

**PUBLISHED OPINIONS
KENTUCKY SUPREME COURT
MAY 2015**

I. CRIMINAL LAW:

A. Jeremy Caraway v. Commonwealth of Kentucky

[2013-SC-000610-MR](#)

May 14, 2015

Opinion of the Court by Justice Noble Affirming. All sitting; all concur. Caraway was convicted of various sex offenses and was sentenced to 20 years' imprisonment. In affirming his convictions and sentence, the Court held that Caraway had accepted a juror's qualifications during voir dire, thereby waiving any objection to the alleged partiality of the juror, and was thus barred from seeking appellate review on those grounds; that his direct appeal ineffective assistance of counsel claim was premature; that the trial court's refusal to hear additional testimony at the sentencing hearing after the penalty phase of trial was not error and did not deny Caraway of meaningful judicial sentencing; and that, in light of the 2011 amendments to KRS 532.120(3), the trial court was not required or authorized to order credit for time served in custody before sentencing.

B. Jose Lopez v. Commonwealth of Kentucky

[2013-SC-000795-MR](#)

May 14, 2015

Opinion of the Court by Justice Keller. All sitting; all concur. . Lopez was convicted of rape, incest, sexual abuse, and unlawful transaction with a minor. His convictions arose from a sexual relationship he admitted to having with his under 16-year-old stepdaughter. On appeal, Lopez primarily argued that he did not receive pre-trial due process or a fair trial because he was not provided a qualified translator. The Court noted that Lopez raised a number of issues regarding what constitutes a qualified translator. However, because Lopez had not properly preserved those issues and had not shown how he was harmed by any error related to the translations, the Court did not substantively address them. Lopez also argued that his statement, which was taken in the presence of a translator and contained the translator's translation, should have been excluded as hearsay. The Court held that Lopez's translated statement was an admissible statement against interest and the fact that a translator was involved did not alter the nature of the statement. During the penalty phase, the jurors indicated that they could not agree regarding the length of certain sentences; however, they had agreed that any sentences should run concurrently. The trial court declared a deadlock and imposed sentences that ran consecutively rather than concurrently. Because Lopez had not preserved the issue, the Court looked for palpable error, which it could not find. Finally, Lopez argued that testimony by his stepdaughter about uncharged sexual activity amounted to impermissible KRE 404(b) evidence. The Court held, as it did in *Noel v. Commonwealth*, 76 S.W.3d 923 (Ky. 2002), that evidence regarding similar acts perpetrated against the same victim are almost always admissible to prove intent, plan, or absence of mistake. Therefore, the complained of testimony was properly admitted.

C. Matthew Ballinger v. Commonwealth of Kentucky

[2012-SC-000694-DG](#)

May 14, 2015

Opinion of the Court by Justice Abramson. Minton, C.J.; Abramson, Barber, Cunningham, Noble, and Venters, JJ., sitting. Minton, C.J.; Barber, Cunningham, and Venters, JJ., concur. Noble, J., concurs by separate opinion. Defendant was charged with DUI second for an offense allegedly committed in Warren County in September 2010. At the time, the defendant faced two additional DUI charges for offenses allegedly committed in Barren County in July 2010. When the Barren County charges resulted in convictions, the Warren County charge was amended to DUI fourth, a felony, and the matter was transferred to the Warren Circuit Court. The Circuit Court ruled that under KRS 189A.010 the Barren County convictions could not be used as predicates to enhance the punishment for the new Warren County offense because at the time of that offense the Barren County convictions had not been entered. The Court of Appeals reversed. That Court held that as long as the offenses occurred within five years of each other, the statute required that any DUI conviction of record at the time of a new conviction was to be used as a predicate for the purposes of sentence enhancement. Affirming the result, the Supreme Court held that a predicate offense for DUI enhancement purposes must have been committed prior to and within five years of the offense for which enhancement is sought, but the prior conviction need not precede the new offense, it need only be of record by the time of the new conviction.

D. Commonwealth of Kentucky v. Shawn Tigue

[2011-SC-000737-DG](#)

May 14, 2015

[2012-SC-000599-DG](#)

May 14, 2015

Opinion of the Court by Justice Noble Affirming, Vacating and Remanding. All sitting; all concur. Tigue pleaded guilty to murder, first-degree burglary, and various drug-related offenses, and was sentenced to life in prison without the possibility of probation or parole for 25 years in accordance with the terms of the plea agreement. At sentencing, he asked the trial court to allow him to withdraw his guilty plea, claiming that it was untrue and was the product of coercion and ineffective assistance by his trial counsel. The request was denied, and Tigue filed no direct appeal. Subsequently, Tigue filed for post-judgment relief under RCr 11.42, asking the trial court to vacate the judgment of conviction and sentence on several grounds, including that his trial counsel's failure to investigate and prepare for trial denied him effective assistance of counsel, that his counsel's ineffective assistance rendered his guilty plea involuntary, and that his trial counsel's refusal to assist in his motion to withdraw the guilty plea denied him assistance of counsel during a critical stage of the proceedings and thus resulted in a per se violation of his Sixth Amendment right to counsel. After appointing appellate counsel and holding an evidentiary hearing, the trial court overruled the motion. Tigue appealed to the Court of Appeals, which reversed his convictions and sentence and remanded for trial upon finding that his right to counsel was violated when he asked to withdraw his plea, but did not otherwise reach the remaining claims of ineffective assistance of counsel related to the validity of the

plea. The Supreme Court granted the Commonwealth's petition for discretionary review to resolve whether a motion to withdraw a guilty plea is a "critical stage" during which the right to counsel attaches and, if so, what the appropriate remedy is for a denial of counsel at that stage. The Court also granted review of Tigue's cross-appeal, which raised those issues not reached by the Court of Appeals.

On discretionary review, the Supreme Court held as a matter of first impression that a pre-judgment plea withdrawal proceeding is a "critical stage" of the criminal proceedings at which a defendant is entitled to assistance of counsel. The Court further agreed with the Court of Appeals that Tigue's right to counsel was violated when his counsel refused to help him seek to withdraw his plea and the trial court refused to consider his pro se request and appoint substitute counsel. But because that violation occurred after the entry of his guilty plea, the Court concluded that reversal of the convictions in that situation was the wrong remedy. Instead, as a result of this violation, Tigue was entitled only to have the final judgment and sentence vacated and the case remanded to the trial court to allow him to re-make his motion to withdraw the guilty plea with the assistance of counsel. However, because Tigue's other cross-appeal claims requested further relief (reversal of both the convictions and sentence and remand), the Court determined that judicial economy warranted addressing those other claims not reached by the Court of Appeals to the extent necessary to fully resolve the appeal. Accordingly, the Court held that Tigue received ineffective assistance of counsel leading to the entry of his guilty plea, which thus rendered the plea involuntary, and that the trial court's refusal to vacate the judgment of conviction was therefore error. For those reasons, the Court affirmed the judgment of the Court of Appeals' decision reversing Tigue's convictions and sentence and remanding to the trial court for further proceedings as necessary.

E. Commonwealth of Kentucky v. Christopher Duncan

[2013-SC-000742-DG](#)

May 14, 2015

Opinion of the Court by Justice Cunningham. All sitting. Minton, C.J.; Barber, Keller, Noble, and Venters, JJ., concur. Abramson, J., concurs in result only. Appellant was pulled over for suspicion of driving under the influence ("DUI"). Appellant submitted to a portable breathalyzer test which detected the presence of alcohol on Appellant's breath. As a result, Appellant was arrested and transported to the local jail. Appellant refused to submit to a blood test, and instead requested that he be allowed to take a breathalyzer test via an intoxilyzer. However, there was no intoxilyzer machine at the jail Appellant was taken to. Appellant subsequently sought to dismiss the DUI charge. In support of his motion, Appellant argued that KRS 189A.103 requires an investigating officer to administer a breathalyzer test first, prior to proceeding with blood testing. The Kentucky Supreme Court ruled that KRS 189A.103 does not require an investigating officer to follow any specific testing order, nor does it state that a breath test is the primary or preferred method of ascertaining the driver's blood alcohol concentration level. On the contrary, when an officer has reasonable grounds to believe that a driver is operating a motor vehicle under the influence of alcohol, that officer may request that the driver submit to a breath, blood, or urine test, and is under no obligation to first administer a

breathalyzer test prior to the administration of a blood or urine test. Consequently, Appellant's motion to dismiss the DUI charge was properly denied.

F. David Milam v. Commonwealth of Kentucky

[2013-SC-000681-DG](#)

May 14, 2015

Opinion of the Court by Justice Cunningham. All sitting; all concur. Police officers, acting on a tip that a resident of a fraternity house was selling marijuana, went to the fraternity house to conduct a "knock and talk". Once there, officers entered the fraternity house without consent. The officers believed that the fraternity house was more akin to an apartment complex than a private residence. Once inside, another fraternity member led the officers to the Appellant's room, after which Officers proceeded to knock on the door. Appellant opened the door and officers immediately smelled marijuana and saw a jar of marijuana sitting on a nearby table, in plain view. Appellant then consented to a search of his room. Besides marijuana, officers also found \$1,700 in cash, Adderall pills, drug paraphernalia, and a fake driver's license. The Appellant sought to suppress evidence found during the search on the grounds that the search was illegal. The Kentucky Supreme Court held that a fraternity house is a private residence for purposes of Fourth Amendment protections, and therefore, officers were barred from entering the fraternity house absent an exception to the warrant requirement. Consequently, when the officers entered the fraternity house and proceeded to knock on the Appellant's door, they exceeded the scope of the "knock and talk". The Kentucky Supreme Court concluded that the evidence obtained from the officers' illegal search of Appellant's room should have suppressed by the trial court.

G. Dennis James Trigg v. Commonwealth of Kentucky

[2013-SC-000785-MR](#)

May 14, 2015

Opinion of the Court by Justice Venters. All sitting. Minton, C.J.; Abramson, Barber, Keller, and Noble, JJ., concur. Cunningham, J., concurs in result only. A Barren Circuit Court jury found Appellant, Dennis James Trigg, guilty of first-degree trafficking in a controlled substance and possession of drug paraphernalia. Appellant was sentenced to twenty years' imprisonment for the trafficking charge and assessed a \$500.00 fine for the drug paraphernalia charge.

Held: 1) The Commonwealth's impermissible use of a statement not disclosed to Appellant prior to trial, in contravention of RCr 7.24, constituted reversible error; 2) testimony regarding Appellant's pre-arrest silence violated KRE 801A(b)(2), where an officer was permitted to testify that Appellant never said anything to expressly disclaim ownership of the residence being searched; and 3) the imposition of a fine by the trial court was not clearly erroneous where there was no express finding of indigency in the record.

H. Nery J. Ruiz v. Commonwealth of Kentucky

2014-SC-000124-MR

May 14, 2015

Opinion of the Court by Justice Venters. All sitting. Minton, C.J.; Abramson, and Noble, JJ., concur. Keller, J., dissents. Cunningham, J., dissents by separate opinion in which Barber, J., joins. Defendant was convicted of first-degree sexual abuse and first-degree sodomy. Upon review the Court held: 1) The Defendant's right to a unanimous verdict was violated because the jury was instructed on, and Appellant was convicted of, one count of sexual abuse and oral sodomy, but the victim testified as to multiple instances of each of these crimes; as such, there was no assurance that each of the jurors were focused upon the same episode of sexual abuse and sodomy when they cast their respective votes, which is in violation of our unanimous verdict rules as enunciated in *Johnson v. Commonwealth*, 405 S.W.3d 439 (Ky. 2013); as such, and even though the issue was not properly preserved, reversal of both convictions was required as palpable error under RCr 10.26; 2) there is no such thing as "investigative hearsay" and the bench and bar should abolish the concept from its lexicon; 3) the investigating officer's detailed description of the victim and her family's demeanor in the immediate aftermath of the accusation was not improper "bolstering" but was nevertheless inadmissible as irrelevant and unduly inflammatory, KRE 403; and 4) the investigating officer's testimony that he had upon his initial interview with the victim and her family determined that there was "probable cause" to believe that a crime had occurred and to pass the case on to a detective for further investigation was improper bolstering.

II. JUVENILE LAW:

A. Q.M., a Child Under Eighteen v. Commonwealth of Kentucky

2013-SC-000210-DG

May 14, 2015

Opinion of the Court by Justice Noble Reversing and Vacating. Minton, C.J., Abramson, Barber, and Venters, JJ., concur. Cunningham, J., concurs in result only. Keller, J., not sitting. In informal adjustment of juvenile offense charges, district court ordered the Appellant to leave Kentucky and live with his father in another state, but the child ultimately returned to Kentucky without permission from the court because of difficulties adjusting to his father's household. Finding that Appellant disobeyed the court's order, the district court revoked the informal adjustment, re-docketed the original charges, and proceeded with formal adjudication and disposition. The circuit court affirmed on appeal, and the Court of Appeals denied discretionary review. The Supreme Court granted discretionary review and vacated the district court's adjudication and disposition of the case, holding that the district court erred when it changed the case from an informal adjustment to formal proceedings because informal adjustment, which is by agreement of the parties and whereby the child consents to a waiver of certain constitution protections, and formal proceedings, with their attendant due process requirements, are alternative routes for dealing with a child charged with a juvenile offense. The Court noted that nothing in the juvenile code supports a hybrid process whereby a juvenile offense charge that is informally adjusted child might later be returned to formal proceedings on that charge and that

electing to proceed by informal adjustment means that there will not be formal proceedings on that charge.

III. SOVEREIGN IMMUNITY:

A. Coppage Construction Company, Inc. v. Sanitation District No. 1, et al.
[2013-SC-000122-DG](#) May 14, 2015

Opinion of the Court by Justice Abramson. All sitting. Minton, C.J.; Barber, Cunningham, Noble, and Venters, JJ., concur. Keller, J., concurs in result only. Venters, J., concurs by separate opinion in which Cunningham, J., joins. Coppage Construction Company, Inc. filed a third-party complaint in this action alleging contract, tort and statutory claims against Sanitation District No. 1 (“SD1”), a public sewer utility that provides services in three Northern Kentucky counties. The Kenton Circuit Court granted summary judgment in favor of SD1 on the basis of sovereign immunity, and the Court of Appeals affirmed. The Supreme Court reversed, vacated and remanded the matter to the circuit court for further proceedings, concluding that SD1 was not entitled to sovereign immunity under the analysis set forth in *Comair, Inc. v. Lexington-Fayette Urban Cnty. Airport Corp.*, 295 S.W.3d 91 (Ky. 2009). The Court determined that SD1 was not created by the state or a county and it does not carry out a function integral to state government.

IV. WORKERS’ COMPENSATION:

A. City of Ashland v. Taylor Stumbo et. al. AND Taylor Stumbo v. City of Ashland, et al.
[2014-SC-000190-WC](#) May 14, 2015
[2014-SC-000212-WC](#) May 14, 2015

Opinion of the Court by Justice Keller. All sitting. Minton, C.J.; Abramson, Cunningham, Keller and Noble, JJ., concur. Barber, J., concurs by separate opinion in which Venters, J., joins. Stumbo suffered a left knee injury while working for the City of Ashland. Following the injury and a course of conservative care, Stumbo underwent arthroscopic surgery. The surgery temporarily aggravated a pre-existing condition, causing Stumbo to suffer a recurrent deep vein thrombosis. The medical evidence regarding the extent of Stumbo's disability was mixed, with several physicians opining that he had little to no impairment rating or functional impairment and others opining that he is significantly impaired. The ALJ found Stumbo to be totally disabled. The City appealed to the Board, which vacated and remanded to the ALJ for additional findings. In doing so, the Board found that the ALJ improperly relied on the opinions of a physician whose impairment rating was based on the 6th edition of the AMA Guides. Stumbo appealed, arguing that the ALJ's opinion was supported by evidence of substance. The City of Ashland cross-appealed, arguing that the ALJ could not, as a matter of law, find Stumbo to be totally disabled. The Court of Appeals affirmed the Board and found that it could not, as a matter of law, declare that Stumbo was only partially disabled.

The Supreme Court affirmed the Court of Appeals. In doing so, the Court held that the ALJ's opinion was deficient in its reasoning and that he did not follow the proper procedure necessary to make a finding of total disability. The Court further held that making such a finding is a five-step process, and the ALJ fell short on all but the first step. In particular, the Court noted that the ALJ failed to determine what impairment rating, if any, Stumbo has, and he failed to delineate what functional impairment is related to Stumbo's work injury and what is related to his pre-existing condition. The Court stated that, based on the record, it would be difficult for the ALJ to justify an award of total disability; however, it agreed with the Court of Appeals that making that determination is within the ALJ's purview. In his separate concurring opinion, Justice Barber noted that an ALJ can give credence to a claimant's self-imposed limitations in assessing the extent and duration of his disability. Furthermore, he noted that, if the ALJ again determined that Stumbo is totally disabled, the City of Ashland could reopen should Stumbo return to work.

B. Gardens Glen Farm v. Bethany Taylor Balderas, et al.
[2014-SC-000401-WC](#) May 14, 2015

Opinion of the Court. All sitting; all concur. Gardens Glen Farm filed this appeal arguing that the ALJ erred by refusing to give it a dollar for dollar credit based on the lump sum settlement it entered into with Bethany Balderas. Balderas was injured while exercising a horse. She entered into a lump sum settlement with Gardens Glen. Several years later, Balderas filed a motion to reopen alleging a worsening of her disability. The ALJ determined that Balderas met her burden of proof to reopen and determined she was entitled to additional workers' compensation. The ALJ then calculated the value of Balderas's original award was less than the amount of the settlement between the parties. Gardens Glen received a credit in that lesser amount. Gardens Glen appealed arguing that it should receive a credit based on the settlement amount. The Court disagreed. When a settled claim is reopened, the monetary value of the original negotiated settlement may not reflect the claimant's actual disability. The change in a claimant's occupational disability should be calculated as the difference between the actual disability on the date of the settlement, as determined by the ALJ, and the occupational disability at the time of reopening.

C. Kentucky Employers' Mutual Insurance v. Randy Ellington, Etc., et al.
[2013-SC-000802-WC](#) May 14, 2015

Opinion of the Court by Justice Noble Reversing. All sitting; all concur. The Appellee, the owner of a sole proprietorship, had a workers' compensation insurance policy with the Appellant that named both him and his sole proprietorship as "insureds." At the same time, it also expressly excluded the owner from bodily-injury coverage under the policy. The owner suffered a work injury several years after purchasing the policy and filed a claim for workers' compensation benefits, naming the Appellant as the payment obligor. Appellant

disputed coverage, and the Administrative Law Judge ultimately agreed, finding that the insurance policy provided coverage only for work injuries by employees of the business and that Appellee, as owner rather than employee of the sole proprietorship, was excluded from coverage by the clear language of the policy. The Workers' Compensation Board affirmed the ALJ. The Court of Appeals reversed the Board and the ALJ, finding that the policy contained an ambiguity because it could reasonably be interpreted to exclude the Appellee from coverage in his capacity as owner of the business while simultaneously covering him in his capacity as its sole employee, and holding that the ALJ erred by construing this ambiguity against the Appellee rather than strictly against the drafter of the insurance contract and also by failing to construe it in favor of the insured's reasonable expectations that he was covered under the policy. The Supreme Court reversed the Court of Appeals, holding that the clear language of the policy excluded Appellee from coverage and contained no ambiguity.

V. WRIT OF PROHIBITION:

A. Daniel E. Bailey, Jr. (M.D.) v. Hon. Allan Ray Bertram, Judge, Marion Circuit Court, Division II, et al.

[2013-SC-000386-MR](#)

May 14, 2015

Opinion of the Court by Justice Noble Affirming. All sitting. Abramson, Barber, Cunningham, and Keller, JJ., concur. Minton, C.J., concurs in result only. Venters, J., concurs in result only by separate opinion. Trial court allowed intervening parties to intervene in Bailey's divorce action, even though they had no interest in the marriage or the marital estate, because they sought intervention for the purportedly limited purpose of unsealing certain records in the court file. The Court of Appeals denied Bailey's request for a writ of prohibition to block the intervention and unsealing of the records. Although this Court agreed that the intervention was improper, it nevertheless held that Bailey was not entitled to a writ of prohibition because he has an adequate remedy by appeal. The Court concluded that the trial court's order granting intervention and unsealing the records resolved all the issues between Bailey and the intervening parties and was, therefore, a final and appealable order.

VI. ATTORNEY DISCIPLINE:

A. Kentucky Bar Association v. James Neal Tilson

[2014-SC-000708-KB](#)

May 14, 2015

Opinion and Order. All sitting; all concur. Tilson is a member of the Arizona bar and was recently suspended from the practice of law there for numerous ethical violations. The Office of Bar Counsel filed a petition for reciprocal discipline against Tilson under SCR 3.435, and asked the Court to require he show cause why identical reciprocal discipline should not be imposed. A show-cause order was issued, but Tilson failed to file a response. Accordingly, finding no reason he should not be subjected to identical reciprocal discipline, the Court ordered that Tilson be suspended from the practice of law in Kentucky for a period of three years.

B. Kentucky Bar Association v. Eric C. Deters

[2015-SC-000023-KB](#)

May 14, 2015

[2015-SC-000025-KB](#)

May 14, 2015

Opinion of the Court. All sitting; all concur. In two consolidated actions, the KBA Board of Governors found Deters guilty of a number of ethical violations and recommended he be suspended thirty days for each. Deters petitioned the Supreme Court to strike the Board's Findings of Fact, Conclusions of Law and Recommendations because the Board failed to provide its findings to the Court within the time specified under SCR 3.370(6). The Court denied Deters' petition, noting that although the Board missed the deadline, Deters did not demonstrate any prejudice from the delay. The Court ultimately found Deters guilty of all counts and ordered him suspended from the practice of law for two consecutive thirty day periods.

C. Kentucky Bar Association v. Russell W. Burgin

[2015-SC-000049-KB](#)

May 14, 2015

Opinion and Order. All sitting; all concur. A four-count charge against Burgin was issued alleging violations of SCR 3.130-1.3 for failing to act with reasonable diligence and promptness in dealing with a divorce action; SCR 3.130-1.4(a)(3) for failing to keep his divorce client reasonably informed about the status of the matter, and SCR 3.130-1.4(a)(4) for failing to promptly reply to the client's reasonable requests for information; SCR 3.130-1.16(d) for failing to give reasonable notice to the divorce client that Burgin had abandoned the matter and thereby ended the representation; and SCR 3.130-8.1(b) for failing to respond to the bar complaint despite having been warned that doing so could result in additional charges of misconduct. Burgin did not answer the charge, and the case thus proceeded directly to the Board of Governors as a default case. The Board voted unanimously to find Burgin guilty of all four counts. After considering Burgin's lengthy history of discipline, *see Burgin v. Kentucky Bar Ass'n*, 362 S.W.3d 331 (Ky. 2012), *Kentucky Bar Ass'n v. Burgin*, 412 S.W.3d 872 (Ky. 2013), *Kentucky Bar Ass'n v. Burgin*, 448 S.W.3d 256 (Ky. 2014), the Board recommended a 181-day suspension to be served consecutively to any current suspension as well as referral to and assessment by KYLAP before any reinstatement. Neither the Office of Bar Counsel nor Burgin sought review under SCR 3.370(7). And the Court ultimately declined to undertake review under SCR 3.370(8). Accordingly, the Board's decision was adopted in full under SCR 3.370(9).

D. Kentucky Bar Association v. Brian Patrick Curtis

[2015-SC-000103-KB](#)

May 14, 2015

Opinion of the Court. All sitting; all concur. The KBA's charges against Curtis arose from allegations that he: agreed to perform legal services for clients or prospective clients in bankruptcy actions; accepted either full or partial payment of costs and fees and subsequently failed to perform any services; failed to respond to the clients' inquiries; failed to return file materials; failed to refund unearned portions of fees;

and failed to act with reasonable diligence and promptness. Curtis filed a blanket denial and asked for an extension of time to further respond based on his alleged severe depression. The Court held the matter in abeyance and ordered Curtis to file status reports. However, Curtis did not file the mandated status reports, and he took no further steps to defend himself. Following a hearing, which Curtis did not attend, the trial commissioner found that the KBA had proven each of the charges. The commissioner noted that Curtis had previously been suspended from the practice of law for a period of 60 days and a period of 90 days and that, at the time of the hearing, Curtis was serving a suspension for failure to comply with CLE requirements. After noting the possible mitigating circumstance of Curtis's alleged depression, the commissioner recommended a five year suspension and referral to KYLAP. She also recommended that Curtis be ordered to repay any unearned client funds. The Supreme Court agreed with the trial commissioner and suspended Curtis from the practice of law for five years with conditions.

E. Mary Lou Chandler v. Kentucky Bar Association
[2015-SC-000133-KB](#) May 14, 2015

Opinion of the Court. All sitting; all concur. Chandler moved the Court to resign under the terms of permanent disbarment after entering a guilty plea to one count of Complicity to Trafficking in a Controlled Substance, a Class D felony. Chandler was sentenced to two years in prison, probated for five years. Under the terms of the plea agreement, Chandler was required to give up her membership with the Kentucky Bar Association and agree to no longer practice law in the Commonwealth of Kentucky. Although the Inquiry Commission had not yet returned formal disciplinary charges, Chandler requested that the KBA's investigation be terminated and that she be allowed to resign under terms of permanent disbarment pursuant to SCR 3.480(3). The Court agreed that Chandler's request was appropriate and permanently disbarred her from the practice of law.