PUBLISHED OPINIONS
KENTUCKY SUPREME COURT
MAY 2016

I. ADMINISTRATIVE LAW:

A. Jerry Jamgotchian v. Kentucky Horse Racing Commission, et al.

2014-SC-000108-DG **May 5, 2016**

Opinion of the Court by Justice Hughes. All sitting; all concur. Owner of thoroughbred race horse sought a declaration that Commission regulations limiting when thoroughbreds claimed during Kentucky race meetings can be raced "elsewhere" imposed a discriminatory burden on interstate commerce in violation of the federal Constitution's Commerce Clause, more specifically, the U.S. Supreme Court's dormant Commerce Clause jurisprudence. The trial court denied relief, and the Court of Appeals affirmed, concluding in part that horseracing regulation was a governmental function in Kentucky and consequently the regulations were not subject to Commerce Clause scrutiny. Affirming the Court of Appeals on different grounds, the Supreme Court held that given the challenged regulations' legitimate, nondiscriminatory purpose; given their de minimis effect on a claiming owner's ability to use the horse as he saw fit; and given the availability of alternative means of acquiring thoroughbreds, means not subject to the challenged regulations which affect only claiming races, the regulations did not violate the Commerce Clause.

II. CIVIL RIGHTS:

A. Janet Owen v. University of Kentucky

2014-SC-000137-DG **May 5, 2016**

Opinion of the Court by Chief Justice Minton. All sitting; all concur. Janet Owen was a former UK employee that filed a claim for workplace discrimination with the Kentucky Commission on Human Rights. After exhausting the administrative process, Owen attempted to file an original action based on the same controversy, against the same party, in circuit court. The issue before the Court is whether KRS 344.270 provides for an election of remedies; if receiving a final order of dismissal from the KCHR bars an original lawsuit in circuit court.

In a unanimous opinion, the Court determined that the statute does not bar the subsequent action. A 1996 amendment to KRS 344.270 substantively altered the meaning of the text. Where before the amendment barred any "other action or proceeding" brought by the same person based on the same grievance, the amended statute only pertains to "any other administrative action or proceeding brought in accordance with KRS Chapter 13B." The changed text took on new meaning to only prohibit subsequent claims filed in administrative tribunals.

Because the ordinary meaning of the text of the statute controls, the Court had no choice other than to reverse the Court of Appeals.

B. John Charalambakis v. Asbury University, et al.
2014-SC-000215-DG May 5, 2016

Opinion of the Court by Justice Venters. All sitting; all concur. Civil; Civil Rights Act (KRS Chapter 344). Discretionary Review Granted. Plaintiff, a Greek native, teaching at Asbury University filed a civil rights lawsuit against the school alleging that it discriminated against him in an employee disciplinary matter because of his national origin, and then retaliated against him because he attempted to vindicate his rights by filing a complaint with the Kentucky Commission on Human Rights in relation to the disciplinary matter. The circuit court awarded summary judgment to Asbury and the Court of Appeals affirmed. Upon review the Court held: (1) Plaintiff lacked direct evidence that Asbury's disciplinary action was motivated by discriminatory animus toward him and further failed to demonstrate under the McDonnell Douglas burden shifting analysis that his circumstantial evidence of discriminatory treatment was sufficient to disprove Asbury's proffered reasons for its disciplinary decisions; (2) Plaintiff failed to present sufficient evidence to support his retaliation claim—the undisputed timeline demonstrated that Asbury's actions against Plaintiff were not related to his civil rights complaint filed with the KCHR; (3) KRS 344.280(1) does not require a Plaintiff to plead and prove that he "acted in good faith" in bringing a retaliation claim but a Defendant may interpose "lack of good faith" in defense to the claim, and if the defendant-employer advances sufficient proof at trial to place the good faith and reasonableness of the plaintiffs belief in doubt so as to be entitled to a jury instruction on the issue; and (4) a Plaintiff need not succeed in his underlying civil rights claim in order to assert a retaliation claim under KRS 344.280.

III. CRIMINAL LAW:

A. Stephen W. Williams v. Commonwealth of Kentucky
2014-SC-000249-MR May 5, 2016

Opinion of the Court by Chief Justice Minton. All sitting; all concur. Williams and Hill went to Montgomery's house with the intention of killing Montgomery. An argument ensued over Williams's assertion that Montgomery had snitched on him and owed him money. Williams eventually grabbed a shotgun that Hill had left beside the couch and shot Montgomery in the chest. Williams was indicted for murder, tampering with physical evidence, and first-degree burglary. A circuit court jury found him guilty of all charges and recommended a life sentence without the possibility of parole for 25 years.

On appeal, Williams argued the trial court erroneously denied his motion for directed verdict on the burglary charge; that the Commonwealth did not present

sufficient evidence to warrant a tampering-with-physical evidence conviction; that he was not provided adequate notice that a witness would offer testimony on incriminating statements; that he was denied due process because gunshot-residue testing had not been performed; and that inadmissible hearsay was erroneously admitted.

The Supreme Court disagreed with all of Williams's arguments, holding that Williams was not entitled to a directed verdict on his burglary charge; that the Commonwealth presented sufficient evidence to defeat a motion for directed verdict on the tampering with physical evidence charge; that the admission of incriminating hearsay testimony was not erroneous; that Williams's right to present a defense was not denied when the Commonwealth did not conduct the requested gunpowder residue testing; and that the admission of hearsay evidence was not palpable error. Because none of Williams's claims merited reversal, the Supreme Court affirmed the judgment of the trial court.

B. Karu Gene White v. Commonwealth of Kentucky
2013-SC-000791-MR May 5, 2016

Opinion of the Court by Justice Cunningham. All sitting. Minton, C.J.; Hughes, Keller, Noble, and Venters, JJ., concur. Wright, J., concurs with separate opinion. This is a death penalty case where the Appellant, Karu Gene White ("White"), raised a post-conviction intellectual disability claim under *Hall v. Florida*, 134 S.Ct. 1986 (2014) (applying Eighth Amendment bar against executing persons with intellectual disability). White requested state funds for an independent psychological evaluation. The trial court denied White's request and ordered him to submit to a psychological evaluation by the Kentucky Correctional Psychiatric Center ("KCPC"). After White repeatedly refused to submit to KCPC's custody, the trial court determined that White had waived his intellectual disability claim. The Supreme Court of Kentucky held, inter alia, that neither KRS 31.185 nor *Hall* require the allocation of state funds for an independent psychological evaluation. However, once an evaluation is ordered, the mode of evaluation must satisfy the dictates of *Hall*. The Court affirmed the trial court's finding that White is not entitled to public funds here and reversed the trial court on the issue of waiver. The Court remanded to the trial court to conduct additional proceedings.

C. Curtis McGruder v. Commonwealth of Kentucky
2014-SC-000598-MR May 5, 2016

Opinion of the Court by Justice Noble. All sitting; all concur. The Appellant was convicted of first-degree burglary, among other offenses, after having been found unlawfully within an unoccupied building that was then in the midst of renovations. A small hatchet was discovered inside a backpack that had been in the Appellant's possession inside the house. The first-degree burglary conviction under KRS 511.020(1)(a) was thus based on the theory that he had been armed with a "deadly weapon" during his unlawful entry and presence in the house. On appeal, the Supreme Court held that a small hatchet does not fall under the

statutory definition of "deadly weapon" in KRS 500.080(4) and, therefore, that the Appellant could not be convicted of first-degree burglary under KRS 511.020(1)(a). Consequently, because there was no evidence that the Appellant caused physical injury to anyone during the course of the burglary, see KRS 511.020(1)(b), or that he used or threatened to use the hatchet—a "dangerous instrument," KRS 500.080(3)—against anyone during the burglary, see KRS 511.020(1)(c), the Court concluded that he was entitled to a directed verdict of acquittal on the first-degree burglary charge.

D. Commonwealth of Kentucky v. David McKee
2014-SC-000255-DG **May 5, 2016**

Opinion of the Court by Justice Noble. All sitting; all concur. The Appellee was convicted of wanton murder and fourth-degree assault after a car accident in which he was highly intoxicated and was alleged to have crossed the center line, resulting in a head-on collision. On collateral review, the Court of Appeals reversed the convictions after concluding that his trial counsel had been ineffective: (1) in failing to conduct an independent investigation that "may" have turned up a diagram of the accident scene that, in turn, "may" have helped an accident reconstructionist show that the Appellee was not at fault; and (2) in failing to object to an emergency medical report tending to show that the victim driver was not intoxicated, despite some evidence to the contrary, because it was "possible" that another result could have been obtained. The Supreme Court reversed, holding that the Court of Appeals had incorrectly applied the prejudice standard for finding ineffective assistance of counsel under Strickland v. Washington, 466 U.S. 668 (1984), by merely speculating about the possibility of a different result; and that, based on a review of the record, the Appellee had failed to show a reasonable probability of a different result absent his counsel's alleged errors.

E. Commonwealth of Kentucky v. Caton Kamil Jones
2014-SC-000306-DG **May 5, 2016**

Opinion of the Court by Chief Justice Minton. All sitting; all concur. Jones was charged with operation of a criminal syndicate for organizing and funding credit mules to procure discounted cell phones for resale (with no intent to fulfill the two-year service contracts signed to obtain the phones). The question on appeal is whether Jones was entitled to a directed verdict dismissing the charge. A unanimous Court determined he was not. A reasonable jury could conclude beyond a reasonable doubt that: (1) this amounted to theft by deception; (2) the plan involved two or more participants; (3) the group collaborated in furtherance of the scheme; and (4) the group operated the plan on a continuing basis. Jones's ignorance that the actions were criminal had no effect in his ability to knowingly form a criminal syndicate. So the Court of Appeals decision was reversed and the trial court's judgment was reinstated.

F. Sherman Keysor v. Commonwealth of Kentucky
2013-SC-000531-DG **May 5, 2016**

Opinion of the Court by Justice Venters. All sitting; all concur. Criminal Appeal, Discretionary Review Granted. *Question presented*: In light of *Montejo v. Louisiana*, 556 U.S. 778 (2009), does Section 11 of the Kentucky Constitution afford greater protection of the right to counsel than the Sixth Amendment? Held: Montejo's degradation of the Sixth Amendment right to counsel is antithetical to Section 11's right to counsel. Section 11 of the Kentucky Constitution incorporates the rule expressed in *Linehan v. Commonwealth*, 878 S.W.2d 8 (Ky. 1994, that once the right to counsel has attached by the commencement of formal criminal charges, any subsequent waiver of that right during a police initiated custodial interview is ineffective. Consequently, Keysor's incriminating statements made during a custodial interview in the absence of his appointed counsel were obtained in violation of his Section 11 right to counsel.

IV. DAMAGES:

A. Saint Joseph Healthcare, Inc., Etc. v. Larry O'Neil Thomas, Etc., et al.
2014-SC-000008-DG **May 5, 2016**

Opinion of the Court by Justice Venters. All sitting. Minton, C.J.; Hughes, Keller, Noble, Venters, and Wright, JJ., concur. Cunningham, J., concurs by separate opinion. Plaintiff, Estate of James Milford Gray, filed suit against Saint Joseph Hospital alleging that Gray died after the hospital's emergency room employees and independent contractor physicians violated the Emergency Medical Treatment and Active Labor Act, 42 U.S.C. § 1395dd (EMTALA) by twice releasing Gray from the hospital in a medically unstable condition. Issues presented: 1) Whether the conduct of the hospital staff, as shown by evidence at trial, justified an award of punitive damages; 2) Whether evidence at trial sufficiently proved that the hospital had ratified the conduct of the emergency room personnel, as required by KRS 411.184(3) for imputing punitive damages to their employer; 3) Whether the hospital is liable for EMTALA violations committed by independent contractor physicians employed at the hospital; 4) Whether the punitive damage award of $1.45 million was unconstitutionally excessive in light of the fact that the hospital's share of compensatory damages was $3750.00; 5) Whether trial court abused its discretion by failing to remove sleeping juror. Held: 1) Evidence that emergency room discharged Gray from the hospital in severe pain, and had him removed from the premises in an ambulance, and then upon his return, left at unattended at a motel, and upon his second return released him again, still in pain, with threat of arrest of he returned supported an award of punitive damages. 2) Ratification under KRS 411.184(3) may be established by circumstantial evidence from which it may be inferred that the employer approved of employees tortious conduct. Threat of hospital's Director of Emergency Room Services to have Gary arrested if he returned to the hospital was conduct explicitly ratifying the previous release of Gray by emergency room staff. 3) EMTALA places statutory duties on the hospital. The hospital does not escape liability for EMTALA violation

committed by independent contractor physicians and other nonemployees affiliated with hospital to provide emergency room services. 4) An award of punitive damages "must be based upon the facts and circumstances of the defendant's conduct and the harm to the plaintiff" with "reasonableness" being the decisive measure." There is no "mathematical bright line between the constitutionally acceptable and the constitutionally unacceptable that would fit every case." Factors include the reprehensibility of the conduct, the ratio of the punitive damages to compensatory damages, and applicable civil or criminal penalties. A punitive to compensatory damage ratio in excess of single digits may be justified when plaintiff's circumstances warrant little by way of compensatory damages but tortious conduct of defendant was particularly egregious. Thus, the Supreme Court concluded that punitive damage award of $1.45 million despite compensatory ward of $3750.00 was not excessive. 5) Trail court did not abuse its discretion when it allowed sleeping juror to remain on the panel.

V. FAMILY LAW:

A. Michelle Carver (Butler) v. Lance G. Carver
2015-SC-000212-DGE **May 5, 2016**

Opinion of the Court by Justice Noble. All sitting. Minton, C.J.; Cunningham, Hughes, Venters and Wright, JJ., concur. Keller, J., concurs in result only. The Court of Appeals affirmed the circuit court, which deviated from the amount provided by the Child Support Guidelines statute, KRS 403.212, in setting the Appellee's child-support obligation at $60 per month based on his living expenses. The Supreme Court granted discretionary review to address the role of the statutory guidelines and the factors that should be considered when a deviation from the guidelines is necessary because the amount is unjust or inappropriate. In affirming in part and reversing in part, the Court held that the lower courts were correct in concluding that a deviation from the guidelines was appropriate under the facts of the case but that setting the amount of the father's support obligation based on his living expenses was improper. On remand, the Court directed the trial court to first ascertain the reasonable support needs of the child and then determine how much of that amount should be the responsibility of each parent, taking into account each parent's income and ability to pay all or a portion of that support need.

B. Rebekah McCarty v. Kenneth Faried
2015-SC-000271-DG **May 5, 2016**

Opinion of the Court by Justice Keller. Minton, C.J.; Hughes, Keller, Venters, and Wright, JJ., concur. Noble, J., concurs in result only. Cunningham, J., not sitting. Faried and McCarty bore a daughter, Kyra, in 2010, while they both attended college. The parties never married or cohabited. McCarty dropped out of college to care for Kyra and returned to live with her parents. Faried, a basketball standout, graduated from college and was drafted into the National Basketball Association (NBA) in 2011. McCarty filed a motion for court-ordered child

support in 2012. At the time of the ensuing evidentiary hearing, McCarty was still sharing a bedroom with Kyra in her parents' house and was earning $1,050 a month working at a gas station. Faried testified that he lived in a three-bedroom apartment in Denver and earned approximately $1.5 million from his NBA salary and other endorsement contracts. McCarty estimated Kyra's reasonable monthly needs to be $5,000, while Faried believed $2,500 a month in child support was appropriate.

The trial court found that deviation from the statutory child support guidelines was appropriate because of the substantial combined income of the parties. The trial court relied, instead, on Kyra's reasonable needs and ordered Faried to pay $4,250 a month in child support. The Court of Appeals vacated and remanded, holding that the trial court had failed to support its award with specific findings, erroneously relied on speculative testimony from McCarty, improperly made its child support order retroactive to the date of McCarty's motion.

The Supreme Court reversed the Court of Appeals and reinstated the trial court's order. The Court held that a trial court's decision, when setting child support over and above the guidelines, must be based on the best interest of the child. When making that determination, a trial court may use its judicial discretion with regard to weighing factors such as: the needs of the child, the financial circumstances of the parents, and the reasonable lifestyle the child may have been accustomed to before or after the parents separated. On review, an order setting child support above the guidelines will be affirmed so long as the trial court sets out specific supportive findings and the award, as a whole, is reasonable in light of those findings and the record. Applying that standard, the Court concluded that the trial court's order set forth specific supportive findings for the award, including a list of Kyra's needs, a contrast of Kyra's lifestyles with each parent, and a compilation of each parent's income and expenses.

As to McCarty's testimony being speculative of Kyra's needs, the Court disagreed. The Court of Appeals took issue with McCarty's requests for child support to facilitate moving Kyra out of her grandparents' house and also to pay for extracurricular activities, in which she had not yet been enrolled. Distinguishing this case—an initial establishment of child support—from a modification case, the Supreme Court determined that the lower appellate court had cast McCarty between a rock and a hard place. The Court held instead that it is for the trial court to determine whether requests for child support are reasonably calculated to support the child's needs, regardless of whether the petitioner provides an invoice for the expense. Finally, as to the retroactivity of the trial court's order, the Court found no abuse of discretion. The Court reasoned that the trial court had forewarned of retroactivity in its temporary child support order and that, absent a significant change in circumstances, Kyra was entitled to the award as of the date McCarty filed her motion.

C. Larry Massie, et al. v. Deborah Navy
2015-SC-000499-DGE **May 5, 2016**

Opinion of the Court by Justice Cunningham. All sitting; all concur. This is a visitation case initiated by the maternal grandmother. The child resided with the Appellees, Larry Massie and his wife, Christina Massie. Larry Massie is the child's paternal uncle. After considering extensive testimony on this issue, the trial court subsequently denied the grandmother's request for visitation rights and she appealed. A divided Court of Appeals panel reversed the trial court's ruling and remanded on the basis that the court did not consider all of the necessary factors required under Kentucky law. The Court of Appeals also applied a less stringent legal standard because Larry and Christina Massie are not the child's biological parents. The Supreme Court of Kentucky granted discretionary review and held that the trial court properly applied Kentucky law. Accordingly, the Court reversed the Court of Appeals and reinstated the trial court's order denying the grandmother visitation rights.

VI. INSURANCE:

A. Allstate Insurance Company v. Craig T. Smith
2013-SC-000732-DG **May 5, 2016**

Opinion of the Court by Chief Justice Minton. All sitting. Minton, C.J.; Cunningham, Hughes, Keller, Venters, and Wright, JJ., concur. Noble, J., concurs by separate opinion and states that in reality, the purchaser of insurance places reliance on the insurance agent selling a policy to provide information about available coverages, and there is no valid logic in requiring notice of available coverages on "first renewal" but not on the initial purchase of the policy, particularly here, when it was purchased before the prevalence of UM and UIM coverages.

Smith suffered injuries in a motor vehicle accident and settled his injury claim with the adverse driver's insurer for policy limits. Smith then submitted a UIM claim to his insurer, Allstate Insurance Company, claiming loss from injuries in excess of the amount recovered from the adverse driver's insurer. Allstate denied the claim because Smith's policy did not provide for UIM coverage and Smith sued Allstate for breach of contract and a declaration of rights as to UIM coverage. He also sought punitive damages for Allstate's alleged bad faith in denying him UIM coverage. Allstate counterclaimed to have its rights declared under the policy. The trial court granted summary judgment in favor of Allstate because Smith had not paid a premium for UIM or requested UIM coverage.

The Court of Appeals reversed the trial court's judgment even though it rejected the bulk of Smith's arguments, holding that Allstate had a duty under a specific provision of the MVRA to advise Smith of possible UIM coverage. The Supreme Court granted discretionary review and reversed the Court of Appeals, holding that Allstate was under no obligation to remind Smith of possible UIM coverage

with each renewal of his policy. No such obligation has ever been imposed on an insurer and no provision of the MVRA alters this fact. Further, UIM is an option coverage to be requested by the insured and it must be mentioned by the insurer only when giving the insured "notice of first renewal."

VII. INTERLOCUTORY RELIEF:

A. Scotty Hedgespeth and Linda Cundiff v. Taylor County Fiscal Court
2015-SC-000595-I **May 6, 2016**

Opinion of the Court. Minton, C.J.; Cunningham, Hughes, Keller, and Wright, JJ., concur. Venters, J., dissents by separate opinion in which Noble J., joins. Hedgespeth sought a temporary injunction to prevent the Taylor County Fiscal Court from constructing a new bridge. Hedgespeth alleged ownership of the land where the bridge would be constructed. The trial court denied the request for a temporary injunction. Subsequently, Hedgespeth sought and was denied interlocutory relief by the Court of Appeals. Finding that Hedgespeth had failed to demonstrate extraordinary cause the Supreme Court affirmed the decisions of the circuit court and Court of Appeals.

VIII. WILLS:

A. John Wesley Bays v. Kristie D. Kiphart, Individually and as Trustee of the Demand Right Irrevocable Trust for Bryace A. Bays
2014-SC-000324-DG **May 5, 2016**

Opinion of the Court by Justice Noble. All sitting; all concur. During their marriage, the Appellant's late wife purchased a term life insurance policy, naming the Appellant (80%) and their son (20%) as beneficiaries under the policy. Weeks before her death from cancer, the Appellant's wife executed a new will that largely disinherited her husband, instead leaving the bulk of her estate to members of her family. (The will was ultimately declared void because it failed to meet the witness requirements of KRS 394.040.) The Appellant's wife also created a trust for the benefit of her son and naming her sister as trustee (the Appellees), and she removed her husband and son as beneficiaries of the life-insurance policy and named the trust as beneficiary.

The Appellant filed a declaration of rights action, seeking to recover the portion of his spousal share that was delivered to the trust as beneficiary under the policy on the theory that his wife (aided by her sister) had committed fraud on his statutory spousal interest by changing the policy beneficiary and establishing the trust without his knowledge or consent, contending that the policy (and its proceeds) were part of his late wife's estate. The circuit court ruled in the Appellant's favor, concluding that the changes made to the insurance-policy beneficiary and the creation of the trust to be funded by the proceeds of the policy were fraudulent inter vivos transfers and that the policy proceeds were personalty to be considered in calculating his statutory share of his wife's estate. A split

panel of the Court of Appeals reversed, holding that the surviving husband's statutory spousal share did not attach to the life-insurance proceeds because they were never part of the decedent's estate and that the decedent, as the owner of the policy, had an absolute right to change the beneficiary of that policy without her husband's knowledge or consent.

Having granted discretionary review, the Supreme Court affirmed the Court of Appeals, agreeing that a life-insurance beneficiary has only a contingent interest in the proceeds of the policy and that where the owner of the policy retains the right to change the beneficiary under the terms of the policy, that right is virtually absolute. Accordingly, the Court held that where a dying spouse exercises that right to remove the surviving spouse as a named beneficiary and instead names a trust for the benefit of their minor child, the surviving spouse cannot claim fraud on his or her statutory spousal interest.

IX. ATTORNEY DISCIPLINE:

A. Visaharan Sivasubramaniam v. Kentucky Bar Association
2016-SC-000096-KB **May 5, 2016**

Opinion and Order of the Court. All sitting; all concur. Pursuant to a negotiated agreement with the Kentucky Bar Association, Sivasubramaniam moved the Supreme Court to sanction him by means of a five-year suspension from the practice of law for his admitted violation of SCR 3.130-8.4(b). Sivasubramaniam, who was also licensed to practice medicine in the Commonwealth of Kentucky, pled guilty to two counts of subscribing to a false tax return relating to the medical practice he owned and operated. He admitted that his actions violated SCR 3.130-8.4(b), which provides that it is misconduct for an attorney to "commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects," and moved the Court to suspend him pursuant to his agreement with the KBA. The Court agreed that the negotiated sanction was appropriate and imposed a five-year suspension from the practice of law in the Commonwealth.

B. Michael A. Valenti v. Kentucky Bar Association
2016-SC-000109-KB **May 5, 2016**

Opinion and Order of the Court. All sitting; all concur. Valenti reached an agreed resolution with the Kentucky Bar Association after self-reporting a professional ethics violation. Specifically, Valenti commingled personal funds with client funds in his firm's IOLTA escrow account. He admitted his conduct violated SCR 3.130-1.5(a) and, under SCR 3.480(2), agreed to a negotiated sanction of suspension from the practice of law for thirty days, to be probated for a one-year period, and attendance at the next Ethics and Professionalism Enhancement Program offered by the Office of Bar Counsel. After reviewing the record and other relevant authorities the Supreme Court concluded that the agreed-upon discipline was appropriate and sanctioned Valenti accordingly.

C. Pamela C. Bratcher v. Kentucky Bar Association
2016-SC-000112-KB May 5, 2016

Opinion and Order of the Court. Cunningham, Hughes, Keller, Noble, Venters and Wright, JJ., sitting. All concur. Minton, C.J., not sitting. Bratcher admitted to violated SCR 3.130(1.15)(a) (commingling settlement funds with attorney's own money); SCR 3.130(1.15)(b) (failing to notify client of settlement funds and promptly deliver funds to which the client was entitled); and SCR 3.130(8.4)(c) (using client's settlement funds as attorney's own money). Pursuant to a negotiated agreement with the Kentucky Bar Association under SCR 3.480(2), Bratcher asked the Court to impose upon her a one-year suspension, with sixty days to be imposed immediately upon the Court's order of discipline and the remainder to be probated for two years, conditioned upon Bratcher incurring no further disciplinary charges, successfully completing the Ethics and Professionalism Enhancement Program, and filing quarterly reports with the KBA showing her compliance with KYLAP recommendations. The KBA did not object to this request. After reviewing the allegations, Bratcher's previous disciplinary record, and her plan to take remedial measures to avoid further disciplinary violations, the Court concluded that the disciplinary proposed by Bratcher and agreed to by the KBA was appropriate and sanctioned Bratcher accordingly.

D. Kyle Anthony Burden v. Kentucky Bar Association
2016-SC-000114-KB May 5, 2016

Opinion and Order of the Court. All sitting; all concur. This case arose from Burden's continuing to appear in court on behalf of his clients when he was suspended for CLE non-compliance in the first half of 2014, resulting in charges of violations of SCR 3.130-5.5(a)—for "practice[ing] law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction"—and SCR 3.130-5.5(b)(2)—for being "[a] lawyer who is not admitted to practice in this jurisdiction" yet "hold[ing] out to the public or otherwise represent[ing] that the lawyer is admitted to practice law in this jurisdiction." Burden admitted that he committed the charged conduct and that his conduct violated the rules alleged; and he and the Office of Bar Counsel reached an agreement to resolve this matter whereby he would be found guilty of the two counts and for which he would receive a public reprimand. He moved the Supreme Court to accept the proposed disposition under SCR 3.480(2), and the Office of Bar Counsel had no objection and also asked that the motion be granted. Burden's history of past discipline included a private reprimand in 2012, a thirty-day suspension, probated, in 2013, and the suspension for CLE non-compliance in 2014 that lead to this case. After reviewing the allegations, the admitted facts, and Burden's disciplinary record, the Court concluded that the proposed resolution of this matter was adequate, if imperfect, finding that the sanction, a public reprimand, was sufficient given the circumstances.