PUBLISHED OPINIONS
KENTUCKY SUPREME COURT
AUGUST 2013

I. CONTRACT LAW:

A. Energy Home, Division of Southern Energy Homes, Inc. v. Brian Peay and Lori Peay

2011-SC-000462-DG August 29, 2013

Opinion of the Court by Justice Venters. All sitting; all concur. Contract Law; Questions Presented: 1) Whether an arbitration provision contained in a warranty agreement for a manufactured house is barred by the merger and integration clause contained in an earlier executed purchase contract for the house; 2) Whether the arbitration provision is unconscionable; and 3) Whether a co-buyer of the manufactured house is bound by the warranty and arbitration agreement if she did not sign the agreement. Held: 1) The warranty and arbitration agreement is a valid contract that is independent from the earlier executed purchase contract and is therefore not barred by the merger and integration clause contained in the purchase contract; 2) The arbitration provision is neither procedurally or substantively unconscionable; and 3) A co-buyer of a house assents to a warranty and arbitration agreement signed by the other buyer when the co-buyer requests and accepts warranty services that are covered in the agreement.

II. CRIMINAL LAW:

A. Kenneth Buster v. Commonwealth of Kentucky

2011-SC-000092-MR August 29, 2013
2011-SC-000093-MR August 29, 2013

Opinion of the Court by Justice Cunningham. Abramson, Keller, Scott and Venters, J.J., concur. Noble, J., dissents by separate opinion in which Minton, C.J., joins. The appellant was convicted of four counts of complicity to rape (victim under 12 years of age), one count of first-degree rape, one count of first-degree sodomy, and one count of first-degree sexual abuse. The trial court properly concluded that the appellant was not entitled to suppress statements he made to a social worker when being interviewed at the prison where he was incarcerated. Although the social worker was a state actor, the appellant was not entitled to Miranda warnings as he was not subject to custodial interrogation.

B. Donald Johnson v. Commonwealth of Kentucky

2011-SC-000137-MR August 29, 2013

Opinion of the Court by Justice Noble. All sitting; all concur. Johnson entered an unconditional guilty plea to charges of murder, first-degree burglary, and two counts of first-degree sexual abuse and was given a death sentence. Johnson then collaterally attacked his murder conviction and death sentence claiming that his

unconditional, "blind" guilty plea was coerced. He claimed that his plea was induced by a secret deal with the trial judge in which the judge agreed not to sentence him to death if he entered a guilty plea. Johnson also claimed that his plea was coerced by his lawyer's threat to withdraw from representation if he did not take the plea. A special judge for the trial court ruled that the evidence did not support Johnson's claims and denied the motion.

The Supreme Court reviewed the case as a matter of right and affirmed Johnson's conviction. The Court found that the trial court's findings of fact were supported by substantial evidence and were not clearly erroneous. There was substantial evidence to support the trial court's finding that there was no secret deal and that Johnson's lawyer did not coerce him into pleading guilty. The Court also addressed Johnson's argument that the relevant inquiry was not whether there was actually a deal, but whether Johnson believed there was a deal based on the trial court judge's and his lawyer's statements to him. The Court reasoned that although the special judge's findings did not address this claim directly, the special judge did find that no credible evidence that a deal existed. As such, the Court found that no reasonable person would believe that a deal existed.

C. Timothy E. Mackey, Jr. v. Commonwealth of Kentucky
2012-SC-000378-MR **August 29, 2013**

Opinion of the Court by Justice Cunningham. All sitting; all concur. The appellant was convicted of manufacturing methamphetamine, possession of anhydrous ammonia in an unapproved container with the intent to use or manufacture methamphetamine, and being a first-degree persistent felony offender. The trial court did not err in denying the appellant's motion to suppress evidence obtained at an uninhabited dwelling where the appellant formally resided. The appellant lacked standing to challenge the search due to his failure to establish a possessory or ownership interest in the property. The appellant also failed to properly preserve alleged errors which occurred during voir dire. Lastly, the appellant was not entitled to a directed verdict based on the defense of entrapment due to sufficient evidence being presented to the jury that the criminal intent originated with the appellant and that he was predisposed to engage in the crimes.

D. Donald Ray Brock v. Commonwealth of Kentucky
2012-SC-000652-MR **August 29, 2013**

Opinion of the Court by Justice Keller. All sitting; all concur. Opinion of the Court by Justice Keller. All sitting; all concur. Donald Ray Brock was convicted of burglary in the second degree, burglary in the third degree, and of being a persistent felony offender in the first degree. Brock argued that the trial court erred in failing to give an instruction on the lesser included offense of criminal trespass. Citing to RCr 9.54(2), the Supreme Court concluded that, because Brock did not request a lesser included offense of criminal trespass, the fact that no instruction was given did not entitle him to relief. Brock also argued that the trial court's imposition of court costs was improper because the trial court had already recognized his indigent status. Although the trial court imposed court

costs in its oral ruling at sentencing, it was not memorialized in the written judgment. Because the written order did not impose court costs, the Court concluded there was no error.

E. Commonwealth of Kentucky v. Vittorio Orlando Martin
AND
Vittorio Orlando Martin v. Commonwealth of Kentucky
2011-SC-000616-DG **August 29, 2013**
2012-SC-000190-DG **August 29, 2013**

Opinion of the Court by Justice Abramson. All sitting; all concur. Martin was convicted of second-degree burglary for having unlawfully entered a residence and stealing various items. The Court of Appeals reversed the conviction on the ground that the trial court had violated Martin's right to counsel, as construed in Faretta v. California, 422 U.S. 806 (1975), by allowing him to file pre-trial, pro-se motions without first establishing on the record that Martin's waiver of counsel was knowing and voluntary. Reversing the Court of Appeals decision and reinstating Martin's conviction, the Supreme Court ruled that Martin's pro-se motions did not implicate Faretta since they in no way limited or dispensed with the assistance of counsel. The Court also ruled that Martin was not entitled to relief from an order to pay court costs.

F. Commonwealth of Kentucky v. Charlotte M. Jones
2012-SC-000144-DG **August 29, 2013**

Opinion of the Court by Justice Cunningham. Minton, C.J.; Abramson, Scott and Venters, JJ., concur. Noble, J., dissents by separate opinion. Keller, J., not sitting. A felony conviction voided under KRS 218A.275 does not amount to the underlying charge being dismissed with prejudice, and therefore does not qualify for expungement pursuant to KRS 431.076.

G. Thomas Frazier v. Commonwealth of Kentucky
2011-SC-000283-DG **August 29, 2013**

Opinion of the Court by Justice Abramson. Minton, C.J.; Noble and Venters, JJ., concur. Cunningham, J., concurs in result only by separate opinion in which Keller and Scott, JJ., join. Frazier was convicted of marijuana possession and other offenses after a traffic stop in which officers asked him to exit his car and then proceeded to pat him down. Reversing the Court of Appeals, which had upheld the trial court's denial of a motion to suppress, the Court found both the pat-down and ensuing vehicle search incident to Frazier's arrest constitutionally impermissible. The Court concluded, in the first instance, that the police lacked reasonable suspicion under the *Terry v. Ohio* standard to conduct a pat-down of Frazier's person. Even if the pat-down had been justified, because the officers could not identify the object in Frazier's pocket as contraband based on plain feel, the continued intrusion into his pant pocket exceeded the scope of a *Terry* search. Finally, because there was no lawful arrest the ensuing "search incident to arrest" was also unlawful.

III. DISABILITY BENEFITS:

A. Kentucky Retirement Systems v. Roger West

2011-SC-000471-DG **August 29, 2013**

Opinion of the Court by Justice Cunningham. Minton, C.J., Abramson, and Venters, JJ., concur. Scott, J., dissents by separate opinion in which Keller and Noble, JJ., join. A County employee, who suffered from Chronic Obstructive Pulmonary Disease ("COPD"), among other health ailments, filed suit to obtain disability benefits as a member of the County Employees Retirement System pursuant to KRS 61.600. The hearing officer reviewed the employee's medical records and appropriately considered the cumulative effect of his diagnoses. The employee's benefits were properly denied based on the length of the employee's extensive history of tobacco use and his failure to prove, by a preponderance of the evidence, that his COPD pre-dated his membership in the retirement system.

IV. EMPLOYMENT LAW:

A. Henry Webb, in his official capacity as Superintendent of the Floyd County Schools, et al. v. Pamela Meyer
AND
Pamela Meyer v. Henry Webb, in his official capacity as Superintendent of the Floyd County Schools, et al.

2011-SC-000145-DG
2012-SC-000113-DG **August 29, 2013**

Opinion of the Court by Justice Noble. All sitting; all concur. Meyer was a long-time employee of an elementary school and held the position of Youth Service Center Coordinator. The local school district closed two older elementary schools, including the school where Meyer was employed, to open a new elementary school. As a result of the closure, Meyer's position was abolished and she was retained as the Youth Service Center Clerk at the new elementary school. Meyer subsequently filed a declaratory action claiming her rights under KRS 161.011(8) had been violated because her transfer was the result of an improper reduction in force. The Court of Appeals, affirming the trial court, ruled in Meyer's favor holding that a reduction in force, under KRS 161.011(8), can occur within a single job classification.

The Supreme Court, on discretionary review, reversed the decision of the Court of Appeals and remanded the matter to the trial court. The Court found that reduction in force as used in KRS 161.011(8) requires a reduction in the total number of employees in an entire work force based on a sound business reason. The Court reasoned that the plain meaning of "reduction in force" equates with the total termination of employment, not the reassignment of employment and that this understanding of the term was internally consistent with seniority recall procedures laid out within the statute.

VI. FAMILY LAW:

A. Joseph Wayne McFelia v. Dorinda McFelia
2011-SC-000610-DG August 29, 2013

Opinion of the Court by Justice Noble. All sitting; all concur. Dorinda McFelia and Joseph McFelia were married in 1994. During the marriage, the couple had two children. The couple divorced in 2009 and entered into a temporary agreement that was entered by the trial court. As to the custody and support of their children, the couple agreed to joint custody, set visitation for Joseph, and agreed that child support would be set "according to the parties' incomes," to be paid to the county attorney for distribution beginning June 1, 2009. The support calculation was made using Kentucky's standard child support worksheet. Dorinda was designated the "custodial parent," and Joseph was to pay her $696.00 a month. In July of 2009, Joseph filed a motion to modify child support based on the amount of time the child spent in his physical custody. The trial court did not specifically address whether time-sharing or visitation must be considered in determining the amount of child support, but did hold that the agreed arrangement was in the best interest of the children and that the amount of child support would not be modified. The Court of Appeals affirmed the trial court.

The Supreme Court, on discretionary review, affirmed the Court of Appeals decision. The Court noted that while courts that decide domestic relations matters are given broad discretion, child support guidelines are statutorily set are presumptively appropriate. Further, the Court noted that where there is a deviation from the guidelines the moving party must convince the court that the guideline amount is unjust or inappropriate and that unless there is a preponderance of the evidence to support a deviation, then the guideline amount controls. There was not sufficient evidence to support a deviation in this case, and the trial court did not abuse its discretion.

B. Phillip Sitar v. Commonwealth of Kentucky and Loretta Glover
2012-SC-000737-DGE August 29, 2013

Opinion of the Court by Justice Keller. Minton, C.J., Abramson, Cunningham, Noble and Venters, J.J., concur. Scott, J., concurs in result only. On Glover's motion, the trial court issued an EPO and DVO against Sitar ordering him to stay away from Glover and her daughter. More than 60 days after the court issued the DVO, Sitar filed a CR 60.02 motion to set aside the DVO as void. In support of his motion, Sitar argued that the trial court lacked jurisdiction to issue either the DVO or EPO because neither Glover nor her daughter were persons governed by the domestic violence statutes. The trial court denied Sitar's motion, and he appealed.

The Court of Appeals affirmed holding that Glover and her daughter were persons governed by the domestic violence statutes. The Supreme Court held that the trial

court had the jurisdiction to enter a DVO; therefore, the issue was not one of jurisdiction, but whether the trial court had acted erroneously within its jurisdiction. The proper way to challenge whether a trial court acted erroneously is through an appeal, not a CR 60.02 motion. Because Sitar did not file his appeal within 60 days after the trial court issued the DVO, he was procedurally foreclosed from appealing. Therefore, the Supreme Court did not address the substantive issues he raised.

VII. OPEN RECORDS:

A. City of Fort Thomas v. Cincinnati Enquirer, a Division of Gannett Satellite Information Network, Inc., Etc.

2011-SC-000725-DG **August 29, 2013**

Opinion of the Court by Justice Abramson. Minton, C.J., Cunningham, Noble, Scott and Venters, JJ., concur. Keller, J., not sitting. In response to a newspaper's Open Records Act request for access to the investigatory file concerning a recent homicide, the City and its police department invoked the Act's law enforcement exemption (KRS 61.878(1)(h)) and issued a blanket denial. Affirming the Court of Appeals' disallowance of the blanket response, the Supreme Court held that even where a law enforcement file bears upon a prospective law enforcement action, the records in the file do not come within the law enforcement exemption unless the agency can show with a reasonable degree of particularity that their disclosure would harm or interfere with the prospective action in some meaningful way. The Court also ruled that inasmuch as the agency had denied access to the records in good faith, the trial court did not abuse its discretion in denying the newspaper's request that the City pay its attorney's fees.

VIII. PRISON DISCIPLINE:

A. Steve Haney, et al. v. Ontario Thomas

2011-SC-000453-DG **August 29, 2013**

Opinion of the Court by Justice Cunningham. Minton, C.J., Abramson, Keller and Venters, JJ., concur. Noble and Scott, J.J., dissent. A prisoner brought forth a petition for declaration of rights due to an adjustment committee's disciplinary determination which resulted in the loss of two years of the prisoner's non-restorable good time credit. The prisoner's constitutional rights of due process under the Fourteenth Amendment of the U.S. Constitution and Section 2 of the Kentucky Constitution were violated when the adjustment committee accepted the investigating officer's conclusions that the informants were credible and their information reliable without any independent investigation. When the information of confidential informants is the sole basis for a prison disciplinary proceeding, a separate determination that the informant is credible and his or her information is reliable is necessary to satisfy the "some evidence" standard announced in

Superintendent, Massachusetts Correctional Institution, Walpole v. Hill, 472 U.S. 445, 454 (1985).

IX. TORTS:

A. Mildred Abbott, et al. v. Stanley M. Chesley, et al.

2011-SC-000291-DG **August 29, 2013**

Opinion of the Court by Justice Venters. Minton, C.J., Abramson, Keller, Noble and Scott, JJ., concur. Cunningham, J., not sitting. Questions presented: 1) Whether Appellants were entitled to a partial summary judgment against three attorneys responsible for representing them in an underlying litigation for violating their fiduciary duties; 2) Whether the Court of Appeals properly declined to review the circuit court's denial of summary judgment against another attorney that represented Appellants in the underlying litigation; 3) Whether joint and several liability could be imposed on the three attorneys adjudged liable for damages; 4) Whether the Court of Appeals erred by failing to transfer the case from the Boone Circuit Court to the Fayette Circuit Court; and 5) Whether the trial court erred by deducting undocumented expenses from Appellants' monetary judgment. Held: 1) The trial court correctly granted partial summary judgment against three of the attorneys that represented Appellants in the underlying litigation because they violated their fiduciary duties to Appellants by collectively withholding attorneys' fees from Appellants' settlement in excess of the agreed to percentage provided for in their contingency fee agreements; 2) The Court of Appeals did not err in declining to review the denial of summary judgment against the attorney that secured the settlement for Appellants in the underlying litigation because a denial of a motion for summary judgment is interlocutory and not appealable; 3) The three attorneys adjudged liable for monetary damages may be held jointly and severally liable because they were engaged in a joint enterprise; 4) The Boone Circuit Court did not abuse its discretion by denying Appellants' motion for transfer to the Fayette Circuit Court because after the case was transferred from Fayette Circuit Court to the Boone Circuit Court, the "receiving" judge, pursuant to KRS 452.090, retained adjudicative authority over the case; 5) The deduction of the undocumented expenses from Appellants' monetary judgment was not ripe for summary judgment because questions of fact remain and therefore the trial court improperly included them in the partial summary judgment against the three attorneys adjudged liable for breaching their fiduciary duties.

X. WORKERS' COMPENSATION:

A. Jason E. Morris v. Owensboro Grain Co., LLC., et al.

2012-SC-000435-WC **August 29, 2013**

Opinion of the Court. Minton, C.J., Abramson, Cunningham, Noble, Scott and Venters, J.J., sitting. All concur. Keller, J., not sitting. Morris injured his shoulder when he caught himself falling on a dock owned by his employer, Owensboro

Grain. He underwent surgery and received Longshore and Harbor Workers' Compensation Act, 33 U.S.C. §901 et. seq. ("LHWCA") benefits. Later, Morris filed a claim under Kentucky Workers' Compensation Act.

The ALJ, Workers' Compensation Board, and Court of Appeals all found that pursuant to KRS 342.650(4), Morris was not covered under our workers' compensation scheme. The Supreme Court affirmed. KRS 342.650(4) states that "[a]ny person for who a rule of liability for injury or death is provided by the laws of the United States. . ." is ineligible from being covered by the Kentucky Workers' Compensation Act. LHWCA constitutes a "rule of liability" and since Morris received benefits through the LHWCA he was ineligible for Kentucky benefits. There was also no evidence Owensboro Grain provided Morris voluntary coverage per KRS 342.660.

B. Jackson Purchase Medical Associates v. Sarah Crossett, Honorable Richard M. Joiner, Administrative Law Judge; and Workers' Compensation Board
2012-SC-000436-WC **August 29, 2013**

Opinion of the Court. All sitting; all concur. Crossett fell on a sidewalk outside of an office building on her way to her job with Jackson Purchase Medical Associates. The sidewalk was to be maintained by the office's landlord and not JPMA. Despite the fact that JPMA did not have direct control over the maintenance of the sidewalk, the ALJ, Workers' Compensation Board, and Court of Appeals all found that the sidewalk was part of the employer's "operating premises" and therefore Crossett's injury was compensable pursuant to an exception to the going and coming rule. The Supreme Court affirmed finding the facts in this matter to be analogous to those found in *Pierson v. Lexington Public Library*, 987 S.W.2d 316 (Ky. 1999). In *Pierson*, the Court found that an employee's injury which occurred in a parking garage, not owned or maintained by her employer, was compensable because the employer instructed the employee to park there. Since Crossett parked in a location which her employer instructed her to park, and was taking a reasonable path to her office, her injury was also compensable.

XI. WRITS:

A. Premiertox 2.0., et al. v. Honorable Vernon Miniard, Judge, Russell Circuit Court, et al.
2013-SC-000101-MR **August 29, 2013**

Opinion of the Court by Justice Venters. All sitting; all concur. Question Presented: Were the requirements for issuing a writ of prohibition satisfied. Held: The requirements for issuing a writ of prohibition were satisfied because a) the circuit court acted erroneously by requiring a Medicaid Managed Care Organization (MCO) to escrow funds, under CR 67.02, that were allegedly owed to a service provider without a determination of the MCO's liability for those funds; b) the MCO lacked an adequate remedy on appeal or otherwise; and c) the

MCO would suffer an irreparable injury because requiring money to be escrowed without an adjudication of liability may result in a very gross injustice due to the loss of control of those funds during the adjudication process.

XII. ATTORNEY DISCIPLINE:

A. Kentucky Bar Association v. Thomas Edward Keating
2013-SC-000313-KB **August 29, 2013**

Opinion of the Court. All sitting; all concur. Keating represented a client in a personal injury matter that arose from a car accident. Keating told the client that the matter could take several years and to expect periods of inaction. During one point of the representation, the client was unable to reach Keating by telephone for several months. In November 2009, Keating told the client that the case had been settled; that she would be getting a settlement check soon; and because she had been so patient, Keating would advance her a check for $5,000. In November 2010, Keating admitted to the client that he failed to file her personal injury case in a timely manner. Without advising her to seek independent legal advice, Keating asked the client whether she would accept a promissory note from him in the amount of $35,000 to settle her potential legal malpractice case against him. The client accepted the offer. Thereafter, Keating failed to make monthly payments to the client.

The Inquiry Commission issued a five-count charge against Keating, and Keating failed to file an answer. The charge alleged Keating violated: (1) SCR 3.130-1.3; (2) SCR 3.130-1.4(a) (in effect through July 15, 2009) and SCR 3.130-1.4(a)(3); (3) SCR 3.130-1.8(h)(2); (4) SCR 3.130-8.3(c) (in effect through July 15, 2009) and current SCR 3.130-8.4(c); and (5) SCR 3.130-8.1(b). The matter was submitted to the Board as a default case pursuant to SCR 3.210(1). The Board unanimously found Keating guilty on all five counts and recommended that the Court suspend Keating for eighteen months and set the suspension to run consecutively to his current suspension. The Board also recommended that Keating be referred to KYLAP. The Supreme Court agreed with the Board's findings and adopted its recommendation.

B. Barbara D. Bonar v. Kentucky Bar Association
2013-SC-000335-KB **August 29, 2013**

Opinion of the Court. Minton, C.J.; Abramson, Cunningham, Keller, Scott and Venters, JJ., concur. Noble, J., not sitting. Bonar moved the Court to issue a public reprimand for her admitted violations arising from two separate disciplinary files. With respect to the first matter, which involved Bonar's representation of clients against the Roman Catholic Diocese of Covington, the

Inquiry Commission issued a four-count charge, including allegations that she violated (SCR) 3.130-1.7(b) (a lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client, a third party, or by the lawyer's own interest); SCR 3.130-1.9(a) (prohibiting a lawyer who has formerly represented a client in a matter from representing another person in the same or substantially similar matter); SCR 3.130-1.16(a)(1) (a lawyer shall withdraw from representing a client if the representation will result in a violation of the Rules of Professional Conduct); and SCR 3.130-1.3 (a lawyer shall act with reasonable promptness and diligence). Bonar admitted that her conduct violated SCR 3.130-1.7(b) and SCR 3.130-1.9(a), but claimed the violations of SCR 3.130-1.16(a)(1) and SCR 3.130-1.3 were redundant.

The second disciplinary file arose from Bonar's conduct while serving as President of the Kentucky Bar Association. Bonar dismissed four members of the Ethics Commission with personal and/or professional connections with the Diocese case before their terms had expired. An investigation by the Board of Governors revealed that Bonar made a series of false and misleading representations concerning her knowledge and actions relating to the controversial dismissals. The Inquiry Commission issued a one-count charge against Bonar, alleging that she violated SCR 3.130(8.3)(c) (lawyers shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation). Bonar admitted that her conduct violated SCR 3.130(8.3)(c).

Bonar moved the Court for a public reprimand based on her admitted violation of SCR 3.130-1.7(b), SCR 3.130-1.9(a), and SCR 3.130(8.3)(c). The KBA did not object to the sanction, which was negotiated pursuant to SCR 3.480(2). Bonar and the KBA also filed a joint motion to impose costs in the amount of $22,500. The Court agreed that the sanction was appropriate for Bonar's misconduct. Accordingly, Bonar was publicly reprimanded and ordered to pay $22,500 in costs associated with the disciplinary proceedings.

C. Kent D. Mitchner v. Kentucky Bar Association
2013-SC-000339-KB August 29, 2013

Opinion of the Court. All sitting; all concur. Mitchner was charged in two separate disciplinary files for violating the Rules of Professional Conduct. The first charge stemmed from Mitchner's representation of a client in a divorce and custody matter. The Inquiry Commission charged Mitchner with violating: (1) SCR 3.130-1.3 for failing to diligently represent his client in his child custody, child support and divorce matter when he let the matter sit for two and one-half years without filing necessary pleadings to move the matter forward; (2) SCR 3.130-1.4(a) by failing to respond to telephone calls, emails, and letters from his client; (3) SCR 3.130-1.4(b) for failing to provide copies of pleadings to the client and failing to explain the matter to the extent reasonably necessary to enable his client to make decisions regarding the representation; and (4) SCR 3.130-1.16(d) for failing to provide copies of all materials (notes, financial information, etc.) that were part of the client file.

The second charge stemmed from Mitchner's representation of a client in a child custody modification proceeding. The Inquiry Commission charged Movant with violating: (1) SCR 3.130-1.3 for failing to provide any legal services to his client in the time frame he advised his client the work would begin; (2) SCR 3.130-1.15(a) for placing the unearned advance fee payment into a general operating account rather than his escrow account; (3) SCR 3.130-1.16(d) for failing to refund the client's unearned advance fee payment for approximately twenty (20) months after termination of the representation; and (4) SCR 3.130-8.1(b) by failing to provide the KBA the requested information regarding his handling of the client's funds.

Mitchner admitted to the above violations and negotiated a sanction with Bar Counsel for a 30-day suspension, probated for one year upon the condition that he attend and successfully complete the KBA's Ethics and Professionalism Enhancement Program ("EPEP"). After reviewing the record and the applicable law, the Court found the negotiated sanction to be appropriate and suspended Mitchner from the practice of law for 30 days, probated for one year

D. Christopher L. Stansbury v. Kentucky Bar Associatoin
2013-SC-000418-KB August 29, 2013

Opinion of the Court. All sitting; all concur. Stansbury moved the Court to sanction him for his violations of Supreme Court Rules (SCR) 3.130-1.3 (lack of diligence and/or promptness); SCR 3.130-1.4(a)(3) (failure to communicate with client); SCR 3.130-1.4(a)(4) (failure to comply with client's request for information); SCR 3.130-1.4(b) (failure to explain matter to client); SCR 3.130-3.2 (failure to expedite litigation); SCR 3.130-8.1(a) (making false statements in connection with a disciplinary matter); and SCR 3.130-8.4(c) engaging in acts of fraud, deceit, dishonesty or misrepresentation). The violations arose from two separate disciplinary files. Stansbury moved the Court to enter an order suspending him for 181 days, with 61 days to be served and the balance probated upon the condition that he successfully complete the next Ethics and Professionalism Enhancement Program, at his own expenses, within one year of the entry of the order. The KBA did not object to the proposed discipline, which was negotiated pursuant to SCR 3.480(2). The Court agreed that the proposed consensual discipline was appropriate and sanctioned Stansbury accordingly.