

**PUBLISHED OPINIONS
KENTUCKY SUPREME COURT
MARCH 2010**

I. CIVIL PROCEDURE

A. Thomas Weird v. Eric Emberton

[2008-SC-000372-DG](#)

March 18, 2010

Opinion of the Court; all concur. Justice Abramson not sitting. On May 3, 2007, Weird tried to file his notice of appeal of judgment at the Jefferson Circuit Court's office. However, the office closed early that day in observance of the annual Kentucky Derby Festival Parade. The Court of Appeals dismissed the appeal as untimely. The Supreme Court reversed, holding KRS 446.330 allows for an extra day when "the public office in which a document is to be filed is actually and legally closed." The Court further held that advance notice of the early closure and the fact that Weird could have filed the notice of appeal at the district criminal traffic desk across the street did not deprive him of the additional day granted by the statute.

B. Commonwealth of Kentucky, ex rel. J. Michael Brown, Secretary, Justice & Public Safety Cabinet v. Interactive Media Entertainment & Gaming Assn., Inc., et al.

[2009-SC-000043-MR](#)

March 18, 2010

Opinion by Justice Noble. All sitting; all concur. Petitioners filed for a writ from the Court of Appeals to stop Commonwealth from seizing the Internet domain names of gambling websites. The Court of Appeals granted the writ after concluding that the circuit court was acting outside its jurisdiction. The Supreme Court reversed the Court of Appeals, holding petitioners lacked standing to challenge the forfeiture. Some of the counsel for petitioners claimed to represent the domain names themselves. The Court held that in *in rem* litigation such as this, only those with an interest in the property have an interest in the litigation. Since the property can have no interest in itself, it had no interest in contesting the forfeiture. Furthermore, the Court held that two gaming trade associations who purported to represent the remaining petitioners also lacked standing. The Court noted that these trade associations have standing only if its members could have sued in their own right. Since neither trade association would identify which domain name registrants it claimed to represent, the Court held the associations could not meet their burden of showing they had standing. The Court declined to reach the merits of the case and remanded to the Court of Appeals with instructions to dismiss the petition for a writ.

C. The Courier-Journal, Inc.; Lexington Herald-Leader Co.; & Associated Press v. Leonard Lawson; Commonwealth of Kentucky

[2009-SC-000756-I](#)

March 18, 2010

Opinion by Chief Justice Minton. All sitting; all concur. Movants filed for CR 65.07 relief in the Court of Appeals from a temporary injunction issued by the circuit court which forbade the release of a proffer of evidence made by Respondent Lawson in 1983. The Supreme Court held that the Office of the Attorney General—as custodian of the record sought—was an indispensable party to the action, and must be named as a party by the Movants. The Court declined to reach the merits of the dispute and affirmed the dismissal of the petition by the Court of Appeals.

D. Thelma Spencer Combs; Brandon Combs; & Paula Spencer Campbell v. Kentucky Court of Appeals & Supreme Court of Kentucky

[2009-SC-000486-OA](#)

March 18, 2010

Justice Abramson not sitting; all concur. The Supreme Court dismissed an original action seeking to have CR 76.16(1) and (4) declared unconstitutional and to require oral arguments in all cases before Kentucky's Court of Appeals and Supreme Court. The Court held that Section 14 of the Kentucky Constitution does not provide a right to oral argument before Kentucky's appellate courts.

II. CRIMINAL LAW

A. Danny Montgomery v. Commonwealth of Kentucky

[2007-SC-000852-MR](#)

March 18, 2010

Opinion by Justice Abramson; all sitting. The Court affirmed conviction for first-degree sexual abuse and PFO-1st. The Court held: 1) the trial court did not err by admitting evidence that the accused had sexually abused three other young girls under the *modus operandi* exception to KRS 404(b); 2) any misjoinder of charges was harmless error; 3) trial court's exclusion of medical evidence showing victim was a virgin three years before offense occurred was harmless error; 4) the trial court properly balanced the interests of the victim and accused when deciding to exclude evidence of victim's collateral sexual conduct pursuant to KRE 412; 5) no abuse of discretion by trial court in granting Commonwealth a continuance to perfect its proof for PFO phase; 6) certified copies of Indiana convictions as evidence of PFO status are admissible without further authentication; 7) trial court's failure to instruct jury to impose sentence for underlying offense before imposing enhanced PFO sentence did not rise to the level of palpable error. Justice Noble concurred in result only.

B. Petitioners F, G, H, J & K v. Bridget Skaggs Brown. Commissioner, Department of Juvenile Justice

[2008-SC-000213-DG](#)

March 18, 2010

Opinion by Justice Schroder. All sitting; all concur. Juveniles previously adjudicated as public offenders for sex offenses sued the Department of Juvenile Justice claiming they should not be required to submit DNA for inclusion in state and national databases. In rejecting the juveniles' Fourth Amendment claim, the Court held that the privacy interests of public offenders, while greater than adults, still do not outweigh the state's legitimate interest in maintaining a DNA database.

C. Cabinet for Health and Family Services v. Hon. Gregory M. Bartlett, Judge; & Larry Cole Jonathan Cox; & Sandra D. Young (Real Parties in Interest)

[2008-SC-000508-MR](#)

March 18, 2010

On trial on drug trafficking charges, Cole sought discovery of the Ky. All Schedule Prescription Electronic Reporting (KASPER) reports concerning himself, his co-defendant, and a co-resident. Finding that Cole made a sufficient showing that the reports might contain relevant or exculpatory information, the trial court entered a discovery order. The Court of Appeals denied the Cabinet's petition for a writ prohibiting enforcement of the discovery order. The Supreme Court held that even though disclosure of such confidential records is barred by KRS 218A.202, the statute must give way to the accused's constitutional rights under the Fifth, Sixth and Fourteenth Amendments, as well as Section 11 of the Kentucky Constitution. In affirming the Court of Appeals' denial of a writ, the Court noted the process for obtaining confidential records set out by the U.S. Supreme Court in Borosso. First, the accused must show evidence

sufficient to establish a reasonable belief that the records contain exculpatory evidence. If so, the trial court must conduct an *in camera* review to determine if the records sought actually contain such evidence.

D. Brandon Leon Watkins v. Commonwealth of Kentucky

[2008-SC-000567-DG](#)

March 18, 2010

Opinion by Justice Cunningham. All sitting; all concur. Watkins appealed from a conditional guilty plea to drug and fleeing charges, challenging the warrantless search of his vehicle. The Court affirmed the conviction, holding that once Watkins abandoned the vehicle after a high-speed chase, he no longer had a reasonable expectation of privacy.

E. Mark Padgett v. Commonwealth of Kentucky

[2008-SC-000632-MR](#)

March 18, 2010

Opinion by Justice Noble. All sitting; all concur. Padgett appealed his convictions for attempted first-degree manslaughter, second-degree assault and violation of an EPO. Padgett argued that the trial court impermissibly compelled his testimony by refusing to allow an expert to testify on extreme emotional disturbance based only on Padgett's out-of-court statements. Padgett subsequently took the stand and testified about the triggering event that gave rise to his purported extreme emotional disturbance. The Supreme Court affirmed the conviction, holding that the trial court did not force Padgett to testify; rather it followed the prohibition in Talbott against bootstrapping an extreme emotional disturbance defense into evidence through expert opinion premised primarily on out-of-court information provided by the accused. The Court also held that the trial court was not required to hold a hearing after Padgett announced he wanted to fire his counsel. Further, the Court held that the trial court was not required to advise Padgett of his right to "hybrid counsel." Padgett also argued that the trial court erred by adopting findings he was competent to stand trial without first holding a competency hearing. The Supreme Court held there was no need to remand for a retrospective competency hearing since there was no substantial evidence of Padgett's incompetency in the record—overruling its earlier decision in Gibbs.

F. Alan Hummel v. Commonwealth of Kentucky

[2008-SC-000801-MR](#)

March 18, 2010

Opinion by Justice Noble; all sitting. Hummel appealed his conviction on rape and PFO charges, claiming the trial court improperly denied his right to represent himself or proceed with "hybrid counsel." After a Faretta hearing, the trial court denied Hummel's request on the grounds 1) self-representation was not in the accused's best interests; 2) Hummel was not skilled enough to represent himself; and 3) Hummel could not control himself. While acknowledging that the first two reasons were improper, the Supreme Court held, in a case of first impression, that a request for self-representation may be denied if the defendant is unable or unwilling to abide by courtroom protocol as he conducts his defense or if the request is made purely as a tactic to disrupt or delay proceedings. The Court noted that the record showed Hummel's behavior during trial was "substantially and repeatedly disruptive" and that the timing of Hummel's requests "strongly suggests he was using them as a tactic to delay proceedings." Conviction affirmed. Justice Scott concurred in result only.

G. Robert Carl Foley v. Commonwealth of Kentucky

[2009-SC-000428-TG](#)

March 18, 2010

Opinion by Justice Venters. All sitting; all concur. Death row inmate filed a petition for declaratory judgment in Franklin Circuit Court seeking to have Kentucky's self-defense statutes as they existed at the time of his 1991 trial declared unconstitutional. Petitioner intended to use a favorable ruling as the basis for a federal *habeas corpus* challenge to the jury instructions used during his criminal trial. The Supreme Court affirmed dismissal of the petition, holding there was no actual controversy. The Court characterized the petition as an attempt to incorporate declaratory judgment actions into the existing framework of post-conviction remedies and noted the federal rule against same.

H. Kelly Marquette Stewart v. Commonwealth of Kentucky

[2007-SC-000278-MR](#)

March 18, 2010

[2007-SC-000853-MR](#)

March 18, 2010

Opinion by Justice Cunningham; all sitting. Stewart was convicted of numerous drug and traffic offenses. On appeal he argued his conviction for possession of drug paraphernalia (second offense) should be vacated because the jury was not instructed to make a finding of guilt regarding his previous conviction for possession of drug paraphernalia. The Court agreed, holding that the prior conviction was an essential element missing from the instructions, without which Stewart could only be found guilty of a first offense. The Court affirmed all other convictions. Justice Scott concurred in part and dissented in part, contending that the "uncontroverted and uncontrovertible" nature of Stewart's prior offense rendered the instructional error harmless.

I. David Thomas Cohron v. Commonwealth of Kentucky

[2007-SC-000483-M](#)

March 18, 2010

Opinion by Chief Justice Minton; all sitting. After walking away from a work release detail, Cohron stole a car and led police on a high-speed chase that ended when Cohron was injured after a wreck. Three days later, Cohron attempted to escape from the hospital while in police custody. The trial court consolidated both escape cases against Cohron but agreed to bifurcate the guilt phase so the charges related to the latter escape would be heard separately than those related to first, but in front of the same jury. The Court rejected Cohron's argument that he was prejudiced by the misjoinder, holding instead that the trial court's improper bifurcation was harmless error. However, the Court reversed a conviction for second degree escape, holding that no evidence was presented at trial to show that, at the time of his second escape, Cohron was facing felony charges—an element of the offense. The majority affirmed all other convictions and remanded to the trial court with instructions that double jeopardy barred retrial on second-degree escape charges since Cohron should have received a directed verdict of acquittal at trial. However, Cohron could still be tried for third-degree escape. Justice Scott concurred in part and dissented in part, asserting any error was harmless since it was not unreasonable for the jury to find Cohron was facing felony charges at the time of the second escape.

J. Cassandra Smith v. Commonwealth of Kentucky

[2008-SC-000060-DG](#)

March 18, 2010

Opinion by Justice Venters. All concur; Justice Cunningham not sitting. Police, acting pursuant to a search warrant, raided the home of Smith. After she was handcuffed, but before being Mirandized, police asked Smith if she had drugs or weapons on her person. Smith told police

she had crack cocaine in her pocket. After her motion to suppress was denied, Smith was convicted of first-degree possession of a controlled substance and possession of drug paraphernalia. The Supreme Court reversed the possession conviction, holding that the motion to suppress should have been granted since the incriminating statement was the product of an un-Mirandized custodial interrogation that was not subject to the public safety exception. The Court affirmed the conviction for possession of drug paraphernalia, holding later statements by Smith were admissible and affirmed the trial court's refusal under KRE 404(b) to allow evidence concerning Smith's ex-husband's prior felony drug conviction.

K. Essamond Wilburn v. Commonwealth of Kentucky

2008-SC-000787-MR

March 18, 2010

Opinion by Justice Venters; all sitting. Wilburn was convicted of first-degree burglary, two counts of first-degree robbery and PFO-2. While robbing a liquor store, Wilburn was alleged to have pulled the trigger of a pistol which did not fire. On appeal, Wilburn argued he was entitled to a directed verdict on the burglary charge since the prosecution failed to prove he did not unlawfully enter or remain upon store premises. The Supreme Court reversed the burglary conviction, holding that under KRS 511.090(2) Wilburn entered the premises lawfully. Furthermore, the Court concluded that Wilburn left the property as soon as his license to be present was revoked i.e. when the store employee fired a weapon of his own.

Wilburn also contended he was entitled to a directed verdict on the first-degree robbery charge since the prosecution failed to prove his pistol was operational at the time of the robbery. The Court affirmed the robbery conviction, holding that the legislature intended for the statutory definition of a deadly weapon to refer to a "class" of weapons which encompasses individual, non-operational weapons like Wilburn's-- overruling Merritt, Kennedy and Helpenstine. The Court also rejected Wilburn's Batson claims. Justice Schroder concurred in result only, noting that the decision would preclude first-degree robbery convictions where the accused uses an exact toy replica of a handgun—a result presumably not intended by the legislature. Justice Noble, joined by the Chief Justice, dissented, asserting that the majority overlooked the plain meaning of the statutory definition to reach its conclusion that the phrase "any weapon" means a "class" of weapons.

L. Frederick Rennel Hannah v. Commonwealth of Kentucky

2007-SC-000267-MR

March 18, 2010

Opinion by Justice Scott; all sitting. The Supreme Court reversed murder conviction that arose out of a shooting during a brawl at a nightclub. The Court held that the trial court erred by refusing to allow the defense to voir dire the jury pool regarding the "no duty to retreat" rule and by forbidding the defense from arguing during its closing that the defendant had no duty to retreat. The Court noted that whether or not the defendant should have retreated prior to his use of force was a question of fact for the jury. Therefore, the defendant must be permitted to argue that under the circumstances, he was privileged to defend himself and others. The Court held that failure to allow such arguments rendered the trial fundamentally unfair. Justice Scott concurred by separate opinion, contending that in such cases juries should be fully instructed on the law concerning the "no duty to retreat rule." The Chief Justice and Justice Abramson concurred in result only.

M. Commonwealth of Kentucky v. Lawrence Everett Alleman

2007-SC-000570-DG

March 18, 2010

Opinion by Justice Venters; all sitting. Alleman appealed revocation of probation arguing the circuit court's oral findings of fact and reasons for revocation violated the due process

requirements of Morrissey which mandates written findings. The Court of Appeals reversed the conviction. The Supreme Court reversed the Court of Appeals and reinstated the order of revocation, holding that where oral findings are preserved by a reliable means and sufficiently complete to allow the parties and reviewing courts to determine the facts relied on and reasons for revocation, due process is met. The Court noted that its decision was consistent with the trend among federal circuits. Justice Schroder, joined by the Chief Justice, dissented, contending that Morrissey explicitly requires a “written” statement.

N. Fred Lee Colvard v. Commonwealth of Kentucky

2007-SC-000477-MR

March 18, 2010

Opinion by Justice Venters; all sitting. The Supreme Court reversed Colvard’s conviction for raping two girls, ages six and seven, because of multiple hearsay violations. In reaching its decision, the Court overruled Edwards, which had previously held that statements by the victim to medical professionals identifying family or household members as sexual abusers fell within the medical diagnosis or treatment exception to the hearsay rule (KRE 803(4)). The Court concluded that the Edwards exception was “ill-advised and unsound,” and that there is no inherent trustworthiness in hearsay statements identifying the perpetrator when the statement does not arise from the patient’s desire for effective medical treatment. The Court also held that numerous non-medical witnesses had been permitted by the trial court to testify about the victims’ statements identifying the accused as their abuser.

The Court also held that at retrial, evidence regarding the accused’s prior conviction for attempted rape would be admissible under the *modus operandi* exception to KRE 404(b) since there was a “striking similarity” between the crimes. In his dissent, Justice Scott, joined by Justice Abramson, contended that there was no evidence that the victims’ motives in making the statements were other than as a patient responding to a physician’s questioning for prospective treatment—and thus a valid exception under KRE 803(4). The Chief Justice concurred in part and dissented in part, arguing that the prior conviction was not sufficiently similar to satisfy the *modus operandi* exception to KRE 404(b).

O. Terry Glenn Hobson v. Commonwealth of Kentucky

2007-SC-000645-DG

March 18, 2010

Opinion by Justice Venters. All sitting; all concur. Hobson attempted to purchase merchandise with a stolen credit card. Store employees alerted a police officer in the store, who took Hobson to an office area to attempt to verify Hobson’s claim that he was acting with the cardholder’s consent. Hobson ran from the store, with the officer in pursuit. After a scuffle in which the police officer suffered a broken ankle, Hobson was apprehended. He was subsequently convicted of first-degree robbery, receiving stolen property and giving a police officer a false name. On appeal, the Supreme Court reversed the first-degree robbery conviction, holding Hobson’s actions did not satisfy the elements of the offense since he did not use force until after the theft attempt had been abandoned. KRS 515.120 requires that the use or threat of use of force be done with intent to accomplish the theft.

P. Robert Eugene Dennis v. Commonwealth of Kentucky

2008-SC-000049-MR

March 18, 2010

Opinion by Justice Abramson. All sitting; all concur. Dennis was convicted of sodomizing and sexually abusing his 11 year old stepdaughter and was sentenced to 65 years. On appeal, Dennis argued that the trial court erred when it excluded evidence regarding the victim’s prior accusations of sexual abuse against other family members. The Supreme Court held that based on the record, there was no evidence that the prior allegations were “demonstrably false”—a

prerequisite for admissibility. However, the Court also held that the trial court erred when it did not conduct an *in camera* review of Cabinet for Health & Family Services documents to determine if they contained information that could show the prior accusations were “demonstrably false.” The Court remanded with instructions to conduct an *in camera* review of the CHFS records and—depending on whether or not the review revealed a reasonable probability that the result would have been different—order a new trial or reinstate the judgment of conviction.

III. INSURANCE

A. Cincinnati Insurance Company v. Motorists Mutual Insurance Company

[2008-SC-000293-DG](#)

March 18, 2010

Opinion by Chief Justice Minton. All sitting; all concur. Homebuyers sued builder claiming their house was built so poorly it was beyond repair. After settling with the homeowner and the builder, Motorists—the builder’s commercial general liability (CGL) carrier at the time the home was built— filed suit against Cincinnati Insurance, the builder’s present CGL carrier, alleging it breached its duty to defend and indemnify the builder from the buyers’ claims. The trial court awarded summary judgment to Cincinnati Insurance, holding that the homebuyers’ claims did not qualify as an “occurrence” under the language of the CGL policy. The Court of Appeals reversed, holding that damage to the house was clearly property damage caused by an “occurrence” since the damage was accidental—not intentional. The Supreme Court reversed the Court of Appeals holding that faulty workmanship alone does not constitute an “occurrence” under a CGL policy.

IV. OPEN RECORDS

A. Central Kentucky News-Journal v. Hon. Douglas M. George, (Judge), et al.

[2009-SC-000018-MR](#)

March 18, 2010

Opinion by Justice Scott; all sitting. A newspaper filed an open records request with the school board for documents related to confidential settlements of two civil suits brought by a former employee. When the board refused to provide the requested letters, the newspaper appealed to the state Attorney General in accordance with the Open Records Act. The AG’s office subsequently issued a formal Open Records Decision stating that the documents sought were public records, but since they were the subject of a confidentiality order, the matter would have to be resolved by the court. The circuit court subsequently denied the newspaper’s request to intervene in the civil suits so as to assert its right of access to the settlement agreements— holding the newspaper did not have a strong and legitimate interest in the terms of the settlement. The Court of Appeals denied the newspaper’s petition for a writ of mandamus, holding it failed to show the circuit court was acting outside its jurisdiction or otherwise acting erroneously.

The Supreme Court held that the settlements must be disclosed pursuant to the Open Records Act and that confidentiality agreements cannot be used to circumvent the Act. The Court further held that the documents were not exempt from disclosure under the personal privacy exception (KRS 61.878(1)) since the agreements did not include the underlying details of the claims that would expose the plaintiff or others to the risk of personal embarrassment or humiliation. Justice Cunningham, joined by Justice Scott, concurred by separate opinion, stressing that the decision did not hold that settlement agreements involving only private parties are subject to the Open Records Act merely because the agreement is held on file by the circuit clerk’s office.

V. PROPERTY

A. **Darrell H. Moore, et al. v. Roy E. Stills, et al.**

2008-SC-000913-DG

March 18, 2010

Opinion by a Justice Abramson; all sitting. Petitioners filed quiet title action based on a claim of adverse possession. After the jury returned a verdict in petitioners' favor, the trial court entered a JNOV to the owners of record, holding that the petitioners failed to prove the existence of a crucial marked boundary line. The Court of Appeals reversed the JNOV and reinstated the jury verdict, finding sufficient evidence of record supporting the existence of the boundary. Further, the Court of Appeals held that KRS 411.190—which states that strictly recreational use of land will not support a claim of adverse possession—could not be retroactively applied to petitioners' claims.

The Supreme Court reversed the Court of Appeals and reinstated the trial court's JNOV, holding that while there is a strong presumption against the retroactive application of statutes, the presumption did not apply KRS 411.190(8) since it was a remedial statute in that it merely codified the existing common law and did not impair the rights held by any party. Finally, the Court held that the JNOV was proper since no rational juror could have deemed the scant testimony at trial regarding the existence of the boundary to be "clear and convincing." Justice Scott, joined by Justice Venters, dissented, arguing that the petitioners use of the land was not merely recreational and sufficient to establish adverse possession. Furthermore, the dissenters contended that substantial proof existed for the jury to conclude a well-defined boundary existed. Lastly, the dissenters asserted that KRS 411.190(8) is not "remedial" when it is used to retroactively take away the right of action to quiet title.

VI. TORTS

A. **Ira E. Branham; Miller Kent Carter; Branham & Carter, PSC v. Elizabeth Stewart (Guardian)**

2007-SC-000250-DG

March 18, 2010

Opinion by Chief Justice Minton; all sitting. Guardian for incompetent adult filed legal malpractice and breach of fiduciary duty claims against attorney that previously represented the ward in a tort action when he was a minor. The attorney argued that he had no duty to the minor, only the minor's mother who hired the attorney to act as next friend to the minor. The trial court granted summary judgment to the attorney, holding such a cause of action had never been recognized under Kentucky law. The Court of Appeals reversed. The Supreme Court affirmed the Court of Appeals, holding in these types of situation, there is an attorney-client relationship between the minor or ward. The Court rejected the attorney's argument that he should not be held responsible since the District Court failed to require a surety from the minor's mother when she was appointed statutory guardian. Justice Scott, joined by Justice Cunningham, dissented, contending that the ruling would make cases involving guardianships expensively complex. The minority contended the change in law was unjustified since the guardian/ward relationship is already closely supervised by the courts.

B. **Sprint Communications Co. LP v. Albert E. Leggett, III (Trustee)**

2005-SC-001023-DG

March 18, 2010

2007-SC-000273-DG

March 18, 2010

Opinion by Justice Venters. Special Justice Garvey and Special Justice Griese sitting for the Chief Justice and Justice Abramson; all concur. After negotiations were unsuccessful, Sprint filed suit to take Leggett's property by eminent domain. Leggett filed a counterclaim, alleging

abuse of process and malicious prosecution. After Sprint withdrew its eminent domain claim, the circuit court awarded Sprint summary judgment on Leggett's counterclaims. In reversing, the Supreme Court held summary judgment was improper because Leggett had presented adequate evidence of the elements of abuse of process (1. ulterior purpose 2. willful act in the use of process not proper in the regular conduct of the proceeding). The Court held that sprint had an "ulterior purpose" for filing their suit—i.e. using the burden and expense of condemnation to pressure Leggett into selling his land for less than he would obtain by a valid condemnation. As for the second element, the Court held that abuse of process does not require that the willful act occur subsequent to the issuance of the process. The Court noted that under KRS 278.540, telecommunications companies such as Sprint cannot acquire total control of private property though condemnation.

C. Fluke Corporation v. Gary LeMaster & Larry LeMaster

2008-SC-000530-DG

March 18, 2010

Opinion by Chief Justice Minton. All sitting; all concur. The LeMasters were injured in an electrical explosion while servicing a piece of coal mining machinery. They sued the machine's owner for negligence in wiring and labeling the machine. The LeMasters later amended their complaint to include Fluke—the manufacturer of the voltage meter that showed the machinery was not charged prior to the explosion. The trial court awarded summary judgment to Fluke, finding LeMasters' claims were time-barred by the applicable statute of limitations. The Court of Appeals reversed, relying on an opinion of the Alaskan Supreme Court, Palmer v. Borg-Warner. The Court of Appeals held that Fluke was equitably estopped from relying upon the statute of limitations because Fluke failed to comply with its duty to report potential safety hazards under the Consumer Product Safety Act.

The Supreme Court reversed the Court of Appeals and reinstated the trial court's award of summary judgment. The Court held that the "discovery rule" did not apply to toll the statute of limitations since the voltage meter's potential role in causing the injuries was immediately evident or discoverable with the exercise of reasonable diligence. The Court also determined that the Court of Appeals ignored binding Kentucky precedent when it expanded the doctrine of equitable estoppel to the "expansive view" adopted by the Alaskan Supreme Court. The Court further held that the LeMasters could not show the detrimental reliance necessary to establish equitable estoppel. Lastly, the Court noted that Kentucky law has never held that failure to report potential problems to the Consumer Protection Safety Council constitutes fraudulent concealment or excuses the plaintiff's duty to exercise due diligence.

VII. ATTORNEY DISCIPLINE

A. Kenneth W. Lampe v. Kentucky Bar Association

2008-SC-000850-KB

March 18, 2010

The Supreme Court reinstated attorney to the practice of law. Attorney was previously suspended for 180 and 120 days for multiple violations of the Rules of Professional Conduct. Reinstatement was made conditional on attorney's participation in remedial CLE program.

B. David Moore Coorsen v. Kentucky Bar Association

2009-SC-000307-KB

March 18, 2010

The Supreme Court reinstated attorney to the practice of law. In 2007, attorney was suspended on his own motion for one year, 181 days to be served with the balance probated with conditions for two years. The Court made reinstatement conditional on the attorney's continued participation in the KYLAP program.

C. Kevin Dwayne Samples v. Kentucky Bar Association

[2009-SC-000537-KB](#)

March 18, 2010

The Supreme Court reinstated attorney to the practice of law. Attorney was previously suspended for failure to pay KBA dues.

D. Kentucky Bar Association v. Douglas C. Combs, Jr.

[2009-SC-000688-KB](#)

March 18, 2010

The Supreme Court permanently disbarred former circuit court judge from the practice of law. The judge resigned from the bench in 2004 while facing charges from the Judicial Conduct Commission relating to payments to “substitute court reporters” whose services were neither needed nor performed. Later, the judge pled guilty to federal mail fraud charges and was sentenced to six months incarceration and three years supervised release. The Supreme Court adopted the KBA Board of Governors’ recommendation that disbarment was the appropriate sanction for the guilty plea.

E. Kentucky Bar Association v. LuAnn C. Glidewell

[2009-SC-000695-KB](#)

March 18, 2010

The Supreme Court suspended attorney from the practice of law for three years. Attorney was found guilty of charging an unreasonable fee and refusing to refund an unearned fee. Furthermore, the Court determined that the attorney continued to practice law after her initial 45-day suspension. The Court noted that the attorney was also suspended for 181 days in 2009 and that the attorney has been on suspension since 2007.

F. Angela Renee Kinser v. Kentucky Bar Association

[2009-SC-000720-KB](#)

March 18, 2010

The Supreme Court reinstated attorney to the practice of law. Attorney had previously withdrawn from the KBA in good standing in 2006.

G. IN RE: Heather Elizabeth Rochet

[2010-SC-000013-KB](#)

March 18, 2010

The Supreme Court denied attorney’s request under CR 76.38 to reconsider rule absolute and order of suspension from practice of law for failure to pay KBA dues. The Court noted its sympathy towards the attorney’s personal hardships, but observed that attorney failed to avail herself of pre-disciplinary alternatives to avoid suspension (i.e. hardship under SCR 3.040; responding to show cause order).

H. Kentucky Bar Association v. Ronald Dean Harris

[2010-SC-000016-KB](#)

March 18, 2010

The Supreme Court suspended attorney from the practice of law for 61 days. Attorney failed to provide his client with finalized trust documents that he was hired to draft and failed to refund the client’s money. The Court noted that after he sent an eleventh-hour email to the Board of Governors, the attorney was granted an extra 14 days to respond to the charges against him. When he failed to so do, the matter was handled as a default case.

I. Paul Gregory Croushore v. Kentucky Bar Association

[2010-SC-000030-KB](#)

March 18, 2010

The Supreme Court suspended attorney from the practice of law for one year retroactive to February 15, 2006. The Ohio Supreme Court had determined the attorney had violated its disciplinary rules concerning IOLTA accounts. The Ohio Supreme Court suspended attorney for a year, stayed on the condition he commit no misconduct during that time. After that punishment was successfully completed, the KBA and the attorney negotiated the retroactive suspension as reciprocal discipline for the Ohio suspension.

J. Kentucky Bar Association v. William O. Ayers

[2010-SC-000064-KB](#)

March 18, 2010

The Supreme Court confirmed the automatic suspension of attorney convicted of five felony counts of failing to file a tax return. Pursuant to SCR 3.166(1), the suspension was effective January 29, 2010--the day following the conviction.