

**PUBLISHED OPINIONS
KENTUCKY SUPREME COURT
AUGUST 2016i**

I. ADMINISTRATIVE LAW:

**A. Kentucky Retirement Systems v. Dianne Carson
2015-SC-000094-DG August 25, 2016**

Opinion of the Court by Justice Keller. All sitting; all concur. Carson filed an application for retirement disability benefits in late 2007. The Retirement Systems denied her claim. Instead of seeking judicial review, Carson opted to reapply pursuant to KRS 61.600(2). With her re-application, Carson filed additional medical evidence. In denying Carson’s claim on re-application, the Retirement Systems, citing to the doctrine of *res judicata*, did not re-evaluate the evidence filed with Carson’s initial application but only evaluated the new evidence. Carson sought review in the Franklin Circuit Court, primarily arguing that the Retirement Systems had inappropriately applied the doctrine of *res judicata* to her re-application. The circuit court reversed the Retirement Systems and remanded for additional proceedings. The court ordered the Retirement Systems to re-evaluate the medical evidence filed with Carson’s initial application as well as the medical evidence filed with the re-application. The Court of Appeals affirmed, and the Retirement Systems sought discretionary review. The Supreme Court granted review primarily to address the interaction between KRS 61.600(2) and *res judicata*.

The Supreme Court held that, because KRS 61.600(2) requires an applicant to file new medical evidence with a re-application, *res judicata* does have some application to re-applications. However, its application is limited to cases where the applicant re-applies without filing any new medical evidence. However, a strict application of *res judicata*, which precludes re-litigating already resolved claims, is at odds with KRS 61.600(2), which permits reapplication on the same claim provided new objective medical evidence is filed. The Court then noted that KRS 61.600(2) requires the Retirement Systems to “reconsider” a claim upon reapplication. Reconsider in this context means that the Retirement Systems must consider the new medical evidence and consider again the medical evidence previously filed. The Retirement Systems cannot, as it did with Carson’s reapplication, “simply reiterate the previous findings and state that it is ‘bound by the findings of the Board of Trustee’s (sic) Report and Order as to all evidence considered in the course of the first application concerning Claimant’s job and condition(s).’ Doing so does not amount to reconsidering the claim.” Finally, the Court held that Carson’s failure to seek judicial review did not foreclose her filing of a reapplication or require a strict adherence to *res judicata* when evaluating her re-application.

**B. Kentucky Retirement Systems v. Charles Wimberly
2015-SC-000159-DG August 25, 2016**

Opinion of the Court by Justice Keller. All sitting; all concur. Wimberly filed an application for retirement disability benefits. Following a hearing, a hearing officer recommended denial of Wimberly's claim. Before the Retirement Systems could render a final decision, Wimberly filed a second application pursuant to KRS 61.600(2). A hearing officer again recommended denial, based on two findings: (1) Wimberly's primary disabling conditions, cardiomyopathy and diabetes, were the result of his pre-employment abuse of alcohol; and (2) Wimberly's condition did not preclude him from returning to his job as a bus driver. The Retirement Systems rendered an opinion consistent with that recommendation. Wimberly appealed to the Franklin Circuit Court, which reversed. The Retirement Systems appealed to the Court of Appeals, which affirmed the circuit court. The Supreme Court granted discretionary review primarily to address the interaction between KRS 61.600(2) and *res judicata*.

As to *res judicata* the Court's opinion was consistent with its opinion in *Carson*. (See above.) In addition to the *res judicata* issue, the Court addressed issues regarding the sufficiency of the evidence. The Court held that the objective medical evidence did not support a finding that Wimberly abused alcohol, that any alcohol abuse caused his cardiomyopathy, or that any alcohol abuse sufficient to cause his cardiomyopathy took place before he became a covered employee. The Court then found that the following evidence overwhelmingly supported Wimberly's assertion that he could not return to his job as a bus driver: (1) Wimberly suffered episodes of syncope; (2) federal regulations prohibit a person with a history of cardiovascular disease and syncope from operating a commercial vehicle; (3) Wimberly's employer refused to let Wimberly return to work as a bus driver; and (4) Wimberly's physician, who had released Wimberly to drive his personal vehicle, had not cleared Wimberly to return to work driving a bus. The Court expressed some dismay with the Retirement Systems's finding that, if a person can drive a car, he can drive a bus, noting that the physical and mental demands of driving a bus eight hours a day are not similar to the demands of driving a car on personal business. Based on the preceding, the Court agreed with the circuit court and the Court of Appeals that the evidence compelled a finding in favor of Wimberly.

II. CRIMINAL LAW:

**A. Commonwealth of Kentucky v. Douglas Rank
2014-SC-000266-DG August 25, 2016**

Opinion of the Court by Justice Venters. All sitting. Minton, C.J.; Cunningham, Hughes, and Noble, JJ., concur. Keller and Wright, JJ., concur in result only. Criminal Appeal, Discretionary Review Granted. Questions presented: Whether the trial court erred by not conducting an evidentiary hearing pursuant to Rank's RCr 11.42 motion. Held: (1) Rank's motion for post-conviction relief under RCr

11.42. The trial court erred by not conducting an RCr 11.42 evidentiary hearing as to whether Rank’s counsel failed to investigate and advise him of an EED (extreme emotional disturbance) defense. The trial court did not err by not conducting an RCr 11.42 evidentiary hearing on Rank’s claims that his counsel’s performance was constitutionally ineffective due to a conflict of interest, the failure to file a formal discovery motion, the failure to follow proper procedure when moving the court to allow the deposition of the victim, the failure to assist him in posting bond and breaching the fiduciary duty, the failure to accurately advise him of the probation and parole eligibility associated with his guilty plea, and failing to present effective mitigating evidence at his sentencing hearing.

**B. Tracey Cassetty v. Commonwealth of Kentucky
2014-SC-000716-DG August 25, 2016**

Opinion of the Court by Justice Noble. All sitting; all concur. The Appellant moved for the trial judge to recuse from diversion-revocation proceedings. The judge denied the motion, held the revocation hearing, and revoked the Appellant’s diversion. The Appellant then submitted his notice of appeal, identifying only the court’s order denying the motion to recuse as the matter being appealed. After filing that notice, the trial court sentenced the Appellant and entered final judgment reflecting that sentence. At the Court of Appeals, the Appellant argued that the refusal to recuse was error, but that court declined to address the merits of this claim because the appeal was taken from the interlocutory order denying recusal and not the final judgment. The Appellant sought discretionary review by the Supreme Court, claiming that the rule of substantial compliance should permit his appeal to go forward. The Supreme Court granted review and affirmed, holding that a notice of appeal naming only an order denying a motion to recuse, rather than a final judgment, is fatally defective and cannot be salvaged by either the substantial-compliance rule or its subsidiary rule of relation forward. Because the defective notice of appeal thus fails to invoke the jurisdiction of the appellate court, the attempted appeal should be dismissed.

**C. Bryan Russell v. Commonwealth of Kentucky
2015-SC-000385-MR August 25, 2016**

Opinion of the Court by Justice Noble. All sitting. Minton, C.J.; Hughes, Keller, Venters, and Wright, J.J., concur. Cunningham, J., concurs in result by separate opinion. After entering a guilty plea, the Appellant mailed a letter to the trial judge complaining about the effectiveness of his counsel and the length of the sentence that he agreed to. The letter did not, however, ask for any specific relief, such as the setting aside of his plea. On appeal, the Supreme Court held that the Appellant’s letter could not be construed as a pro se motion to withdraw his guilty plea under CR 8.10 because, by not expressly asking for any relief, it failed to “set forth the relief or order sought” as required under CR 8.14. The Court was clear that although pro se litigants are not held to the same standards as counsel, they must still ask for what they want for such a communication to be treated as a motion.

- D. Jonathan McDaniel v. Commonwealth of Kentucky**
[2014-SC-000241-DG](#) August 25, 2016
AND
David DeShields v. Commonwealth of Kentucky
[2014-SC-000242-DG](#) August 25, 2016
AND
John C. Martin v. Commonwealth of Kentucky
[2014-SC-000243-DG](#) August 25, 2016

Opinion of the Court by Justice Hughes. All sitting; all concur. Convicted felony sex offenders brought separate pro se, post-conviction motions in their respective trial courts seeking to “amend” their sentences by having the conditional discharge provisions removed. When the trial courts denied the motions, the Court of Appeals consolidated the cases and, in the course of affirming the trial court rulings, recharacterized the initial motions as having been brought pursuant to RCr 11.42 and upheld the constitutionality of KRS 532.043(5)—the conditional discharge statute—although none of the original motions in the trial courts had raised that issue. Affirming the denial of the original motions, the Supreme Court disapproved and “vacated” the Court of Appeals’ recharacterization of the pro se motions as RCr 11.42 motions as well as its premature consideration of the conditional discharge statute’s validity.

- E. Kyle Sheets v. Commonwealth of Kentucky**
[2014-SC-000002-MR](#) August 25, 2016

Opinion of the Court by Justice Wright. All sitting. Minton, C.J.; Cunningham, Hughes, Keller, and Venters, JJ., concur. Noble, J., concurring in part, dissenting in part by separate opinion. Appellant, Kyle Sheets, was convicted of first-degree sexual abuse and two counts of first-degree sodomy. In a separate trial with a separate jury, he was convicted of possession of a handgun by a convicted felon. Sheets was sentenced in accordance with the juries’ recommendations to ten years’ imprisonment for the sexual-abuse conviction, forty years’ for each sodomy conviction, and six years’ for the handgun conviction, all to run consecutively, subject to the statutory maximum aggregate sentence of seventy years. Sheets appealed to the Supreme Court as a matter of right, Ky. Const. § 110(2)(b), and raised the following allegations of error: (1) the trial court erred when it failed to grant his motions for directed verdicts of acquittal; (2) the trial court violated his right to be free from double jeopardy; (3) the trial court violated his right to a unanimous verdict; (4) the Commonwealth erred when it introduced irrelevant evidence of legal sexual acts between Sheets and his wife; (5) the Commonwealth erred when it alleged Sheets’s defense attorney acted immorally or illegally by investigating the allegations; (6) one of the Commonwealth’s witnesses gave improper testimony on cross examination; (7) the trial court erred by failing to conduct an in camera review of Sheets’s alleged victim’s

psychological counseling records; and (8) the trial court erred when it included an instruction on a definition of “constructive possession” on his possession-of-a-handgun-by-a-convicted-felon charge. The Supreme Court did not have jurisdiction to review the possession-of-a-handgun-by-a-convicted-felon conviction and sentence on direct appeal, as the sentence for that conviction was for less than twenty years’ imprisonment. Thus, the Court did not address Sheets’s final claim of error. As to his other claims, the Court affirmed all of Sheets’s convictions and their corresponding sentences with the exception of one count of sodomy. As to that count, the Court pointed to *Johnson v. Commonwealth*, 405 S.W.3d 439, 449 (Ky. 2013), which held that a defendant’s right to a unanimous verdict is violated by “a general jury verdict based on an instruction including two or more separate instances of a criminal offense, whether explicitly stated in the instruction or based on the proof.” In this case, the Court held that the instructions for sodomy did not provide any specifics about the events surrounding the charged conduct, even though the victim testified to more than one occasion of this particular type of abuse. Rather, the instructions merely provided a four-year time span during which the events could have taken place. Because the jury instructions neither directed the jury to one such instance, nor did they otherwise specify on the verdict form that it unanimously based its ruling on a particular instance of abuse, the Court held this specifically ran afoul of its precedent in *Johnson*. Therefore, the Court reversed one of Sheets’s sodomy convictions on these grounds.

**F. David Alan Jenkins v. Commonwealth of Kentucky
2014-SC-000353-MR August 25, 2016**

Opinion of the Court by Justice Hughes. All sitting. Minton, C.J.; Keller, Noble and Wright, JJ., concur. Cunningham, J., dissents by separate opinion in which Venters, J., joins. Venters, J., dissents by separate opinion in which Cunningham, J., joins. Defendant was convicted of first-degree rape and first-degree sodomy, both by forcible compulsion. He was sentenced to twenty years’ imprisonment for each offense with the sentences to be served consecutively. Affirming in part and reversing in part, the Supreme Court upheld the rape conviction, rejecting claims that force had not been proven, that evidence of prior bad acts and of a post-polygraph interview had been erroneously introduced, and that the court had erroneously denied the defendant’s request for a sexual misconduct jury instruction. The Court reversed the sodomy conviction because, although that offense had been sufficiently proved, the pertinent jury instruction was duplicitous and thus gave rise to a unanimous-jury violation.

**G. David Howard v. Commonwealth of Kentucky
2015-SC-000377-MR August 25, 2016**

Opinion of the Court by Chief Justice Minton. All sitting; all concur. Following an open guilty plea, Howard was sentenced to ten years’ imprisonment and a \$1,000 fine for trafficking in a controlled substance. He challenged the trial court’s ability to impose the statutory-maximum penalty. The Court unanimously

reaffirmed that matters of sentencing are ultimately committed to the trial court's discretion. There was ample evidence supporting the trial court's decision to impose the maximum penalty on Howard. Furthermore, the Court held that the maximum sentence was not unconstitutional under the Double Jeopardy Clause of the Fifth Amendment or the Cruel and Unusual Punishment Clause of the Eighth Amendment.

III. ELECTION LAW:

A. Charles Hardin, M.D. v. John Montgomery, et al.

[2015-SC-000572-DGE](#)

AND

Magoffin County Board of Elections, et al. v. John Montgomery, et al.

[2015-SC-000575-DGE](#)

August 25, 2016

Opinion of the Court by Justice Venters. All sitting; all concur. After losing an election for Magoffin County Judge-Executive by 28 votes according to the officially-tabulated results, Montgomery sued his opponent, Hardin, and the Magoffin County Board of Elections, alleging voting irregularities and violations of election statutes. The trial court set aside the election results based upon its conclusion that numerous violations of election law sufficiently established fraud and bribery such that neither the contestant nor the contestee could be adjudged to have been fairly elected. The Court of Appeals affirmed. Question presented: whether the evidence adequately proved violations of election statutes affecting the outcome of the election or making it impossible to determine if either candidate was fairly elected. On discretionary review, the Supreme Court held: 1) election law violations cannot be presumed but must be affirmatively shown by competent evidence, not only that they existed, but also that they affected the result to such an extent that it cannot be reasonably determined who was elected; 2) the burden of proof is on the contestant to show such fraud, intimidation, bribery, or violence in the election that neither the contestant nor the contestee can be adjudged to have been fairly elected; 3) setting aside an election on less than compelling evidence unnecessarily undermines essential public confidence in election results; 4) a statistical anomaly in absentee voting is not alone sufficient grounds to set aside an election or to cast out all of the absentee ballots; 5) failure of election officials to follow statutory directives did not warrant discarding of all the votes cast at the precinct where evidence fails to show how such irregularities could have affected election results; 6) where fraud, intimidations, bribery, illegalities, or voting irregularities are established, and the effects of such sinister influences can be eliminated allowing the proper result to be clearly ascertained, it is the duty of the court to do so, and thereby sustain the election; but if the court cannot with reasonable certainty determine who has received a majority of the legal votes, the election should be set aside and a candidate cannot be declared a victor, unless he can be shown to have received a majority or plurality of the legal votes cast at the election.

IV. **FORCIBLE DETAINER:**

- A. **Lesley D. Shinkle v. Bobby D. Turner**
[2015-SC-000039-DG](#) **August 25, 2016**

Opinion of the Court by Justice Venters. All sitting. Minton, C.J.; Cunningham, Hughes, Noble and Wright, JJ., concur. Keller, J., concurs in result only. Landlord (Turner) filed a forcible detainer action against tenant (Shinkle) eight days after giving the tenant notice to vacate the premises. Tenant moved to dismiss based on the landlord's failure to comply with the one-month notice requirement contained in KRS 383.195. The district court deferred the statutory inquisition to allow one-month to lapse from the date of notice and denied tenant's motion to dismiss. Upon entry of verdict and judgment, tenant appealed. The circuit court affirmed. The Court of Appeals denied tenant's motion for discretionary review. Upon discretionary review, the Supreme Court held:(1) despite mootness, review was warranted under the public interest exception to the mootness doctrine as explained in *Morgan v. Getter*, 441 S.W.3d 94, 99 (Ky. 2014); and (2) pursuant to the plain language of KRS 383.195 and KRS 383.210(1), and KRS 383.200(a), the landlord had no cause of action for forcible detainer until after the passage of one month from the date tenant was notified to vacate. Since the forcible detainer was not ripe when filed, dismissal was required.

V. **INSURANCE LAW:**

- A. **Countryway Insurance Company v. United Financial Casualty Insurance Company, et al.**
[2014-SC-000265-DG](#) **August 25, 2016**

Opinion of the Court by Justice Hughes. All sitting; all concur. Auto insurers both providing uninsured motorist coverage to a person injured while a passenger in vehicle owned by another raised a priority issue in the trial court. That court resolved the issue by ruling that the companies' competing "other insurance" clauses cancelled each other out and left the companies jointly liable on a pro-rata basis. Reversing, the Court of Appeals ruled that primary liability rested with the passenger's personal carrier. Reversing the Court of Appeals, the Supreme Court held, in accord with *Kentucky Farm Bureau Mut. Ins. Co. v. Shelter Mut. Ins. Co.*, 326 S.W.3d 803 (Ky. 2010), that the Motor Vehicle Reparations Act implicitly fixes primary uninsured motorist coverage on the vehicle owner's insurer.

VI. ATTORNEY DISCIPLINE:

**A. Kentucky Bar Association v. William Perry McCall
2013-SC-000792-KB August 25, 2016**

Opinion and Order of the Court. All sitting; all concur. In 2014, the KBA moved for an order imposing reciprocal discipline based on a disciplinary order from the Indiana Supreme Court. The Indiana order suspended McCall's license for 90 days but stayed that suspension pending 24 months of probation with conditions. The Kentucky Supreme Court abated the KBA's motion, pending McCall's completion of the probationary period in Indiana. In response to a May 2016 show cause order, the KBA stated that McCall's probationary period in Indiana ended in October 2015, and it had no information indicating McCall had not been compliant with all of the conditions of that probation. Therefore, the Kentucky Supreme Court denied the KBA's motion to impose reciprocal discipline.

**B. Kentucky Bar Association v. Jeffrey Owens Moore
2016-SC-000082-KB August 25, 2016**

Opinion and Order of the Court. All sitting; all concur. The Inquiry Commission filed a charge against Moore, who was served with a copy of the charge via certified mail. Moore signed to receive the charge but failed to respond. In January 2016, SCR 3.380 was amended to allow the Supreme Court to indefinitely suspend a lawyer who fails to answer a charge. In June 2016, the Court gave Moore an additional twenty days to respond since the charges to which he failed to respond predated the amendment to SCR 3.380. The Court also ordered the KBA to supplement its original motion to provide more information on Moore's charges. The KBA adequately supplemented its motion but Moore still failed to respond to the charges. Accordingly, under SCR 3.380, the Court indefinitely suspended Moore from the practice of law.

**C. Kentucky Bar Association v. John D.T. Brady
2016-SC-000094-KB August 25, 2016**

Opinion and Order of the Court. All sitting; all concur. By order of the Supreme Court, Brady was suspended from the practice of law for a period of five years. After that order was entered, the Inquiry Commission filed an additional nine charges against Brady, encompassing a total of 37 disciplinary violations. Brady failed to respond. The Commission submitted the cases to the Board of Governors under SCR 3.210. The Board, finding Brady guilty of 32 of the 37 violations, recommended Brady be permanently disbarred. The Court agreed with the Board's recommendation and permanently disbarred Brady.

- D. Kentucky Bar Association v. Russell W. Burgin**
[2016-SC-000098-KB](#)
AND
Kentucky Bar Association v. Russell W. Burgin
[2016-SC-000203-KB](#) **August 25, 2016**

Opinion and Order of the Court. All sitting; all concur. The Inquiry Commission issued three separate disciplinary charges against Burgin, who failed to respond. In light of Burgin's failure to answer any of the pending charges and his extensive disciplinary history, which resulted in several temporary suspensions, the Board of Governors recommended permanent disbarment. The Court agreed, noting that its decision to disbar Burgin was fortified by his demonstrated disregard for the Court of Justice and the rules of ethics.

- E. Kentucky Bar Association v. James D.R. Roberts, Jr.**
[2016-SC-000155-KB](#) **August 25, 2016**

Opinion and Order of the Court. All sitting; all concur. The Supreme Court of Tennessee entered an Order suspending Roberts from the practice of law for six months. The KBA moved the Supreme Court to order Roberts to show cause why reciprocal discipline should not be imposed. Roberts failed to respond to the motion. So the Court granted the KBA's motion and imposed reciprocal discipline, suspending Roberts from the practice of law in the Commonwealth of Kentucky for six months.

- F. Kentucky Bar Association v. Edwin L. Vardiman, Jr.**
[2016-SC-000159-KB](#) **August 25, 2016**

Opinion and Order of the Court. All sitting; all concur. Vardiman was suspended from practicing law in Kentucky in 2008 for his failure to comply with continuing legal education requirements. In February 2016, the Supreme Court of Ohio found Vardiman guilty of violating several provisions of the Ohio Rules of Professional Conduct and suspended him for one-year, with the final six months stayed upon compliance with various conditions. The KBA then filed a petition for reciprocal discipline under SCR 3.435. The Supreme Court entered a show cause order but Vardiman did not respond. Accordingly, the Court imposed reciprocal discipline and suspended Vardiman from the practice of law in the Commonwealth of Kentucky for one year, with the last six months stayed on conditions.

- G. Kentucky Bar Association v. Bryan Samuel Coffman**
[2016-SC-000204-KB](#) **August 25, 2016**

Opinion and Order of the Court. All sitting; all concur. Coffman was convicted of 27 counts of wire fraud, conspiracy to commit money laundering, money laundering and securities fraud involving approximately 600 individuals and a total monetary loss of over \$36,000,000. He was sentenced to 300 months in

prison and ordered to pay restitution. His conviction was affirmed by the Sixth Circuit on appeal.

Coffman was initially suspended from practicing law under SCR 3.166 due to the criminal indictment. The Inquiry Commission subsequently filed a complaint but the matter was held in abeyance while Coffman appealed his conviction. Following the conclusion of his appeal, the case was removed from abeyance and Coffman filed a response to the original complaint. The Inquiry Commission then filed formal charges, to which Coffman failed to respond.

The Board of Governors concluded that Coffman's conviction of 27 separate felonies was a clear violation of SCR 3.130(8.3) and recommended permanent disbarment. Neither Coffman nor Bar Counsel filed a notice of review and the Court declined to independently review the decision of the Board. Accordingly, the Court adopted the Board's recommendation and permanently disbarred Coffman from the practice of law.

**H. Kentucky Bar Association v. Byron Kemp Howard
2016-SC-000215-KB August 25, 2016**

Opinion and Order of the Court. All sitting; all concur. Howard entered an *Alford* plea of guilty to one count of Manufacturing Methamphetamine, 1st offense, a Class B felony, and was sentenced to ten years' imprisonment, probated for three years.

The Inquiry Commission authorized a complaint to be filed against Howard but it was returned "unclaimed" and "unable to forward." Bar Counsel subsequently sent the complaint to Howard at two additional addresses but the packages were also returned. Service was ultimately completed by constructive service on the Executive Director of the KBA.

The Inquiry Commission filed a two-count charge against Howard as a result of his criminal conviction. Efforts to serve the charges were unsuccessful and Howard again failed to answer or otherwise respond to the complaint. So the case reached the Board of Governors as a default case under SCR 3.210(1). The Board found Howard guilty of both counts and recommended that he be permanently disbarred from the practice of law.

Neither Howard nor Bar Counsel filed a notice of review and the Court declined to independently review the decision of the Board. Accordingly, the Court adopted the Board's recommendation and permanently disbarred Howard from the practice of law.

**I. Kentucky Bar Association v. Christina Rose Edmondson
2016-SC-000216-KB August 25, 2016**

Opinion and Order of the Court. All sitting. All concur. The KBA charged Edmondson with a number of violations: (1) assisting another to engage in the unauthorized practice of law by permitting a paralegal to finish taking a deposition; (2) taking money from clients and then not performing the agreed to services; (3) failing to communicate with clients; and (4) failing to respond to requests for information from the KBA. Based on these violations, the KBA recommended that Edmondson be suspended from the practice of law for 180 days, that she refund client money, and that she attend the Ethics and Professional Enhancement Program. The Supreme Court, noting that Edmondson was under suspension for failure to pay bar dues and obtain CLE, adopted the KBA's recommendation and ordered that Edmondson's two suspensions run consecutively.

**J. John Knox Benintendi v. Kentucky Bar Association
2016-SC-000238-KB August 25, 2016**

Opinion and Order of the Court. All sitting; all concur. In 2003, Benintendi withdrew from the KBA, pursuant to an Order of the Supreme Court of Kentucky. In 2015, he applied for restoration of his license to practice law. Benintendi maintained his license to practice law in the state of Ohio and Chief Bar Counsel of the KBA reported that he had no disciplinary actions filed against him and had not been the subject of any claims against the Client Security Fund. Additionally, the Director of Continuing Legal Education of the KBA certified that Benintendi obtained the maximum number of CLE credits required for restoration under SCR 3.685. Benintendi further satisfied all other requirements for restoration, including payment of all fees and posting of a bond in the amount of \$2500.

After reviewing the entire record, the Board unanimously determined that Benintendi satisfied all applicable standards and recommended that his application for restoration be approved under SCR 3.500. The Court adopted the Board's recommendation and restored Benintendi's membership in the KBA and to the practice of law in the Commonwealth.

**K. Kentucky Bar Association v. Clinton Chadwell Carter
2016-SC-000261-KB August 25, 2016**

Opinion and Order of the Court. All sitting; all concur. The Supreme Court of Tennessee entered an Order of Public Censure against Carter, finding that he engaged in the unauthorized practice of law while his license was administratively suspended; failed to file a certificate of good faith in a medical malpractice action; and failed to inform his client of the dismissal of the lawsuit for a period of over six months. The KBA filed a petition for reciprocal discipline and the Supreme Court entered a show cause order. Carter did not respond. Accordingly, the Court

imposed reciprocal discipline, publicly reprimanding Carter for his disciplinary violations.

L. Joseph Daniel Thompson v. Kentucky Bar Association
[2016-SC-000262-KB](#) August 25, 2016

Opinion and Order of the Court. All sitting; all concur. Thompson moved the Supreme Court to impose a 181-day suspension from the practice of law, with 120 days of the suspension probated for 2 years on the condition that he not receive any new charges from the Inquiry Commission during his probationary period, for his admitted violations of the Rules of Professional Conduct. The KBA did not object to the negotiated discipline and the Court held that the agreed upon sanction was appropriate given the facts of the case and sanctioned Thompson accordingly.

M. James Robert Yates v. Kentucky Bar Association
[2016-SC-000271-KB](#) August 25, 2016

Opinion and Order of the Court. All sitting; all concur. Yates moved the Supreme Court to impose a thirty-day suspension, probated for one year with conditions for his admitted violations of the Rules of Professional Conduct. The KBA did not object to the negotiated discipline. The Court found the proposed discipline appropriate and granted Yates's motion.