PUBLISHED OPINIONS
KENTUCKY SUPREME COURT
SEPTEMBER 2015

I. ARBITRATION:

A. Extendicare Homes, Inc., Etc., et al. v. Belinda Whisman, Etc. et al.
AND
Kindred Nursing Centers Limited Partnership, Etc., et al. v. Janis E. Clark, Etc.
AND
Kindred Nursing Centers Limited Partnership, Etc., et al. v. Beverly Wellner, Etc.

2013-SC-000426-I	**September 24, 2015**
2013-SC-000430-I	**September 24, 2015**
2013-SC-000431-I	**September 24, 2015**

Opinion of the Court by Justice Venters. Barber, Cunningham, and Keller, JJ., concur. Abramson, J., dissents by separate opinion in which Minton, C.J., and Noble, J., join. Noble, J. dissents by separate opinion in which Minton, C.J., joins.

Questions presented in these three cases consolidated for resolution in a single opinion because of their common issues: 1) Whether the wrongful death beneficiaries are bound to arbitration agreement made by or on behalf of the wrongful death decedent; 2) Whether any language in the power of attorney documents in three cases authorized attorneys-in-fact to sign pre-dispute arbitration agreement binding the principal to arbitrate any disputes with nursing home facility, thus waiving constitutional right of access to courts in any future claims against nursing homes; 3) Whether the principal's assent to waiver of the fundamental rights of access courts and trial by jury will be inferred from power of attorney document that does not explicitly authorize such waivers.

Held: 1) the power to "institute or defend suits concerning [the principal's] property rights" does not confer upon the attorney-in-fact the power to provide principal's assent to a pre-dispute arbitration agreement because the act of signing a pre-dispute arbitration bears no relationship to the act of instituting or defending a lawsuit but is instead inconsistent with instituting a lawsuit; the power "to draw, make and sign any and all checks, contracts…agreements" and the power to "demand, sue for, collect, recover, and receive all debts, monies" belonging to the principal do not confer upon the attorney-in-fact the power to provide principal's assent to a pre-dispute arbitration agreement because those powers relate expressly to handling of the principal's financial concerns; the power to "make…contracts of every nature in relation to both real and personal property" does not confer upon the attorney-in-fact the power to provide principal's assent to a pre-dispute arbitration agreement because a pre-dispute arbitration agreement is not a transaction relating to the principal's property or property rights; 2) Under Kentucky law the right to recover damages in a wrongful death action belongs exclusively to the wrongful death beneficiaries; the wrongful death decedent has no authority to bind claims in which he has no legal interest; 3) the authority to

waive a principal's fundamental constitutional rights of access to the courts and trial by jury must be unambiguously expressed in a power of attorney document and will not otherwise be inferred.

II. CRIMINAL LAW:

A. Ronnie Lee Bowling v. Randy White (Warden, Kentucky State Penitentiary)

2014-SC-000235-CL **September 24, 2015**

Opinion of the Court by Justice Noble. Minton, C.J.; Abramson, Cunningham, Keller, Noble, JJ., and Special Justice John D. Seay and William G. Francis, sitting. Barber and Venters, JJ., not sitting. Minton, C.J.; Abramson, Cunningham and Keller, JJ., and Special Justice William G. Francis concur. Special Justice John D. Seay dissents by separate opinion. Bowling was convicted and sentenced to death in 1992 for a pair of murders. In 1996, he was also convicted of attempted murder and sentenced to twenty years in prison. The judgment in the latter case failed to award him jail-time credit to which he was entitled that would mean he had served out that sentence in 2009. The Department of Corrections nevertheless treated that twenty-year sentence as though it had been served out at that time. Bowling filed a petition for habeas corpus in United States District Court for the Eastern District of Kentucky challenging his 1996 conviction. Unable to resolve the question whether Bowling was "in custody" under the challenged conviction at the time he filed his petition due to a perceived conflict in Kentucky's case law, the district court certified two questions to this Court. The Supreme Court accepted certification but agreed to consider only one of the questions: "Does *Bard v. Commonwealth*, 359 S.W.3d 1 (Ky. 2011), control Bowling's case, so that the Department of Corrections lacked authority to correct the sentencing court's failure to award jail-time credit in Bowling's [1996 case]?" The Court held that *Bard* continued to be good law but did not control Bowling's case, which presented a different factual scenario. Under the present version of KRS 532.120(3), the Department of Corrections may award jail-time credit mistakenly left off the judgment of conviction and sentence entered at a time when the trial court was commanded to award the appropriate credit under the previous version of the statute.

B. Theodore Maras v. Commonwealth of Kentucky

2013-SC-000267-DG **September 24, 2015**

Opinion of the Court by Chief Justice Minton. All sitting; all concur. Theodore Maras was convicted of first-degree stalking, a felony, and violating a protective order, a misdemeanor. For the felony, Maras was sentenced to five years' imprisonment; for the misdemeanor, nine months' confinement. After Maras's trial had concluded and he had been sentenced, the trial judge had a conversation with the jury during which jurors allegedly expressed confusion over the first-degree-stalking instruction. The judge informed Maras and the Commonwealth of these statements—Maras then attempted to use the statements to attack the

credibility of his conviction. The Court rejected Maras's argument outright, relying on its recent decision in Commonwealth v. Abnee, 375 S.W.3d 49 (Ky. 2012), and over a century's worth of jurisprudence codified in Kentucky Rule of Criminal Procedure (RCr) 10.04 to emphasize that, absent overt acts of misconduct involving extraneous and potentially prejudicial information, juror statements cannot be used to impeach a conviction. Maras's challenge, as highlighted by the Court, involved nothing more than speculation and conjecture. Specifically, the Court noted that Maras did not challenge the facial validity of the verdict or sufficiency of evidence presented; instead, Maras simply sought to subject the private deliberations of jurors to the spotlight of judicial review. The Court was clear: RCr 10.04 does not permit such intrusion.

C. Ricky Barrett, Jr. v. Commonwealth of Kentucky
2014-SC-000048-DG **September 24, 2015**

Opinion of the Court by Justice Keller. All sitting; all concur. Police received a confidential tip that Barrett, who had multiple warrants out for his arrest, could currently be found at a residence. Prior to their arrival at that residence, police confirmed that Barrett's last contact with police had occurred there and that "Ricky Barrett" was the homeowner—police later discovered that Ricky Barrett Sr., Barrett's father, was the actual owner. When police arrived at the residence, they heard voices and sound from inside. When officers knocked and announced their presence, the voices stopped, but no one answered the door. When they knocked again, the door opened and the police entered the residence and began searching for Barrett on the first floor. Moments after entry, Barrett's stepmother came down the stairs and told police that Barrett was hiding in a closet upstairs. Police went up the stairs, where they found Barrett hiding in a hallway closet. They also found drug paraphernalia in plain view in Barrett's bedroom. Barrett was indicted for first-degree possession of a controlled substance. After the trial court denied Barrett's motion to suppress the drug evidence, he entered a conditional guilty plea. The Court of Appeals affirmed the denial, and the Supreme Court granted discretionary review.

At all levels, Barratt argued that the initial entry by police into the residence and the search of the upstairs rooms were violations of the U.S. Constitution's Fourth Amendment. The Court disagreed, relying on Payton v. New York's holding that, "for Fourth Amendment purposes, an arrest warrant founded on probable cause implicitly carries with it the limited authority to enter a dwelling in which the suspect lives when there is reason to believe the suspect is within." The Court held that the "reason to believe" standard requires less proof than probable cause and is established by evaluating the totality of the circumstances and common sense factors. As applied, the Court held that police satisfied this standard and that the entry was lawful. The Court also held that when police have lawfully entered a suspect's residence to execute a valid arrest warrant pursuant to Payton, they may search anywhere the suspect may reasonably be found but must terminate the search when the suspect is found. The Court held that police did not exceed the lawful scope of their second-floor search, and, therefore, the seizure of

the drug evidence was constitutional. The Court affirmed the opinion of the Court of Appeals.

D. Derek Early v. Commonwealth of Kentucky
2014-SC-000311-MR **September 24, 2015**

Opinion of the Court by Justice Noble. All sitting; all concur. Early obtained and later sold five forged prescriptions for controlled substances for which he was convicted of five counts of trafficking in prescription blanks. He was also convicted of being a first-degree persistent felony offender. He was sentenced to 20 years' imprisonment and appealed as a matter of right. See Ky. Const. § 110(2)(b). In affirming Early's convictions and sentence, the Supreme Court held that there was sufficient evidence to support each conviction and that multiple convictions related to one sale of multiple forged prescriptions did not violate the bar on double jeopardy because KRS 218A.286(3), which prohibits trafficking in "a prescription blank" or "a forged prescription for a controlled substance," clearly defines a separate trafficking offense as relating to each individual prescription.

E. Mollie T. Shouse v. Commonwealth of Kentucky
2012-SC-000663-MR **September 24, 2015**

Opinion of the Court by Justice Noble. All sitting; all concur. Shouse was convicted of wanton murder, second-degree criminal abuse, and first-degree wanton endangerment of her two-year-old son who died when she left him in her car overnight and into the following afternoon. The Supreme Court vacated her wanton murder conviction and remanded for a new trial, holding that while her conduct historically would have supported a conviction for wanton murder, the legislature's 2000 amendments to the homicide statutory scheme created a new-type of second-degree manslaughter specifically applicable to such circumstances. This carve-out precluded the wanton-murder conviction. The Court also reversed the wanton-endangerment conviction for taking her child with her in her car when she drove to obtain marijuana. Evidence that she had taken drugs and had driven on a spare "donut" tire for more than fifteen minutes was insufficient to support the conviction, and the trial court erred in denying her motion for a directed verdict of acquittal on that charge.

F. Steven Pettway v. Commonwealth of Kentucky
2013-SC-000548-MR **September 24, 2015**

Opinion of the Court by Justice Noble. All sitting; all concur. Pettway was convicted of murder and intimidating a participant in the legal process after shooting and killing an eyewitness to a separate murder a friend of Pettway's had been charged with committing. The Supreme Court affirmed Pettway's murder conviction and sentence but reversed his conviction and sentence for intimidating a participant in the legal process. The Court held that evidence of the intentional

murder of the witness did not support conviction on the intimidation-of-a-witness charge because the evidence did not support finding that Pettway shot and killed the victim with the intent to "influence" her to alter her testimony in the other trial or to "induce" her not to testify, as criminalized by the intimidation statute, KRS 524.040.

G. Commonwealth of Kentucky v. Adrian Parrish
2013-SC-000830-DG September 24, 2015

Opinion of the Court by Justice Keller. All sitting. Minton, C.J.; Abramson, Barber, Cunningham, Keller, and Venters, JJ., concur. Noble, J., concurs by separate opinion. Adrian Parrish was pulled over in his car at just after midnight. He admitted to police that he had been drinking alcohol that night, and he failed two field sobriety tests. The arresting officer also took a preliminary breath test (PBT) at the scene and showed the numerical result to his cruiser's dashboard camera. Parrish was arrested for driving under the influence, taken to the station, and given an Intoxilyzer breath alcohol level test, which registered a result over the legal limit. Before trial, Parrish's attorney made an informal request for the dashboard video, but police responded that the video did not exist.

At a bench trial before the district court, the arresting officer testified that he could not remember the PBT result and was unaware that the video was not available. Because the video was the only record of the numerical result of the PBT, Parrish's attorney argued that the video was exculpatory evidence and that his client's extrapolation defense was severely hampered. In full awareness of the missing video, the district court commended the officer for his honesty and convicted Parrish of DUI, first offense.

On appeal to the circuit court, Parrish argued that the missing video amounted to a Brady v. Maryland violation. The court agreed, finding that police acted in bad faith. The Court of Appeals affirmed, and the Supreme Court granted discretionary review. The Court reversed the Brady violation and reinstated the district court's conviction. In so doing, the Court held that the circuit court's finding of bad faith was not supported by the record and that Parrish was on notice of the missing video before trial.

Justice Noble wrote a short concurring opinion, in which she restated that the circuit court was sitting as an appellate court and erroneously made a finding of fact contrary to district court. J. Noble reminded appellate courts to remember that they are not independent finders of fact.

H. Jared Futrell v. Commonwealth of Kentucky
AND
Kayla Lord v. Commonwealth of Kentucky
2013-SC-000184-MR **September 24, 2015**
2013-SC-000200-MR **September 24, 2015**

Opinion of the Court by Justice Abramson. Minton, C.J.; Barber, Keller, Noble, and Venters, JJ., concur. Cunningham, J., concurs in part and dissents in part by separate opinion. Defendants, boyfriend and girlfriend, were each convicted of wanton murder for having participated, as either principal or accomplice, in the killing of the girlfriend's nineteen-month-old child. Reversing both convictions, the Supreme Court held that the trial court's failure to strike for cause two presumptively-biased and properly-objected-to jurors entitled both defendants to a new trial. The Court also held that because evidence of the boyfriend's complicity was insufficient, the boyfriend's conviction under a combination principal-or-accomplice jury instruction was invalid. He is subject to retrial for wanton murder as a principal. Further, the trial court did not err, the Court held, by admitting expert testimony from a pediatrician specializing in child abuse to the effect that the child's injuries were not accidental, but had been inflicted

I. Jeremy Brewer v. Commonwealth of Kentucky
2013-SC-000467-DG **September 24, 2015**

Opinion of the Court by Chief Justice Minton. All sitting; all concur. Jeremy Brewer entered a conditional guilty plea to fourth-degree assault, third or subsequent offense within five years, while reserving the right to assert on appeal that the trial court erred when it ruled that evidence of his prior assault convictions was admissible in the guilt phase of his trial. Brewer was sentenced to two-and-a-half years' imprisonment, probated for five years with various conditions on that probation. Initially, the Court found KRS 508.032 to be an enhancement statute with elements required to be proven beyond a reasonable doubt. The Court held that prior assault convictions were not admissible during the Commonwealth's case-in-chief under KRS 508.032. In doing so, the Court outlined the proper trifurcated procedure for trying cases under KRS 508.032: (1) in the initial phase, the defendant must be tried and convicted of simple fourth-degree assault under KRS 508.030; (2) during the second phase, the Commonwealth must prove the elements of KRS 508.032—specifically, that the defendant has previously committed fourth-degree assault three times where the victim was a family member or member of an unmarried couple; and (3) during the final phase, the defendant is sentenced per our standard felony sentencing procedures. The Court held that the Commonwealth was permitted to introduce evidence of the victim's identity and simply the nature of the past assault convictions during the second phase. Finally, the Court noted the General Assembly's odd attempt ostensibly to allow the jury to find the defendant guilty under KRS 508.032, yet convict him of a misdemeanor rather than a felony. Beyond odd, the Court found this language constituted an unconstitutional delegation of legislative authority to the judiciary.

III. OPEN RECORDS:

A. Council on Developmental Disabilities, Inc. v. Cabinet for Health and Family Services

2013-SC-000357-DG **September 24, 2015**

Opinion of the Court by Justice Noble. All sitting. Minton, C.J.; Barber, and Keller, JJ., concur. Abramson, J., concurs in result only by separate opinion. Cunningham, J., dissents by separate opinion in which Venters, J., joins. The Cabinet for Health and Family Services investigates whenever allegations are made that a disabled adult under the state's care has been abused or has died from abuse, and it produces confidential records related to such investigations. Though those records are otherwise confidential, they may be disclosed to certain statutorily-defined individuals and groups under KRS 209.140, including "social service agencies … that have a legitimate interest in the case." KRS 209.140(3). The Council on Developmental Disabilities, Inc., a private non-profit corporation that advocates generally for "children and adults with mental retardation and their families and other interested persons in the community," sought disclosure of certain confidential records produced by the Cabinet related to investigations of alleged instances of elder abuse. In affirming the Court of Appeals, the Supreme Court held that the confidentiality exemption under KRS 209.140(3) was intended to apply to social services agencies with a direct stake in the cases at issue and, thus, did not apply to the Council.

IV. PERSONAL INJURY:

A. James Carter v. Bullitt Host, LLC, Etc.

2013-SC-000325-DG **September 24, 2015**

Opinion of the Court by Justice Noble. All sitting. Minton, C.J.; Barber and Keller, JJ., concur. Venters, J., dissents by separate opinion in which Abramson and Cunningham, JJ., join. Carter sued hotel operator Bullitt Host for injuries suffered as a result of a fall on ice on the hotel property, alleging negligence in the maintenance of the hotel's entryway during or soon after a severe snow storm. Summary judgment was granted in favor of the hotel on the grounds that the icy patch on which Carter fell was a naturally occurring open-and-obvious hazard for which there can be no liability under *Standard Oil Company v. Manis*, 433 S.W.2d 856 (Ky. 1968). The Court of Appeals affirmed. In reversing the Court of Appeals, the Supreme Court held that the *Manis* rule is no longer viable and that all open-and-obvious-hazard cases, including cases involving obvious naturally-occurring outdoor hazards, are subject to the comparative fault doctrine, which requires apportionment of fault among all parties to an action.

V. PRODUCTS LIABILITY:

A. Nissan Motor Company, Ltd., et al. v. Amanda Maddox
2013-SC-000685-DG **September 24, 2015**

Opinion of the Court by Justice Cunningham. All sitting. Minton, C.J.; Abramson, Keller, and Noble, JJ., concur. Barber, J., dissents by separate opinion in which Venters, J., joins. Amanda Maddox (now Gifford) and her then-husband, Dwayne Maddox, were traveling in their 2001 Nissan Pathfinder when their vehicle was hit, head on, by a drunk driver who was driving on the wrong side of the road. The drunk driver was killed on impact and Amanda sustained severe injuries. She filed suit against the drunk driver's estate and Nissan, and specifically alleged that her injuries were caused by Nissan's defectively designed restraint system and failure to warn her about the system's limitations. A Lincoln County Circuit Court jury found Nissan responsible for approximately $2.6 million in compensatory damages and $2.5 million in punitive damages. Nissan appealed several rulings, including the denial of its directed verdict motion. The Court of Appeals affirmed on all issues. The Kentucky Supreme Court reversed the judgment of the Court of Appeals on the issue of punitive damages, and vacated the Lincoln Circuit Court's judgment assessing punitive damages against Nissan. The Court held that while Amanda's injuries were monumental, the evidence presented at trial failed to indicate that such an outcome was the result of Nissan's reckless or wanton disregard for Amanda or those similarly situated. In support, the Court specifically noted that Nissan met and exceeded federal regulatory safety standards.

VI. WORKERS' COMPENSATION:

A. Consol of Kentucky, Inc. v. Osie Daniel Goodgame, Jr., Honorable Jeanie Owen Miller, Administrative Law Judge; and Workers' Compensation Board
AND
Osie Daniel Goodgame, Jr. v. Consol of Kentucky, Inc., Honorable Jeanie Owen Miller, Administrative Law Judge; and Workers' Compensation Board
2014-SC-000305-WC **September 24, 2015**
2014-SC-000333-WC **September 24, 2015**

Opinion of the Court by Justice Keller. All sitting; all concur. Goodgame worked for Consol in Kentucky from 1999 through July 2009, when Consol closed its Kentucky operations. Pursuant to an offer from Consol, Goodgame went to work at one of Consol's Virginia mining operations. In January 2010, Goodgame resigned from that job and took early retirement. In January 2012, Goodgame filed a claim alleging that he had suffered cumulative trauma injuries to his extremities and back. The ALJ dismissed Goodgame's claim, finding that he had not filed it within two years of the date he last worked in Kentucky. The Board

reversed and remanded the case to the ALJ for a finding regarding when Goodgame's cumulative trauma became manifest.

The Court of Appeals and the Supreme Court affirmed. In doing so, the Supreme Court noted that KRS 342.185 provides that the "date of accident" triggers the running of the statute of limitations. However, because cumulative trauma does not arise from a single accident, the statute in those claims begins to run when the injury becomes manifest, i.e. when the claimant is advised by a physician that he/she suffers from a work-related cumulative trauma injury. Therefore, the ALJ erred by finding that Goodgame's statute of limitations began to run on the day he last worked for Consol in Kentucky.

The Court went on to hold that, as set forth in Manalapan Mining Co. v. Lunsford, 204 S.W.3d 601 (Ky. 2006), KRS 342.185 acts as both a statute of limitations and a statute of repose. However, the Court overruled Lunsford's holding that the statute of repose in cumulative trauma claims begins to run on the date a claimant was last exposed to the repetitive trauma. Rather, the statute of repose begins to run when the statute of limitations begins to run - when the claimant is advised by a physician that he/she suffers from work-related cumulative trauma.

VII. WRIT:

A. Commonwealth of Kentucky v. Hon. Audra J. Eckerle, Judge, Jefferson Circuit Court, et al.

2014-SC-000027-MR **September 24, 2015**

Opinion of the Court by Justice Abramson. Minton, C.J.; Barber, Keller, and Noble, JJ., concur. Keller, J., concurs by separate opinion in which Barber and Noble, JJ., join. Venters, J., dissents by separate opinion in which Cunningham, J., joins. Defendant claimed self-defense following indictment for first-degree assault and two counts of wanton endangerment. Defense counsel moved to dismiss on immunity grounds and requested the circuit court to review a videotape of the incident, obtained from a Louisville Metro Arson camera on a utility pole. Without reviewing the videotape or evidence of record, the trial judge ordered an evidentiary hearing at which the victim and perhaps other witnesses would be subpoenaed by the defendant to testify. After the Court of Appeals denied a writ, the Court reversed and remanded to the appellate court for issuance of a writ. The trial court's action in scheduling an evidentiary hearing without first reviewing the evidence of record was clearly erroneous because the probable cause determination must be made on the record and, only if a determination cannot be made, should there be a hearing. Further, any ensuing hearing is not a full-blown evidentiary hearing but a probable cause hearing as outlined in RCr 3.14. Disregard of the first step in the self-defense immunity probable cause determination (and potentially other cases involving defense of self, property and others) interferes with the orderly administration of justice, justifying a writ.

VIII. ATTORNEY DISCIPLINE:

A. Kentucky Bar Association v. Russell W. Burgin
2015-SC-000248-KB **September 24, 2015**

Opinion of the Court. All sitting; all concur. The Board of Governors unanimously found Burgin guilty of seven counts, including violations of SCR 3.130-1.3 (failure to provide diligent representation); SCR 3.130-1.4(a)(3) and (4) (failure to keep client reasonably informed and failure to comply with reasonable requests for information); SCR 3.130-1.16(d) (failure to protect client's interest upon termination of representation, including refunding any advanced payment or fee); SCR 3.130-5.5(a) (unauthorized practice of law); SCR 3.130-8.1(b) (failure to respond to a lawful demand for information from an admissions or disciplinary authority); and SCR 3.130-8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation). After considering the nature of the violations and Burgin's disciplinary history, the Board recommended that Burgin be suspended from the practice of law for one year. Neither the Office of Bar Counsel nor Burgin sought review from the Court. So the Court adopted the Board's recommendation, suspending Burgin from the practice of law for one year, consecutive to any other suspension currently in effect.

B. Kentucky Bar Association v. John D.T. Brady
2015-SC-000252-KB **September 24, 2015**

Opinion of the Court. All sitting; all concur. In 2014, the KBA Inquiry Commission issued three separate disciplinary charges against Brady. The Board eventually found Brady guilty of violating SCR 3.130-1.3 (failure to provide diligent representation); SCR 3.130-1.4(a)(3) and (4) (failure to keep client reasonably informed and failure to comply with reasonable requests for information); SCR 3.130-1.15(a) (escrow account violation); SCR 3.130-1.16(d) (failure to protect client's interest upon termination of representation, including refunding any advanced payment or fee); SCR 3.130-8.1(b) (failure to respond to a lawful demand for information from an admissions or disciplinary authority); and SCR 3.130-8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation). After considering the seriousness of Brady's misconduct and his previous discipline, the Board recommended that Brady be suspended for a period of five years, to run consecutively with any other discipline currently imposed, and that he fully comply with the terms of his Kentucky Lawyers Assistance Program Supervision Agreement. Neither Brady nor the Office of Bar Counsel requested review by the Supreme Court under SCR 3.370(7). The Court concluded that the Board's Findings of Fact and Conclusions of Law were adequately supported by the record and case law and found the five-year suspension to be a suitable punishment for Brady.

C. Matthew D. Bowman v. Kentucky Bar Association
2015-SC-000404-KB September 24, 2015

Opinion of the Court. All sitting; all concur. Bowman moved the Court to impose upon him a thirty-day suspension, to be probated for one year, conditioned upon Bowman incurring no further disciplinary charges and further conditioned upon Bowman completing the Ethics and Professional Enhancement Program within one year. Bowman admitted to professional misconduct and, under SCR 3.480(2), negotiated the proposed sanction with the KBA. After reviewing the record, the applicable ethical standards, and other relevant authorities, the Court concluded that the proposed discipline was appropriate and sanctioned Bowman accordingly.