

**PUBLISHED OPINIONS
KENTUCKY SUPREME COURT
SEPTEMBER 2013**

I. CHOICE OF LAW:

- A. State Farm Mutual Automobile Insurance Company v. Karen Hodkiss-Warrick**
[2011-SC-000266-DG](#) September 26, 2013

Opinion of the Court by Justice Abramson. Minton, C.J.; Keller and Noble, JJ., concur. Scott, J., dissents by separate opinion in which Cunningham, J., joins. Venters, J., not sitting. Pennsylvania resident was injured in Kentucky while riding as a passenger in her daughter's car. Her insurer denied her claim for under-insured motorists benefits because her Pennsylvania insurance contract excluded the vehicles of resident relatives from the definition of "under-insured vehicle." Disagreeing with the policy holder's contention that Kentucky's public policy invalidated the exclusion, the trial court ruled that under standard choice-of-law rules Pennsylvania law applied and that under Pennsylvania law the exclusion was valid. Reversing the Court of Appeals rejection of that result and reinstating the trial court's judgment, the Supreme Court held that the General Assembly's statutorily expressed policy of mandating automobile liability insurance did not extend to under-insurance coverage so as to justify a Kentucky court's invalidation of the Pennsylvania contract on public policy grounds.

II. CRIMINAL LAW:

- A. Anthony Thornton v. Commonwealth of Kentucky**
[2011-SC-000425-MR](#) September 26, 2013

Opinion of the Court by Justice Venters. All sitting; all concur. Criminal Direct Appeal. Appellant was convicted of third-degree assault, third-degree criminal mischief, of being a first-degree persistent felony offender, and sentenced to twenty years' imprisonment. On appeal Appellant argued that (1) palpable error occurred when the trial court failed to instruct the jury consistently with KRS 501.030, which requires that to be found guilty of a criminal offense the defendant must have engaged in a voluntary act which he was physically capable of performing; (2) palpable error occurred when the trial court failed to instruct on the burden of proof in relation to his insanity defense instruction; (3) palpable error occurred when the trial court failed to instruct the jury regarding his right not to testify during the penalty phase; (4) the final sentencing was unfair and denied him the benefit of KRS 532.070, which permits a trial court to modify an unduly harsh felony sentence; and (5) that the persistent felony offender enhanced twenty-year sentence imposed in this case for the third-degree assault conviction is arbitrary and, therefore, in violation of Section 2 of the Kentucky Constitution. Upon review the Court held that palpable error review of the failure to give a voluntary act instruction was not permissible under RCr 9.54(2) and our

contemporaneous holding in *Martin v. Commonwealth*, 2012-SC-000225-MR, (Ky. Sept. ____, 2013), on the basis that Appellant had not requested the instruction and 9.54(2) precludes appellate review under the palpable error standard of RCr 10.26 for unreserved assignments of error based upon the “giving or the failure to give an instruction”. The Court further held that Appellant was not entitled to relief regarding the insanity defense instruction because the instruction given was consistent with the one he tendered and therefore any error was invited (and also that such a burden instruction is improper under long-standing ky law). As concerns the failure to give an instruction not to testify, the Court held that palpable error review was precluded by *Martin*, RCr 9.54(2) and RCr 9.54(3). With regard to final sentencing issues we held that the use of a substitute judge at the sentencing hearing followed by an invitation to file a motion for rehearing with the regularly presiding judge to review the sentence for undue harshness did not deny Appellant a meaningful judicial sentencing. And finally, the Court reviewed Appellant’s excessive sentence argument under Ky. Const. Sec. 2 (brought in lieu of a Sec. 17 and/or 8th Amend. argument), and held, consistent with the principles applied to cruel and unusual punishment analysis under Sec 17 and Amend. 8, the sentence did not, upon application of Sec. 2, result in unequal, disparate, or arbitrary treatment.

**B. *Lester Keith Hurt v. Commonwealth of Kentucky*
[2011-SC-000760-MR](#) September 26, 2013**

Opinion of the Court by Justice Abramson. All sitting; all concur. Lester Hurt appealed as a matter of right from a judgment sentencing him to life in prison for wanton murder, three counts of wanton endangerment in the first degree, criminal mischief, and assault in the fourth degree. The Supreme Court held that the juror challenge, alleged under our *Shane v. Commonwealth*, 243 S.W.3d 336 (Ky. 2007) decision, was not properly preserved for appellate review. In order to comply with the *Gabbard v. Commonwealth*, 297 S.W.3d 844 (Ky. 2009) standard for preserving a *Shane* challenge, the defendant must indicate on his strike sheet any potential juror whom he would have stricken with the allotted peremptory strikes had he not been forced to use a strike (or strikes) on a juror (or jurors) who should have been stricken for cause. Hurt’s oral motion before the trial court after the seating of the jury was insufficient to satisfy *Gabbard* and preserve the *Shane* challenge.

**C. *Odell K. Martin v. Commonwealth of Kentucky*
[2012-SC-000225-MR](#) September 26, 2013**

Opinion of the Court by Justice Venters. All sitting; all concur. Criminal Direct Appeal. Appellant was convicted of first-degree trafficking in a controlled substance and of being a first-degree persistent felony offender and sentenced to twenty years’ imprisonment. On Appeal he argued instructional in that no “innocent possession” instruction was given, and, second, because the instruction setting forth the elements of first-degree trafficking charge did not adequately incorporate the statutory element that, to be guilty of the charge, the trafficking had to be done “knowingly and unlawfully.” Both alleged errors were

unpreserved, however, and so the focus of the discussion was about the interplay between RCr 9.54(2), which requires instructional error to be brought to the trial court's attention, and RCr 10.26, which permits palpable error review of trial errors. In reconciling the two provisions we held that assignments of error in "the giving or the failure to give" an instruction are subject to RCr 9.54(2)'s bar on appellate review, but, on the other hand, unpreserved allegations of defects in the wording of an instruction that was actually given may be accorded palpable error review under RCr 10.26. Because Appellant had failed to request an innocent possession instruction, we held that palpable error review was not available. Because a first-degree trafficking instruction had been given, and Appellant challenged only to its wording on appeal, the Court held that the alleged unpreserved error was subject to RCr 10.26 review, but found no error in the wording of the instruction. The Court further held that no palpable error occurred as a result of impermissible evidence of Appellant's past criminal charges that had been dismissed or amended to lesser offenses history being presented in criminal record documents during the penalty phase because the evidence was not actually mentioned and there is no evidence that the jury actually saw the impermissible evidence; and that while improper, no palpable error occurred as a result of statements made by the prosecutor during his closing argument to the effect that made an improper argument in his closing statement to the jury to the effect that Appellant was part of a vast "drug pipeline" because there is not a reasonable possibility the result of the sentence would have been different.

**D. Richard Smith v. Commonwealth of Kentucky
2012-SC-000322-MR September 26, 2013**

Opinion of the Court by Justice Venters. All sitting; all concur. Criminal Law; Questions Presented: 1) Did the trial court err by denying Appellant's pretrial motion to suppress the recording of his interview with the police; 2) Was Appellant entitled to a directed verdict on two of the first-degree wanton endangerment counts; 3) Was the trial court's failure to define self-protection in the self-defense instruction palpable error; and 4) Should an instruction defining reasonable doubt be given to the jury. Held: 1) The trial court properly denied Appellant's motion to suppress his interview with the police because substantial evidence supported its finding that his statements were knowing, willing, and voluntary, despite Appellant being intoxicated when the statements were made; 2) Appellant was not entitled to a directed verdict on two counts of first-degree wanton endangerment because his conduct exhibited an extreme indifference to the value of human life and created a substantial danger of death or serious physical injury; 3) The trial court's failure to define self-protection in the self-defense instruction did not result in palpable error because there is not a reasonable possibility that the result of the trial would have been different had such a definition been included in the instruction; and 4) Appellant was not entitled to an instruction defining reasonable doubt because RCr 9.56 provides that a jury should not be instructed upon a definition of reasonable doubt.

**E. Albert Springfield v. Commonwealth of Kentucky
2012-SC-000370-MR September 26, 2013**

Opinion of the Court by Justice Scott. All sitting; all concur. Albert Springfield was found guilty of trafficking in a controlled substance in the first degree and of being a persistent felony offender (PFO) in the first degree by a Hopkins County Circuit Jury. He was sentenced to the maximum of five years' imprisonment, which was enhanced to twenty years' imprisonment due to his status as a PFO. He appealed his conviction to the Supreme Court of Kentucky as a matter of right, Ky. Const. § 110(2)(b), alleging that the trial court erred by (1) allowing the jury to re-watch videotapes while in the jury deliberation room, (2) failing to instruct the jury on the offense of criminal facilitation to trafficking in a controlled substance in the first degree, (3) excusing a potential juror for cause based on his religious views, and (4) denying Appellant's request for an instruction of second-degree PFO. The Supreme Court affirmed Appellant's conviction and sentence, holding that the trial court: (1) did not abuse its discretion in allowing the jury to review a video recording of the actual drug transaction outside the presence of the court based upon the fact that the video fell within the realm of non-testimonial evidence; (2) did not err in refusing to instruct the jury on the lesser included offense of facilitation, as no evidence was presented that would allow a reasonable juror to Appellant guilty of facilitation; (3) used sound legal judgment in making a decision to strike a juror for cause, and thus did not abuse its discretion in doing so; and (4) did not err in failing to instruct the jury on second-degree PFO as that would have required the jury to disbelieve part of the proof presented by the Commonwealth, which, according to the Supreme Court of Kentucky's precedent established in *Payne v. Commonwealth*, 665 S.W.2d 719 (Ky. 1983), is impermissible.

**F. Randy McCleery v. Commonwealth of Kentucky
2012-SC-000486-MR September 26, 2013**

Opinion of the Court by Justice Noble. All sitting; all concur. Appellant was convicted of first-degree fleeing and evading and other crimes after stealing property from a home and fleeing from police in a vehicle and on foot. Appellant challenged his conviction claiming (1) he was entitled to a directed verdict on the charge of first-degree fleeing and evading because the Commonwealth failed to prove the element of "substantial risk", (2) that he had not been complicit in fleeing from police because he was not in control of the vehicle, and (3) it was error for the trial court to prohibit jurors from taking their notes into deliberations.

The Court found that Appellant's claim that the Commonwealth did not present sufficient evidence of "substantial risk" was unpreserved. The Court noted that although the Appellant's co-defendant's counsel made a motion as to the sufficiency of the evidence, that motion was not enough to preserve the issue for the Appellant because it was not clear from the record that the motion was to apply to both defendants. The Court found no palpable error because it was possible a jury could find the Appellant's actions constituted substantial risk. Further, the Court found there was sufficient evidence to support Appellant's

complicity to flee and evade authorities. The Court noted that although the Appellant was not in control of the vehicle, he did choose to escape in the car and a jury could find he acted as an accomplice under KRS 502.020. The Court found that it was error for the trial court judge to prohibit jurors from taking their notes into deliberations under Criminal Rule 9.72. However, the Court found that the trial court's error did not rise to the level of a reversible structural error or palpable error and affirmed Appellant's conviction.

**G. Derrick K. McAtee v. Commonwealth of Kentucky
2011-SC-000259-MR September 26, 2013**

Opinion of the Court by Justice Scott. Minton, C.J.; Abramson, Noble, and Venters, J.J., concur. Keller, J., concurs in result only without separate opinion. Cunningham, J., concurs in result only by separate opinion. A Jefferson Circuit Court jury found Appellant, Derrick K. McAtee, guilty of murder and tampering with physical evidence. Appellant was sentenced to twenty-five years in prison. He appealed as a matter of right to the Supreme Court of Kentucky, Ky. Const. § 110(2)(b), arguing that: (1) he was entitled to a directed verdict of acquittal on the tampering charge, (2) the trial court erroneously permitted the introduction of out-of-court testimony, (3) the trial court erroneously permitted the jury to review a videotaped witness statement in the deliberation room, (4) the trial court erroneously prohibited him from introducing his entire statement to police, (5) the prosecutor's closing argument was misleading and denied him his right to a fair trial, and (6) the trial court improperly coerced a verdict from a hung jury. The Supreme Court affirmed in part and reversed and vacated in part, holding: (1) the trial court erred by denying Appellant a directed verdict of acquittal on the tampering charge, therefore, the Supreme Court reversed Appellant's conviction for tampering with physical evidence, and vacated his sentence for that conviction; (2) the trial court did not err in the introduction of out-of-court testimony; (3) any errors by the trial court in allowing the jury to review a videotaped witness statement in the deliberation room, outside the presence of Appellant, were harmless; (4) the trial court properly denied Appellant's request to introduce his entire statement, and properly exercised its discretion by permitting defense counsel ample latitude on cross-examination to contextualize the statements elicited by the Commonwealth; (5) the prosecutor's statements during closing argument did not constitute misconduct, and, therefore, Appellant's right to a fair trial was not compromised; and (6) the trial court did not coerce a verdict from the jury.

**H. Scottie Roberts v. Commonwealth of Kentucky
2012-SC-000528-MR September 26, 2013**

Opinion of the Court by Justice Scott. All sitting; all concur. A Leslie Circuit Court jury found Appellant, Scottie Roberts, guilty of Manufacturing Methamphetamine, Possession of a Defaced Firearm, Use of or Possession with Intent to Use Drug Paraphernalia, Second-Degree Possession of a Controlled Substance, and Fourth-Degree Controlled Substance Endangerment to a Child. Appellant was sentenced to a total of twenty-two years' imprisonment and

assessed \$1,500 in fines. He appealed as a matter of right, Ky. Const. § 110(2)(b), to the Supreme Court of Kentucky alleging that the trial court erred by (1) failing to instruct the jury on Facilitation to Manufacturing Methamphetamine, (2) failing to instruct the jury on Unlawful Possession of a Methamphetamine Precursor, and (3) levying fines upon an indigent defendant. We now affirm in part and vacate in part. The Supreme Court affirmed in part and vacated and remanded in part, holding: (1) the trial court did not err by denying Appellant's request for a facilitation instruction because Criminal Facilitation is not a lesser included offense of Manufacturing Methamphetamine; (2) the trial court did not err by failing to instruct the jury on Unlawful Possession of a Methamphetamine Precursor because Appellant did not request said instruction, and was, therefore, not entitled to relief; and (3) the trial court did err by levying fines on an indigent person, therefore, the Supreme Court vacated that part of the trial court's judgment imposing fines for Appellant's misdemeanor convictions and remanded the matter to the trial court for entry of a new judgment.

I. Commonwealth of Kentucky v. Janice Hasch

And

Janice Hasch v. Commonwealth of Kentucky

[2010-SC-000494-DG](#)

September 26, 2013

[2011-SC-000232-DG](#)

September 26, 2013

Opinion of the Court by Justice Venters. All sitting; all concur. Scott, J., also concurs by separate opinion in which Cunningham and Noble, J.J., join. Criminal Law; Questions Presented: 1) In light of the 2006 codification of the common law "No Duty To Retreat" doctrine, was it proper to admit evidence that Defendant in murder case could have retreated from the threat posed by aggressor-victim and thereby avoided the necessity of using deadly force as self-defense; 2) Was evidence sufficient to sustain conviction for reckless homicide, based upon the theory of imperfect self-defense. Held: 1) Evidence of a defendant's awareness of a potential route of escape or retreat is not admissible for the purpose of proving that the defendant lacked a subjective belief in the necessity of using force in self-defense, or that the defendant's subjective belief in the necessity of acting in self-defense was not reasonable. Although in the lesser offense of reckless homicide, evidence of ability to retreat is relevant upon issue of whether Defendant's belief in the necessity of using deadly force was reckless, admitting such evidence would unduly prejudice Defendant on the murder charge, and therefore shall not be admitted; 2) Circumstantial evidence casting doubt about whether husband actually posed a threat of death or serious injury to wife was sufficient to support finding by jury that wife was reckless in failing to recognize the risk that she may be mistaken in her belief that deadly force was necessary to ward off attack from husband, therefore reckless homicide conviction was affirmed. Also held, in future murder trial involving issue of self-defense, the trial court should instruct the jury on the no duty to retreat doctrine if so requested by a party.

J. Commonwealth of Kentucky v. Leah Tramble
2012-SC-000106-DG September 26, 2013

Opinion of the Court by Justice Venters. All sitting. Minton, C.J., Abramson, Cunningham, Keller, Scott and Venters, JJ., concur. Noble, J., dissents. Commonwealth's Appeal.

Appellee was convicted of trafficking in marijuana over five pounds and sentencing her to five years' imprisonment after being caught receiving two packages of marijuana delivered to her ups mailbox. The Court of Appeals reversed. On Appeal the Commonwealth argued that the Court of Appeals erred in concluding that the trial court erroneously admitted evidence of Appellee's and her accomplice's prior bad conduct in violation of KRE 404(b); and that the prosecutor improperly misstated the facts during closing arguments. Upon review, the Court conclude that the admission of the prior bad act evidence relating to Appellant's having previously received mailings of drugs was properly ruled as admissible by the trial court under KRE 404(b) to show Appellant's knowledge, and that evidence of a prior investigation and arrest of Appellant's accomplice was likewise admissible under KRE 404(b) to show the Appellant's intent and the overall planning for the crime. The Court further held that a factual misstatement made by the prosecutor during his closing arguments, and the trial court's failure to give a proper admonition to correct the error, and instead permitting the prosecutor to himself give an ineffectual correction, while erroneous, was harmless. The Court further held that a discovery violation occurred as result of a late disclosure of an incriminating statement made by Appellee, but that the late disclosure was harmless.

K. Joseph William Parker v. Commonwealth of Kentucky
2012-SC-000164-MR September 26, 2013

Opinion of the Court by Justice Keller. All sitting; all concur with Justices Cunningham and Scott concurring in result only by separate opinion. Joseph William Parker was convicted of robbery related to a purse snatching in a Target parking lot. Through surveillance videos from the store and the victim's statements, the police were able to identify and capture Justin Wayne Masengale, who was with Parker when the robbery took place. Shortly after Masengale was stopped by police, the victim made an in person identification. The police then arrested Masengale, and he identified Parker. Prior to trial, Masengale and Parker moved to suppress the victim's identification of Masengale arguing that the circumstances surrounding the identification were so suggestive as to make it unreliable. The trial court denied the motion.

Parker appealed the denial of the suppression motion and the Court of Appeals reversed. In doing so, the Court of Appeals noted that the victim had not testified at the suppression hearing, and, without her testimony, there was not sufficient evidence to determine if her identification of Masengale was reliable. The Commonwealth appealed arguing that Parker did not have standing to challenge the victim's identification of Masengale and that the identification was reliable. The Supreme Court reversed the Court of Appeals. In doing so, the Court analyzed the *Neil v. Biggers*, 409 U.S. 188 (1972) factors and held that there was

sufficient evidence, by way of testimony from other witnesses, to support the trial court's determination that the victim's identification of Masengale was reliable. The majority of the Court did not address whether Parker had standing; however, Justices Cunningham and Scott stated that the Court should have addressed that issue. Furthermore, they stated that they would have found that Parker did not have standing.

**L. Ricky Allen v. Commonwealth of Kentucky
2011-SC-000009-MR September 26, 2013**

Opinion of the Court by Chief Justice Minton. All sitting. Abramson, Keller, Noble, and Venters, JJ., concur. Scott, J., dissents by separate opinion in which Cunningham, J., joins. Ricky Allen was charged with four felonies and being a second-degree persistent felony offender. The trial court granted Allen's request to represent himself and, over Allen's objection, appointed a DPA attorney as standby counsel. Because Allen was deemed to be a threat to disrupt court proceedings and a flight risk, the trial judge barred him from all bench conferences, allowing only standby counsel to participate. Allen was convicted and sentenced to twenty-years' imprisonment. On appeal, he argued that the trial court erroneously denied his motion for a directed verdict and violated his Sixth Amendment rights by excluding him from bench conferences, and that the Commonwealth introduced inadmissible evidence for purposes of finding him a PFO 2.

The Court held that Allen was not entitled to a directed verdict of acquittal and that inadmissible evidence was not introduced during Allen's sentencing phase. But Allen's Sixth Amendment Rights were violated as a result of being excluded from participating in bench conferences. Although the appointment of standby counsel over Allen's objection was not a per se violation of his rights, the Court held that the participation of standby counsel in bench conferences over Allen's objection violated his rights. The Court noted that the trial court did not abuse its discretion in finding Allen a disruption and a flight risk. But once the trial court decided to appoint standby counsel, it was not free to exclude Allen from bench conferences because they are a critical stage of the proceedings. Rather, after determining that Allen should not approach the bench for conferences, the trial court should have appointed co-counsel to represent Allen at these critical stages. Because this error was of constitutional magnitude, the Court held that it required reversal.

III. TRUSTS:

**A. Katherine Combs Jarvis and Hugh J. Caperton v. National City and PNC Bank National Association
2011-SC-000135-DG September 26, 2013**

Opinion of the Court by Chief Justice Minton. All sitting; all concur. The Appellants were beneficiaries of testamentary trusts managed by the Appellees. Until 2008, KRS 386.180 placed a statutory cap on the amount of fees that a Trustee could seek for the management of testamentary trusts. However, in 2008

the General Assembly repealed KRS 386.180. As a result, the Appellees brought a declaratory judgment action seeking a judicial determination of whether the repeal of KRS 386.180 impacted trusts that were in existence for many years before the statute. Under KRS 386.180, Trustees were required to elect one of two fee options. The Appellants argued that, despite the repeal, the Trustees were still governed by the fee option they elected. The Court held that the repeal of KRS 386.180 was complete and unlimited and fully applied to trusts created before 2008. Accordingly, the Court reasoned that with no statute now governing compensation, and no provision in the trust themselves regarding compensation, the Trustees were entitled to reasonable compensation for their services going forward. The Court also held that this was not a retroactive application of the repeal because no vested rights were stripped away as the Appellants maintain the right to challenge the compensation of the Trustees going forward. And the Court held that the trust remaindermen were not necessary parties because the Appellants, as beneficiaries, adequately represented their interests through the doctrine of virtual representation.

IV. ATTORNEY DISCIPLINE:

**A. Kentucky Bar Association v. Philip M. Kleinsmith
2013-SC-000262-KB September 26, 2013**

Opinion of the Court. All sitting; all concur. The Arizona Supreme Court publicly reprimanded Kleinsmith for his conduct in violation of the Arizona Rules of Professional Conduct. The Court further ordered that Kleinsmith be placed on probation for one year, subject to early termination upon completion of “Ethics School.” Thereafter, the Kentucky Bar Association moved the Kentucky Supreme Court to issue an order requiring Kleinsmith to show cause why reciprocal discipline should not be imposed under SCR 3.435. Kleinsmith failed to file a response. Accordingly, the Court granted the KBA’s petition for reciprocal discipline, publicly reprimanding Kleinsmith for his conduct and placing him on probation for one year, subject to early termination upon completion of “Ethics School.”

**B. Kentucky Bar Association v. William A. Nisbet, IV
2013-SC-000421-KB September 26, 2013**

Opinion of the Court. All sitting; all concur. Nisbet failed to communicate adequately with his clients and to file the matter for which he was retained. The Inquiry Commission issued a one-count Charge against him, alleging a violation of SCR 3.130-1.16(d). Nisbet failed to participate in the disciplinary proceedings and service to his bar address was unsuccessful, resulting in the KBA Executive Director accepting service on his behalf under SCR 3.175(2). The Board of Governors recommended that the Supreme Court suspend Nisbet for thirty days and probate the suspension on the condition that Nisbet provide restitution in the amount of \$1,000 to his clients within sixty days. The Court agreed with the Board’s recommendation and sanctioned Nisbet accordingly.

**C. Kentucky Bar Association v. Louis Edward Reinhart, III
2013-SC-000422-KB September 26, 2013**

Opinion of the Court. All sitting; all concur. The Board of Governors unanimously found Reinhart guilty of violating SCR 3.130-1.3; SCR 3.130-1.4(b); SCR 3.130-1.5(b) & (c); SCR 3.130-8.4(c); SCR 3.130-1.15(a); SCR 3.130-1.15(b); and SCR 3.175(1)(a), and recommended permanent disbarment from the practice of law. Upon consideration of the severity of Reinhart's violations, his prior disciplinary record, his failure to respond to any prior correspondence relating to the disciplinary charges, and sanctions imposed for similar infractions, the Court agreed with the Board's recommendation and permanently disbarred Reinhart from the practice of law.

**D. Kentucky Bar Association v. Steven F. Claypoole
2013-SC-000469-KB September 26, 2013**

Opinion of the Court. All sitting; all concur. After a two-day hearing, a trial commissioner recommended that Claypoole receive a six-month suspension from the practice of law, conditionally probated for two years, for his alleged violations of former SCR 3.130-1.2(a); former SCR 3.130-1.4(b); former SCR 3.130-1.7(b); and former SCR 3.130-8.3(c). The recommended sanction was based on Claypoole's alleged misconduct, along with his prior disciplinary history, which included a 30-day suspension and a 181-day suspension, both of which were imposed when Claypoole failed to comply with the conditions of the relevant disciplinary orders. Neither Claypoole nor the KBA filed a notice to the Court to review the trial commissioner's decision. Accordingly, the Court adopted the decision of the trial commissioner and suspended Claypoole from the practice of law for six months.

**E. Richard D. Null v. Kentucky Bar Association
2013-SC-000507-KB September 26, 2013**

Opinion of the Court. All sitting; all concur. Null asked the Supreme Court to enter an order resolving his two pending disciplinary cases by imposing a 61-day suspension from the practice of law, probated for a period of two years with certain conditions, for his alleged violation of SCR 3.130-1.3; SCR 3.130-1.16(d); and SCR 3.130-8.4(c). The motion was the result of a negotiated sanction with Bar Counsel. After reviewing the allegations and Null's disciplinary record, the Court concluded that the proposed discipline was appropriate and sanctioned Null accordingly.

**F. Paul S. Gordinier v. Kentucky Bar Association
2013-SC-000508-KB September 26, 2013**

Opinion of the Court. All sitting; all concur. Gordinier moved the Court to impose a suspension from the practice of law for a period of four years, beginning June 5, 2012, the date of his automatic suspension under SCR 3.166(1). In 2011,

Gordinier pled guilty on two separate occasions to driving under the influence, a misdemeanor, and on one occasion to two counts of assault in the second degree, a Class C felony. On February 4, 2013, the Inquiry Commission issued a one-count Charge against Gordinier for violating SCR 3.130-8.4(b), which provides that it is professional misconduct for a lawyer to “commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects.” Gordinier admitted that his actions violated SCR 3.130-8.4(b) and entered into a negotiated sanction with the KBA. After reviewing sanctions imposed in similar cases and several mitigating factors, including Gordinier’s 5-year supervision agreement with the Kentucky Lawyer Assistance Program, his completion of an intensive outpatient chemical dependency program, and his participation in Alcoholics Anonymous, the Court determined that the negotiated sanction was appropriate and suspended Gordinier from the practice of law for a period of four years, commencing on June 5, 2012.

G. William R. Wilson v. Kentucky Bar Association
[2013-SC-000546-SC](#) September 26, 2013

Opinion of the Court. All sitting; all concur. Wilson moved the Court for an order allowing him to resign under terms of permanent disbarment under SCR 3.480(3). Based on Wilson’s numerous ethical violations and the KBA’s agreement with his request, the Court allowed Wilson to resign and ordered him permanently disbarred from the practice of law in Kentucky.

H. Charles J. McEnroe v. Kentucky Bar Association
[2013-SC-000547-KB](#) September 26, 2013

Opinion of the Court. Minton, C.J., Abramson, Cunningham, Keller, Noble and Scott, JJ., concur. Venters, J., not sitting. McEnroe moved the Court to impose a five-year suspension from the practice of law based upon his federal conviction for tax evasion. Upon his guilty plea to willfully attempting to evade and defeat payment of income and employment taxes owed to the United States from 1993 – 2008, McEnroe and the KBA agreed to a negotiated sanction that would impose a five-year suspension from the practice of law, subject to the requirement that McEnroe also undergo an evaluation through the Kentucky Lawyers Assistance Program and successfully complete any and all resulting recommendations. The Court agreed that the negotiated sanction was appropriate and suspended McEnroe accordingly.

I. Andrew L. Holton v. Kentucky Bar Association
[2013-SC-000551-KB](#) September 26, 2013

Opinion of the Court. All sitting; all concur. The Inquiry Commission issued a Charge against Holton, which contained seven counts alleging violations of SCR 3.130-13 (failure to act with reasonable diligence and promptness); SCR 3.130-1.4(a)(3) (failure to keep client reasonably informed); SCR 3.30-1.4(a)(4) (failure to comply with client’s reasonable requests for information); SCR 3.130-1.8(a) (entering into a business transaction with a client); SCR 3.130-1.8(e) (providing

financial assistance to a client in connection with pending litigation); SCR 3.130-1.15(b) (failure to promptly notify client of receipt of funds or deliver funds to a client); and SCR 3.130-8.1(b) (failure to respond to a lawful demand for information from disciplinary authority). Holton asked the Court to dismiss five of the seven counts that were based on his alleged failure to respond to the bar complaint. Holton's counsel provided an affidavit stating that he had mailed Holton's response. And the KBA subsequently received Holton's response and verified answer and found they were sufficient to justify dismissal of the charges. Upon reviewing Holton's response and answer, and in light of the KBA having no objection, the counts were dismissed. With respect to the remaining counts, Holton admitted that his actions violated SCR 3.130-1.8(a) and SCR 3.130-1.8(e) and agreed to a negotiated sanction in order to resolve the matter. The Court agreed with the recommended discipline and suspended Holton from the practice of law for sixty-one days, probated for two years on the condition that he receive no additional disciplinary charges during that period. The Court further ordered Holton to receive and participate in an evaluation performed by the Kentucky Lawyers Assistance Program.