KENTUCKY SUPREME COURT
JUNE 2022

CRIMINAL LAW:
Commonwealth of Kentucky v. Dovontia Reed
2020-SC-0116-DG **June 16, 2022**

Opinion of the Court by Chief Justice Minton. All sitting. Hughes, Keller, and Nickell, JJ., concur. Minton, C.J., concurs by separate opinion in which Hughes and Keller, JJ., join. VanMeter, J., dissents by separate opinion in which Conley and Lambert, JJ., join. After Reed was alleged to have committed a robbery at a gas station, police officers contacted Reed's cell-service provider to track Reed's location through his cell phone's real-time cell-site location information (CSLI). Using this CSLI, the officers located and apprehended Reed. Prior to trial, Reed moved for suppression of the warrantless acquisition of his CSLI as an unreasonable search, violative of the Fourth Amendment. The trial court denied Reed's motion, and Reed entered a conditional guilty plea, reserving his right to challenge the denial of his suppression motion. The Court of Appeals reversed the trial court's denial of Reed's suppression motion, finding that the officers' acquisition of Reed's real-time CSLI constituted a warrantless, unreasonable search. Additionally, the Court of Appeals found that the good-faith exception to the warrant requirement did not apply because the officers were not acting in reliance on binding precedent.

Upon review, the Supreme Court concluded that the acquisition of an individual's real-time CSLI constitutes a search under the Fourth Amendment to the United States Constitution because an individual has a reasonable expectation of privacy in his real-time CSLI. The Supreme Court also concluded that the good-faith exception to the warrant requirement was not applicable in Reed's case because the privacy interest in an individual's real-time CSLI was an unsettled point of law. The Court reasoned that its silence on a topic should not embolden law enforcement to assume that a space or object is not protected under the Fourth Amendment. Accordingly, the Supreme Court affirmed the Court of Appeals, remanding Reed's case to the trial court for further proceedings.

Jonathan Sexton v. Commonwealth of Kentucky
2020-SC-0528-MR **June 16, 2022**

Opinion of the Court by Justice Keller. All sitting; all concur. Jonathan Sexton was convicted of second-degree rape, third-degree rape, and two counts of incest for sexually abusing his daughter. Sexton was jointly tried with his wife, Tina, who was charged with complicity to rape and incest. At trial, Sexton, through counsel, admitted responsibility for the crimes of rape and incest, asking for mercy in sentencing. He was sentenced to 55 years' imprisonment. He appealed as a matter of right. The issues before the Supreme Court included whether the jury instructions violated Sexton's right to a unanimous verdict, whether KRE 404(b) evidence was impermissibly admitted, and whether his trial should have been severed from his wife's trial. Neither the KRE 404(b) issue nor the unanimous jury verdict issue were preserved below and were reviewed for palpable error.

The Supreme Court affirmed the trial court. Specifically, the Court held that any unanimity error, to the extent that one existed, could not rise to the level of manifest injustice requiring reversal because Sexton had admitted guilt. The Court similarly held that any evidentiary errors were not palpable and therefore not reversible. The Court also held that it was not an abuse of discretion for the trial court to deny severance since the mere threat of prejudice is insufficient for reversal.

JUVENILES:
Alexander Bloyer v. Commonwealth of Kentucky
2020-SC-0473-DG **June 16, 2022**

Opinion of the Court by Justice Nickell. All sitting; all concur. At age fifteen, Bloyer was charged with multiple sex crimes against his younger siblings. He was transferred to circuit court as a youthful offender where he ultimately entered guilty pleas to rape, two counts of sexual abuse, five counts of sodomy, and six counts of incest. He received a sentence of fifteen years' imprisonment and was committed to the Department of Juvenile Justice (DJJ) until his eighteenth birthday. At his age-eighteen hearing, Bloyer was granted permission to remain with DJJ for further treatment and he later sought and was granted permission to remain with DJJ until he turned twenty-one pursuant to KRS 640.075(1). While his motion sought probation, Bloyer admitted he did not want probation but was asking to remain in DJJ custody rather than being transferred to the Department of Corrections.

Near his twenty-first birthday, the trial court conducted a lengthy hearing on Bloyer's motion to reconsider probation pursuant to KRS 640.075(4). The trial court determined Bloyer's conviction of incest against his siblings who resided in the same house and were under age fourteen brought him under the purview of KRS 532.045 which rendered him ineligible for probation.

On appeal, the Court of Appeals affirmed, relying on *Commonwealth v. Taylor*, 945 S.W.2d 420 (Ky. 1997), to conclude KRS 532.045 applied to youthful offenders and the legislature had expressed its intent that certain sexual offenders should be ineligible for probation, no matter their age at the time they committed their crime. The Court of Appeals signaled a desire for the Supreme Court to take up the matter to resolve any potential conflict in *Taylor* and *Commonwealth v. Merriman*, 265 S.W.3d 196 (Ky. 2008).

On discretionary review, the Supreme Court affirmed the Court of Appeals. First, it reviewed the statutory provisions related to youthful offender sentencing and the legislatively created exceptions exempting youthful offenders from the harshest sentences, noting KRS 532.045 was not included as an exception. Next, although *Taylor* was rendered twenty-five years prior, the legislature had not amended any statutes to disagree with *Taylor's* reasoning, evidencing its acquiescence with that decision. Thus, because *Taylor* was controlling and had not been superseded by statute or altered by the holding in *Merriman*, the trial court's denial of Bloyer's request for probation as statutorily impermissible was correct. Bloyer's constitutional challenges were rejected as being without merit. Finally, his request to clarify the provisions of KRS 640.075(4) to require trial courts to permit presentation of evidence at final sentencing was rejected as seeking an advisory opinion.

PROPERTY LAW:
Henry Gray v. Frank Stewart, et al.
2020-SC-0395-DG **June 16, 20222**

Opinion of the Court by Justice Hughes. Minton, C.J.; Conley, Keller, Nickell, and VanMeter, JJ., sitting. All concur. Lambert, J., not sitting. Civil Appeal, Discretionary Review Granted. The trial court, considering parol evidence, concluded that the contract at issue satisfied the statute of frauds by sufficiently identifying the property to be conveyed. The Court of Appeals reversed that decision, but based upon the trial court's findings of fact, concluded that one co-owner of the property, Appellee Frank Stewart, conveyed his property interest under the merger doctrine. Because Frank Stewart did not cross-appeal that adverse decision by way of a cross-motion for discretionary review, that decision stands. Held: The contract does not satisfy the statute of frauds because it does not sufficiently describe the boundary of the property to be conveyed, making the contract unenforceable against Appellees William and Mary Stewart. While Appellant Henry Gray also claims that the Court of Appeals erred by not relying on the trial court's findings of fact and concluding that William and Mary Stewart likewise conveyed their interest under the merger doctrine, this is not a viable argument for reversing the Court of Appeals. Although not addressed by the Court of Appeals, the Stewarts did not waive their right to a jury trial. Because the trial court was not properly sitting as the fact finder, the trial court's factual findings cannot be the basis for application of the merger doctrine as to William and Mary Stewart.

SUMMARY JUDGMENT:
Erie Insurance Exchange v. Megan Johnson, et al.
2021-SC-0312-DG **June 16, 2022**

Opinion and Order of the Court. All sitting; all concur. Megan Johnson and Terri Reed, following treatment for injuries sustained in a motor vehicle accident, sought to direct the order in which their medical expenses were paid from their BRB (basic reparation benefits) under Kentucky's Motor Vehicle Reparations Act. Erie Insurance Exchange declined to follow their direction, instead initiating a declaratory judgment action against Johnson and Reed in Floyd Circuit Court. The trial court issued several orders, but none of those orders were final and appealable. Nonetheless, Erie appealed, and the Court of Appeals determined that Johnson and Reed should be able to direct their payments within an element of loss. The Supreme Court granted discretionary review. Because there was no final and appealable order below, the Supreme Court vacated the opinion of the Court of Appeals and dismissed the appeal.

TAXES:
Tax Recall Petition Committee, Acting By and Through its Members, et al. and Bobbie Holsclaw, in her Official Capacity as Jefferson County Clerk v. Jefferson County Board of Education

AND

Jefferson Tax Recall Petition Committee, Acting By and Through its Members, et al. and Bobbie Holsclaw, in her Official Capacity as Jefferson County Clerk v. Jefferson County Board of Education
2020-SC-0569-TG
2020-SC-0571-TG **June 16, 2022**

Opinion of the Court by Justice Conley. All sitting; all concur. The Jefferson County Board of Education (JCBE) announced a tax increase in May 2020 from 73 to 80.6 cents per $100. This was over 4% of the compensating tax rate; as such, the excess portion over 4% was subject to a recall. KRS 132.017. Appellants formed the Tax Recall Petition Committee to gather the requisite signatures required by statutory law. The principal means to gather these signatures was electronic. The Jefferson County Clerk certified the recall had gathered the requisite signatures and allowed the recall to proceed to the ballot on November 3, 2020. The JCBE challenged the certification in circuit court. The Appellants filed a counter-claim, alleging the JCBE was non-compliant with the notice and publication requirements of KRS 133.185. The Circuit Court ruled the requirements of KRS 132.017 clashed with the requirements of KRS 133.185, as such a substantial compliance test was called for and under that test, the JCBE had substantially complied with the notice requirements of KRS 132.017. The court also ruled the certification was improper after having struck several thousands of signatures for various reasons of non-compliance with KRS 132.017.

The Supreme Court unanimously affirmed but on different grounds than those of the trial court. It ruled that the Uniform Electronic Transactions Act requires security measures to ensure that an electronic signature is the act of the purported signatory. The Tax Recall Petition Committee failed to utilize any security measures whatsoever to accomplish this task thus, because the vast majority of signatures were electronically signed, all such signatures were "insufficient to establish attribution. Based on the proof, there is simply no way to determine the electronic signatures are attributable to the person they purport to be." Therefore, the recall petition should not have been certified. The Supreme Court also affirmed the trial court's ruling regarding JCBE's notice compliance, again on slightly different grounds. The Court found KRS 160.470 to be specific and controlling over KRS 133.185. Nonetheless, the requirements of KRS 160.470 clashed with the deadline requirements of KRS 132.017 because the former required certain information to be published that was not available to the JCBE in time for it to announce the tax increase and have the tax placed on the ballot of November 3, 2020, if a recall petition had been successful. Therefore, those notice and publication requirements could not be enforced thus, there was no statutory violation on the part of JCBE.

TORTS:

Charles Armstrong, Administrator of the Estate of Craig Armstrong v. The Estate of Jonathan Elmore, et al.

2020-SC-0408-DG **June 16, 2022**

Opinion of the Court by Justice Conley. Minton, C.J.; Keller, Lambert, Nickell, and VanMeter, JJ., sitting. All concur. Hughes, J., not sitting. This case came before the Supreme Court for a second time after rendering its decision in *Travelers Indem. Co. v. Armstrong*, 565 S.W. 3d 550 (Ky. 2018). In the original decision, the trial court had granted summary judgment to the auto dealers, ruling that Jonathan Elmore was the owner of the vehicle which had crashed and caused the deaths of both Elmore and of Craig Armstrong, his passenger. *Travelers* affirmed the trial court's summary judgment, reversing the Court of Appeals. Back at the trial court, the Armstrong Estate filed a motion to amend its complaint to file a claim against another auto-dealer, DeWalt, as the statutory owner of the vehicle. The trial court granted the motion. DeWalt filed a motion to dismiss, which was also granted. On appeal, the Court of Appeals affirmed the trial court's dismissal based on law of the case doctrine citing to *Travelers*.

The Supreme Court granted discretionary review and affirmed. The decision in *Travelers* affirmed the trial court's summary judgment which declared that Elmore was the statutory owner. The issue of who owned the vehicle was, therefore. governed by law of the case. The Estate argued against application of the doctrine based on the intervening change in law exception. But the intervening change in law had occurred as a result of *Travelers* and, therefore, was inapplicable. The Estate also argued the language in *Travelers* was dicta, but that argument failed as the issue in *Travelers* was to determine who the statutory owner of the vehicle was at the time of the crash. Finally, the Estate argued law of the case only applies when the same parties are arguing the same issues and, because DeWalt was not a party to *Travelers*, the doctrine was inapplicable. The Court rejected that argument, pointing out the lack of authority for the proposition that law of the case required the same parties being present. Instead, because the Estate was seeking to continue to litigate the issue of the statutory owner of the vehicle—which had been determined on summary judgment and affirmed by this Court previously—law of the case was applicable.

UNIFORM COMMERCIAL CODE:

Versailles Farm Home and Garden, LLC v. Harvey Haynes, et al.

2021-SC-0161-DG **June 16, 2022**

Opinion of the Court by Justice VanMeter. All sitting; all concur. The question presented was whether the Woodford Circuit Court erred in its determination that the security agreement between Harvey Haynes, the debtor, covered future advances made by Jerry Rankin d/b/a Farmers Tobacco Warehouse ("Farmers") so as to have priority over the security interest claimed by Versailles Farm, Home and Garden, LLC ("Versailles Farm") in Haynes' 2013 tobacco crop. Versailles Farm argued that since the parties failed to include an explicit future advance clause, as permitted by KRS 355.9-204, none existed and therefore future advances were not covered under the agreement. The result, Versailles Farm argued, was that Farmers' advances after June 25, 2013, never attached to the security interest, was unsecured, and thus had no priority. The Court disagreed, noting that under Article 9 of the Uniform

Commercial Code, priority of claims between two secured creditors is determined by order of filing or perfection, provided that each had an appropriate security interest which had attached and which covered the collateral in question and any proceeds. The Court found that the relevant statutes, KRS 355.9-203(2), 355.9-204(3), 355.1-201(2)(c), and 355.1-303, when read together, do not require that a future advance clause be explicitly included in a written security agreement. Thus, a security agreement, properly construed, requires only authentication by the debtor and a description of the collateral. KRS 355.9-203(2). The record demonstrated the basic evidentiary requirement that Haynes authenticated a security agreement granting a security interest in his 2013 tobacco crop to Farmers. Further, the parties' course of performance and course of dealing supplemented that writing, demonstrating their agreement with respect to the production credit to be advanced by Farmers to Haynes, i.e., the future advances, over the ensuing months of 2013 were to be secured by Haynes' 2013 tobacco crop. And the parties' previous course of dealing as to advances and repayment when tobacco was sold confirm the agreement. The Court found this evidence sufficient to establish the "bargain of the parties in fact, as found in their language or inferred from other circumstances, including course of performance, course of dealing, or usage of trade." KRS 355.1-201(2)(c). The Court noted that the record was devoid of any contrary evidence. Because the parties' agreement covered Farmers' advances made after June 25, 2013, its security interest attached and was perfected by its October 30, 2012, financing statement filed with the Secretary of State, which in turn gave it priority over Versailles Farm's claim. Accordingly, the Court affirmed the trial court's grant of summary judgment in favor of Farmers and affirmed the Court of Appeals' opinion, albeit on different grounds than as stated in that opinion.

WORKERS' COMPENSATION:
Jarvis Helton v. Rockhampton Energy, LLC, et al.
2021-SC-0248-WC **June 16, 2022**

Opinion of the Court by Justice Hughes. Minton, C.J.; Conley, Keller, Nickell, and VanMeter, JJ., sitting. All concur. Lambert, J., not sitting. Jarvis Helton appealed from a Court of Appeals' decision affirming the Workers' Compensation Board's reversal of an Administrative Law Judge's (ALJ) application of the 2x multiplier in Kentucky Revised Statute (KRS) 342.730(1)(c)2, the provision that doubles a claimant's benefits if the claimant returns to work after injury at the same or higher wages but then experiences a cessation of that employment. Helton suffered a work-related injury that manifested on November 16, 2018, and continued working his normal job until he was laid off for economic reasons on September 2, 2019. The ALJ determined that since Helton earned no wage after the lay-off, he qualified for the 2x multiplier. The Board reversed, and the Court of Appeals agreed.

The Kentucky Supreme Court affirmed the Court of Appeals. Helton did not "return" to work because he never left work. The Court found similarity to *Bryant v. Jessamine Car Care*, No. 2018-SC-000265-WC, 2019 WL 1173003 (Ky. February 14, 2019), in which the Court held that a continuation of work is not a return to work. To qualify as a "return," there must be a cessation followed by a resumption. Because Helton indisputably continued to perform his regular job after his injury and only ceased working when he was laid off due to the mine closing, no "return" to work occurred because there was no cessation followed by a resumption. While the Court recognized

that Helton's employment with Rockhampton ended for reasons he could not control, the purposes of KRS 342.730(1)(c)2 are to encourage continued employment and create an incentive to return to work. Awarding the 2x multiplier did not accomplish the recognized objectives and does not comport with the plain language of the statute.

Tractor Supply v. Patricia Wells, et al.
2021-SC-0286-WC **June 16, 2022**

Opinion of the Court by Justice Conley. All sitting; all concur. Patricia Wells was injured in August 2018. The ALJ made a finding of fact that she was unable to return to her previous work, therefore applied the three multiplier under KRS 342.730(1)(c)1. She was subsequently fired for allegedly filing false information on a work report. Tractor Supply moved for further findings of fact, arguing this Court's holding in *Livingood v. Transfreight, LLC*, 467 S.W.3d 249 (Ky. 2015), precluded application of the three-multiplier. The ALJ and Worker's Compensation Board both concluded *Livingood* was not applicable. On appeal, the Court of Appeals affirmed.

The Supreme Court unanimously affirmed the Court of Appeals. *Livingood*'s holding was based on the totality of the text of KRS Chapter 342, to hold that the two-multiplier did not apply when a claimant's conduct proximately causing his cessation of employment is "shown to have been an intentional, deliberate action with a reckless disregard of the consequences either to himself or to another." *Id.* at 259. In this case, the Supreme Court ruled "[t]he three-multiplier benefit is concerned with a finding of disability, and not tied to any condition of employment. Therefore, application of the general rule that no claimant should profit by his or her misconduct serves no substantive purpose regarding the three-multiplier." Because Wells did not gain or prolong any benefit as a result of her alleged misconduct, the rule was inapplicable. The Court concluded that nothing in the statutory text or facts of the case justified extending *Lviningood*'s holding to KRS 342.730(1)(c)1.

Tracy Scott Toler v. Oldham County Fiscal Court, et al.
2021-SC-0356-WC **June 16, 2022**

Opinion of the Court by Justice Lambert. All sitting; all concur. The employee suffered a work-related injury to his left knee requiring surgical repair. To dispute the employee's entitlement to an additional impairment rating for pain, the employer submitted a report by a physician, Dr. Brigham, who did not have a medical license issued by the Commonwealth of Kentucky. Dr. Brigham conducted a review of the employee's medical records, but did not physically examine him. Dr. Brigham opined that the employee was not entitled to an additional impairment rating for pain. The employee objected to the admission of Dr. Brigham's report as evidence before the ALJ on the basis that he was not a "physician" as that term is defined in KRS Chapter 342. The ALJ disagreed and allowed the report to be admitted as evidence. The Workers' Compensation Board and the Court of Appeals affirmed.

The Supreme Court reversed, and held that Dr. Brigham did not meet the statutory definition of "physician" because he does not hold a Kentucky medical license. KRS 342.0011(32) declares that "[a]s used in this chapter, unless the context otherwise requires . . . 'Physician' means physicians and surgeons, psychologists, optometrists, dentists, podiatrists, and osteopathic and chiropractic practitioners acting within the

scope of their license issued by the Commonwealth[.]" The Court held that the context of submitting a physician's report as evidence did not compel the definition of physician to be expanded to include individuals not licensed in Kentucky in contravention of the plain language of the statute. The Court further held that the employee's argument that Dr. Brigham was unqualified to determine whether he was entitled to an additional impairment rating for pain because he did not physically examine him was moot. The Court vacated the ALJ's opinion and order and remanded for further proceedings.

ATTORNEY DISCIPLINE:

Kentucky Bar Association v. Melissa Jan Williamson
2022-SC-0051-KB **June 16, 2022**

Opinion and Order of the Court. All sitting; all concur. The Kentucky Bar Association moved the Court to suspend Williamson for failure to file an Answer to a Charge. The Charge arose from an unanswered Bar Complaint filed against Williams relating to her representation of a client in a divorce matter. After Williamson failed to respond to the complaint, the Inquiry Commission issued a five-count Charge against her, which included violations of SCR 3.130(1.3) (a lawyer shall act with reasonable diligence and promptness); SCR 3.130(1.4)(a) (a lawyer shall keep the client reasonably informed); SCR 3.130(1.4)(b) (a lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding representation); SCR 3.130(1.16)(d) (a lawyer shall take steps to protect a client's interests); and SCR 3.130(8.1)(b) (a lawyer shall not knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority). Despite receiving the Charge and being informed of the possible consequences of not responding, Williamson did not file an Answer. Accordingly, under SCR 3.167(1), the Supreme Court suspended Williamson from the practice of law indefinitely.

Kylie Parker Hofmann v. Kentucky Bar Association
2022-SC-0072-KB **June 16, 2022**

Opinion and Order of the Court. All sitting; all concur. Hoffmann appealed her suspension from the practice of law for non-compliance with the minimum continuing legal education (CLE) requirements for the 2019-2020 and 2020-2021 combined educational years. After Hoffmann was suspended under SCR 3.675, she filed a "motion to appeal" in the Supreme Court, requesting that the Court revoke her suspension. As grounds for her request, Hoffmann asserted that she had not practiced law since 2019 due to a series of personal health issues and a family crisis. Because of these issues, she failed to update her bar roster address. Hoffmann provided proof that she had cured her deficiency six months after the reporting deadline.

In response, the KBA noted that Hoffman had been contacted by mail nine times and by phone once. The KBA further asserted that Hoffmann was aware that she could have requested a time extension to comply with the CLE requirements because she was granted an exception for the 2018-2019 reporting period.

Upon review of the record, the Supreme Court determined that Hoffmann had not demonstrated good cause sufficient to revoke her suspension. Accordingly, the Court denied Hoffmann's appeal to set aside her suspension and ordered that she remain

suspended until such time as she complies with the appropriate restoration provisions of SCR 3.504.

Melinda Christine Harhai v. Kentucky Bar Association
2022-SC-0073-KB **June 16, 2022**

Opinion and Order of the Court. All sitting. Keller, Lambert, Nickell, and Conley, JJ., concur. Minton, C.J., dissents by separate opinion, in which Hughes and VanMeter, JJ., join. Harhai failed to pay her annual bar dues by September 1, 2021. On two separate occasions, she was sent a reminder via email that she was delinquent in payment. On November 22, 2022, a Show Cause Notice of Delinquency was mailed to her at her registered address via certified mail. Harhai failed to pay her delinquent dues and she was suspended from the practice of law on January 21, 2021. Harhai appealed her suspension and, at the same time, sent a check to the KBA for the amount owed. Although she admitted that she had not paid her dues by September 1, she argued she thought she had paid them on December 8, prior to her suspension. The KBA responded to Harhai's appeal, requesting no specific relief except what the Court deemed appropriate.

In considering Harhai's appeal, the Supreme Court reviewed the procedure for restoration under SCR 3.500. The Court noted that an application for restoration can be effective either by order of the Board of Governors or the Court, and that suspended members are required to have the requisite CLE credits prior to restoration. Accordingly, the Court ordered Harhai's suspension be lifted upon certification by the Director of CLE that she completed the necessary CLE credits for 2020-21, and that the certification be submitted to the Board of Governors, which, upon receipt, shall order her reinstatement of the practice of law.

Kentucky Bar Association v. Timothy D. Belcher
2022-SC-0102-KB **June 16, 2022**

Opinion and Order of the Court. All sitting; all concur. Belcher was charged with one count of theft by unlawful taking, $10,000 or more but less than $1,000,000, in Pike Circuit Court. He was later indicted in the U.S. District Court of the Eastern District of Kentucky for bank fraud and three counts of making false statements. Because of the federal charges, the Pike Circuit case was eventually dismissed. Belcher pled guilty to one count of federal bank fraud and one count of filing a false tax return. He was committed to federal custody for a total of forty-one months was ordered to pay restitution totally $867,813.54.

In 2019, Belcher was temporarily suspended from the practice of law based on allegations that he had misappropriated at least $600,000 from a minor who had been appointed to maintain. Following the initiation of criminal charges in both state and federal court, the Inquiry Commission issued a Charge against Belcher, to which Belcher failed to respond. The Board of Governors unanimously recommended that Belcher be found guilty of violating SCR 3.130(8.4)(b), SCR 3.130(8.4)(c), and SCR 3.130(8.1)(b), and that he be permanently disbarred.

Based on the nature of Belcher's criminal conduct, the Supreme Court agreed with the Board's recommendation. Accordingly, the Court ordered Belcher permanently disbarred from the practice of law in the Commonwealth.

Clara Rogalinski v. Kentucky Bar Association
2022-SC-0144-KB **June 16, 2022**

Opinion and Order of the Court. All sitting; all concur. In October 2020, Rogalinski took and passed Ohio's bar examination. In December of that year, she became licensed to practice law in Ohio. However, she is not and has never been licensed to practice law in Kentucky. In August of 2021, Rogalinski filed an application with the Kentucky Office of Bar Admissions seeking admission by her transferred Ohio bar exam score, pursuant to a special reciprocity agreement between several state supreme courts and bar licensing agencies, including Kentucky and Ohio.

From April to October of 2021, Rogalinski represented clients in court and provided legal advice while employed by the Kentucky Department of Public Advocacy, despite the fact that she was not licensed to practice law in Kentucky. After receiving an Investigative File from the Office of Bar Counsel alleging that she was practicing law in Kentucky without a license, Rogalinski resigned from DPA and ceased practicing law in either Kentucky or Ohio. The Inquiry Commission issued a one-count complaint alleging Rogalinski violated SCR 3.130(5.5)(a), which prohibits the unauthorized practice of law.

Rogalinski admitted she violated the rule and asked the Supreme Court to impose a public reprimand to dispense of any further proceedings for this violation. The KBA did not object. Upon review of similar case law and the facts of Rogalinski's case, the Court agreed that a public reprimand was appropriate. Accordingly, the Court found Rogalinski guilty of violating SCR 3.130(5.5)(a) and publicly reprimanded her for unprofessional conduct.