

**PUBLISHED OPINIONS
KENTUCKY SUPREME COURT
MAY 2009**

I. ADMINISTRATIVE LAW

**A. Bob Lawson v. Kentucky Retirement Systems, et al.
[2007-SC-000540-DG](#) May 21, 2009**

Opinion by Justice Noble. All sitting. Lawson retired from employment with the state after 26 years. He selected a retirement benefit payment option and signed a form acknowledging that under KRS 61.590(3) he could not change his payment option after the first payment “had been issued.” Prior to receiving his first check, Lawson realized he had misunderstood the terms of the payment option and contacted KERS to obtain paperwork to make a change. KERS advised Lawson that since the initial check had been printed by the State Treasurer’s office, no change would be permitted. Lawson began the appeals process, and KERS prevailed before the hearing officer and Board, as well as at the circuit court and Court of Appeals levels.

The Supreme Court affirmed the Court of Appeals’ ruling that KRS 65.590 was neither void for vagueness nor required defining regulation under KRS 13A.100. However, the Court reversed the Court of Appeals’ findings that KERS had correctly applied 61.590(3) and had not misled Lawson. The Court held that payment is “issued” when the check is delivered to the payee—as such, Lawson should have been allowed to change his payment option. Justice Abramson (joined by the Chief Justice) concurred in result only, contending that inasmuch as state workers’ retirement rights have been deemed an “inviolable contract,” contract law requires that the ambiguity contained in 61.590(3) be construed against the drafter (i.e. the Commonwealth). The minority disagreed with the majority’s conclusion that Lawson had either been misled by KERS or that KERS was negligent in their handling of Lawson’s retirement process.

**B. Eric C. Norsworthy, MD v. Kentucky Board of Medical Licensure (KBML)
[2008-SC-000918-1](#) May 21, 2009**

Opinion and order of the Court. All sitting; all concur. A KBML panel restricted a doctor’s license to treating only male patients after a sexual misconduct complaint was lodged against him by a

female patient (the sixteenth such complaint in 19 years). The doctor appealed the decision to the circuit court, where he also sought injunctive relief during the pendency of the appeal. The circuit court granted the injunction, holding restricting his license amounted to irreparable injury. The Court of Appeals reversed, holding that the circuit court abused its discretion when it found that the injury to the doctor rose to the level to justify an injunction. The doctor then sought review by the Supreme Court under CR 65.09.

The Supreme Court denied the request to reinstate the injunction after applying the tripartite test from Maupin (1: irreparable harm if relief not granted; 2: substantial possibility appellant will ultimately prevail on merits; 3: injunction will not harm other parties or disserve public). The Court noted that mere economic and reputational injury are generally not irreparable and the proof did not support the doctor's claims that the restriction would result in the loss of 70% of his patients and force him to close his practice. The Court also held that the circuit court abused its discretion when it decided there was a substantial possibility that the doctor would ultimately prevail on the merits. The Court found that the lower court had based its determination on the doctor's assertion that the complainant's medical chart listed medications used to treat bipolar schizophrenic disorders.

Lastly, the Court held that the circuit court abused its discretion when it balanced the equities in the doctor's favor based on a) the mere fact that a large group of women traveled a long way to support the doctor at his hearing and b) the circuit court's mistaken belief that no other complaints had been filed against the doctor since the complaint in question. Further, the Court noted that under the "unclean hands" doctrine, the doctor was not entitled to equitable relief since he had been indicted on nine felony charges that he improperly accessed the complainant's electronic prescription records after she filed her complaint against him and was no longer his patient.

II. CRIMINAL LAW

A. Jerry Bernard Winstead v. Commonwealth of Kentucky Court of Justice 2007-SC-000425-MR May 21, 2009

Opinion by Justice Abramson. All sitting; all concur. Winstead was convicted of murder and first degree robbery and sentenced to concurrent terms of life without parole and twenty years. On appeal, Winstead argued that he had been denied his right to

represent himself at trial. The Supreme Court noted that there is a strong presumption against the waiver of counsel, which can only be overcome by a clear and unequivocal invocation of the right to represent one's self. The Court concluded that Winstead's *pro se* discovery motions and letter to the trial court expressing dissatisfaction with his appointed counsel did not amount to much an invocation—thus there was no error.

The Court also rejected Winstead's argument that Juror #29 should have been struck for cause since he said Winstead's poverty and family history would not affect his sentencing decision. The Court held potential jurors are to be struck for cause if they would automatically vote for the death penalty regardless of mitigating evidence, however that right does not extend to disqualifying a potential juror who would give no weight to a particular mitigating factor. The juror in question had said he would not automatically vote to impose the death penalty and would consider mitigating evidence. The Court observed that Winstead was not entitled to jurors who were bound to weigh mitigating evidence in his favor.

Winstead also argued that he had been denied his constitutional right to *voir dire* potential jurors on the issue of racial prejudice. Winstead had sought to ask broad questions designed to elicit racial attitudes (e.g. "How would you react to an interracial romantic relationship in your family?"), but the trial court limited the questions to the racial aspects of the case (e.g. "Would the fact that individuals in this case were involved in interracial relationships have any bearing on your judgment?"). The Supreme Court found no abuse of discretion in limiting the extent of the questioning since it did not render the trial fundamentally unfair. The Court noted that Winstead was allowed to ask questions that afforded him the opportunity to assess verbal responses and demeanor regarding the racial facets of the case.

B. Terry Tobar v. Commonwealth of Kentucky
2007-SC-000842-DG May 21, 2009

Opinion by Justice Venters. Justice Noble not sitting. Tobar entered a conditional guilty plea to failure to comply with the sexual offender registration requirement of KRS 17.510(10)(a). Tobar did not notify authorities after he was made to leave the homeless shelter where he lived. Tobar argued that the statute, as it existed in 2005, was unconstitutionally vague because he was homeless and had no new address to report. Tobar further argued that it was impossible for a homeless person to comply with the statute. The Court held that KRS 17.510(10)(a) was not unconstitutionally vague

since it was sufficiently definite such that an ordinary person could understand what conduct was prohibited and that the statute as written did not cause arbitrary or discriminatory enforcement. The Court noted that the focus of the statute was not that the registrant has an address, but that any change in the address must be reported to proper authorities. Justice Schroder (joined by Justice Scott) dissented contending that the protracted struggle over the question of whether homeless persons were required to register a change of residence indicated that the language of the statute was not definite enough for an ordinary person to understand.

**C. Kenneth Wayne Parker v. Commonwealth of Kentucky
2006-SC-000102-MR May 21, 2009**

Opinion by Chief Justice Minton; all sitting. Kenneth Parker—the alleged leader of Louisville’s Victory Park Crips gang—was sentenced to two life terms after being convicted on two counts of murder and nine other felony offenses. On appeal, he raised a host of alleged errors.

Parker argued, *inter alia*, that taped telephone conversations between he and one of the persons he was charged with murdering were inadmissible under Crawford since they were testimonial in nature and he had not been afforded a prior opportunity for cross-examination. The prosecution argued that the “forfeiture-by-wrongdoing” hearsay exception in KRE 804(b)(5) was applicable. That rule states that the hearsay rule does not apply where the party to whom the statement is offered against has engaged in wrongdoing to procure the unavailability of the declarant as a witness. The Court cited the recent U.S. Supreme Court decision in Giles which limits the “forfeiture-by-wrongdoing” exception to instances where the defendant engaged in wrongdoing designed to prevent the witness from testifying. To satisfy Giles, the Kentucky Supreme Court adopted the following procedure: at the evidentiary hearing, “the proponent of the hearsay must first introduce evidence establishing good reason to believe that the defendant intentionally procured the absence of the declarant, then the burden of going forward shifts to the party opposing introduction of the hearsay to offer credible evidence to the contrary.” Applying this analysis, the Court determined that the taped conversations did not violate the Confrontation Clause under Crawford and Giles.

The Court reversed Parker’s conviction on the charge of criminal syndication. The Court held that under KRS 506.120(3), the offense requires collaboration of five or more persons in illegal conduct on a continuing basis. The Court noted that the

prosecution failed to cite in its appellate brief any evidence in the record showing it presented proof at trial that Parker and four others collaborated to traffic in narcotics on a continuing basis, forcing the Court to conclude the trial court erred by failing to grant Parker's motion for a directed verdict on the criminal syndication charge. The Court rejected Parker's remaining evidentiary issues and claims of prosecutorial misconduct. Justice Venters concurred in result only, disagreeing with the majority's conclusion that an indictment is sufficiently specific as long as it "names the offense." He contended that the indictment must also contain a statement of the essential facts constituting the offense.

**D. Frederick Miller v. Commonwealth of Kentucky
2007-SC-000048-TG May 21, 2009**

Opinion by Justice Scott. Chief Justice Minton not sitting. Miller was convicted of multiple counts of third-degree rape, third-degree sodomy and PFO-I. The charges stemmed from his relationship with a 15-year-old girl. On appeal, Miller argued he was denied his right to a unanimous verdict because the jury instructions for each of the multiple counts were factually indistinguishable. The Court ordered a new trial, ruling that palpable error had occurred since there was no assurance that all jurors were voting for the same factually distinct crime. The Court went on to reject Miller's arguments regarding the sufficiency of the evidence and denial of his right to a speedy trial. Justice Cunningham (joined by Justice Schroder) concurred in result only, asserting that consideration of the evidentiary and speedy trial claims was premature in light of ordering a new trial.

**E. David Paul Sanderson v. Commonwealth of Kentucky
2007-SC-000537-MR May 21, 2009**

Opinion by Justice Noble; all sitting. Sanderson was convicted of two counts of second-degree sodomy and three counts of first-degree sexual abuse of his girlfriend's minor daughter and was sentenced to 35 years imprisonment and five years conditional discharge. The Supreme Court reversed the conviction and ordered a new trial, holding that the trial court improperly admitted Child Sexual Abuse Accommodation Syndrome (CSAAS) evidence. The CSAAS testimony was offered by a psychologist to explain that victims of childhood sexual abuse often delay disclosure of the abuse for many years and may outwardly appear to be happy, well-adjusted children. The Court cited the long standing rule in Kentucky that a party "cannot introduce evidence of the habit of a class of individuals either to prove that another member of the class

acted the same way under similar circumstances or to prove that the person was a member of that class because he/she acted the same way under similar circumstances.” The Court further noted that there is “no such thing as expertise in the credibility of children.”

The Court went on to address remaining assignments of error that were likely to occur upon retrial. The Court ruled that Sanderson’s sentence of 36 years exceeded the limit upon consecutive indeterminate sentences under KRS 532.110(1)(c) and 532.080(6) (b), and that if Sanderson was convicted of the same offenses upon retrial his maximum term of imprisonment would be 20 years. Furthermore, the Court held that Sanderson’s term of conditional discharge could not exceed three years since application of the amended version of KRS 532.043 amounted to an unconstitutional *ex post facto* law. Finally, the Court held that upon retrial, the social worker could not be allowed to give hearsay testimony about the child’s statements and “ultimate issue” testimony about the child’s credibility.

Justice Scott concurred in part and dissented in part, stating that Kentucky should join the majority of states which allow CSAAS evidence as rehabilitative testimony to explain the child’s conduct when the defense raises the issue of the delay in reporting alleged abuse. Justice Abramson concurred in result only, agreeing with Justice Scott’s assertion that it is time to reconsider the Court’s position on CSAAS testimony.

F. Commonwealth of Kentucky v. Thomas Elza, Jr.
2007-SC-000538-DG May 21, 2009

Opinion by Justice Cunningham. All sitting; all concur. The Laurel Circuit Court denied Elza’s request for RCr 11.42 post-conviction relief without conducting an evidentiary hearing. Elza had argued that his guilty plea to murder and burglary charges was not voluntary and intelligent because his attorney failed to advise him of the availability of an intoxication defense. The Court of Appeals remanded, holding that the circuit court erred in not holding an evidentiary hearing since there were issues of material fact that could not be conclusively resolved by examination of the record. The Supreme Court reversed the Court of Appeals and reinstated the circuit court’s judgment. The Court held that Elza’s statements during his Boykin colloquy completely refuted his argument that he was so intoxicated that he did not remember committing the crimes. Furthermore, the Court concluded that even if the case had gone to trial and the intoxication defense had been made, there was no

likelihood it would have succeeded. The Court also held that Elza failed to show that his defense counsel was deficient in any manner. The plea agreement was reasonable under the circumstances, the Court reasoned, noting that the Commonwealth had been seeking the death penalty against Elza and had opposed all defense efforts to remove the death penalty as a possible sentence.

G. Tywan Beaumont v. Commonwealth of Kentucky
2007-SC-000486-MR May 1, 2009

Opinion of the Court; all sitting. Beaumont appealed his conviction of complicity to murder and tampering with physical evidence. Beaumont argued that he was denied his right to a unanimous verdict on the complicity to murder conviction. Beaumont contended that combination principal / accomplice jury instruction allowed him to be convicted under four different theories, but the verdict did not specify on which of the grounds the jury based its conviction. Under the instruction, Beaumont could be found to have been either the principal under either KRS 507.020(1)(a) (killing with intent to cause death) or 507.020(1)(b) (killing while acting with extreme indifference to human life) or an accomplice under KRS 502.020(1) (“complicity in the act”) or 502.020(2) (“complicity to the result”). The Supreme Court affirmed the complicity to murder conviction, holding that sufficient evidence of record existed to reasonably support Beaumont’s conviction under each of the four theories.

The Court reversed Beaumont’s conviction on tampering with physical evidence on double jeopardy grounds. At the close of the Commonwealth’s proof, Beaumont moved for a directed verdict on the charge on the grounds that it was not supported by the evidence presented. The trial court sustained the motion, but at the close of all proof, the Commonwealth asked the trial court to reconsider, and the charge was reinstated. Beaumont argued that reinstatement of the charge amounted to double jeopardy. The Court agreed, citing the rule in Smith that an “acquittal must be treated as final if, after a facially unqualified midtrial dismissal of one count, the trial has proceeded to the defendant’s introduction of evidence.”

IV. REAL PROPERTY

A. Nellie Meece, et al. v. Feldman Lumber Company
2007-SC-000785-DG May 21, 2009

Opinion by Justice Schroder; Justice Abramson not sitting. Feldman Lumber Co. purchased acreage in Pulaski County which included, in part, 18 acres of standing timber. The adjoining landowner, Meece, claimed ownership of the 18 acres and Feldman filed a quiet title action. During the pendency of the suit, Feldman cut down the trees on the property. The circuit court quieted title in Meece's favor, and awarded \$3,186.46 representing the "stump value" of the timber. Both parties appealed—with Meece claiming she was entitled to treble damages and attorney fees under KRS 364.130. The Court of Appeals affirmed the circuit court, holding treble damages were not appropriate since "Feldman had reason to believe the timber was his and thus possessed color of title." Feldman based its color of title upon the deed to the property.

The Supreme Court reversed and remanded to the circuit court to enter judgment for treble damages to Meece, holding that Feldman's subjective belief of ownership was insufficient to create color of title. The Court noted that the legal description on Feldman's deed did not describe the land with sufficient certainty to establish its borders—a condition precedent to a claim of color of title. The description on Meece's deed, on the other hand, was "certain and ascertainable." Chief Justice Minton (joined by Justice Cunningham) dissented, contending that under established case law, color of title is derived from any instrument purporting to convey the land "however defective or imperfect." The dissent noted that questions as to the sufficiency of the description are issues of fact for a jury. Lastly, the minority claimed that the majority had "effectively abolishe[d] the color of title doctrine by making the standard to prove its existence impossibly high."

V. TAXATION

A. **John Bradford Freeman, Jessamine Co. PVA, et al. v. St. Andrew Orthodox Church, Inc.** **2007-SC-000640-DG May 21, 2009**

Opinion by Justice Cunningham. All sitting; all concur. St. Andrew Orthodox Church, Inc. appealed a property tax assessment, claiming it violated the exemption on real property "owned and occupied" by religious institutions found in Section 170 of the state constitution. The 10-acre property included two single family homes that the church rented to tenants until such time as it could

afford to build a new church on the land. In addition to the rental dwellings, parts of the property were used for church activities such as picnics, recreation, prayer and meditation. The circuit court upheld the assessment, but ruled that it must be apportioned—with the parts occupied by the renters taxed and the parts used by the church exempt. The Court of Appeals reversed, holding the entire property exempt under Section 170. In reaching its decision the Court of Appeals relied on an Attorney General’s opinion stating that the requirement that the church “occupy” the property did not require use for religious purposes, and that plans for future occupation were sufficient for the exemption. The Supreme Court reinstated the circuit court’s decision that the assessment be apportioned, noting that the advisory AG opinion would extend the exemption to church-owned shopping centers, commercial enterprises and land speculation.

VI. TORTS

- A. **Timothy Morgan v. Candria Scott and James E. Scott, Jr.**
[2006-SC-000693-DG](#) **May 21, 2009**
[2006-SC-000701-DG](#) **May 21, 2009**
[2007-SC-000282-DG](#) **May 21, 2009**

Opinion of the Court; all sitting. Morgan went to an automobile dealership where, contrary to its policy, he test drove a truck without being accompanied by a salesperson. Morgan lost control of the truck and struck the vehicle driven by Scott. Scott and her husband sued Morgan and the dealership, claiming Morgan had driven negligently and that the dealership had breached its duty to ensure Morgan’s safe operation of the vehicle. The jury returned a verdict in Scott’s favor, awarding approximately \$4,000,000 and apportioning fault equally between Morgan and the dealership. The Court of Appeals affirmed the verdict against Morgan, but reversed as to the dealership. Further, the Court of Appeals held that Morgan was liable for 100% of the damages awarded by the jury. The Supreme Court affirmed the Court of Appeals, holding that the dealership satisfied its duty of care when it confirmed Morgan was duly licensed to drive and not otherwise obviously impaired.

The Court further held that the dealership did not assume a duty towards the public by establishing its policy that test drivers must be accompanied by a salesperson since a) Scott could not have relied upon the policy since the evidence showed she was unaware of its existence; and b) the dealership’s failure to observe its policy did not increase the risk of harm to Scott. The Court also rejected Morgan’s argument that he should bear only 50% of the liability for

the damages verdict, holding that KRS 411.182(1) requires apportionment only when “more than one party” is at fault. Wrote the court: “We can find nothing fundamentally unfair about assigning one hundred percent of the fault for an injury to the only party that breached a duty and caused the injury.”

Justice Abramson (joined by Justice Cunningham) concurred in part, but dissented from the portion of the opinion holding Morgan 100% liable for the damages—asserting the case should be remanded for a new trial solely on the issue of damages caused by Morgan. Justice Noble also dissented in part, contending that whether or not the dealership assumed a duty and if failure to follow its policy increased the risk of harm to Scott were questions for the jury. The Chief Justice concurred in result only.

B. Ten Broeck Dupont, Inc. (d/b/a Ten Broeck Hospital) v. Artemecia Brooks
2006-SC-000484-DG May 21, 2009

Opinion by Justice Scott. Justice Abramson not sitting. Patient sued a psychiatric hospital claiming she was raped by an orderly during her in-patient stay. The jury returned a judgment in the patient’s favor for \$2,091,000. The Supreme Court affirmed in part, reversed in part and remanded for a new trial. The Court held that the trial court erred when it excluded the patient’s medical records as well as her relevant sexual history under KRE 412 (Kentucky’s Rape Shield Law). The Court ruled that the excluded evidence should have been allowed since it was highly probative of the issues of consent and patient’s injuries. The Court determined that the danger of harm to the patient from admitting the evidence did not outweigh the hospital’s need for the probative value of the evidence.

The Court also held that the trial court committed reversible error by failing to include a definition of “rape” in its jury instructions. In so doing, the Court reasoned, the trial court did not require the jury to determine whether the sexual conduct was non-consensual—effectively denying the hospital a defense to the patient’s claims. Justice Schroder (joined by the Chief Justice) concurred in result only, contending that the patient’s sexual history was not relevant to the issue of her damages.

C. Myanh Coleman v. Bee Line Courier Service, Inc.
2007-SC-000628-DG May 21, 2009

Opinion of the Court. Justice Abramson not sitting. Coleman suffered injuries in an accident involving a vehicle owned by Bee Line. She received \$5,737 in basic reparation benefits (BRB) from her insurer, Nationwide, before settling with Bee Line for \$6,500. As part of the settlement with Bee Line, Coleman signed a release in which he agreed to indemnify Bee Line for all claims “against the proceeds of the settlement.” Nationwide then sought reimbursement of its BRB payment from Bee Line in arbitration proceedings. After agreeing to pay Nationwide \$4,737, Bee Line demanded indemnity from Coleman. When she refused, Bee Line filed suit. The trial court awarded summary judgment to Bee Line, holding she was contractually obligated to reimburse Bee Line for the payment. The Court of Appeals affirmed.

The Supreme Court reversed, holding that the language of the agreement limited indemnity to “claims against the proceeds of the settlement” of personal injury tort claims and did not include BRB benefits. The Court declined to address the issue of whether a sufficiently specific agreement to indemnify the tortfeasor for BRB recoupment claims would contravene the purposes of Kentucky’s Motor Vehicle Reparations Act. Justice Noble (joined by Justice Venters) concurred in result only, contending that the Court should have addressed the “next question” regarding the propriety of tortfeasors extracting BRB recoupment agreements when settling claims. The minority asserted that the legislative intent and public policy behind the MVRA prohibit such agreements.

VII. WORKERS’ COMPENSATION

A. **Crawford & Company v. Joseph Wright, et al.** [2008-SC-000646-WC](#) **May 21, 2009** [2008-SC-000746-WC](#) **May 21, 2009**

Opinion of the Court. All sitting; all concur. Crawford—the employer’s third party insurance adjuster—filed a motion to reopen a 1987 award, seeking a determination that it had no responsibility for future medical treatment for claimant’s knee. ALJ Davis entered an order stating Crawford would be relieved of responsibility if no response was filed within 20 days. No response was filed and the matter subsequently came before the Chief ALJ who reopened the award and assigned the case to ALJ Smith to take additional proof in anticipation of ruling on the merits. ALJ Smith granted Crawford’s motion to reconsider reopening the award, vacated the Chief ALJ’s order, and reinstated ALJ Davis’ order-- noting that no response had been filed. The Supreme Court held that a response to the motion to reopen is not required by the controlling regulation. Further, the Court held that to require a response to avoid the

award being revised amounted to an impermissible shifting of the burden of proof. Lastly, the Court held that just because ALJ Davis presided over the Chief ALJ's motion docket did not mean that ALJ Davis retained jurisdiction over the underlying medical dispute and reinstated the CALJ's order reopening the award.

B. Kentucky Employers Safety Association v. Lexington Diagnostic Center, et al.
2008-SC-000671-WC May 21, 2009

Opinion of the Court. All sitting; all concur. Worker was splattered in the face with blood when flushing out a patient's IV line. Consistent with the employer's post-exposure protocol, the worker went to a required series of five doctor visits. The employer's workers' compensation insurance carrier refused to pay beyond the second visit, deciding that until such time as an objective medical finding showed the exposure had resulted in a harmful change to the worker, no injury had occurred. The Workers Compensation Board determined the insurer was liable for the payments and the ALJ and Court of Appeals affirmed. The Supreme Court also affirmed, holding that for the purposes of KRS 342.0011(1), being splattered with foreign blood or other potentially infectious material constitutes a "traumatic event."

VIII. ATTORNEY DISCIPLINE

A. Stanley Brown v. Kentucky Bar Association
2007-SC-000455-KB May 21, 2009

Attorney was disbarred in Kentucky in 1995. At that time, the rules did not provide for permanent disbarment, and attorney could seek reinstatement after five years. The attorney was subsequently permanently disbarred in Ohio in 1997. In 2007, he sought reinstatement to the Kentucky bar. The Court ordered the attorney to show cause, in light of the Ohio disbarment, why he should not be subject to permanent disbarment in Kentucky under the reciprocal discipline rule (SCR 3.435). The attorney argued that at most, his reciprocal discipline should be disbarment for five years after which he could seek reinstatement since that was the severest sanction possible in Kentucky at the time when he was disciplined in Ohio. Further, the attorney argued that the five-year period should run from the date of his Ohio disbarment.

The Court agreed that appropriate sanction should be suspension for five years after which he may apply for reinstatement. However, the Court made the suspension effective from the date of its order,

noting that the attorney failed to notify the KBA of his Ohio disbarment when it occurred, as required under SCR 3.435(1). Further, the attorney did not reveal the extent of the Ohio discipline in his 2007 application for reinstatement to the Kentucky bar. The Court lauded the attorney's steps to seek treatment for addiction issues, but noted those efforts did not offset his "habitual lack of candor." The Chief Justice dissented on the grounds that he would impose permanent disbarment.

- B. Kentucky Bar Association v. Brentley P. Smith**
[2008-SC-000523-KB](#) **May 21, 2009**
[2009-SC-000094-KB](#) **May 21, 2009**

The Supreme Court adopted the KBA Board of Governor's recommendation of permanent disbarment of attorney based on 73 violations of the Rules of Profession Conduct stemming from 12 consolidated disciplinary cases against him. The attorney did not respond to, or otherwise defend against, the charges.

- C. Kentucky Bar Association v. William J. Grider**
[2009-SC-000101-KB](#) **May 21, 2009**

The Supreme Court adopted the KBA Board of Governor's recommendation to suspend attorney for 30 days. Attorney accepted \$500 to pursue an expungement, but took no action in the matter, despite client's repeated attempts to discuss the case. The attorney was found to have failed to act with reasonable diligence and promptness (SCR 3.130-1.3), failed to keep his client reasonably informed (SCR 3.130-1.4(a)), failed to return an unearned fee (SCR 3.130-1.16(d)) and failed to respond to a lawful demand for information from a disciplinary authority (SCR 3.130-8.1(b)).

- D. Kentucky Bar Association v. James Kevin Mathews**
[2009-SC-000102-KB](#) **May 21, 2009**

The Supreme Court adopted the KBA Board of Governor's recommendation to suspend attorney for 181 days. Attorney was found to have accepted money from two separate clients, but took no further action beyond filing a complaint. The clients tried unsuccessfully to contact the attorney and subsequently learned that he had closed his law office. The Court noted that the attorney did not respond to the charges and has been serving a suspension since January 2008 for failing to pay bar dues.

E. Ferdinand R. Radolovich v. Kentucky Bar Association
2009-SC-000128-KB May 21, 2009

The Supreme Court granted attorney's motion to resign from the bar under terms of permanent disbarment. Attorney admitted to inducing client to make an agreement prospectively limiting liability for legal malpractice, in violation of SCR 3.130-1.8(h), and engaging in conduct involving dishonesty, fraud, deceit or misrepresentation (SCR 3.130-8.3(c)). Attorney had also been held in contempt by the Sixth Circuit for failing to pay opposing party's attorney fees and costs associated with an appeal deemed to be "incoherent and frivolous." Attorney admitted to incorrectly advising a client whether her guilty plea to a fraud charge would result in a misdemeanor or felony conviction. Attorney also admitted to incorrectly advising the same client whether her settlement proceeds from sexual harassment suit would be taxable income. Lastly, attorney admitted he did not provide truthful testimony during a hearing in Jefferson Circuit Court—which led to his indictment on perjury charges. As part of his plea agreement in that matter, the attorney agreed to notify the KBA of his request for permanent disbarment.

F. Keith U. Laurin v. Kentucky Bar Association
2009-SC-000192-KB May 21, 2009

The Supreme Court granted attorney's motion for public reprimand with conditions on charges arising from his representation of a client seeking to form a tax-exempt organization. The attorney admitted that he did not provide competent representation (SCR 3.130-1.1), that he did not act with reasonable diligence (SCR 3.130-1.3), and that he did not adequately respond to the client's reasonable requests for information about the status of the case (SCR 3.130-1.4(a)). The Court also ordered the attorney to attend remedial ethics CLE.