PUBLISHED OPINIONS
KENTUCKY SUPREME COURT
NOVEMBER 2018

I. ADMINISTRATIVE LAW:

A. Kentucky Retirement Systems v. Ronald Ashcraft

2017-SC-000345-DG **November 1, 2018**

Opinion of the Court by Justice Hughes. All sitting; all concur. After the denial of his claim for disability retirement benefits, Ashcraft sought judicial review in circuit. The circuit court upheld the administrative denial of the claim, but the Court of Appeals reversed. Both courts cited the "substantial evidence" standard of review from *McManus v. Kentucky Retirement Systems*, 124 S.W.3d 454, 458 (Ky. App. 2003). The Supreme Court granted discretionary review to examine the appropriate standard for judicial review of denials of applications for state disability retirement benefits, and to address the deference accorded to the fact-finding agency under KRS 13B.150. The Court, in upholding the *McManus* standard, concluded that when the decision of the fact-finder is in favor of the party with the burden of proof (the disability claimant), the issue on appeal is whether the agency's decision is supported by substantial evidence. When the fact-finder's decision denies a claimant's relief, on judicial review courts, at every level, should first consider whether the denial is supported by substantial evidence. If so, the court should then consider, as explained in *McManus*, whether the evidence in that party's favor is so compelling that no reasonable person could have failed to be persuaded by it. Giving deference to the agency as fact-finder, and holding that Ashcraft failed to meet the purposefully high standard, the Supreme Court reversed the Court of Appeals and reinstated the agency's final decision denying his claim.

B. Veronica Bradley v. Kentucky Retirement Systems

2017-SC-000275-DG **November 1, 2018**

Opinion of the Court by Justice Hughes. All sitting; all concur. Bradley, a member of the Kentucky Retirement Systems (KERS), was denied disability retirement benefits by the KERS Board. Although the circuit court reversed the Board on judicial review, the Court of Appeals concluded that the standard for reversal had not been met and reinstated the Board's denial of Bradley's claim. On discretionary review, Bradley challenged the *McManus* standard as inconsistent with the disability provisions of KRS Chapter 61 and the administrative law provisions of KRS Chapter 13B. The Supreme Court concluded that Bradley's application was addressed in a manner consistent with Kentucky statutes, that she failed to show that the Board's findings were not supported by substantial evidence and failed to address how her proof met the compelling evidence standard set forth in *McManus*. Holding that the *McManus* standard remains viable and controlling on judicial review of cases where the

Board, as fact-finder, concludes that an applicant failed to meet their burden of proof, the Supreme Court affirmed the Court of Appeals and remanded the case to the trial court for reinstatement of the Board's decision denying Bradley's claim.

II. APPEALS:

B. William Robert Hagan, et al. v. Commonwealth of Kentucky, Transportation Cabinet

2018-SC-000084-DG **November 1, 2018**

Opinion of the Court by Justice Venters. Minton, C.J.; Cunningham, Hughes, Keller, and VanMeter, JJ., concur. Wright, J., not sitting. The Transportation Cabinet, Department of Highways, commenced a condemnation action to acquire land owned collectively in fee simple by several tenants-in-common ("landowners"). The landowners did not contest the Commonwealth's authority to take the property under its powers of eminent domain, the Circuit Court entered an interlocutory judgment allowing the taking. Following a jury trial to determine the compensation to be paid for the taking, the trial court entered a final order fixing the compensation to be paid and the landowners appealed. The landowner's notice of appeal failed to name the husband of one of the co-tenants, and upon motion of the Cabinet to dismiss for failure to name an indispensable party, the Court of Appeals dismissed the appeal. The Court of Appeals reasoned that the husband vested with an inchoate curtsey interest in the property was a necessary party to the appeal.

Upon discretionary review, the Supreme Court reversed, citing Riley v Dept. of Highways, 375 S.W.2d 245 (Ky. 1963) and Dept. of Highways v Kelley, 376 S.W.2d 539 (Ky. 1964), and holding that the owner of a fractional interest in the property taken by eminent domain party need not participate in the appeal taken by other affected owners and was, therefore not an indispensable party. The only issue for appeal was the adequacy of the compensation to be paid collectively for entire taking. Where the condemning authority has not appealed the amount of compensation it must pay and the authority for the taking is not being challenged, each owner of a fractional interest in the property may choose to appeal or not appeal, as they each perceive their best interest. The non-appealing owners are bound by the trial verdict and those choosing to appeal will be bound as determined by the results of the appeal.

For purposes of calculating the respective compensation of tenants-in-common or other fractional owners in an eminent domain action, the fractional interests in real property subject to condemnation are severable. The value of a vested but inchoate right of curtesy can be actuarially calculated as a fractional portion of the value of the taken property as determined by the jury, in a condemnation action. Each owner's proper compensation can be calculated by applying his or her fractional interest to the total valuation to which he or she is bound. The absence of an owner of a fractional interest, who by inadvertence or choice fails to appeal does not justify a dismissal of the appeal.

III. AUTOMOBIILE TRANSFERS:

A. The Travelers Indemnity Company v. Martin Cadillac, Inc. D/B/A Martin Dodge Jeep Chrysler v. Charles Armstrong, Etc.

2017-SC-000041-DG **November 1, 2018**

Opinion of the Court by Justice Keller. Minton, C.J.; Cunningham, Keller, Venters, Wright, JJ., and Clark and Royse, SJ., sitting. All concur. Hughes and VanMeter, JJ., not sitting. Martin Cadillac, Inc. (Martin) accepted a vehicle as a trade-in on November 30, 2013; on December 6, 2013, Martin provided the vehicle to ABC Auction (ABC) to sell. There, DeWalt Auto purchased the vehicle. At that time, the title had not been provided to ABC, nor was it provided to DeWalt Auto. After the auction sale, Martin completed the statutorily required notice to the county clerk to record title assignment, but admitted it was not timely completed. The assignment to Martin was recorded by the county clerk on January 2, 2014. Johnathan Elmore purchased the vehicle from DeWalt Auto on January 19, 2014. On January 20, 2014, he provided proof of insurance through Nationwide to DeWalt Auto and took possession of the vehicle. On January 24, Martin delivered paperwork to ABC, transferring title and ABC transferred the proceeds check from the sale of the vehicle to Martin. On April 5, 2014, Elmore was in a car accident, and both he and his passenger, Craig Armstrong, were killed.

Travelers insured Martin; it argued that the transfer to ABC and, subsequently, DeWalt Auto, was not an assignment to a "purchaser for use" under Kentucky Revised Statute (KRS) 186.220(5) and, therefore, Martin was not required to verify proof of insurance before the sale. Martin had an assignment to the vehicle; but, if Martin complied with all the relevant requirements of KRS 186A.220, then it would not be considered the "owner" for insurance purposes, according to KRS 186.010(7)(c). The Court held that KRS 186A.220(5) does not apply to dealer-to-dealer transactions and a seller must only verify insurance when the buyer is a "purchaser for use," a consumer buyer. Martin substantially complied with all the relevant requirements in KRS 186A.220 and, therefore, was not the "owner" of the vehicle at the time of Elmore's accident.

IV. CONTRACTS:

A. Beth Lewis Maze, et al. v. Board of Directors for the Commonwealth Postsecondary Education Prepaid Tuition Trust Fund, et al.

2017-SC-000233-DG **November 1, 2018**

Opinion of the Court by Justice Venters. Minton, C.J.; Hughes, Keller, VanMeter, and Wright, JJ., concur. Cunningham, J., not sitting. A parent who entered into three Kentucky Affordable Prepaid Tuition Fund (KAPT) contracts pursuant to KRS 164A.700-164A.709 for prepaid college tuition for her children brought action seeking declaration that the 2014 statutory amendments to the KAPT plans

adding time limits on use of the plans were unconstitutional if retroactively applied to her rights under pre-existing tuition contracts. The Franklin Circuit Court entered summary judgment in favor of the parent and the Court of Appeals reversed. Upon discretionary review, the Supreme Court reversed and held that (1) the express language of the KAPT contracts and incorporated KAPT statutes did not reserve to the Commonwealth unlimited discretion to alter its promise of performance, including the time limits for use of KAPT tuition; and (2) the retroactive application of statutory amendments that extinguished rights to benefits promised under KAPT contracts violated the federal and state Contract Impairment Clauses.

V. <u>CONSTITUTIONAL LAW:</u>

A. Fred Zuckerman and William Londrigan, as representatives respectively of the General Drivers, Warehousemen and Helpers Local Union No. 89 and the Kentucky State AFL-CIO, Affiliated Unions and their Members v. Office of the Governor, ex. rel. Matthew G. Bevin, in his official capacity as Governor, and the Commonwealth of Kentucky, Kentucky Labor Cabinet, ex rel. Derrick K. Ramsey, in his official capacity as Secretary of the Kentucky Labor Cabinet

2018-SC-000097-TG and
2018-SC-000098-TG **November 15, 2018**

Opinion of the Court by Justice VanMeter. All sitting. Minton, C.J., Hughes and Venters, JJ., concur. Minton, C.J., concurs by separate opinion in which Hughes and Venters, JJ., join. Keller, J., dissents by separate opinion in which Cunningham and Wright, JJ., join. Wright, J., dissents by separate opinion in which Cunningham and Keller, JJ., join. In 2017, Kentucky's legislature passed, and the Governor signed, 2017 HB2 1, commonly referred to as the Kentucky Right to Work Act, 2017 Ky. Acts ch. 1, § 15 (the "Act"). Significantly, this Act amended KRS 336.130(3) to provide that no employee is required to become, or remain, a member of a labor organization, or to pay dues, fees, or assessments to a labor organization. The Act's stated goal was "to attract new business and investment into the Commonwealth as soon as possible." 2017 Ky. Acts ch. 1, § 14. The Kentucky Supreme Court held that the Franklin Circuit Court did not err in dismissing constitutional challenges to the validity of the Act, specifically that it violated the Kentucky Constitution's provisions requiring equal protection of the laws, prohibiting special legislation, prohibiting takings without compensation, and that it was improperly designated as emergency legislation. The Court affirmed the Franklin Circuit Court's Order dismissing the challenges to the Act.

B. Commonwealth of Kentucky, Cabinet for Health and Family Services, ex rel. Adam Meier, in his Official Capacity as Secretary of the Cabinet for Health and Family Services v. Ezra Claycomb, a Minor, By and Through his Next Friend, Natural Guardian and Parent, Tonya Claycomb and Tonya Claycomb on Behalf of all Others Similarly Situated

2017-SC-000614-TG
2017-SC-000615-TG **November 15, 2018**

The Court examined the constitutionality of the Medical Review Panel Act, which establishes a system for review of the merits of a medical malpractice claimant's purported claim against a medical professional. The Court ultimately found the Act unconstitutional under Section 14 of the Kentucky Constitution, which states: "All courts shall be open, and every person for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial or delay." The Court determined that the Act's proscription against a claimant filing suit in a Kentucky court before the earlier of the conclusion of the panel's review of the claimant's claim or nine months contravened the constitutional right of Kentuckians to file suit in a Kentucky court "without delay."

VI. CRIMINAL LAW:

A. Frederick Dorsey v. Commonwealth of Kentucky
2017-SC-000005-DG **November 1, 2018**

Opinion of the Court by Justice Hughes. All sitting. Minton, C.J.; Cunningham, Keller, and VanMeter, JJ., concur. Wright, J., dissents by separate opinion, which Venters, J., joins. After entering a guilty plea, Dorsey sought to withdraw his plea during sentencing because he mistakenly believed that the judge had the ability to determine his parole eligibility, despite no such indication by his counsel and no reasonable basis for his belief. During the hearing on the motion to withdraw the plea, the trial court placed counsel under oath and questioned the advice given. Dorsey testified that he thought the judge could reduce the parole eligibility simply because he was the judge. Dorsey was sentenced in accordance with the plea agreement, and thereafter filed an RCr 11.42 motion alleging ineffective assistance of counsel and coercion. The trial court denied the motion and on appeal, Dorsey alleged that he was denied counsel because the attorney who represented Dorsey on his motion to withdraw his guilty plea was the same attorney who negotiated the plea and testified- creating a conflict of interest. Dorsey also alleged coercion because counsel had Dorsey's mother visit him on the morning of trial and "virtually twist his arm" to force him to plead guilty.

The Supreme Court held that strong encouragement by family members does not rise to the level of coercion. Additionally, although the trial court mishandled the hearing on Dorsey's motion to withdraw the guilty plea by quickly placing counsel under oath and hearing sworn testimony, Dorsey had competent representation during the hearing and his attorney was not placed at odds with representing Dorsey's interests. Since there was no conflict of interest and no support of his coercion claim in the record, the Supreme Court affirmed the Court of Appeals.

B. William E. Mason v. Commonwealth of Kentucky
2017-SC-000569-MR **November 1, 2018**

Opinion of the Court by Chief Justice Minton. All sitting. Minton, C.J.; Cunningham, Hughes, Keller, VanMeter, and Wright, JJ., concur. Venters, J., concurs in result only by separate opinion. The defendant, William Mason, appealed his convictions and sentences to the Court as a matter of right, raising several challenges to the admission of certain evidence during his trial. Specifically, Mason challenged the admissibility of a detective's video interrogations of him and two other witnesses on hearsay grounds. The Court found no merit in these arguments, but did clarify that the standard of review used to generally evaluate hearsay determinations is abuse of discretion. Mason also challenged the admission of polygraph examination evidence. The Court recognized that while Kentucky law normally prohibits admission of such evidence, Mason opened the door to the admission of such evidence when he purposefully elicited testimony about such evidence.

C. Shawn Tigue v. Commonwealth of Kentucky
2017-SC-000156-MR **November 1, 2018**

Opinion of the Court by Chief Justice Minton. All sitting. Minton, C.J.; Hughes, Keller, VanMeter, and Venters, JJ., concur. Cunningham, J., concurs in result only by separate opinion in which Wright, J., joins. The defendant, Shawn Tigue, appealed to the Court as a matter of right, raising several issues for review relating to his first-degree murder conviction, for which he received a sentence of life without the possibility of parole. The Court found merit in some of Tigue's arguments and reversed his first-degree murder conviction and life without the possibility of parole sentence, but affirmed the remainder of Tigue's convictions and sentences. Specifically, the Court found: 1) the trial court erred in its application of KRE 404(b)(1), specifically, the modus operandi character evidence exception, and the prohibition against impeaching a witness on collateral facts; 2) there is no blanket prohibition in Kentucky law for the admissibility of expert testimony on the scientific phenomenon of false confessions; 3) the trial court erred in completely preventing Tigue from exploring the reasons behind missing/destroyed purportedly exculpatory evidence; and 4) the trial court erred in characterizing orders and threats as inadmissible hearsay evidence

VII. FAMILY LAW:

A. Sally A. May v. Donnie J. Harrison
[2018-SC-000011-DGE](#) **November 1, 2018**

Opinion of the Court by Justice Cunningham. All sitting. Minton, C.J.; Hughes, VanMeter, and Wright, JJ., concur. Keller, J., concurs in result only by separate opinion in which Venters joins. Appellant, Sally A. May and Appellee, Donnie J. Harrison never married but had two sons, ages fifteen and thirteen. After one boy alleged that he and his brother were sexually abused while in May's custody, the Jessamine Family Court interviewed one of the boys in camera pursuant to KRS 403.270. During that interview, the judge questioned him extensively concerning the sexual abuse. As a result, the trial court suspended May's visitation rights and specifically ordered "that there be no contact between [Ms. May] and the two boys until either of their qualified mental health professionals believe it would be appropriate . . . ." In affirming the trial court, the Court of Appeals held that although the judge's questioning exceeded the bounds of KRS 403.290(1), the error was harmless. The Supreme Court of Kentucky granted discretionary review and held: KRS 403.270 gives the trial judge direction to make critical custody determinations for the best interest of the child. The statute enumerates several broad and encompassing factors to be considered in that decision making. This gives the judge wide fact-finding responsibility. Inherent with that statutory mandate is the authorization to seek out testimony from the child involved, as need be. As such, the trial court did not abuse its discretion here.

VIII. INSURANCE:

A. Government Employees Insurance Company v. Jordan Sanders, et al.
[2016-SC-000546-DG](#) **November 1, 2018**

Opinion of the Court by Justice Wright. Minton, C.J.; Cunningham, Keller, Venters, JJ., concur. Hughes, J., concurs in result only. VanMeter, J., not sitting. GEICO denied payment of basic reparation benefits (BRBs) to cover claimants' medical treatment. The trial court granted summary judgment in favor of GEICO and the Court of Appeals reversed. The Supreme Court of Kentucky granted discretionary review and affirmed the Court of Appeals, though for different reasons. The question the Court considered was whether GEICO can deny BRB claims based on a paper review of the medical claims. The Court held it could not. Specifically, the Court stated: "The medical treatments and invoices are presumed to be reasonable. It requires prompt payment and recovery of any improper payment must be accomplished by filing an action in court."

IX. QUALIFIED IMMUNITY:

A. Alicia Ritchie, et al. v. Arch Turner, et al.
[2017-SC-000157-DG](#) **November 1, 2018**

Opinion of the Court by Justice Hughes. All sitting. Minton, C.J.; Cunningham, VanMeter, Venters and Wright, JJ., concur. Keller, J., concurs in part and dissents in part by separate opinion. Question presented: Whether school officials were entitled to qualified official immunity on claims brought by a student sexually abused by a former teacher. The student alleged the officials: 1) failed to supervise her, 2) failed to report the abuse of another student as required by Kentucky statute, and 3) failed to obtain text transcripts between the teacher and the other student. Held: The school officials were entitled to qualified official immunity. Under the circumstances of this case, the school officials' duty to supervise, the KRS 620.030 duty to report, and decision to obtain the text transcripts were discretionary acts. First, although the school administrators had both a statutory and school policy duty to supervise students, the administrators were not actually involved in the active supervision of students at the times relevant to the student's complaint. Consistent with *Marson v. Thomason*, 438 S.W.3d 292 (Ky. 2014), the school officials were entitled to qualified immunity as they only had a general supervisory duty over the student. Second, in cases such as this when the alleged abuse was not actually observed by the officials who allegedly failed to report, KRS 620.030 first requires a baseline determination of whether there is "reasonable cause" to believe abuse has occurred or is occurring. Assessing the information gathered from the investigation and making the actual determination of whether reasonable cause exists requires personal judgment and is a discretionary function. After the superintendent investigated and concluded there was no reasonable cause to believe that a child was being or had been abused, no further action was required. Third, if an official engages in a good faith investigation regarding excessive texting between a teacher and student and uncovers no evidence that there have been any sexual texts exchanged, and then orally requests, but never obtains, documentation of the text messages for school records, that does not turn a discretionary act — investigation of potential abuse — into a ministerial act.

X. <u>REAL PROPERTY</u>:

A. Lexington-Fayette Urban County Government v. Justin T. Moore
2017-SC-000555-DG **November 1, 2018**

Opinion of the Court by Justice Venters. All sitting; all concur. Lexington-Fayette Urban County Government (LFUCG) brought a condemnation action seeking a temporary construction easement and a permanent drainage easement across a portion of property owner's land. The property owner challenged the taking by asserting that LFUCG should be required to take all of the affected area in fee simple rather than a mere easement because the area to be affected by the easement is left essentially useless to the property owner. The trial court denied the challenge but on appeal, the Court of Appeals held that LFUCG was indeed required to take the property in fee simple. On discretionary review, the Supreme Court held that LFUCG properly sought to acquire only an easement rather than fee simple title, citing *City of Bowling Green v. Cooksey*, 858 S.W.2d 190, 192 (Ky. App. 1992), which held that a condemning authority "cannot acquire the

property in fee simple if it can obtain access or use of the property through other privileges or easements." The Court reaffirmed the *Cooksey* rule as the better public policy because "when a governmental unit needs to take a small area out of a larger estate, it should take the least possible interest, such as an easement, so that if the public purpose for the tract is concluded, it may be reintegrated into the original estate unburdened by the prior public taking."

B. Don Hensley v. Keith A. Gadd and JHT Properties, LLC.

2017-SC-000189-DG
2017-SC-000431-DG **November 15, 2018**

Opinion of the Court by Justice VanMeter. All sitting. Minton, C.J., Cunningham, Hughes, Venters, JJ., concur. Wright, J., concurs in result only by separate opinion in which Keller, J. joins. The Kentucky Supreme Court granted discretionary review to address the Court of Appeals' opinion reversing in part/affirming in part the decision of the Garrard Circuit Court determining that Gadd and JHT had violated a restrictive covenant of their subdivision. The Supreme Court held that the Court of Appeals erred in reversing the decision of the Garrard Circuit Court. Specifically, the Court held that Gadd and JHT had violated the restrictive covenant by renting out the properties on a nightly and weekly basis when the covenant only allowed the lots to be used for "residential purposes" that were "occupied by one family." "Commercial" activity, including the operation of a hotel, was permitted on only one lot in the subdivision, per the covenant. The Court further held that the nightly and weekly rental of the two properties constituted the operation of a hotel, in violation of a restrictive covenant prohibiting the operation of a business on any residential lot within the subdivision. The Court affirmed both the Court of Appeals and the Garrard Circuit Court regarding Gadd's counterclaim of harassment as the record contained no evidence to support this claim.

XI. TORTS:

A. Nicole Peterson, Etc., et al. v. Bethany Foley, et al.

2017-SC-000028-DG **November 1, 2018**

Opinion of the Court by Justice Cunningham. Minton, C.J.; Cunningham, Hughes, Venters, and Wright, JJ., sitting. Minton, C.J.; Hughes, Venters, and Wright, JJ., concur. Keller, J., dissents by separate opinion. Peggy McWhorter died in her sleep while incarcerated in the Russell County Detention Center. Her death was attributed primarily to a hydrocodone overdose. Appellant, the administratrix of McWhorter's estate, filed a wrongful death claim against the Jailor and Deputy Jailors. The trial court granted summary judgment in favor of the Jailors. In a split decision, the Court of Appeals affirmed the trial court's order. The Supreme Court of Kentucky affirmed and held that there was no need to address the issue of qualified immunity because Appellants could not prove causation at trial. More specifically, the undisputed evidence indicated that several different

Deputies visited McWhorter's cell and signed the log at least every hour and, in fact, sometimes more frequently. It would be speculative to apportion fault amongst the various defendants. Moreover, Appellant could not demonstrate McWhorter's time of death. Therefore, the Jailors were entitled to summary judgment in their favor.

XII. <u>TAXES:</u>

A. Michael Scalise, et al. v. Suzette Sewell-Scheuermann
2016-SC-000246-DG **November 1, 2018**

Opinion of the Court by Justice Hughes. All sitting. Minton, C.J.; Cunningham, VanMeter, and Wright, JJ., concur. Venters, J., dissents by separate opinion, which Keller, J., joins. The City of Audubon Park approved annual ordinances setting out a monthly assessment for sanitation services. However, the assessment generated more revenue than the costs of the services, and the City diverted the surplus revenue into a general fund to use for other city expenditures. Sewell-Scheuermann, as a taxpayer for the use and benefit of the City, brought suit under KRS 93.330 and 92.340 and the Kentucky Constitution seeking to recover the surplus revenue. The circuit court dismissed the action, for failure to state a cause of action due to lack of injury to the City, but the Court of Appeals reversed, concluding that pursuant to the statutes cited, the former Mayor and City Council members were personally liable for the surplus funds, despite the funds being used for other valid municipal purposes.

The Supreme Court determined that Sewell-Scheuermann properly stated a cause of action, but also recognized the longstanding offset defense available to city officials based on previous Supreme Court cases and the statutes preceding KRS 92.330 and 92.340. If the city officials could establish that the sanitation tax revenue was spent for valid city obligations, there would be no personal liability. However, moving forward this offset defense will no longer apply. On remand, the defendants must establish how the excess revenue was spent so that the factual issue of the validity of those expenditures can be determined.

XIII. <u>WHISTLEBLOWER ACT:</u>

A. Laurel Harper et al. v. University of Louisville
2016-SC-000632-DG **November 1, 2018**

Opinion of the Court by Justice Venters. All sitting; all concur. The Plaintiff, a former university employee, brought action against the university claiming she was wrongfully terminated in violation of Kentucky Whistleblower Act. At trial, the jury found in favor of the plaintiff and awarded her damages in form of backpay and mental anguish, plus interest and attorney fees. University appealed; the Court of Appeals reversed upon its conclusion that none of the plaintiff's claimed disclosures qualified for whistleblower protection under the statute. Upon discretionary review, the Supreme Court reinstated the jury verdict because at

least some of the employee's disclosures met the statutory requirements. The Court also held that a "disclosure" of information which already widely known within the organization cannot qualify as a whistleblower disclosure under the Whistleblower Act; that complaints disclosed only to the putative wrongdoer generally cannot qualify as a whistleblower disclosure under the Act. Although the information disclosed must be more than the whistleblower's subjective opinion, the statute affords protection to disclosures of what the plaintiff merely suspected to be the kind of fraud, waste, and mismanagement objectively described in the Act. Disclosures to the news media does not qualify as a report to "any other appropriate body or authority," within meaning of provision of the Act.

XIV. WRIT OF PROHIBITION:

A. Commonwealth of Kentucky v. Hon. John R. Grise, Chief Circuit Judge, Warren Circuit Court and William H. Meece

2018-SC-000472-OA **November 1, 2018**

Opinion and Order by Chief Justice Minton. All sitting; all concur. Indigent petitioner filed an RCr 11.42 motion to set aside his death sentence. Petitioner requested the use of public funds to procure private experts to prove his post-conviction claims. The circuit court judge held an ex parte hearing to determine whether petitioner was entitled to public funds. The judge granted in part petitioner's request and ordered the disbursement of public funds to pay for several of petitioner's private experts.

The Commonwealth sought a writ of prohibition to stop public funds from being disbursed under the judge's order. The Commonwealth argued that the trial court had acted erroneously in holding the entire hearing ex parte and that the court should have first held an adversarial hearing to determine whether petitioner's requested private experts were "reasonably necessary" for a full presentation of petitioner's claims.

The Court first held that KRS 31.185(2), which allows an indigent criminal defendant to be heard ex parte with regard to a request to use private facilities for the evaluation of evidence, applies to post-conviction petitioners. The Court then held that the determination of whether the use of private experts is "reasonably necessary" for a full presentation of petitioner's claims must also be made at the ex parte hearing. Accordingly, the Court denied the Commonwealth's writ of prohibition.

XV. ATTORNEY DISCIPLINE:

A. Kentucky Bar Association v. Charles Edward Daniel

2018-SC-000348-KB **November 1, 2018**

Opinion and Order of the Court. All sitting; all concur. The Tennessee Supreme Court found that Daniel had violated Rule 8.4(b) and (c) of the Tennessee Rules of Professional Conduct by misappropriating funds from his law partnership in a manner intended to conceal his actions from his partners. As a result, the Court imposed three years' suspension upon Daniel, with one year to be served on active suspension and the remaining two years on probation.

The Kentucky Bar Association then petitioned the Supreme Court of Kentucky for reciprocal discipline and requested the Court to order Daniel to show cause why reciprocal discipline should not be imposed. The Court entered a show cause order and Daniel failed to respond. Accordingly, under SCR 3.435, the Court imposed reciprocal discipline on Daniel, suspending him from the practice of law in Kentucky for three years, with one year to be served on active suspension and the remaining two years on probation.

B. Kentucky Bar Association v. Kenneth Joseph Bader
2018-SC-000376-KB **November 1, 2018**

Opinion and Order of the Court. All sitting; all concur. Bader was charged with violating several Rules of Professional Conduct. The charges arose from four separate disciplinary files and related to Bader's failure to perform services for which he was hired, failure to return unearned fees to clients, failure to keep clients informed, and practicing law while suspended.

The Supreme Court noted Bader's disciplinary history, which included a private admonition, a 30-day suspension, and an indefinite suspension after he attempted to practice law during the 30-day suspension. The Court also noted Bader's failure to participate in the previous disciplinary proceedings.

The Board of Governors found Bader guilty of all charges pending against him and voted to suspend him for two years. The Court adopted the Board's recommendation and suspended Bader from the practice of law in Kentucky for two years.

C. Christopher David Wiest v. Kentucky Bar Association
2018-SC-000537-KB **November 1, 2018**

Opinion and Order of the Court. All sitting; all concur. Wiest applied for reinstatement to the practice of law under SCR 3.510(3). The Board of Governors unanimously recommended his reinstatement.

Wiest's suspension arose from unlawful securities trading. He was suspended by the Supreme Court of Ohio and the U.S. District Court for the Southern District of Ohio. The Supreme Court of Kentucky then imposed reciprocal discipline and suspended Wiest from the practice of law for two years.

In January 2108, the Ohio Supreme Court determined that Wiest had substantially complied with the order of suspension and reinstated him to the practice of law. The U.S. District Court for the Southern District of Ohio also reinstated him.

The Character and Fitness Committee of the Kentucky Office of Bar Admissions recommended that Wiest's application be approved, and Bar Counsel filed a motion recommending that the Board accept the Committee's recommendation. The Board of Governors then voted unanimously to reinstate Wiest. The Court agreed with the Board's recommendation and ordered Wiest reinstated to the practice of law in Kentucky.