

**PUBLISHED OPINIONS
KENTUCKY SUPREME COURT
NOVEMBER 2012**

I. CRIMINAL:

**A. Randal Keith Kiper v. Commonwealth of Kentucky
2010-SC-000768-MR November 21, 2012**

Opinion of the Court by Justice Venters. Abramson, Cunningham, Minton, Noble, Scott, JJ. concur. Schroder, J. not sitting. Criminal Appeal. *Questions Presented* – (1) Did defendant's convictions for both attempted murder and first-degree assault involving the same victim did violate prohibition against double jeopardy? (2) Did the prosecutor misstate the law regarding the Commonwealth's burden in proving its case beyond a reasonable doubt? (3) Did the prosecutor improperly comment on the Commonwealth's main witness's credibility during opening statements; (4) Did the prosecutor improperly cross-examine the defendant; (5) Did the prosecutor improperly imply that the defendant's mere indictment indicate that he was guilty? *Held:* (1) Defendant's convictions for both attempted murder and first-degree assault involving the same victim did not violate constitutional prohibition against double jeopardy per *Blockburger*, but did violate statutory double-jeopardy prohibition as contained in KRS 505.020(1)(b), which proscribes convictions where “inconsistent findings of fact are required to establish the commission of the offenses”; (2) Prosecutor's statement that the Commonwealth must prove beyond a reasonable doubt only the elements of the offense, not *each* and *every* evidentiary fact presented during the trial, was a fundamentally correct statement of the law; (3) Prosecutor did not engage in improper conduct by pointing out in opening arguments that its main witness would not have a motive to lie about who shot him; (4) Prosecutor's cross-examination Defendant about his claim that the Commonwealth's main witness falsely accused him was proper; (5) Prosecutor's comment did not imply that the fact of Defendant's indictment was an indication of guilt.

**B. Bass Webb v. Commonwealth of Kentucky
2011-SC-000594-MR November 21, 2012**

Opinion of the Court by Justice Scott. Minton, C.J.; Abramson, Cunningham, Noble, and Venters, JJ., concur. Schroder, J., not sitting. Appellant was convicted of two counts of attempted murder and one count of being a first-degree persistent felony offender (PFO) after he drove his vehicle into a wall of the Bourbon County Detention Center against which two jail officials were standing (hitting one of them and pinning him between his vehicle and the wall). For these crimes, Appellant received a fifty-year prison sentence. Appellant appealed his conviction as a matter of right, Ky. Const. § 110(2)(b), alleging that (1) evidence

that he was a former inmate was erroneously admitted, (2) evidence that he threatened a prison guard during apprehension was erroneously admitted, (3) he was entitled to a directed verdict on the PFO charge, and (4) the prosecution exceeded the scope of KRS 532.055 when telling jurors about his prior convictions. The Court affirmed the trial court on the first three grounds, but reversed and remanded for a new sentencing phase given that the Commonwealth exceeded the scope of KRS 532.055 when it read indictments from four prior convictions aloud to the jury. The Court also took this opportunity to set forth the proper means of introducing evidence of prior convictions in accordance with KRS 532.055, seeing as this is an issue that frequently presents itself to the Court.

II. ATTORNEY DISCIPLINE:

A. Kentucky Bar Association v. Fred G. Greene 2012-SC-000148-KB November 21, 2012

Opinion and Order. Minton, C.J.; Abramson, Cunningham, Noble, Scott and Venters, JJ., concur. Schroder, J., not sitting. The Office of Bar Counsel sought review of the Findings of Fact, Conclusions of Law and Recommendations of the Board of Governors in a consolidated disciplinary proceeding involving Respondent's alleged ethical violations. The proceeding involved nineteen counts of alleged misconduct. The Board found Respondent not guilty of seventeen of the charges; however, the Board found that Respondent was guilty of violating SCR 3.130-1.5(a) (charging an unreasonable fee) and SCR 3.130-1.15(a) (commingling of fees) and recommended a 45-day suspension, probated for two years. In contrast, Bar Counsel argued that Respondent was guilty of all nineteen counts and deserved a five-year suspension.

Upon review, the Court agreed with the Board's findings and adopted their recommendations in full, with the exception of the recommended punishment. The Court imposed a 30-day suspension for Respondent's violation of SCR 3.130-1.5(a), without probation, and a public reprimand for Respondent's violation of SCR 3.130-1.15(a).

B. Kentucky Bar Association v. Joshua Michael Robinson 2012-SC-000397-KB November 21, 2012

Opinion and Order. Minton, C.J.; Abramson, Cunningham, Noble, Scott and Venters, JJ., concur. Schroder, J., not sitting. Respondent was charged with numerous instances of failing to appear in court on his own behalf and on behalf of a client. While those matters were pending, Respondent was suspended from the practice of law for non-payment of bar dues. Respondent was later charged with violating SCR 3.130-5.5(a) (unauthorized practice of law) after sending a letter to Bar Counsel on his "Attorney at Law" letterhead and with SCR 3.175(1)(d) (failure to maintain a current bar roster address) and SCR 3.130-

8.1(b) (failure to respond to a disciplinary complaint) after he failed to respond to the Inquiry Commission's formal complaint on the failure to appear charges.

At a hearing before the Trial Commissioner, Respondent's counsel requested to negotiate an appropriate disciplinary sanction rather than hold a hearing. The Trial Commissioner gave Respondent and Bar Counsel fifteen minutes to negotiate and, when they returned, they informed the Trial Commissioner that they had negotiated a sanction of 181-day suspension from practice. The Trial Commissioner memorialized the negotiated sanction and submitted the report to the Court pursuant to SCR 3.360(4). The Court rejected the report on the basis that the resolution resulted from negotiation and not an independent decision by the trial commissioner. The case was remanded until Respondent complied with SCR 3.480(2).

Respondent then moved the Court to reconsider its order or, in the alternative, to accept the negotiated sanction as properly submitted under SCR 3.480(2). The Court rejected the request to accept Respondent's motion as properly submitted under SCR 3.360(4) but did accept the motion as properly submitted under SCR 3.480(2). The Court suspended Respondent from the practice of law for 181 days, in accordance with the terms of the negotiated sanction.

**C. Kentucky Bar Association v. Edward L. Jacobs
2012-SC-000413-KB November 21, 2012**

Opinion and Order. Minton, C.J.; Abramson, Cunningham, Noble, Scott and Venters, JJ., concur. Schroder, J., not sitting. The Board of Governors found that Respondent violated SCR 3.3130-1.4(a), SCR 3.130-1.15(a), and 3.130-1.15(b) while acting as both executor and attorney for an estate. The Board recommended that Respondent be suspended from the practice of law for thirty days and attend remedial ethics training. The Court agreed with the Board's findings and adopted their recommendations.

**D. John Brandon Bruce v. Kentucky Bar Association
2012-SC-000611-KB November 21, 2012**

Opinion and Order. Minton, C.J.; Abramson, Cunningham, Noble, Scott and Venters, JJ., concur. Schroder, J., not sitting. Respondent filed an application for restoration to the practice of law after having been suspended in February 2012 for non-payment of bar dues. Respondent complied with the requirements for restoration and the Board of Governors unanimously recommended that Respondent's application be granted. The Court concurred with the Board's recommendation and restored Respondent to the practice of law.

**E. Charles David Keen v. Kentucky Bar Association
2012-SC-000648-KB November 21, 2012**

Opinion and Order. Minton, C.J.; Abramson, Cunningham, Noble, Scott and Venters, JJ., concur. Schroder, J., not sitting. Respondent moved the Court to impose a public reprimand with conditions to resolve his pending disciplinary proceedings. The KBA did not object and the Court granted Respondent's motion. The Court publicly reprimanded Respondent and ordered him to complete ethics training and return any unearned portion of the fees that were the subject of the disciplinary charges.