

**KENTUCKY SUPREME COURT
FEBRUARY 2020**

I. CRIMINAL LAW:

A. Michael Torrence v. Commonwealth of Kentucky
[2018-SC-000322-MR](#) February 20, 2020

Opinion of the Court by Justice Wright. All sitting; all concur. A Jefferson Circuit Court jury convicted Appellant, Michael D. Torrence, of first-degree assault and possession of a handgun by a convicted felon and found him to be a persistent felony offender. He was sentenced to twenty-five years' imprisonment and appealed to the Supreme Court of Kentucky as a matter of right, Ky. Const. § 110(2)(b). On appeal, Torrence alleged the trial court erred by: (1) failing to remove a juror and failing to grant a mistrial concerning said juror, (2) allowing a lay witness to testify as to historical cell tower data and several other related sub-issues, and (3) failing to suppress the victim's identification of Torrence in a police photo array and in court. The Supreme Court affirmed, holding: (1) the trial court did not err in failing to remove the juror in question and there was, therefore, no manifest necessity for the court to grant Torrence's mistrial motion; (2) the trial court did not err in allowing a lay witness to testify regarding historical cell tower data, as lay testimony may be used to present historical cell-tower data so long as the testimony does not go beyond simply marking coordinates on a map—and the witness's testimony was so limited; and (3) the trial court did not err in allowing the introduction of the victim's identification of Torrence in a photo array after previously being shown a photograph of Torrence by another individual, as there was no state action involved in showing him the previous photograph.

B. Michael Howard v. Commonwealth of Kentucky
[2018-SC-000468-MR](#) February 20, 2020
[2018-SC-000469-MR](#) February 20, 2020

Opinion of the Court by Justice Keller. All sitting; all concur. On May 15, 2016, Michael Howard reported a theft from his home in Harlan County, Kentucky. In the process of investigating that crime, police discovered that Howard had engaged in sexual acts with minors and provided drugs to minors. Howard was indicted on forty-nine counts involving sixteen different victims. A Harlan County jury found Howard guilty on twenty-one counts, and he was sentenced to the statutory maximum of seventy years in prison.

The Court first held that the trial judge did not abuse his discretion in finding that Howard failed to produce sufficient evidence to merit an in camera review of requested juvenile records of some of the victims, as Howard only made vague statements that what transpired in the juvenile cases would be part of his defense and would be exculpatory. Second, the Court held that the trial court did not err in denying Howard's motion for an independent mental health evaluation as he

failed to provide any evidence of a “reasonable necessity” for the assistance of an independent evaluator. Next, the Court held that the waiver of an objection to taking testimony of a child victim pursuant to KRS 421.350 can be executed by counsel without a personal waiver by the defendant, and Howard’s counsel’s waiver was valid. Because the objection was waived, the Court declined to review the alleged error any further. Finally, the Court found no palpable error in the admission of KRS 404(b) evidence. Howard’s conviction was affirmed.

C. Robert Helton v. Commonwealth of Kentucky
[2019-SC-000024-MR](#) **February 20, 2020**

Opinion of the Court by Justice Keller. All sitting; all concur. A jury found Robert Helton guilty of five counts of possession of matter portraying a sexual performance by a minor and five counts of distribution of matter portraying a sexual performance by a minor. The jury recommended a total sentence of forty years of imprisonment, which was reduced to the statutory maximum of twenty years.

The Supreme Court affirmed the judgment of the trial court. The Court held that (1) the trial court did not abuse its discretion in allowing the Commonwealth to show portions of five child pornography videos because the potential for undue prejudice did not outweigh the probative value of the videos; (2) the trial court did not abuse its discretion in permitting testimony about additional child pornography images because the court appropriately limited the scope of that testimony and provided a limiting admonition; and (3) Helton’s due process rights were not violated by the introduction of incorrect parole eligibility information during the sentencing phase because it was unlikely that the incorrect testimony affected his sentence.

II. STATUTE OF LIMITATIONS:

A. Tracie Williams v. Katelin Hawkins, Administratrix of the Estate of Charlotte Hawkins
[2019-SC-000012-DG](#) **February 20, 2020**

Opinion of the Court by Justice Hughes. Minton, C.J.; Keller, VanMeter, Wright, JJ., concur. Lambert, J. dissents without separate opinion. Nickell, J., not sitting. Appellant Tracie Williams was injured in a two-vehicle accident with Charlotte Hawkins in March 2015. Despite public records indicating that Charlotte had died in October 2015, Appellant did not discover her death until one day prior to the expiration of the statute of limitations in March 2017. Because Appellant did not name her estate in place of Charlotte individually, the trial court dismissed the complaint and the Court of Appeals unanimously affirmed.

On discretionary review, the Supreme Court affirmed. Appellant argued that she was not afforded the full statutory period to file her complaint because the non-existence of an estate prevented her from timely filing suit. She sought application

of the doctrine of equitable tolling, which pauses the running of the limitations period if (1) she has been pursuing her rights diligently, and (2) some extraordinary circumstance stood in her way. The Supreme Court concluded that Appellant did not pursue her rights diligently because available public information indicated that Charlotte was deceased - an obituary and the probate case. The plaintiff has an affirmative obligation to locate the proper party defendant and determine their vital status, which could have easily been determined in this case by a simple internet search.

Additionally, equitable estoppel is inapplicable because, contrary to Appellant's assertion, there is no evidence suggesting that Charlotte's insurer knew of her death. Without evidence that the insurer knew of the death, there is no evidence that the insurer concealed a material fact or intended to induce Appellant's action or inaction in reliance thereon, as required by the estoppel doctrine. Lastly, despite Appellant's argument that application of *Gailor v. Alsabi*, 990 S.W.2d 597 (Ky. 1999), regularly leads to unjust results, the result in this case could have been avoided with due diligence, something Kentucky law has always required in cases such as this. No extraordinary circumstance justifies deviating from this routine application of the statute of limitations.

III. TORTS:

A. Angela Jackson and Lamont Marshall v. Estate of Gary Day and USAA General Indemnity Company [2018-SC-000297-DG](#) February 20, 2020

Opinion of the Court by Justice Hughes. All sitting. Minton, C.J.; Keller, Nickell, VanMeter, and Wright, JJ., concur. Lambert, J., dissents without separate opinion. Appellants Marshall and Jackson were injured in a two-vehicle accident with Gary Day in February 2014. On December 29, 2015, well before the statute of limitations period expired pursuant to KRS 304.39-230(6), Appellants filed a complaint against Day. After several unsuccessful service attempts, a sheriff's return filed in the record on May 18, 2016 indicated that Day was deceased. However, it was not until receipt of a special bailiff report in August 2016, after expiration of the limitations period, that all parties discovered his death. Appellants filed a third amended complaint, naming Day's estate in place of Day individually, on December 19, 2016. Appellees filed a motion for summary judgment arguing that the claims were time barred by the statute of limitations, while the Appellants argued that the third amended complaint could relate back to the original complaint pursuant to CR 15.03. The trial court granted summary judgment and dismissed the complaint based on this Court's holding in *Gailor v. Alsabi*, 990 S.W.2d 597 (Ky. 1999). The Court of Appeals adopted the trial court opinion in its entirety.

Affirming the Court of Appeals, the Supreme Court determined that the Appellants' case is factually similar to *Gailor*, where this Court upheld the dismissal of a complaint against a deceased driver's estate as untimely. The

plaintiff has an affirmative obligation to locate the correct party defendants and determine their vital status, a status that could have been easily determined in this case by simply examining the court file. The original complaint filed against Day, the deceased driver, was a nullity. Moreover, his Estate could not have known about the proceedings against it during the applicable limitations period as required by CR 15.03 and our relation back doctrine because the Estate did not exist during that time frame. Further, the facts do not warrant equitable tolling of the statute of limitations because Appellants did not pursue their claim diligently despite readily available information accessible within the limitations period informing the parties that Day was deceased. The Supreme Court also reiterated that proof that the tortfeasor is an underinsured motorist (UIM) is an essential fact that must be proved before a insured can recover judgment in a lawsuit against his UIM insurer.

IV. WRIT OF MANDAMUS:

A. Stars Interactive Holdings (IOM) Ltd., f/k/a Amaya Group Holdings (IOM) Ltd., f/k/a Oldford Group Ltd., and Rational Entertainment Enterprises, Ltd. v. Hon. Thomas D. Wingate, Judge; and Commonwealth of Kentucky ex rel. John Tilley, Secretary, Justice and Public Safety Cabinet
[2019-SC-000381-MR](#) February 20, 2020

Memorandum Opinion of the Court. All sitting; all concur. The Commonwealth of Kentucky filed suit against Appellants seeking recovery under the Loss Recovery Act (LRA), a statute allowing gamblers or “any other person” to sue the winner of a gambling transaction to recover money lost. KRS 372.020. The Franklin Circuit Court entered a judgment in favor of the Commonwealth totaling more than \$1.1 billion, and Appellants appealed the judgment and posted a supersedeas bond. The Court of Appeals reversed the trial court and directed that the case be dismissed on remand. Despite the Commonwealth’s then-pending motion for discretionary review, Appellants sought release of the supersedeas bond in the trial court, which denied the motion because of the pending motion for discretionary review. They also petitioned for a writ of mandamus in the Court of Appeals seeking release of the bond, but that court denied relief because discretionary review had been granted by this Court.

On appeal to the Supreme Court, Appellants argued that because the Court of Appeals reversed the trial court no underlying judgment existed and therefore the bond was unnecessary to stay execution of the judgment. The Supreme Court held that because the Court of Appeals’ opinion was not yet final, and because this Court will render a final decision regarding the underlying dispute, the trial court did not abuse its discretion in concluding the status of the parties should be maintained pending the outcome on discretionary review. A supersedeas bond is necessary to stay execution of a judgment throughout the course of all appeals, not just until the party posting the bond received a favorable result on a first appeal to an intermediate appellate court. Appellants failed to establish that the trial court acted incorrectly in denying release of the bond, a prerequisite for

granting a second-class writ. Because the trial court did not err in its handling of the supersedeas bond, the opinion of the Court of Appeals denying the writ is affirmed.

V. ATTORNEY DISCIPLINE:

**A. Ingrid Nada Hickman v. Kentucky Bar Association
2019-SC-000594-KB February 20, 2020**

Opinion and Order of the Court. All sitting; all concur. Hickman was suspended from the practice of law in February 2003 for nonpayment of bar dues. In July 2017, she filed an application for restoration to the practice of law under SCR 3.500(3). During her suspension, Hickman remained a member in good standing with the Ohio bar and practiced as in-house counsel for various corporations, including in Georgia, which does not require in-state licensure of in-hour counsel.

Because her suspension lasted more than five years, Hickman's restoration application was referred to the Kentucky Office of Bar Admissions' Character and Fitness Committee. Following a thorough investigation, the Committee recommended that Hickman be restored to the practice of law, provided that she sit for and pass the essay portion of the Kentucky Bar Examination, as required by SCR 3.500(3)(e).

The Board of Governors of the Kentucky Bar Association unanimously voted in favor of Hickman's restoration. The Court agreed with the recommendation and granted Hickman's application for restoration with examination.

**B. Kentucky Bar Association v. Cassidy Ann Teater
2019-SC-000598-KB February 20, 2020**

Opinion and Order of the Court. All sitting; all concur. The Supreme Court of Tennessee prohibited Teater from practicing law in the state of Tennessee, a prohibition tantamount to disbarment. Thereafter, the Kentucky Bar Association filed a petition asking that the Supreme Court of Kentucky impose reciprocal discipline under SCR 3.435. The Court ordered Teater to show cause why discipline should not be imposed but she failed to respond.

Because Teater failed to provide any response or evidence showing a lack of jurisdiction or fraud in the Tennessee proceedings or any reason the Court should impose a lesser discipline upon her, the Court permanently disbarred Teater from the practice of law, as consistent with the order of the Supreme Court of Tennessee.

C. Kentucky Bar Association v. Robert Andrew Rowland
2019-SC-000614-KG **February 20, 2020**

Opinion and Order of the Court. All sitting; all concur. The Kentucky Bar Association moved the Supreme Court to indefinitely suspend Rowland from the practice of law after he failed to respond to an Inquiry Commission charge or any attempts at contact from the KBA. Letters mailed to Rowland's bar roster address from Bar Counsel were returned undelivered and attempts to contact him at his business and home phone numbers were unsuccessful. Similarly, Rowland did not respond to letters or email messages from the Trial Commissioner and did not appear or participate in a telephonic pretrial hearing.

Given his failure participate in the disciplinary process, the KBA asked the Court to indefinitely suspend Rowland under SCR 3.380(2). Having reviewed the KBA's motion, the Court agreed with the requested sanction and ordered Rowland suspended indefinitely.

D. Kentucky Bar Association v. James Douglas Mory
2019-SC-000636-KB **February 20, 2020**

Opinion and Order of the Court. All sitting; all concur. The Kentucky Bar Association moved the Supreme Court to enter an order directing Mory to show cause why he should not be subject to reciprocal discipline after being publicly censured by the Supreme Court of Tennessee. Mory's sanction arose from his unauthorized practice of law after his Tennessee law license was administratively suspended for noncompliance with CLE requirements.

The Court granted the KBA's request under SCR 3.435(2)(b), but Mory failed to file a timely response. Accordingly, under SCR 3.435(4), the Court ordered that Mory be publicly reprimanded.

E. An Unnamed Attorney v. Kentucky Bar Association
2019-SC-000639-KB **February 20, 2020**

Opinion and Order of the Court. All sitting. Minton, C.J.; Hughes, Lambert, Nickell, VanMeter, and Wright, JJ., concur. Keller, J., concurs in result only by separate opinion. Movant, an Unnamed Attorney, moved the Court under SCR 3.480(2) to accept his negotiation sanction with the Kentucky Bar Association of a Private Reprimand with Conditions for violations of SCR 3.130(1.9)(a) and SCR 3.130(1.16)(d). The violations arose from Unnamed Attorney's representation of several family members involved in a guardianship matter.

The negotiated sanction consisted of a private reprimand with a condition that Unnamed Attorney attend and complete the Ethics and Professionalism Enhancement Program at its next offering and pay all costs associated with this disciplinary proceeding. After reviewing the relevant case law and the American Bar Association Standards for Imposing Lawyer Sanctions, the Court agreed that

the proposed sanction was appropriate and ordered that Unnamed Attorney be privately reprimanded.

F. Joseph W. Bolin v. Kentucky Bar Association
[2019-SC-000644-KB](#) February 20, 2020

Opinion and Order of the Court. All sitting; all concur. Bolin moved the Court to accept his resignation from the Kentucky Bar Association under terms of permanent disbarment. The KBA did not object to Bolin's motion. In August 2019, Bolin pled guilty to two counts of Theft by Failure to Make Required Disposition of Property. The theft charges arose from his representation of clients and subsequent failure to distribute funds in two separate probate matters.

Based on Bolin's guilty plea and the allegations in the disciplinary files, the Court granted Bolin's motion to resign and ordered that he be permanently disbarred in the Commonwealth.

G. James Clayton Hall v. Kentucky Bar Association
[2019-SC-000658-KB](#) February 20, 2020

Opinion and Order of the Court. All sitting; all concur. Hall moved the Court under SCR 3.480(2) to impose a sanction of a 181-day suspension from the practice of law to resolve his pending charges. The KBA did not object to the motion.

Hall's disciplinary violations spanned five consolidated KBA files. He admitted to violating two counts of SCR 3.130(1.3), five counts of SCR 3.130(1.4)(a), two counts of SCR 3.130(1.15)(b), four counts of SCR 3.130(1.16)(d), four counts of SCR 3.130(8.1)(b), and one count of SCR 3.130(8.4)(c). Hall did not have any prior disciplinary history and the majority of his current disciplinary issues occurred during late 2017 and 2018, during which time Hall claimed to have been suffering from severe anxiety and depression.

Upon review of the record, the Court agreed that the negotiated sanction was appropriate. Accordingly, the Court suspended Hall from the practice of law in the Commonwealth for a period of 181 days.

H. Eric Shane Grinnell v. Kentucky Bar Association
[2019-SC-000677-KB](#) February 20, 2020

Opinion and Order of the Court. All sitting; all concur. Grinnell moved the Court under SCR 3.480(2) to impose a negotiated sanction of a one-year suspension from the practice of law, with 180 days to serve and 185 days probated for two years with conditions. The KBA did not object to the motion.

Grinnell's alleged violations span 14 consolidated KBA disciplinary files and 55 counts. Upon review of the charges, the Court concluded that they demonstrated

Grinnell's pattern of neglect and disregard for the interests of his clients. The Court also noted Grinnell's five previous private reprimands. In mitigation of his pending charges, Grinnell stated that he suffers from anxiety and depression and agreed, as part of the negotiated sanction, to seek professional help with KYLAP.

In light of Grinnell's numerous violations and the economic harm to his clients – \$26,440 in unrefunded fees – the Court concluded that the negotiated sanction proposed in this case was inadequate. Accordingly, Grinnell's motion was denied and the matter was remanded to the KBA for further disciplinary proceedings under SCR 3.480(2).

I. Harold Wayne Roberts v. Kentucky Bar Association
[2019-SC-000706-KB](#) February 20, 2020

Opinion and Order of the Court. All sitting; all concur. The Inquiry Commission issued a two-count charge against Roberts. He admitted to violating SCR 3.130(1.5)(b) by failing to adequately communicate the scope of representation and fee arrangement to his client and moved the Supreme Court to impose the sanction of a public reprimand with conditions under SCR 3.480(2). The KBA did not object and cited to prior caselaw to demonstrate that a public reprimand is an appropriate sanction.

Upon review of Roberts's motion and the relevant cases, the Supreme Court agreed that a public reprimand with conditions was appropriate and sanctioned Roberts accordingly.

J. Derwin Lamont Webb v. Kentucky Bar Association
[2019-SC-000708-KB](#) February 20, 2020

Opinion and Order of the Court. All sitting; all concur. Webb moved for consensual discipline under Supreme Court Rule (SCR) 3.480(2) based on a negotiated sanction agreement with the Kentucky Bar Association. Webb requested an order imposing a sanction of public reprimand based on his admitted failure to discharge his duty of diligence in representing a client. The KBA filed a response stating it had no objection.

Because Webb and the KBA agreed on the sanction and caselaw supported the proposed resolution in this matter, the Court held that a public reprimand was the appropriate discipline for Webb's conduct and granted his motion.

K. Robert F. Smith v. Kentucky Bar Association
[2019-SC-000713-KB](#) February 20, 2020

Opinion and Order of the Court. All sitting; all concur. Smith was suspended from the practice of law for failing to pay bar dues and failing to meet his Continuing Legal Education requirements. He failed to promptly inform the courts in which he had pending cases of his suspension and appeared as counsel in more than a

dozen cases in early 2019 while suspended. The KBA charged Smith with three counts of misconduct, all of which he admitted to violating. Smith moved the Supreme Court under SCR 3.480(2) to enter a negotiated sanction imposing a public reprimand, subject to conditions, and the KBA did not object.

Upon reviewing the facts of this case and the relevant caselaw, the Court granted Smith's motion and adopted the negotiated sanction of a public reprimand, with conditions.