J.; Buckingham, Hughes, and VanMeter, JJ., concur. Keller, J., dissents by separate opinion which Lambert and Wright, JJ., join. Lambert, J., dissents by separate opinion which Keller and Wright, JJ., join. Wright, J., dissents by separate opinion which Keller and Lambert, JJ., join. Judge Beth Maze sought a stay of her ongoing Judicial Conduct Commission proceedings pending the result of her simultaneously occurring criminal proceedings. The Court denied Judge Maze's request for a stay, finding the totality of the circumstances favored denying Judge Maze's request. The Court also rendered moot Judge Maze's request for a continuance per the Court's grant of Judge Maze's request for an emergency stay pending her appeal. Finally, the Court declined to reach Judge Maze's request for an

additional hearing before the JCC, as consideration of that issue at this time would be procedurally impermissible.

VII PAROLE:

A. Shannon Jones, et al. v. David Wayne Bailey AND David Wayne Bailey v. Shannon Jones, et al.

2017-SC-000203-DG
2017-SC-000604-DG **June 13, 2019**

Opinion of the Court by Justice Hughes. Minton, C.J.; Buckingham, Keller, VanMeter, and Wright, JJ., concur. Wright, J., files a separate concurring opinion in which Keller, J., joins. Lambert, J., not sitting. Bailey was convicted of first-degree sexual abuse and served a five-year sentence after which he was released to post-incarceration supervision, a status treated like parole in Kentucky. Because Bailey did not complete the required sex offender treatment program, his supervision was revoked. Citing several deficiencies in the revocation process, he sought a writ, which was denied by the circuit court. The Court of Appeals, however, held that KRS 31.110(2)(a) created a statutory right to counsel for offenders at post-incarceration supervision final revocation hearings.

On review, the Supreme Court held that under *Morrissey v. Brewer*, 408 U.S. 471 (1972), and *Gagnon v. Scarpelli*, 411 U.S. 778 (1973), the current supervision revocation procedure is constitutionally inadequate. To satisfy due process, the Parole Board must inform the offender of his right to request counsel to represent him at the final hearing; conduct the constitutionally-required evidentiary hearing prior to revocation; provide the offender timely notice of the time and place of that final hearing; consider the evidence and determine pursuant to the preponderance of the evidence standard whether the offender committed the alleged violation(s); and timely inform the offender in writing of the Board's decision, including the evidence relied on and reasons for the decision. Furthermore, an offender's right to counsel arises from due process guarantees and must be decided on a case-by-case basis by the Parole Board; counsel will not always be deemed required. Finally, contrary to the Court of Appeals' conclusion, KRS 31.110 does not serve as a statutory basis for a "right to counsel."

VIII WORKERS' COMPENSATION:

A. Letcher County Board of Education v. Roger Hall, et al.

2018-SC-000638-WC **June 13, 2019**

Opinion of the Court by Justice Keller. All sitting; all concur. Roger Hall developed mesothelioma after being exposed to asbestos over the course of his employment as a teacher at Letcher County High School in Letcher County, Kentucky. In 2015, Hall filed a claim for workers' compensation benefits. This claim was denied as untimely by the administrative law judge, but this decision was reversed by the Workers'

Compensation Board. The Court of Appeals affirmed the Board. The question before the Court was whether the statute of limitations barred Hall's claim. The Supreme Court found that the administrative law judge's dismissal of Hall's claim was clearly erroneous. There was clear evidence that asbestos containing material was present in the school at the time Hall retired in 2003. Therefore, his claim was made within twenty years from his last date of exposure and the Court of Appeals' decision was affirmed.

B. TECO/Perry County Coal v. Paul Feltener, et al.
AND
McCoy-Elkhorn Coal Co., Inc. v. Robbie Hatfield, et al.
AND
Enterprise Mining Company v. Herman Napier et al.

2018-SC-000215-WC	**June 13, 2019**
2018-SC-000216-WC	**June 13, 2019**
2018-SC-000217-WC	**June 13, 2019**

Opinion of the Court by Justice VanMeter. All sitting. Minton, C.J.; Buckingham, Hughes, and VanMeter, JJ., concur. Lambert, J., dissents by separate opinion in which Keller and Wright, JJ., join. Appellees Herman Napier, Robbie Hatfield, and Paul Feltner all filed claims against their employers (collectively "Appellants") for workers' compensation benefits based on occupational hearing loss. The relevant statute, KRS 342.7305(2), allows for income benefits from hearing loss only where an 8% whole body impairment exists. All three Appellees fell below the 8% threshold and challenged the statute as a violation of equal protection. The Court of Appeals held that the statute violated equal protection on grounds that no rational basis existed for the 8% threshold. The Kentucky Supreme Court held that while KRS 342.0011(1) excludes "the effects of the natural aging process," and KRS 342.730(l)(b)-(c) limit the impairment rating to one "caused by the injury or occupational disease," KRS 342.7305(1) sets an 8% threshold. The Guides instruct the physician to not subtract for age-related hearing loss when assigning a rating. Without the use of a threshold number, the Guides contain no reference as to how KRS 342.0011(1) or KRS 342.730(l)(b)-(c) would exclude pre-existing and age-related hearing loss. The Court further ruled that the "logical conclusion [to the statutory construction] is that the 8% threshold recognizes the differences in assigning an impairment rating to hearing-loss claimants under the Guides, as compared to assigning a rating to other traumatic injuries." Accordingly, the Court reversed the Court of Appeals and held that a rational basis existed for the 8% threshold for income benefits contained in KRS 342.7305(2).

IX. WRONGFUL DEATH:

A. Luis J. Gonzalez, II, etc. v. Jeremy Johnson, in his Official Capacity as Scott County Deputy Sheriff, et al.

2018-SC-000224-DG **June 13, 2019**

Opinion of the Court by Justice Lambert. All sitting. Minton, C.J; Buckingham, Hughes, Keller, Lambert, and Wright, JJ., concur. VanMeter, J., dissents by separate opinion. A wrongful death case wherein the Court addressed the sole issue of whether to overrule *Chambers v. Ideal Pure Milk Co.*, 245 S.W.2d 589 (Ky. 1952). The Court abandoned *Chamber*'s holding that a pursuing police officer cannot legally be the proximate or legal cause of damage inflicted on a third party by a fleeing suspect, also known as the *per se* no proximate cause rule. Overruling *Chambers*, it held that a jury may determine whether a pursuing officer's actions were a substantial factor in causing injury to a third party under existing negligence law and then apportion fault accordingly.

X. WRONGFUL TERMINATION:

A. Debra Marshall v. Montaplast of North America, Inc.

2018-SC-000260-DG **June 13, 2019**

Opinion of the Court by Justice Keller. All sitting; all concur. Debra Marshall was terminated from her employment at Montaplast of North America, Inc. after accurately informing coworkers that one of their supervisions was a registered sex offender. The issue before the Court was whether the Court of Appeals erred in affirming the trial court's granting of a motion to dismiss for failure to state a claim in favor of Montaplast. The Supreme Court affirmed the Court of Appeals, holding that the Sex Offender Registration Act does not create a public policy exception to the terminable-at-will doctrine. The Sex Offender Registration Act does not bestow an explicit right to disseminate information from the registry in a private workplace and, therefore, the trial court's granting of Montaplast's motion to dismiss for failure to state a claim was not in error.

XI. ATTORNEY DISCIPLINE:

A. Kentucky Bar Association v. Michael L. James

2019-SC-000070-KB **June 13, 2019**

Opinion and Order of the Court. All sitting; all concur. The Kentucky Bar Association petitioned the Supreme Court to suspend James from the practice of law for three years. The request was based on James's lengthy disciplinary history and three new charges pending against him, which alleged violations of SCR 3.130(4.4)(a) for continuing to practice law in Indiana while he was suspended; SCR 3.130(3.4)(c) for violating the Supreme Court of Indiana's order suspending him from the practice of law; and SCR 3.130(3.3)(a)(1) for falsely stating to the Supreme Court of Indiana that he believed he had been readmitted to practice law

in the state. The allegations stemmed from a 2016 Indiana order holding James in contempt of court, imposing a $1000 fine, and suspending him from the practice of law for two years.
Following the entry of the Indiana order, the Inquiry Commission filed the three-count charge against James. During a hearing before a KBA Trial Commissioner, James repeatedly claimed that he believed he had been reinstated to the Indiana Bar, but admitted that he was practicing law without a license. Noting the ease with which James could have confirmed if he had been readmitted to the bar and his apparent lack of candor with the Supreme Court of Indiana, the Trial Commissioner recommended a three-year suspension.

James filed a notice of appeal. Following oral arguments, the Board of Governors adopted the findings of the Trial Commissioner and recommended that the Kentucky Supreme Court impose a three-year suspension. After reviewing the record and James's lengthy disciplinary history, which included four suspensions in Kentucky and several instances of reciprocal discipline from Indiana, the Court agreed with the Trial Commissioner's findings of fact and conclusions of law and ordered James suspended from the practice of law for a period of three years.

B. D. Brian Richmond v. Kentucky Bar Association
2019-SC-000083-KB June 13, 2019

Opinion and Order of the Court. All sitting. Buckingham, Keller, Lambert, and Wright, JJ., concur. VanMeter, J., dissents by separate opinion in which Minton, C.J., and Hughes, J., join. Richmond was suspended from the practice of law pursuant to SCR 3.050 for failure to pay his bar dues and appealed his suspension.

The record showed that the KBA emailed Richmond on three separate occasions to notify him of his delinquency in payment of bar dues. The KBA finally sent a Show Cause Notice of Delinquency to Richmond's bar roster address on November 13, 2019, which was returned on January 3, 2019, marked "Return to Sender, Unclaimed, Unable to Forward." On January 7, 2019, a KBA employee contacted Richmond by telephone and discussed his delinquency with him. Richmond indicated that he thought his employer had paid his bar dues. On January 18, 2019, Richmond called the KBA to pay his dues but learned that he had been suspended that morning by the KBA Board of Governors.

The Supreme Court noted that although there were several uncertainties in the facts leading up to Richmond's suspension, the circumstances did not require Richmond to apply for reinstatement. Accordingly, the Court ordered that Richmond be reinstated upon his payment of his membership dues, late fee, and associated costs.

B. Kentucky Bar Association v. Kimberly Shawn Gevedon
2018-SC-000110-KB June 13, 2019

Opinion and Order of the Court. All sitting; all concur. The Board of Governors of the Kentucky Bar Association recommended the Supreme Court find Gevedon guilty of violating SCR 3.130(1.3); 3.130(1.4)(a)(3); 3.130(1.4)(a)(4); 3.130(1.4)(b); 3.130(1.16)(d); 3.130(8.1)(b); and 3.130(8.4)(b) based on four consolidated disciplinary files. The Board recommended that she be found not guilty of violating SCR 3.130(5.5)(a). The Board also recommended that she be suspended for 181 days and ordered to return files and money to various clients.

Gevedon had previously been issued three private admonitions with conditions and had been suspended for thirty days. When her case came before this Court, Gevedon was under an administrative suspension for nonpayment of dues and noncompliance with CLE requirements.

The Supreme Court followed the Board's recommendation but ordered her 181-day suspension to run consecutively to her administrative suspension.

D. Kentucky Bar Association v. Richard Graham Kenniston
2019-SC-000124-KB June 13, 2019

Opinion and Order of the Court. All sitting; all concur. The Kentucky Bar Association recommended that attorney Richard Graham Kenniston be permanently disbarred from the practice of law in Kentucky. Kenniston faced a multitude of allegations of ethical violations stemming from his representation of at least eight different clients. The Court found Kenniston's ethical violations to include: failing to keep his clients informed of their cases; failing to respond to his clients' inquiries about their cases; not only failing to make proper use of client monies entrusted to him, but actually, in some cases, using the clients' money himself and for his own personal purposes; failing to return unearned portions of fees paid to him; and failing to file pleadings and represent his clients in court, leading to, in some cases, dismissal of his client's case. In permanently disbarring Kenniston, the Court additionally noted Kenniston's previous discipline, pattern of ignoring and disobeying orders from multiple courts, his permanent disbarment from the Bankruptcy Court of the Eastern District of Kentucky, and his lack of remorse for the damage he inflicted on his clients and the legal profession. Finally, the Court justified its decision by noting that the only way to protect the public and the legal profession going forward is to permanently disbar Kenniston. And although Kenniston attempted to file a belated response to the allegations against him, the Court denied it because Kenniston had failed to plead "excusable neglect" in justifying his belated response.

E. Kentucky Bar Association v. Cory Scott Robins
2019-SC-000152-KB **June 13, 2019**

Opinion and Order of the Court. All sitting; all concur. The Supreme Court of Florida issued an order barring Robins from practicing law for five years. The KBA then filed a petition for reciprocal discipline pursuant to SCR 3.435. Robins filed a reply to the Order to Show Cause stating that he had no objection to the Kentucky Supreme Court's imposition of a five-year suspension and waiving any additional time to respond to the Court's order. Accordingly, because Robins agreed to the imposition of reciprocal discipline, the Court ordered Robins suspended from the practice of law in the Commonwealth for a period of five years.

F. Kentucky Bar Association v. Jason Pierce Mac Iain
2019-SC-000194-KB **June 13, 2019**

Opinion and Order of the Court. All sitting; all concur. Mac Iain was charged with endangering the welfare of a minor. He entered a guilty plea and was sentenced to 12 months in jail, probated for two years. The Inquiry Commission issued a bar complaint as a result of the conviction.

Mac Iain responded to the bar complaint, and the Office of Bar Counsel requested additional information. Mac Iain failed to respond to the inquiries. The Inquiry Commission then entered a private admonition for violations of SCR 3.130(8.4)(b) and SCR 3.130 (8.1)(b), conditioned on Mac Iain providing the OBC an executed Kentucky Lawyer's Assistance Program (KYLAP) agreement within 60 days, as well as quarterly monitoring reports showing compliance.

The OBC never received proof of a KYLAP agreement or monitoring reports. Accordingly, the Inquiry Commission revoked the private admonition and issued a charge for violations of SCR 3.130(8.4)(b) (committing a criminal act); SCR 3.130 (8.1)(b) (failure to respond to a lawful demand for information from a disciplinary authority); and SCR 3.130(3.4)(c) (knowingly disobeying an obligation under the rules of a tribunal).

For the next several months, Mac Iain communicated with the Office of Bar Counsel via email indicating he intended to file a response. But an answer was never filed, leading the Supreme Court to determine that indefinite suspension under SCR 3.380(2) was warranted. Accordingly, Mac Iain was suspended indefinitely from the practice of law in the Commonwealth.

G. Franklin S. Yudkin v. Kentucky Bar Association
2019-SC-000206-KB **June 13, 2019**

Opinion and Order of the Court. All sitting; all concur. In 2016, the Supreme Court of Indiana issued an order suspending Yudkin for 90 days due to his conduct in a case in which he represented a bank in a collection action against a

pro se defendant. Yudkin self-reported the Indiana discipline to the KBA and to the Supreme Court of Kentucky imposed reciprocal discipline of a 90-day suspension on March 23, 2017, to run concurrently with his Indiana suspension. Yudkin was reinstated to the Indiana Bar on June 19, 2018.

On July 31, 2018, Yudkin filed for reinstatement in Kentucky. The KBA has certified that there are no pending disciplinary actions against Yudkin as of April 19, 2019, and the Character and Fitness Committee ultimately recommended that Yudkin's application be approved. Upon review of the record and the recommendation of the Board of Governors, the Supreme Court agreed that Yudkin's application should be approved and reinstated him to the practice of law in the Commonwealth.

H. Joseph Baron Hammons v. Kentucky Bar Association
2019-SC-000228-KB **June 13, 2019**

Opinion and Order of the Court. All sitting; all concur. Hammons moved the Supreme Court to enter a negotiated sanction imposing a 181-day suspension, with 30 days to serve and the balance probated with conditions, for violations of SCR 3.130(1.5)(a) (charging, or collection of, an unreasonable fee); SCR 3.130(1.16)(d) (return of papers and property to which the client is entitled upon termination of the representation); SCR 3.130(8.1)(1) (knowingly making a false statement of material fact during a disciplinary investigation); and SCR 3.130(8.4)(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation). Hammons admitted his conduct and his violations of the rules, and the parties agreed that the proposed suspension was the appropriate sanction for his violations. Upon reviewing the record and discipline imposed for similar violations, the Court granted Hammons's motion and ordered him suspended for 181 days, with 30 days to serve and the balance probated with conditions.

I. Mary Porter Parsons v. Kentucky Bar Association
2019-SC-000266-KB **June 13, 2019**

Opinion and Order of the Court. All sitting; all concur. Parsons was suspended on September 26, 1991 for nonpayment of dues. On May 12, 2017, she filed an Application for Restoration pursuant to SCR 3.500(3). In compliance with the rule, Parsons paid all required fees for restoration, including all unpaid membership dues from the date of her suspension. Chief Bar Counsel certified there were no disciplinary matters pending against Parsons, and the KBA Director for Continuing Legal Education certified that she had complied with SCR 3.685 and had the required CLE credits needed for restoration. The Character and Fitness Committee of the Kentucky Office of Bar Admissions also compiled a detailed history of Parson's suspension and request for restoration, which the Board of Governors adopted in its entirety and which the Supreme Court similarly adopted.

Parsons ultimately sat for a special examination administered by the Kentucky Office of Bar Admissions in February 2019, pursuant to SCR 3.500(3), and received a passing score. Accordingly, finding that Parsons had met all requirements for restoration, the Supreme Court ordered that she be restored to membership to the Bar of the Commonwealth of Kentucky.