

**PUBLISHED OPINIONS
KENTUCKY SUPREME COURT
NOVEMBER 2013**

I. AGENCY LAW:

- A. Southern Financial Life Ins. Co. v. Honorable Steven D. Combs, Judge, Pike Circuit Court, et al.**
[2012-SC-000642-MR](#) November 21, 2013

Opinion of the Court by Chief Justice Minton. All sitting; all concur. Southern Financial, a credit life and disability insurer, sought a writ of prohibition to prevent the enforcement of the trial court's order requiring Southern Financial, pursuant to its discovery obligations under CR 34.01, to subpoena and disclose information in the possession of the lending institutions that solicit its insurance or, in the alternative, pay opposing counsel's fees to subpoena the same information. In arguing for a writ to issue, Southern Financial argued that it was not in "possession, custody or control" of the information it was required to subpoena and disclose because its soliciting agents did not voluntarily disclose the information upon Southern Financial's request, thereby proving that Southern Financial did not sufficiently "control" the information to mandate disclosure under CR 34.01. Applying well-settled principles of agency law, the Court held that for purposes of CR 34.01 a principal is in control of all information that is possessed by their agents and within the scope of the agency. In applying this rule, the Court held that the trial court did not abuse its discretion in finding that the sought-after discovery was within the scope of the agency between Southern Financial and its solicitors that possessed the information being sought, and thus declined to issue a writ because the trial court did not err.

II. CIVIL PROCEDURE:

- A. Coy Turner, Jr. and M&W Milling Co., Inc. v. Billy Andrew, Jr.**
[2011-SC-000614-DG](#) November 21, 2013

Opinion of the Court by Justice Abramson. All sitting; all concur. Coy Turner, Jr. and M & W Milling Co., Inc., appealed from a Court of Appeals' decision reversing a judgment granting them a "judgment on the pleadings." The judgment dismissed the underlying action brought by Billy Andrew, Jr., claiming personal property damage and lost business profits resulting from a vehicle collision. The vehicle damaged in the collision was a truck owned by Andrew individually and used in a trucking business operated by the limited liability company "Billy Andrew, Jr. Trucking, LLC." The dismissal of the claim was the consequence of sanctions imposed by the trial court for Andrew's failure to comply with multiple discovery orders. Turner and M & W contended that the Court of Appeals erred (1) by concluding that the claim was properly brought by Andrew in his individual capacity, despite the fact that the trucking company was operated as an LLC; and (2) in reversing the trial court's exclusion of Andrew's

damages evidence and the consequential dismissal of his claim. The Supreme Court concluded that the Court of Appeals erred in determining that Andrew was entitled to bring the claim for lost business profits in his own name rather than in the name of the LLC, if in fact the trucking business was conducted by the LLC. The Court further concluded that the discovery sanctions imposed on Andrew, specifically, the exclusion of all evidence relating to Andrew's damages, were the functional equivalent of an order dismissing the claim and, consequently, findings of fact and conclusions of law were required. The case was remanded with directions to consider the appropriate sanctions for Andrew's repeated disregard of discovery orders, which sanctions could again result in dismissal, but must be supported by findings of fact and conclusions of law.

III. CRIMINAL LAW:

A. Dejuan Anthony Glenn v. Commonwealth of Kentucky 2012-SC-000499-MR November 21, 2013

Opinion of the Court by Justice Cunningham. All sitting; all concur. Appellant was convicted of one count of first-degree wanton endangerment, one count of first-degree fleeing or evading the police, one count of first-degree illegal possession of a controlled substance (cocaine), and one count of second-degree criminal mischief. On those charges, the jury recommended a total sentence of thirteen years. The jury also found Appellant guilty of being a persistent felony offender ("PFO") in the first-degree and then recommended an enhanced sentence of twenty years. The trial court sentenced Appellant in accordance with the jury's recommendation. Questions Presented: 1) Does RCr 9.40, the rule prescribing the number of peremptory challenges in a criminal case, exceed the authority granted to the Kentucky Supreme Court in § 116 of the Kentucky Constitution; 2) Did the trial court err by failing to give a "no adverse inference" instruction regarding Appellant's decision not to testify during the PFO phase of his trial; 3) Did the Commonwealth's improper reference of Appellant's PFO status as a "separate crime" constitute palpable error. Held: 1) RCr 9.40 is valid and constitutional. In so holding, the Supreme Court reinforced its authority to promulgate all rules of practice and procedure in the Commonwealth. In addition, no notice is required to be given to the Attorney General when challenging the validity or constitutionality of Supreme Court Rules; 2) Appellant's failure to request jury instruction precluded palpable error review; 3) Although the Commonwealth's mischaracterization of Appellant's PFO status was improper, it was not palpable error.

B. Commonwealth of Kentucky v. William Ayers 2012-SC-000261-DG November 21, 2013

Opinion of the Court by Justice Cunningham. All sitting; all concur. A Jefferson Circuit Court jury convicted Appellant, William Ayers, on five counts of failing to file a state tax return. He was sentenced to three years on each count, to run concurrently. The Court of Appeals reversed the conviction and the Kentucky

Supreme Court granted discretionary review. Question Presented: 1) Whether the trial court's failure to conduct a *Faretta* hearing requires Ayers' conviction to be set aside and a new trial ordered. Held: 1) Ayers, who was an experienced criminal defense attorney, was not entitled to a *Faretta* hearing or inquiry. The Court clarified its decision, holding that all criminal defendants who are experienced criminal trial attorneys are not entitled to a *Faretta* hearing or inquiry prior to representing themselves.

**C. Randy Brumley v. Commonwealth of Kentucky
2012-SC-000189-DG November 21, 2013**

Opinion of the Court by Justice Cunningham. Noble, Scott and Venters, JJ., concur. Abramson, J., dissents by separate opinion in which Minton, C.J., joins. Keller, J., not sitting. Criminal Discretionary Review. Appellant, Randy Brumley, was convicted of manufacturing methamphetamine and possession of drug paraphernalia and received a sentence of ten years incarceration. Question Presented: 1) Did the trial court err in denying Brumley's motions to suppress evidence. Held: 1) On an issue of first impression involving the protective sweep exception to the search warrant requirement, the Supreme Court of Kentucky applied the reasonable suspicion standard mandated by *Maryland v. Buie*, 494 U.S. 325 (1990). The Court held that the Commonwealth failed to demonstrate that the information obtained by law enforcement officers concerning the presence of guns in Brumley's residence, coupled with the noise coming from inside, satisfied the reasonable suspicion standard articulated in *Buie*. The issue of Brumley's additional suppression motion alleging improper chain of custody was rendered moot.

IV. TORTS:

**A. Dick's Sporting Goods v. Betty C. Webb
2011-SC-000518-DG November 21, 2013**

Opinion of the Court by Chief Justice Minton. Minton, C.J.; Abramson, Cunningham, Noble, Scott, and Venters, JJ., concur. Scott, J., concurs in result only by separate opinion in which Cunningham, J., joins. Keller, J., not sitting. Betty Webb went to Dick's Sporting Goods on a rainy day to do some Christmas shopping. As she entered the store, she attempted to avoid a puddle of water that had formed between two mats Dick's Sporting Goods placed at the entryway, slipped and fell on a tile that appeared to be dry, but was actually wet. The trial court granted summary judgment for Dick's Sporting Goods because the condition of the floor was open and obvious. The Court of Appeals held summary judgment inappropriate in light of this Court's recent *Kentucky River Medical Center v. McIntosh* decision. The Court affirmed the Court of Appeals but on different grounds. The tile that Webb slipped on, according to the Court, was not an open and obvious condition. Webb was not aware that the tile was wet before stepping onto the tile. Rather, the Court, relying on clear precedent, held the question of whether Dick's Sporting Goods exercised reasonable care was for the jury to decide. In doing so, the Court noted that Dick's Sporting Goods, like

all landowners, is subject to the general duty to exercise ordinary care and maintain its premises in a reasonably safe condition. This duty is an active, affirmative, and positive duty. In conclusion, whether the simple use of mats, without maintaining watch over them or making sure they continued to perform their intended function adequately, was sufficient to satisfy the duty of reasonable care owed by Dick's Sporting Goods was a question for the jury.

B. Mickiel Pete, et al. v. Michael Anderson, Jr., et al.
[2011-SC-000692-DG](#) November 21, 2013

Opinion of the Court by Justice Abramson. Minton, C.J.; Keller, and Venters, JJ., concur. Noble, J., concurs in part and dissents in part by separate opinion. Scott, J., concurs in part and dissents in part by separate opinion in which Cunningham, J., joins. Michael Anderson, Jr. and Malik Anderson filed a professional negligence claim against attorney Mickiel Pete and his law firm ("Pete"), arising out of the dismissal of a wrongful death claim brought on behalf of the estate of their deceased father when the Andersons were minors. The trial court granted Pete's motion for summary judgment on the grounds that Michael, Jr. and Malik lacked standing to sue for professional negligence because they did not share an attorney-client relationship with Pete, who had been retained by their mother. The Court of Appeals reversed, holding that summary judgment was inappropriate because there was a genuine issue of material fact as to the existence and scope of an attorney-client relationship with the sons. That court also held that Pete owed professional duties to Michael, Jr. and Malik, who were statutory beneficiaries of the underlying wrongful death claim. The Supreme Court affirmed the Court of Appeals, holding that the children had standing to bring a malpractice claim as the statutory beneficiaries of the wrongful death claim. The Court further concluded that the pleading in the malpractice action brought by the children was sufficient to raise the issue of Pete's failure to bring a loss of parental consortium claim on their behalf following their father's death.

C. Patricia W. Ballard v. 1400 Willow Council of Co-Owners, Inc.
AND
1400 Willow Council of Co-Owners, Inc. v. Patricia W. Ballard
[2010-SC-000533-DG](#) November 21, 2013
[2011-SC-000584-DG](#) November 21, 2013

Opinion of the Court by Justice Keller. Minton, C.J.; Cunningham and Venters, JJ., concur. Noble, J., concurs in part and dissents in part by separate opinion in which Scott, J., joins. Abramson, J., not sitting. This appeal involved a dispute between 1400 Willow Council of Co-Owners, Inc. (the Council), a condominium association, and one of its co-owners, Patricia W. Ballard (Ballard), regarding the need to replace and who should bear the cost of replacement of a two-story wall of windows in Ballard's condominium. The Court concluded that the Court of Appeals erred when it determined that Ballard's slander of title claim was governed by the one-year statute of limitations set out in KRS 413.140(1)(d), which governs actions for "libel or slander." The Court determined that, although not specifically mentioned, slander of title claims are governed by the

five-year statute of limitations set forth in KRS 413.120(7), which applies to “[a]n action for an injury to the rights of the plaintiff, not arising on contract and not otherwise enumerated.”

The Court next addressed whether the filing of a lis pendens is protected by a qualified privilege. The Court determined that filing a lis pendens is privileged but only if the filing was “made in good faith and without actual malice.” The jury concluded that the Council knowingly and maliciously made a false statement when it filed a lis pendens against Ballard's condominium, thus negating the Council's entitlement to the privilege. Furthermore, the jury found that the Council's actions disparaged Ballard's title and caused a decrease in her condominium's value and/or the loss of a sale. Because there was sufficient evidence to support the jury's findings, the Court concluded that Ballard's slander of title claim was properly submitted to the jury and affirmed the trial court's judgment on that claim.

Next, the Court addressed whether the trial court erred in denying the Council's motion for a directed verdict on Ballard's breach of fiduciary duty claim. The Court concluded that the fiduciary duty claim should have been dismissed because the Council did not have a fiduciary duty to the individual owners. Furthermore, the Court determined that the Court of Appeals incorrectly relied on KRS 273.215(1) because Ballard only brought suit against the Council and not its Board of Directors. Accordingly, the Court reversed and remanded this matter to the trial court for entry of a judgment dismissing Ballard's fiduciary duty claim.

**D. Wilma Jean Shelton v. Kentucky Easter Seals Society, Inc.
2011-SC-000554-DG November 21, 2013**

Opinion of the Court by Chief Justice Minton. Abramson, Keller, and Noble, JJ., concur. Cunningham, J., dissents by separate opinion in which Scott, J., joins; and Scott, J., dissents by separate opinion in which Cunningham and Venters, JJ., join. Shelton became entangled in wires at her husband's bedside while visiting him at Cardinal Hill Rehabilitation Hospital. As a result of the entanglement, Shelton fell and sustained serious injuries. The trial court granted summary judgment for Cardinal Hill because it found the wires to be an open and obvious condition, absolving Cardinal Hill of any duty of care to Shelton. The Court of Appeals affirmed the trial court, again holding Cardinal Hill owed no duty to Shelton. This Court then rendered our decision in *Kentucky River Medical Center v. McIntosh*, modernizing our open-and-obvious jurisprudence. Accordingly, we remanded the case back to the Court of Appeals for reconsideration in light of our decision in *McIntosh*. Again, the Court of Appeals held that summary judgment for Cardinal Hill was appropriate and Shelton sought discretionary review.

The Court held summary judgment was inappropriately granted and Shelton should have been allowed to present her case to a jury. Noting the facts of the case were undisputed, the Court outlined the remaining question as whether Cardinal Hill, an invitor, completely satisfied the duty of care it indisputably

owed Shelton, an invitee. Advancing its decision in *McIntosh*, the Court held Cardinal Hill undoubtedly owed Shelton the general duty of reasonable care and the condition being open and obvious did not obviate that duty. And the Court held that, because Shelton was an invitee, Cardinal Hill owed the more specific duty to eliminate or warn of unreasonable dangers. In the Court's estimation, the duty analysis does not need to go any farther. Instead, the focus of open-and-obvious cases is the element of breach -- that is, whether a defendant has fulfilled the relevant standard of care. Accordingly, the decision of the Court of Appeals was reversed and the case was remanded to the trial court.

V. SOVEREIGN IMMUNITY

A. **Steven L. Beshear, in his official capacity as the Governor of the Commonwealth of Kentucky; and Mary Lassiter, in her official capacity as State Budget Director v. Haydon Bridge Co., Inc., et al.**
[2011-SC-000563-TG](#) November 21, 2013

Opinion of the Court by Justice Abramson. Minton, C.J.; Keller, Noble, and Venters, JJ., concur. Scott, J., concurs in result only by separate opinion in which Cunningham, J., joins. On remand from *Beshear v. Haydon Bridge Co., Inc.*, 304 S.W.3d 682 (Ky. 2010) (*Haydon Bridge I*), the circuit court held that Plaintiffs, a group of Kentucky employers, were entitled to retroactive injunctive relief in the form of a judgment against the Governor to return any and all monies that had been transferred from the Benefit Reserve Fund (BRF) maintained by the Kentucky Workers' Compensation Funding Commission (KWCF) to the General Fund via Budget Bills in the decade from 2000-2010, those transfers having been held unconstitutional. The retroactive relief included monies from the Coal Workers' Pneumoconiosis Fund, a separate fund maintained by the KWCF that was not at issue in *Haydon Bridge I*. The trial court enjoined future transfers of funds from the BRF to the General Fund and transfers of funds from the Pneumoconiosis Fund to the Office of Mine Safety and Licensing. The trial court also awarded Plaintiffs' lawyers' a 25% contingency fee from "the fund" created by their work, i.e., the funds ordered returned retroactively to the Benefit Reserve Fund. The Governor conceded that *Haydon Bridge I* controlled future transfers of monies from the Benefit Reserve Fund and did not appeal that portion of the trial court's order. However, the Governor did appeal the retroactive relief awarded, the attorney fee and the injunction as to future transfers from the Pneumoconiosis Fund. On transfer of the appeal, the Supreme Court held that sovereign immunity precluded the retroactive monetary relief ordered by the circuit court. In so ruling, the Court determined that KRS 45.111 provided no avenue for relief because the monies at issue were lawfully "due to the state"; that the funds at issue were part of the State Treasury; that Section 242 of the Kentucky Constitution regarding the taking of private property was inapplicable; and that retroactive injunctive relief was in essence a damage award in violation of sovereign immunity. The Court further held that the constitutional separation of powers provisions precluded the courts' ordering the requested retroactive transfer of funds from the General Fund back to the Benefit Reserve Fund. Because no fund was created by the litigation, the Supreme Court held there was

no attorney fee awardable under KRS 412.070. Finally, none of the parties before the circuit court had contributed to the Coal Workers' Pneumoconiosis Fund and, without a party with standing before it, that court erred in enjoining future transfers based on a request from the Plaintiffs. Accordingly, the Supreme Court reversed the trial court on all appealed portions of the orders it had entered on remand from *Haydon Bridge I*.

VI. ATTORNEY DISCIPLINE:

**A. Charles L. Huffman, III v. Kentucky Bar Association
2013-SC-000282-KB November 21, 2013**

Opinion of the Court. All sitting. Minton, C.J.; Abramson, Noble, and Venters, JJ., concur. Scott, J., dissents by separate opinion in which Cunningham and Keller, JJ., concur. Huffman pleaded guilty in federal court to the felony offense of willfully affecting interstate commerce by extortion. The charge arose from Huffman's conduct while serving as a district judge. Huffman was convicted and, in 1997, he was allowed to resign from the Kentucky Bar Association under threat of disbarment. Approximately 15 years later, Huffman sought reinstatement under SCR 3.510. His case was presented to the Character and Fitness Committee for proceedings under SCR 2.300. After an investigation and hearing, the Committee found that Huffman had complied with all the terms of the order permitting his resignation and that his conduct since his resignation had been exemplary. Accordingly, the Committee recommended to the Board of Governors that Huffman be reinstated to the practice of law, with certain conditions, including his continued participation in the Kentucky Lawyers Assistance Program (KYLAP). The Board of Governors unanimously adopted the Committee's recommendation.

On review, the Supreme Court disagreed with the recommendations of the Committee and the Board and denied Huffman's reinstatement. Although the Court acknowledged Huffman's personal rehabilitation and work helping others recover from addiction, the majority held that Huffman's crime of extortion, perpetrated by trading on his position of power as a district judge, was a breach of public trust that permanently disqualifies him from restoration to the practice of law. The Court also held that approving Huffman's reinstatement would be inconsistent with recent decisions in comparable cases dealing with similar criminal conduct by lawyers who were elected officials. Accordingly, Huffman's petition for reinstatement was denied.

**B. Kentucky Bar Association v. Richard Lee Walls
2013-SC-000621-KB November 21, 2013**

Opinion of the Court. All sitting; all concur. A trial commissioner recommended that Walls receive a 181-day suspension from the practice of law, with 30 days to be served and the remaining 151 days conditionally probated, for his alleged violations of SCR 3.130-1.3 (failure to diligently represent client); SCR 3.130-1.4(a)(4) (failure to respond to client's requests for information); SCR 3.130-1.16(d) (failure to return an unearned portion of a fee to a client); and SCR 3.130-

8.1(b) (failure to respond to bar complaint) The Inquiry Commission issued a complaint and served Walls by sheriff. However, Walls failed to respond to the complaint and the subsequent reminder letter. After a trial commissioner was assigned to the case, Walls did file answers through counsel. But his counsel later withdrew and Walls stopped participating in the disciplinary process. The trial commissioner found Walls guilty of the alleged misconduct and recommended that he be suspended. Neither Walls nor Bar Counsel filed a notice for the Supreme Court to review the trial commissioner's decision, as allowed under SCR 3.360(4). Accordingly, the Court chose to adopt the findings of the trial commissioner and ordered Walls suspended from the practice of law for 181 days, with 30 days to be served and the remainder probated upon his compliance with certain conditions.

**C. Kentucky Bar Association v. Joshua Michael Robinson
2013-SC-000668-KB November 21, 2013**

Opinion of the Court. All sitting; all concur. Robinson was involved in two separate altercations resulting in criminal convictions. Consequently, the Inquiry Commission issued two disciplinary charges. The charges were consolidated and heard before a trial commissioner. Robinson appealed the trial commissioner's report but later moved to withdraw his appeal. Accordingly, the disciplinary matter came to the Court under SCR 3.360(4). The trial commissioner's report concluded that Robinson failed to provide the KBA with current addresses with respect to both disciplinary charges; failed to notify the KBA of his criminal convictions; failed to provide the KBA with a copy of either judgment against him; knowingly failed to respond to the Inquiry Commission's request for additional information; and that his guilty pleas in both criminal cases were conclusive proof of his violations of SCR 3.130-8.4(b). The trial commissioner recommended that Robinson be suspended from the practice of law for a period of five years and that he continue to attend alcohol and anger management counseling during his suspension.

The Court concluded that the trial commissioner's report was supported by the record and case law. Accordingly, the Court adopted the trial commissioner's findings of fact, conclusions of law and recommendations under SCR 3.370(9) and suspended Robinson from the practice of law for a period of five years.

**D. Kentucky Bar Association v. Russell W. Burgin
2013-SC-000689-KB November 21, 2013**

Opinion of the Court. All sitting; all concur. A trial commissioner found that Burgin failed to timely deposit a client's settlement check into escrow and failed to satisfy a Medicaid lien on the check. He also failed to timely respond to requests from Bar Counsel and failed to keep Bar Counsel informed. Taking these facts into consideration, the trial commissioner concluded that Burgin "exhibits an extremely lackadaisical and disconcerting nature and lack of diligence in the performance of his practice." The trial commissioner considered Burgin's disciplinary record, which included a private admonition in 2011 and a probated

30-day suspension in 2012, and recommended that Burgin be suspended from the practice of law for sixty days, with thirty days to be probated for two years under specific conditions. Neither Burgin nor Bar Counsel appealed the trial commissioner's recommendation. The Court found that the trial commissioner's findings and conclusions were supported by the record and the law and the recommended sanction was appropriate in light of Burgin's history of prior discipline. Accordingly, the Court adopted the trial commissioner's recommendation and suspended Burgin for sixty days, with thirty days to be probated for two years under specific conditions.

**E. Randal Kent Perkins v. Kentucky Bar Association
2013-SC-000702-KB November 21, 2013**

Opinion of the Court. Minton, C.J.; Abramson, Keller, Noble, Venters and Scott, JJ., concur. Cunningham, J., concurs but would also order movant to pay restitution to David Megronigle. Perkins moved the Court to enter an Order resolving three pending disciplinary proceedings against him by imposing a suspension from a practice of law for a period of five years with several conditions. The charges against Perkins included several counts, including violations of SCR 3.130-1.3 (failure to act with reasonable diligence and promptness); SCR 3.130-1.4(a)(3) (failure to keep client reasonably informed); SCR 3.130-1.4(a)(4) (failure to promptly comply with reasonable requests for information); SCR 3.130-1.4(b) (failure to explain matters to client); SCR 3.130-1.15(a) (failure to keep the property of client or third party separate from lawyer's own property); SCR 3.130-1.15(b) (failure to promptly notify third party of receipt of funds); SCR 3.130-1.16(d) (failure to protect client's interest upon termination of representation); SCR 3.130-8.3(b) (failure to respond to a lawful demand for information from disciplinary authority); and SCR 3.130-8.3(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation). Perkins admitted that his actions were in violation of the Rules of Professional Conduct and negotiated a sanction with Bar Counsel in an effort to resolve the pending disciplinary actions. The Court agreed with the majority of the negotiated sanction, though declined to order Perkins to KYLAP based on the lack of evidence that he suffered from a mental health or substance abuse issue. Accordingly, the Court ordered that Perkins be suspended from the practice of law for a period of five years.

**F. Astrida L. Lemkins v. Kentucky Bar Association
2013-SC-000703-KB November 21, 2013**

Opinion of the Court. All sitting; all concur. Lemkins moved the Court to impose a negotiated sanction of public reprimand for her violations of SCR 3.130-1.4(a)(3); SCR 3.130-1.4(a)(4); and SCR 3.130-1.6(d). Lemkins acknowledged that she engaged in the misconduct in violation of the Rules of Professional Misconduct and agreed to the imposition of discipline. The Court agreed that the negotiated sanction was appropriate and publicly reprimanded Lemkins for her violations.

G. Kentucky Bar Association v. Ronald E. Thornsberry
[2013-SC-000718-KB](#) November 21, 2013

Opinion of the Court. All sitting; all concur. Thornsberry was charged with violating SCR 3.130-5.5(a) (a lawyers shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction); SCR 3.130-5.5(b) (a lawyer who is not admitted to practice in this jurisdiction, including a lawyer under suspension, shall not establish or maintain an office or other presence in this jurisdiction); SCR 3.130-8.1(b) (failure to respond to a lawful demand for information from disciplinary authority); and SCR 3.175(1)(a) (failure to maintain a current address with the Director), arising from his continued representation of a client after he was suspended from the practice of law. The Board of Governors found Thornsberry guilty of all counts and recommended that he be suspended from the practice of law for 181 days, to run consecutively with his current suspensions. The Court adopted the Board's findings of guilt and sanctioned Thornsberry accordingly.

H. David L. Drake v. Kentucky Bar Association
[2013-SC-000721-KB](#) November 21, 2013

Opinion of the Court. All sitting; all concur. Drake moved the Court to impose the negotiated sanction of public reprimand for his violations of SCR 3.130-1.1; SCR 3.130-1.3; and SCR 3.130-1.4(b). Drake acknowledged his violations of SCR 3.130-1.3 and 3.130-1.4(b) but denied he violated 3.130-1.1. In light of these admissions, Drake and the KBA agreed to a negotiated sanction that would dismiss the violation of SCR 3.130-1.1 and impose a public reprimand. The Court agreed that the negotiated sanction was appropriate and publicly reprimanded him for his violations.

I. William D. Rye v. Kentucky Bar Association
[2013-SC-00646-KB](#) November 21, 2013

Opinion of the Court. All sitting; all concur. Rye moved the court to impose the negotiated sanction of public reprimand with conditions for his violation of SCR 3.130-1.3, SCR 3.130-1.4(a)(3), and SCR 3.130- 8.1(b).