PUBLISHED OPINIONS
KENTUCKY SUPREME COURT
DECEMBER 2010

I. ARBITRATION

A. Michael Schnuerle, Amy Gilbert, Lance Gilbert and Robin Wolff v. Insight Communications Company, L.P. And Insight Communications Midwest, LLC

2008-SC-000789-DG **December 16, 2010**
2009-SC-000390-DG **December 16, 2010**

Opinion of the Court by Justice Venters. All sitting. Customers of broadband Internet service provider filed class action in circuit court for damages caused by temporary interruption of Internet service, despite language in service agreement banning class actions and requiring resolution of disputes by either arbitration or small claims court. The Supreme Court held that the provision in Internet Service Agreement barring class action litigation is void as an exculpatory and unconscionable contract provision in a consumer adhesion contract. Neither the small claims court provision, nor the incorporation of the American Arbitration Association's rules and procedures rendered the class action ban procedurally and substantively conscionable. A contractual provision imposing a confidentiality requirement upon the litigants to arbitration proceedings was held unenforceable. The service agreement's general arbitration provision was held not unconscionable and was enforceable in class-action litigation upon remand. The Supreme Court also held the service agreement's choice of law provision was not enforceable.
Justice Schroder concurred in part and dissented in part, stating that he would invalidate the arbitration clause as procedurally unconscionable.

II. ATTORNEY-CLIENT PRIVILEGE

A. 3M Company v. Hon. William Engle III, etc., et al. & American Optical Corp. and 3M Company v. Delbert Miller, et al.

2010-SC-000125-MR **December 16, 2010**
2010-SC-000163-MR **December 16, 2010**

Opinion of the Court by Justice Schroder. All sitting; all concur. Plaintiffs, a group of coal miners suffering from coal workers' pneumoconiosis (CWP) filed suit against the manufacturers of allegedly defective respirators, including 3M and American Optical. Defendants asserted that the plaintiffs' claims were time-barred by the statute of limitations. The plaintiffs submitted affidavits, asserting that they did not learn of a possible connection between CWP and the defendants' equipment until they were informed by their attorney, and that they filed suit within the statutory time period after gaining this knowledge. The defendants sought to compel the plaintiffs' attorney to be deposed in order to learn when he first discussed with the plaintiffs a possible connection between respirators and

CWP, as well as when he first learned of a possible connection. The trial court issued an order compelling the attorney to be deposed. The Court of Appeals issued a writ of prohibition to prevent the deposition of the plaintiffs' attorney. The Supreme Court reversed and vacated the writ, concluding that the trial court did not act erroneously in permitting the deposition. With respect to when the plaintiffs first learned of a possible connection between CWP and the respirators, the plaintiffs impliedly waived attorney-client privilege by putting their attorney's knowledge at issue. The defendants also had no other means of obtaining the information, and it was critical to the preparation of their case.

III. CRIMINAL

A. Richard Winstead v. Commonwealth of Kentucky

2009-SC-000019 **December 16, 2010**

Opinion of the Court by Chief Justice Minton. All sitting. Final judgment erroneously granted defendant jail-time credit. No direct appeal was taken. Commonwealth filed motion to amend judgment pursuant to CR 60.02 after the time for filing a direct appeal had elapsed. Trial court granted CR 60.02 motion. Defendant appealed and Court of Appeals affirmed. Supreme Court reversed for two main reasons: 1) erroneous jail time credit award was judicial error and precedent holds that judicial errors cannot be corrected via CR 60.02; and 2) CR 60.02 is unavailable to correct an error which could have been raised on direct appeal with the exercise of due diligence. Supreme Court also found that jail-time credit award was not part of defendant's sentence, meaning that precedent holding that an illegal sentence could be corrected "at any time" was inapplicable. Justices Cunningham and Scott dissented.

B. Bertrand Howlett v. Commonwealth of Kentucky

2010-SC-000128-CL **December 16, 2010**

Opinion by Justice Cunningham. All sitting; Justices Abramson, Schroeder, Noble, Venters, and Minton, C.J., concurring, with Justice Scott dissenting. The Commonwealth sought a certification of the law on the issue of a judge taking judicial notice of a fact that comes from the judge's own personal knowledge. The Supreme Court held that under KRE 201, the taking of judicial notice derived from the court's personal knowledge of a fact peculiarly known to the judge is a fact neither "[g]enerally known within the county from which the jurors are drawn, or, in a nonjury matter, the county in which the venue of the action is fixed; [nor] [c]apable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Further, much like in a jury trial, when it is requested that judicial notice be taken of a fact in a bench trial, the other party is afforded the opportunity to respond.

C. Debbie Childers v. Commonwealth of Kentucky
2009-SC-000297-MR December 16, 2010

Opinion of the Court by Justice Abramson. All sitting. Debbie Childers was convicted of complicity to trafficking in a controlled substance in the first degree and sentenced to ten years, enhanced to twenty years by her PFO 2 status. On appeal, Childers argued (1) KRE 608(b) permits inquiry into the nature of a witness's prior felony convictions; (2) the Commonwealth's Attorney and a witness impermissibly interpreted a drug buy tape; and (3) there was insufficient evidence to support her conviction.

Regarding the first issue, the Court held KRE 608(b) permits impeachment only by specific instances of conduct that have not resulted in a conviction. Evidence relating to impeachment by criminal conviction is governed solely by KRE 609. As to the second issue, the Court held there was no prosecutorial misconduct because the prosecutor did no more than make reasonable comments on the evidence. The witness, though, improperly invaded the province of the jury by interpreting the tape rather than testifying from his recollection. However, this unpreserved error was not sufficient to warrant a reversal. As for Childers's third argument, based on the record as a whole, the Court held it was not clearly unreasonable for the jury to find Childers' guilty of complicity to trafficking in a controlled substance in the first degree. Accordingly, the Court affirmed. Justice Venters dissented by separate opinion, in which Justices Schroder and Scott joined.

D. Michael Shawn Payton v. Commonwealth of Kentucky
2008-SC-000965-DG December 16, 2010

Opinion of the Court by Chief Justice Minton. All sitting. Payton entered conditional guilty plea after trial court denied Payton's motion to suppress evidence of search conducted by police accompanying social services worker investigating allegations of drugs in home with children on basis that consent was given. Court of Appeals affirmed. Supreme Court took discretionary review and affirmed Court of Appeals. Issues/holdings include: Kentucky state courts must follow the rule in Georgia v. Randolph, 507 U.S. 103 (2006) that an occupant's voluntary consent to a warrantless premises search is ineffective to bind a co-occupant who is physically present and who objects to the search. However, Randolph rule was inapplicable to this case because: 1) Payton did not clearly object to the search and 2) his wife consented to a search of the marital home without restrictions. Trial court's factual findings were not clearly erroneous and lower courts' determination that motion to suppress properly denied on basis of consent was not erroneous, even applying a de novo standard of review. Specifically, the trial court did not err in concluding that Payton's wife had validly consented to a search of the residence where: 1)the trial court found that a police officer had asked to come in and look around and search and Payton's wife responded to this request by simply stating "come on in" given that questions of

consent are properly judged by objective viewpoint and not from subjective viewpoint of person allegedly consenting and 2) trial court did not err in not determining wife's consent to be involuntary despite wife's possible intoxication and fear that her children would be taken away in social services investigation under totality of circumstances (including no weapons being drawn, fact that police came during daytime and fact that officer did not advise wife of right to refuse consent)—most importantly lack of improper threats, promises or other coercive police conduct. Payton did not clearly object to search or revoke wife's consent to search by asking law enforcement about a warrant and then responding "fine" or "well, okay" to officer's assertion that a warrant was not required because wife had consented. Officer's statement that warrant was not required due to wife's consent was not a misrepresentation which would invalidate any consent given or retained by Payton especially as officer was not obligated to inform Payton of right to refuse consent. Justice Schroder concurred in part and dissented in part.

E. Antonio Bradley v. Commonwealth of Kentucky
2009-SC-000561-MR December 16, 2010

Opinion of the Court by Chief Justice Minton. All sitting, all concur. Appellant entered a conditional plea of guilty but mentally ill to one count of murder and one count of tampering with physical evidence. The main issue is whether custodial interrogation by the police violated Bradley's constitutional right to counsel. During interrogation at police station, Bradley said to interrogating officer, "you know, I need a lawyer or something." When interrogating officer replied, "[d]o what?"--Bradley replied, "[a] lawyer." Interrogating officer then replied "[t]hat's your right" but continued to speak to and interrogate Bradley without honoring Bradley's request for an attorney. Bradley confessed shortly thereafter. Bradley later filed motion to suppress which was denied by trial court. On direct appeal, Supreme Court held that Bradley had unequivocally invoked his right to counsel since there was no uncertainty or doubt in Bradley's request for an attorney. Thus, Supreme Court concluded that interrogating officer erred by continuing to interrogate Bradley without first affording him an attorney, which, in turn, led Supreme Court to conclude that the trial court erred by denying Bradley's motion to suppress statements made after Bradley invoked his right to an attorney.

F. Roy Rankin v. Commonwealth of Kentucky
2009-SC-000385-MR December 16, 2010

Opinion of the Court by Justice Abramson. All sitting. Defendant was convicted of wantonly causing the death of his girlfriend's six-month old daughter. Upholding the conviction, the Supreme Court held (1) that a potential juror who claimed and appeared to be dispassionate was not disqualified by the fact that she had been abused as a child; (2) that a social worker's out-of-court experiment tending to show that the victim's two-year old sibling was not strong enough to

have lifted the victim from her car-seat was sufficiently probative to be admissible; and (3) that evidence of the mildly retarded defendant's awareness of the victim's susceptibility to blunt force injury was sufficient to support the finding that he acted wantonly. Justice Schroder concurred in result only by separate opinion.

G. Lashawn Johnson v. Commonwealth of Kentucky
2009-SC-000401-MR December 16, 2010

Opinion of the Court by Chief Justice Minton. All sitting, all concur. Supreme Court affirmed judgment convicting Johnson of first-degree burglary, first-degree robbery and first-degree PFO. Issues/holdings include: 1) Johnson not entitled to jury instructions on second-degree burglary and second-degree robbery due to overwhelming and undisputed evidence that victim was injured by perpetrator; 2) jury could reasonably find that BB/pellet gun was a deadly weapon (of a class of weapons capable of causing death or serious injury), despite alleged lack of evidence that BB pellet/gun was loaded or operable; 3) Supreme Court refused to remand for evidentiary hearing on motion to suppress DNA evidence as trial court had already held hearing on this motion at which parties had opportunity to present evidence and Johnson failed to show illegal CODIS entry; 4) Johnson failed to show that a DNA sample identified as his had been posted on CODIS before he was convicted of a crime requiring the posting of his DNA sample on CODIS under KRS 17.170; 5)there was nothing improper in posting "forensic unknown" DNA profiles (not identified by a person's name) gathered from crime scene specimens on CODIS under KRS 17.175; and 6) trial court properly denied motion to suppress DNA evidence as improper CODIS entry would amount to statutory violation, not a constitutional violation; and 7)no showing that DNA information actually presented at trial was gathered in unconstitutional manner, as warrant to obtain buccal swab from Johnson for DNA testing was properly obtained upon judicial determination of probable cause not depending on prior CODIS entries.

H. Zelnar Travis v. Commonwealth of Kentucky
&
William Dawson v. Commonwealth of Kentucky
2008-SC-000811-MR December 16, 2010
2008-SC-000831-MR December 16, 2010

Opinion of the Court by Justice Noble Affirming in Part, Reversing in Part and Remanding. Cunningham, Scott and Venters, JJ., concur. Minton, C.J., concurs in result only by separate opinion. Abramson, J., concurs in result only by separate opinion. Schroder, J., concurs in result only. Travis and Dawn were convicted of robbery and as persistent felony offenders and, in addition to their sentences, were assessed court costs and fines. The court costs and fines were reversed because both defendants were indigent. The underlying convictions were unsuccessfully challenged on unanimous verdict grounds. Although the

robbery instructions allowed the jury to convict based on either an underlying theft or attempted theft and the only evidence presented was for actual theft, such evidence is inherently sufficient to prove attempt as well. Thus, the evidence was sufficient to support either theory of robbery. The PFO instructions were written to reflect the entire PFO statute and consequently contained surplus language, including theories of liability unrelated to any evidence presented. Because there was no real chance of the jury following such surplus theories in reaching its convictions, the inclusion of this language was not palpable error. The Chief Justice, Justice Abramson, and Justice Schroder concurred in result only, with separate opinions by the Chief Justice and Justice Abramson.

I. Joshua Machniak v. Commonwealth of Kentucky

2008-SC-000352-DG **December 16, 2010**

2009-SC-000317-TG **December 16, 2010**

2009-SC-000342-TG **December 16, 2010**

Opinion of the Court by Justice Venters. All sitting. Defendant in criminal case was sentenced, pursuant to plea agreement, to concurrent three-year prison sentences on each several felony charges, probated for three years, subject to the condition that if probation was revoked, the sentences would be served consecutively. However, the written sentencing order failed to include that condition. Defendant violated probation, which the trial court then revoked, further ordering the sentences to run consecutively for a total of twenty years. On appeal, the Supreme Court held that while the failure of the written sentencing order to record the additional provision was clerical error, which may be corrected by the trial court at any time, pursuant to RCr 10.10, the alternative sentences provided by the plea agreement violated the requirement of KRS 532.030(3) that sentence be "fixed" at the time of sentencing, and violated the requirement of KRS 532.110(1) requiring the trial court to determine "at the time of sentence" if the sentences will be served concurrently or consecutively. The Court vacated the judgment and remanded for further proceedings. Justice Noble concurred in result only, stating that the omission of critical term was not "clerical error," and three year sentence contained therein should stand. Justice Scott dissented, stating that the statutes upon which majority based its opinion did not deprive the trial court of flexibility to devise the alternate sentencing arrangement as it did.

IV. DISCOVERY/WORK PRODUCT

A. Michael J. O'Connell, Et al. v. Honorable Frederic J. Cowan, Et al.
2009-SC-000596-MR (Original Opinion: May 20, 2010; Modified: December 16, 2010)

Opinion of the Court by Chief Justice Minton. All sitting. Attorney, who had entered *Alford* plea to a criminal charge arising from threatening messages sent

from his computer, filed a civil action alleging malicious prosecution and other claims against law enforcement officer and municipality after a related tampering with evidence charge was dismissed due to lack of probable cause (no evidence of tampering with computer). Attorney sought to depose prosecutor, who was not a party to his civil action, and to obtain her entire litigation file relating to the prosecution of criminal charges against him. Although providing attorney with some written discovery, prosecutor claimed that further discovery (including deposition and provision of remainder of litigation file) was barred due to work product protection. After trial court ruled that attorney was entitled to the requested discovery, prosecutor unsuccessfully sought a writ to bar the discovery requests from the Court of Appeals.

Supreme Court granted the writ. Upon grant of rehearing, Supreme Court's holdings include: that broader common-law work product protection applied, although facts did not technically support the application of Kentucky Civil Rule 26.02(3)(a), which provides work product protection to parties only by its plain language.

Supreme Court further held that, in light of circumstances unique to prosecutors, discovery of a prosecutor's opinion work product was permitted only if the requestor met a heightened standard of showing a compelling need for the discovery. Thus, Supreme Court reversed Court of Appeals, with directions to instruct trial court on remand to re-evaluate the request for discovery of prosecutor's opinion work product under the heightened "compelling need" standard and conduct an *in camera* review of the material before permitting discovery of such information. Justice Schroder concurred in result only.

V. EMPLOYMENT LAW

A. Kimberly G. Hill, Et al. v. Kentucky Lottery Corporation

2006-SC-000748-DG
2008-SC-000380-DG **(Original Opinion: April 22, 2010; Modified: December 16, 2010)**

Opinion of the Court by Justice Venters. Special Justices Whitlow and Martin sitting for Justice Abramson and the Chief Justice. The Hills sued the Kentucky Lottery Corporation (KLC), alleging 1) unlawful retaliation in violation of Kentucky's Civil Rights Act; 2) common law wrongful discharge in violation of public policy; and 3) defamation. After a jury verdict for the Hills, the trial court mistakenly entered an erroneous judgment. Months later, the judge entered an amended judgment, but also granted KLC's motion for a new trial. At the second trial, the Hills were awarded less damages and KLC received a defense verdict on the defamation claim. The Supreme Court reversed and reinstated the jury verdict from the first trial, holding the trial court should not have ordered a second trial. The Court held that the trial court erred when it concluded that the Hills' claim for common law discharge was preempted by their civil rights claim. The Court held

that a separate claim will lie where the wrongful discharge is based on a termination that violates public policy other than the policy reflected in the civil rights statute (in this case, termination for refusing to commit perjury). The Supreme Court also held that the trial court erred in ordering a new trial because it failed to instruct the jury on qualified privilege. The Court held that KLC had not properly requested such an instruction, a prerequisite for assignment of error under CR 51(3). The Supreme Court also held that the punitive damage instruction given at the first trial erroneously included the civil rights claim, but that the error was harmless. Justice Noble concurred in result only, contending that the trial court's original judgment was final and it lacked jurisdiction to order a new trial. Justice Abramson dissented in part, contending that the case should be remanded for a new trial on punitive damages only.

VI. PRODUCTS LIABILITY

A. Certainteed Corportation v. Ava Nell Dexter, ET AL.

2008-SC-000886-DG **December 16, 2010**

Opinion of the Court by Justice Noble Reversing and Remanding. Cunningham, Schroder, Scott and Venters, JJ., concur. Minton, C.J., concurs in result only. Abramson, J., not sitting. In a products liability case against nineteen corporate defendants, all but two defendants settled or won summary judgments. The jury ultimately issued a verdict against the two remaining defendants, apportioning zero fault to the empty-chair defendants who had settled or been dismissed from litigation. The court granted a new trial because of the failure of the jury to apportion fault to empty-chair defendants, but the Court of Appeals reversed. The Supreme Court versed the Court of appeals because the trial court was not clearly erroneous in granting a new trial, in light of the manifest unfairness in apportioning 100 percent fault in the only two remaining defendants. The Chief Justice concurred in result only. Justice Abramson not sitting.

VII. UNIFORM TRANSFER TO MINORS ACT

A. Emil Peter, III v. Hon. Susan Schultz Gibson, Judge Jefferson Circuit Court and Emil Peter IV, Real Party in Interest

2010-SC-000155-MR **December 16, 2010**

Opinion of the Court by Justice Venters. All sitting. Appellant, Emil Peter III, sought a writ of prohibition against the Jefferson Circuit Court to prevent the accounting of funds he held for the benefit of his son, Real Party in Interest, Emil Peter IV. Appellant argued that the circuit court did not have subject matter jurisdiction since the funds being held by him were subject to a bequest made under the Uniform Transfers to Minors Act (UTMA), KRS Chapter 385, which vested original jurisdiction over accounting claims brought under the UTMA in the district court. The Supreme Court held that KRS 385.192 (the UTMA accounting statute) applies only to *minors* or one petitioning for an accounting of

custodial property on behalf of a *minor*. Thus, since the Real Party in Interest was a 29-year old adult when he petitioned for an accounting of the funds which, under KRS 385.202, should have been released to him on his eighteenth birthday, the matter fell outside of the UTMA, and the circuit court had jurisdiction. Justice Noble dissented by separate opinion in which Justice Schroder joined.

VIII. WORKERS COMPENSATION

A. Blackstone Mining Company v. Travelers Insurance Company

2009-SC-000015-DG **December 16, 2010**

Opinion of the Court by Justice Venters. All sitting. Based on an audit, Travelers, a workers's compensation insurance company, brought an action against employer (Blackstone) for unpaid premiums on certain employees. Employer then produced evidence of rejection notices signed by the employees rejecting workers' compensation coverage. The Supreme Court held that the signed rejection notices were presumptively valid and, under the Steelvest summary judgment standard, sufficiently established the employees's rejection of workers's compensation so as to shift the burden to Travelers to present affirmative evidence establishing a genuine issue of fact regarding the validity of the rejection notices. In light of Travelers failure to present such evidence, employer was entitled to summary judgment. Justice Scott dissented, stating his view that Travelers Insurance presented sufficient evidence to challenge the validity of the rejection notices.

B. Kentucky Associated General Contractors Self-Insurance Fund v. Sheila Lowther, Administrative Law Judge, Et al.

2010-SC-000114-DG **December 16, 2010**

Opinion of the Court. All sitting; all concur. The injured worker and his employer settled his claim, agreeing among other things to continued medical benefits. Kentucky Associated General Contractors Self-Insurance Fund (KACG) refused to pre-authorize certain treatment but failed to file a medical dispute or motion to reopen. The worker complained to the Office of Workers' Claims and the Office's Executive Director determined that KAGC and its third-party administrator committed unfair claims settlement practices, imposing fines for their failure "to meet the time constraints . . . established in KRS 342" and subsequent failure to "attempt in good faith to promptly pay a claim in which liability is clear." The Executive Director based the decision on the Workers' Compensation Board's longstanding interpretation of the applicable regulations as equating a final utilization review decision with a "statement for services" that an employer must contest within 30 days or pay. The Franklin Circuit Court and the Court of Appeals affirmed. The Supreme Court also affirmed, finding no error in the Board's interpretation of the regulations and noting that employer, KAGC, and the third-party had ample notice of the interpretation since it was adopted in 2001.

C. Susan Garno v. Solectron USA, Et al.
2010-SC-000154-WC **December 16, 2010**

Opinion of the Court. All sitting; all concur. Garno sought benefits for work-related injuries that occurred in 2002, when Royal & Sun Alliance provided coverage, and in 2004, when St. Paul Travelers provided coverage. The claim was later bifurcated and questions related to the extent and duration of disability held in abeyance until the claimant reached maximum medical improvement. In March 2006 the ALJ found the injuries to be work-related; ordered Royal to pay all TTD and medical benefits due between the dates of the injuries and assigned equal liability to the carriers for benefits due after the 2004 injury. In January 2007 Garno filed the first several requests for reimbursement of out-of-pocket medical expenses, some of which dated to 2002 and 2003. The carriers filed medical disputes, asserting that the reimbursement requests were untimely under 803 KAR 25:096, § 11 and not supported by documentation adequate to determine if the expenses were compensable. Finding no reasonable excuse for Garno's failure to submit reimbursement requests until January 2007, the ALJ found all expenses incurred more than 60 days before submission to be non-compensable. The Workers' Compensation Board and Court of Appeals affirmed. The Supreme Court also affirmed, rejecting Garno's argument that the interlocutory order of March 2006 was not enforceable and that her obligation to present the requests did not arise until a final award was entered. The court determined that KRS 342.305 permitted the terms of the interlocutory order to be enforced until superseded by a subsequent order or award.

D. Shane Granger v. Louis Trauth Dairy, Et al.
2010-SC-000253-WC **December 16, 2010**

Opinion of the Court. All sitting. Minton, C.J.; Abramson and Schroder, JJ., concur. Venters, J., concurs in result only by separate opinion. Scott, J., dissents by separate opinion in which Cunningham and Noble, JJ., join. Granger testified that he injured his leg on August 15, 2007, when a case filled with nine half-gallons of milk came down a chute, striking his leg and causing him to fall. He failed to notify his employer of the accident until sometime after he obtained medical treatment, explaining that the accident left only a welt or red mark on his leg initially. He sought treatment on November 7, 2007 although his shin remained bruised through October 2007; became red and discolored; and developed an open, draining sore despite self-treatment. The ALJ agreed that an employee is not required to report every minor bump or bruise but found that he could not have reasonably considered the injury to be insignificant when it began to worsen and develop an open sore and concluded that a further delay in giving notice was inexcusable. The Workers' Compensation Board and the Court of Appeals affirmed. The Supreme Court also affirmed.

E. Stephanie Lawson v. Toyota Motor Manufacturing
2009-SC-000767-WC **December 16, 2010**

Opinion of the Court. All sitting; all concur. Lawson requested post-award temporary total disability (TTD) benefits prospectively, for the recovery period following a pre-authorized surgery. The ALJ denied the motion, finding that the surgery was non-compensable because it was unnecessary. The Workers' Compensation Board reversed and remanded with respect to the TTD request, reasoning that the employer failed to file a medical dispute within 30 days after the surgery was pre-authorized in order to contest its reasonableness and necessity. The Court of Appeals reversed, however, and remanded to the Board to determine whether substantial evidence supported the finding that the surgery was non-compensable. The Supreme Court reversed, noting that the Benefit Review Conference Memorandum encompassed the claimant's argument, raised in her brief and preserved on appeal, that the employer's failure to file a timely medical dispute and motion to reopen contesting the utilization review decision rendered the proposed surgery compensable without regard to reasonableness and necessity. Moreover, having failed to invoke the ALJ's jurisdiction by filing a timely medical dispute and motion to reopen, the employer could not engraft such a dispute onto the claimant's pending motion requesting TTD.

IX. ATTORNEY DISCIPLINE

A. Steven Wayne Sebastian v. Kentucky Bar Association
2010-SC-000671-KB **December 16, 2010**

Opinion of the Court. All sitting; all concur. Supreme Court restored attorney to the practice of law.

B. Susan O. Phillips v. Kentucky Bar Association
2010-SC-000672-KB **December 16, 2010**

Opinion of the Court. All sitting; all concur. Supreme Court restored attorney to the practice of law.