

**KENTUCKY SUPREME COURT
SEPTEMBER 2020**

I ADMINISTRATIVE LAW:

**A. The Family Trust Foundation of Kentucky, Inc., D/B/A/ The Family Foundation
v. The Kentucky Horse Racing Commission, et al.
[2018-SC-0630-TG](#) September 24, 2020**

Opinion of the Court by Justice VanMeter. All sitting. Minton, C.J.; Hughes, Lambert, Nickell, and Wright, JJ., concur. Keller, J., concurs by separate opinion. The Family Trust Foundation, Inc. (“Foundation”) appealed from a Franklin Circuit Court Opinion and Order finding that the Encore system of wagering, also known as the Exacta system, constituted “pari-mutuel wagering” under a four-part definition developed by the trial court based on 810 KAR 1:001(48). The Franklin Circuit Court found that the Encore system constituted pari-mutuel wagering because: (1) the system or method of wagering was approved by the Commission; (2) patrons wagered among themselves and not against the association; (3) amounts wagered are placed in one or more designated wagering pools; and (4) the net pool is returned to the winning patrons. After oral argument and review, the Supreme Court of Kentucky reversed the Franklin Circuit Court’s Opinion and Order. The Supreme Court held that Franklin Circuit Court erred because the Encore system allowed patrons to bet on multiple, randomly selected horse races, rather than allowing simultaneously wagering on a discrete, finite event, and thereby, did not allow patrons to wager against themselves. The Supreme Court also found that because the “initial seed pool” is furnished by racing associations, the associations are impermissibly involved in creating the seed pool. The Supreme Court remanded the case to the Franklin Circuit Court for entry of judgment consistent with its opinion.

II. CERTIFICATION OF LAW:

**A. Commonwealth of Kentucky v. Kevin Charles Curry
[2019-SC-0696-CL](#) September 24, 2020**

Opinion of the Court by Justice Lambert. All sitting; all concur. The Commonwealth of Kentucky sought certification of law after the Jefferson District Court’s ruled that provisions of Kentucky’s speed limit law, KRS 189.390 (3)-(5), violated the void-for-vagueness doctrine. The Court held that the statutory provisions, interpreted in the context of the proper statutory and regulatory scheme, provided citizens fair notice of the applicable speed limits on Kentucky highways.

**B. Clara Ruplinger v. Louisville/Jefferson County Metro Government, et al.
[2020-SC-0140-CL](#) September 24, 2020**

Opinion of the Court by Justice VanMeter. All sitting; all concur. The United States District Court, Western District of Kentucky, requested that the Supreme Court of Kentucky certify the law on two issues: (1) whether the General Assembly waived

sovereign immunity from suit in the Kentucky Religious Freedom Restoration Act (“KRFRA”) codified as KRS 446.350; and (2) whether, if the KRFRA provides a waiver of sovereign immunity, does KRS 446.070 nevertheless entitle government defendants to immunity from suit. After review, the Supreme Court held that KRFRA contains no express waiver of sovereign immunity, and further, KRS 446.070 does not constitute a broad waiver of sovereign immunity. Thus, the Supreme Court certified that sovereign immunity as to monetary damages is waived neither as to the KRFRA, nor in conjunction with KRS 446.070.

III. CRIMINAL LAW:

A. Imojean Daniel v. Commonwealth of Kentucky

[2018-SC-0560-MR](#)

September 24, 2020

Opinion of the Court by Justice Lambert. All sitting. Minton, C.J.; Hughes, Nickell, VanMeter, and Wright, JJ., concur. Keller, J., concurs in part and dissents in part by separate opinion in which Nickell, J., joins. Daniel was convicted of murder following the death of her roommate. Daniel asserted that the decedent died as a result of suicide. The Court held: (1) the trial court erred by failing to grant Daniel KRS Chapter 31 funds for an expert after Daniel made the requisite showing of entitlement to expert funds under Benjamin v. Commonwealth, 266 S.W.3d 775 (Ky. 2008). The Court reversed Daniel’s conviction based on this error and remanded for a new trial; (2) the trial court abused its discretion by admitting evidence that Daniel’s friend spent a \$2 bill that was sentimentally significant to the decedent; (3) the trial court did not err by allowing the Medical Examiner to use a Styrofoam head for demonstrative purposes; (4) there were no errors in relation to jury instructions on burden of proof or extreme emotional disturbance; and, (5) the trial court did not err by failing to suppress a statement made by Daniel to a deputy jailer after her arrest.

B. Shayna Hubers v. Commonwealth of Kentucky

[2018-SC-0667-MR](#)

September 24, 2020

Opinion of the Court by Justice Hughes. All sitting; all concur. On April 15, 2015, a Campbell County jury convicted Shayna Hubers of the murder of her boyfriend, Ryan Poston. After discovering that a convicted felon served on the jury, Hubers moved for a new trial and the Campbell Circuit Court granted her motion. Her sixteen-day retrial in August 2018 once again ended with Hubers’s conviction. The trial court sentenced her to life imprisonment in accordance with the jury’s recommendation. Hubers appealed as a matter of right, raising issues concerning jury selection, her motion to change venue due to pretrial publicity, and the admissibility of various items of evidence.

The Supreme Court held that a juror’s knowledge that a prior trial of the same case ended with a conviction is not automatically disqualifying. Further, despite heightened media coverage of the case, the trial court acted properly in seating a qualified jury and by denying Hubers’s change of venue motion but allowing the parties to mail a juror questionnaire prior to trial and conducting individual voir dire

of each potential juror. Other issues included the admissibility of various items of evidence, including evidence of the victim’s prior drug use, and admission of testimony regarding Hubers’s lack of remorse. The Court also addressed the unavailability of a witness due to mental infirmity under Kentucky Rule of Evidence (KRE) 804(a)(4) and concluded that consideration of sworn testimony from two reliable witnesses was sufficient for the trial court to determine that a witness was unavailable. Finding no error, the Court affirmed the judgment and sentence of the Campbell Circuit Court.

C. Maurice Deal v. Commonwealth of Kentucky

[2019-SC-0175-DG](#)

September 24, 2020

Opinion of the Court by Chief Justice Minton. All sitting; all concur. The Court found reversible error when the trial court allowed the Commonwealth to show the jury a thirty-five-minute video of a police interview of the defendant—recorded in jail two months post arrest on the underlying murder charge—in which the defendant is shown handcuffed and wearing jail garb. The Court reviewed U.S. Supreme Court precedent and established for Kentucky jurisprudence a two-part test for trial courts confronted with a criminal defendant’s due-process challenge to a specific trial event or trial practice. The trial court must: (1) determine whether the proposed event or trial practice is inherently prejudicial to the extent that it threatens to undermine the fairness of the jury’s fact-finding process and, if so, (2) determine whether the proponent of the event or practice can show beyond a reasonable doubt that the event or practice is justified because it serves some identifiable and essential state interest. Here the Commonwealth offered no explanation as to why the playing of the video of the interview was necessary as opposed to using the available audio version of the interview.

D. Carlos Deandre Jenkins v. Commonwealth of Kentucky

[2019-SC-0252-MR](#)

September 24, 2020

Opinion of the Court by Justice Wright. All sitting; all concur. A Fayette Circuit Court jury convicted Appellant, Carlos Deandre Jenkins, of first-degree assault, eight counts of first-degree wanton endangerment, tampering with physical evidence, and of being a persistent felony offender (PFO). Jenkins was sentenced to life imprisonment, and now appealed to the Supreme Court of Kentucky as a matter of right. Ky. Const. §110(2)(b). On appeal, Jenkins alleged the trial court erred by: (1) denying a missing evidence instruction, (2) admitting cell phone location evidence, and (3) failing to grant a directed verdict on the PFO charge. The Supreme Court affirmed Jenkins’s felony convictions, holding the trial court did not err in denying a missing evidence instruction or by admitting cell phone location evidence. However, the Court held the trial court should have granted Jenkins’s motion for directed verdict motion on the PFO charge, as the Commonwealth failed to prove a sentence of more than one year had been imposed in Jenkins’s prior out-of-state conviction pursuant to KRS 532.080(2). In reaching its holding, the Court overruled *James v. Commonwealth*, 647 S.W.2d 794 (Ky. 1983), reversed on other grounds by *James v.*

Kentucky, 104 S. Ct. 1830 (1984). The Court emphasized that, “while the statute does not require actual imprisonment, it does require proof of the imposition of a sentence of one year or more, even if the sentence was then probated.”

IV. **FAMILY LAW:**

A. **Justin Pinto v. Van Robison, et al.**

2019-SC-0615-DGE

September 24, 2020

Opinion of the Court by Justice Keller. Minton, C.J.; Hughes, Nickell, VanMeter, and Wright, JJ., concur. Lambert, J., not sitting. Lisa and Justin Pinto are the parents of two children. After their divorce, Lisa was granted full custody of the children, and Justin was granted visitation. Approximately ten years later, Lisa passed away, and Justin was eventually granted full and sole custody of the children. Lisa’s parents, the Robisons, moved for grandparent visitation under KRS 405.021(1). The trial court denied the Robisons’ motion, finding KRS 405.021(1)(b) and (c) to be unconstitutional under *Troxel v. Granville*, 530 U.S. 57 (2000), and *Walker v. Blair*, 382 S.W.3d 862 (Ky. 2012). The Court of Appeals reversed, concluding that KRS 405.021(1)(b) and (c) was narrowly tailored to a very specific set of circumstances and served to protect the relationships a child had with his or her grandparents before the death of the child’s parent. The Supreme Court granted discretionary review.

The Supreme Court first reviewed *Troxel*, 530 U.S. 57, and *Walker*, 382 S.W.3d 862. It then turned to KRS 405.021(1)(b) and (c), and held that, on its face, the statute runs afoul of a parent’s fundamental constitutional right to the care and custody of his or her child. The Court noted that the preponderance of the evidence standard utilized in the statute is lower than the clear and convincing evidence standard that is required under *Walker* for a grandparent to rebut the presumption that a parent is acting in the child’s best interest by limiting or denying visitation. Because proving such a relationship by a mere preponderance standard is the only element required by the statute to give the grandparents a rebuttable presumption in their favor, which in turn effectively rebuts the presumption in favor of the parent, the statute fails to accord the parent’s determination regarding his or her child the “special weight” required by *Troxel*. Accordingly, the Court held that KRS 405.021(1)(b) and (c) is violative of the United States Constitution’s Due Process Clause on its face and reversed the Court of Appeals.

V. **GOVERNMENT CONTRACTS:**

A. Dolt, Thompson, Shepherd & Conway, P.S.C. F/K/A Dolt, Thompson, Shepherd & Kinney, P.S.C. v. Commonwealth of Kentucky, ex rel. William M. Landrum, III, Secretary of the Finance and Administration Cabinet, et al.

AND

Commonwealth of Kentucky, ex rel. Daniel Cameron, Attorney General, et al. v. Commonwealth of Kentucky, Finance and Administration Cabinet, ex rel. William M. Landrum III, Secretary of the Finance and Administration Cabinet, et al.

[2019-SC-0197](#)

September 24, 2020

[2019-SC-0199](#)

September 24, 2020

Opinion of the Court by Justice Wright. Minton, C.J.; Hughes, Lambert, Keller, VanMeter, and Wright, JJ., sitting. Minton, C.J.; Hughes, Keller, and Lambert, JJ., concur. VanMeter, J., concurs in part and dissents in part by separate opinion. Nickell, J., not sitting. In 2007, then-Attorney General Greg Stumbo filed suit against Purdue Pharma regarding the OxyContin epidemic. Stumbo’s successor, Jack Conway, pursued the action after he took office. The trial court entered judgment on liability in favor of the Commonwealth and Conway engaged in a competitive bidding process to hire outside counsel to assist in the Commonwealth’s litigation. Dolt, Thompson, Shepherd & Kinney won the bid. Under the agreement, Dolt Thompson would be paid on a contingency basis “[i]f the Commonwealth receives . . . a settlement or award.” Conway settled with Purdue Pharma, with half the settlement to be paid in a lump sum and the other half to be paid in installments. Purdue Pharma made the initial lump-sum payment to Dolt Thompson and later then-Attorney General Andy Beshear authorized Dolt Thompson to pay itself the agreed-upon attorneys’ fees and expenses from the settlement funds. At some point the Attorney General’s office realized the contract with Dolt Thompson had expired even though the firm had continued to provide services and incur costs. The Finance Cabinet instructed the Attorney General’s office to request a new contract, which it then approved. Then, the General Assembly specified in the budget bill based in March 2016 that the Attorney General pay the attorney’s fees and expenses in the Purdue Pharma case. A year and a half after the budget bill was passed, the Finance Cabinet sent a letter to Attorney General Beshear asserting that he “may have unlawfully authorized or facilitated payment to” Dolt Thompson. Beshear filed a complaint in Franklin Circuit Court seeking a declaration that the 2016 contract was enforceable and the payment to Dolt Thompson was proper. The Cabinet filed a motion the same day against Dolt Thompson and the trial court consolidated the two actions. When the trial court granted Beshear’s and Dolt Thompson’s motions for summary judgment, the Cabinet appealed to the Court of Appeals, which reversed and remanded to the trial court. The Office of the Attorney General and Dolt Thompson filed a motion for discretionary review with the Supreme Court of Kentucky, which was granted. The Supreme Court reversed the Court of Appeals and reinstated the trial court’s order granting summary judgment. The Supreme Court held that the Model Procurement Code applies to contracts entered into by the

Attorney General’s office and that equitable estoppel does not apply in state government procurement; however, the trial court’s grant of summary judgment was proper in light of the Legislature’s direction for the Attorney General to pay attorney’s fees in the 2016 budget bill.

VI. INSURANCE:

A. Diana Metzger, et al. v. Auto-Owners Insurance Company, et al.
2018-SC-0070-DG September 24, 2020

Opinion of the Court by Justice Wright. All sitting; all concur. Appellants, Diana Metzger and her husband Gary, are members of a limited liability company (LLC). The LLC bought a commercial automobile insurance policy from Auto-Owners Insurance. The LLC’s policy from Auto-Owners included underinsured motorist (UIM) coverage. Diana Metzger drove her personal vehicle to a store to purchase inventory to resale at the LLC and was struck by an automobile in the parking lot while walking back to her personal vehicle. When the other driver’s coverage added to the settlement Metzger reached with her personal UIM coverage did not fully compensate Metzger for her injuries or Gary for his loss of consortium claim, they attempted to collect UIM benefits from the LLC’s policy with Auto-Owners. Auto Owners denied the claim, as Metzger was not occupying an automobile covered by the policy pursuant to the policy’s language. Metzger filed a declaratory action with the Jefferson Circuit Court, asking that court to declare Auto-Owners was obligated to provide UIM benefits under the LLC’s policy and Gary filed a derivative claim for loss of consortium. Auto-Owners filed a motion for summary judgment, which the trial court granted. Metzger appealed to the Court of Appeals which unanimously affirmed the trial court. Metzger then sought discretionary review from the Supreme Court of Kentucky, which granted review and affirmed, as “[t]he policy’s terms unambiguously distinguished between policies in which the named insured was an individual and those in which the named insured was not.” Because the policy terms were unambiguous, the Court would “not disturb the parties’ contractual rights.”

B. Darryl Isaacs, et al. v. Sentinel Insurance Company Limited D/B/A The Hartford
2018-SC-0078-DG September 24, 2020

Opinion of the Court by Justice Wright. Minton, C.J.; Hughes, Keller, Nickell, and VanMeter, JJ., concur. Lambert, J., not sitting. Appellant, Darryl Isaacs, was struck by an automobile while bicycling on a road in Louisville. Isaacs settled with both the driver who struck him and with his personal underinsured motorist (UIM) coverage. Isaacs’s law firm, a professional services company (PSC), had a commercial automobile policy with Sentinel. That policy included UIM coverage. When Isaacs was not fully compensated for his injuries and his wife, Theresa, was not fully compensated for her loss of consortium claim, they filed a UIM claim with Sentinel. Sentinel denied the claim and the Isaacses filed a motion for declaratory judgment in Jefferson Circuit Court, asking that court to declare that Sentinel was obligated to provide UIM benefits under the terms of the commercial policy. The trial court

granted summary judgment in favor of Sentinal, finding that Isaacs did not qualify as an insured under the terms of the policy under the facts of the case. The Isaacses appealed to the Court of Appeals, which unanimously affirmed the trial court. The Isaacses then sought discretionary review from the Supreme Court of Kentucky, which granted review and affirmed. The Supreme Court first held a PSC is not synonymous with its sole shareholder. The Court also held that the policy language at issue was unambiguous and it would “not disturb the parties’ contractual rights in the absence of an ambiguity.”

VII. RETIREMENT:

A. Edward Elder v. Kentucky Retirement Systems 2017-SC-0258-DG September 24, 2020

Opinion of the Court by Justice Nickell. All sitting; all concur. Edward Elder was hired as a school custodian in 1995. He was a model employee until 2007 when debilitating symptoms associated with Hereditary Hemorrhagic Telangiectasia (HHT) began to ravage his body. Unbeknownst to Elder, he had inherited HHT from his mother at conception, but he remained asymptomatic until 2007—a dozen years after joining the County Employees Retirement System (CERS)—and was not formally diagnosed with HHT until 2008. Work became increasingly difficult due to ongoing medical treatment, ultimately prompting Elder to seek early retirement. Having just fifteen years’ service credit, he had to satisfy KRS 61.600(3)(d) and demonstrate he was asymptomatic and could not have reasonably known he had HHT when hired and joined CERS.

In preparing his application for disability retirement benefits in 2011, without benefit of counsel, he was told no pre-employment medical records were available. He supported his claim with more than 2,000 pages of medical records documenting a steep rise in medical issues beginning in 2007, but his earliest medical records were from 2005, after a decade of work.

Two divided medical review panels of three physicians each recommended denying Elder’s claim because HHT is genetic and from a medical standpoint, “pre-existing.” Following a hearing, at which Elder was the sole witness and the ALJ deemed his testimony credible, the ALJ recommended granting benefits based on Kentucky Retirement Systems v. Brown, 336 S.W.3d 8 (Ky. 2011). Rather than adopting the ALJ’s recommendation, Kentucky Retirement Systems (Systems)—knowing Kentucky Retirement Systems v. West, 413 S.W.3d 578 (Ky. 2013), was pending in this Court on a petition for rehearing—remanded the matter to the ALJ for reconsideration under West when it became final. Systems read West to require every claimant with less than sixteen years’ service credit to submit “medical records dated prior to and immediately subsequent to the disability retirement claimant’s membership and/or expert testimony explaining the onset of a condition[.]”

Having acquired counsel, Elder opposed remand to no avail. After reconsideration on remand—without receipt of new proof—the ALJ recommended denial of Elder’s

claim because he had submitted no pre-employment medical records—a disqualifying factor under West according to Systems. In its final order, Systems adopted the ALJ’s revised factual findings and recommendation to deny benefits. It also struck newly-acquired medical records—including one dated before Elder’s hire—and denied his request for rehearing. The Franklin Circuit Court and Kentucky Court of Appeals affirmed.

VIII. SOVEREIGN IMMUNITY:

**A. Louisville & Jefferson County Metropolitan Sewer District v. Mark D. Hill
2018-SC-0491-DG September 24, 2020**

Opinion of the Court by Justice VanMeter. Minton, C.J.; Hughes, Keller, Nickell, and Wright, JJ., concur. Lambert, J., not sitting. An African American former administration services manager for Louisville & Jefferson County Metropolitan Sewer District (“MSD”) brought action against MSD alleging a violation of the Whistleblower Act and racial discrimination in violation of Kentucky’s Civil Rights Act (“KCRA”). The Jefferson Circuit Court granted partial summary judgment in favor of MSD and Hill appealed. The Court of Appeals affirmed in part and reversed in part. Both parties moved for discretionary review, which was granted.

The Supreme Court of Kentucky affirmed the Court of Appeals as to the dismissal of Hill's KCRA claims but reversed the Court of Appeals’ determination that MSD is subject to the Whistleblower Act. Specifically, the Court held that MSD is not political subdivision of Commonwealth and, thus, it did not qualify as an “employer” for purposes of the Whistleblower Act. The Court further held that Hill failed to show that he was engaged in a protected activity, as required to make a prima facie case of retaliation under the KCRA. The Court remanded the case, directing the trial court to enter final judgment in favor of MSD on all of Hill's claims.

IX. WORKERS COMPENSATION

**A. Calloway County Sheriff’s Department v. Karen Woodall, Spouse of Steven Spillman, Deceased, et al.
AND
Karen Woodall, Spouse of Steven R. Spillman, Deceased, et al. v. Calloway County Sheriff’s Department, et al.
2019-SC-0419-WC September 24, 2020**

Opinion of the Court by Justice VanMeter. Minton, C.J.; Hughes, Lambert, and Nickell, JJ., concur. Keller, J., concurs in part and concurs in result only by separate opinion in which Wright, J., joins. Steven Spillman was injured during his employment with the Calloway County Sheriff’s Department (the “Department”). Thereafter, Spillman was awarded permanent partial disability benefits (“PPD”). In January 2017, more than four years after the accident that caused his injuries,

Spillman died following a surgery necessitated by that injury. Karen Woodall, Spillman's widow, and his daughter, Jennifer Nelson, were appointed co-administrators of his estate (the "Estate"). Woodall, as surviving spouse, filed a claim for income benefits under KRS 342.750(1)(a). The Estate sought a lump-sum benefit under KRS 342.750(6). The ALJ denied all benefits and dismissed all claims finding that the claims were time barred. The Workers' Compensation Board (the "Board") found Woodall was eligible for surviving spouse benefits but agreed that the Estate was not entitled to a lump-sum death benefit. The Court of Appeals affirmed the decision of the Board. The parties appealed to the Supreme Court of Kentucky.

On review, the Supreme Court affirmed the decision of the Court of Appeals and clarified that the four-year limitation in KRS 342.750(6) does not apply to income benefit claims by surviving spouses under KRS 342.750(1)(a). Moreover, the Supreme Court held a claim for income benefits by an injured worker's surviving spouse has no temporal limitation and that such a claim can be made regardless of whether the total amount of an injured worker's PPD benefits have been paid out. The Court also held that the 4-year limitation for a lump sum benefits award in KRS 342.750(6) did not violate equal rights protections under the state or federal constitutions. The Supreme Court also held the KRS 342.750(6) did not constitute special legislation under Sections 59 and 60 of the Kentucky Constitution and clarified that the appropriate test to determine whether a statute qualifies as special legislation is whether the statute applies to a particular individual, object, or locale.

B. Porter Slaughter v. Tube Turns, et al.

[2020-SC-0013-WC](#)

September 24, 2020

Opinion of the Court by Justice Nickell. All sitting; all concur. Porter Slaughter sustained a work-related injury to his right shoulder in 1996 and a second work-related injury to his left shoulder, chest, and neck in 1997. The two claims were consolidated, and a settlement agreement was approved in November 1997. Income benefits were paid for the right shoulder injury but not the left shoulder injury, although Slaughter remained eligible for medical expenses for that injury.

Motions to reopen the left shoulder claim were denied in 1999 and 2001 as untimely under the then-current versions of KRS 342.125(3). Following a left shoulder surgery, Slaughter was granted leave to reopen his claim in November 2016 and was awarded medical expenses and TTD benefits in early 2017.

On July 10, 2018, Slaughter moved once again to reopen the left shoulder claim asserting he was entitled to income benefits based on a recent surgery and increased impairment. Tube Turns objected, asserting recent amendments to KRS 342.125(3) prohibited reopening a claim more than four years after entry of an original award or settlement. Slaughter asserted the 2017 award extended the limitations period citing *Hall v. Hospitality Resources, Inc.*, 276 S.W.3d 775 (Ky. 2008).

The CALJ agreed with Tube Turns and denied the motion. The Board affirmed and on appeal, the Court of Appeals concluded *Hall* had been superseded by the 2018

amendments to KRS 342.125(3) which restricted motions to reopen to a four-year period following an original award. The Court of Appeals also concluded the legislature had explicitly declared the amendments were to apply retroactively.

On appeal, Slaughter’s attempt to revive a previously abandoned constitutional challenge to the statutory amendment was rejected. On the merits, the Supreme Court held the 2018 amendments to KRS 342.125(3) removed any doubt as to the legislature’s intent following the decision in Hall and explicitly specified orders granting or denying benefits entered after the original award or settlement are not to be considered “original orders” for purposes of extending the statutory deadline for filing motions to reopen. Further, in enacting KRS 342.25(8), the legislature expressly declared the revised time limitations were to be retroactively applied irrespective of the date of injury or award. Accordingly, the Court held the CALJ correctly denied the 2018 motion to reopen as untimely.

X. ZONING APPEALS:

**A. Kenton County Board of Adjustment, et al. v. Ian Meitzen, et al.
2018-SC-0677-DG **September 24, 2020****

Opinion of the Court by Justice Hughes. Minton, C.J.; Nickell, and VanMeter, JJ., concur. Wright, J., dissents by separate opinion in which Keller, J., joins. Lambert, J., not sitting. After the Kenton County Board of Adjustment unanimously granted approval of Jessica Swope and Aimee Glover’s conditional application to allow the operation of a nursery school in a residential zone, adjoining property owners Ian Meitzen and Donald Nageleisen initiated an administrative appeal pursuant to Kentucky Revised Statute (KRS) 100.347(1). The circuit court dismissed the appeal because Meitzen and Nageleisen failed to claim that they were “injured or aggrieved” by a final action of the Board, as required by the plain language of the statute. The Court of Appeals reversed the circuit court order, finding that substantial compliance with the statute authorizing the appeal was sufficient.

The Supreme Court concluded that a party must claim to be “injured or aggrieved” to perfect an appeal to circuit court under KRS 100.347(1). Finding that the statute is clear and unambiguous, the Court determined that Meitzen and Nageleisen failed to claim an injury or grievance in their complaint. Further, because no appeal to the courts from an administrative agency exists as a matter of right, strict compliance with KRS 100.347(1) was required. The Court also addressed standing and jurisdiction, concluding that to have standing, a party must be injured or aggrieved by a final action of the Board, but for a circuit court to have jurisdiction, a party must strictly comply with KRS 100.347(1) and Meitzen and Nageleisen’s failure to comply with the statute justified dismissal. Accordingly, the opinion of the Court of Appeals was reversed.

XI. ATTORNEY DISCIPLINE

A. Kentucky Bar Association v. Virginia Mara Riggs-Horton 2020-SC-0002-KB September 24, 2020

Opinion and Order of the Court. All sitting; all concur. The Kentucky Bar Association (KBA) moved the Supreme Court of Kentucky to enter an order directing Riggs-Horton to show cause why she should not be subject to reciprocal discipline after being suspended from the practice of law for six months by the Supreme Court of Ohio, with said suspension stayed conditioned on Riggs-Horton refraining from engaging in any further misconduct. The KBA also requested the Court enter an order imposing identical discipline were we to find such cause lacking. The Court granted the KBA's request under SCR 3.435(2)(b) and ordered Riggs-Horton to show cause why she should not be subject to reciprocal discipline. Riggs-Horton did not file a timely response. Accordingly, under SCR 3.435(4), the Court granted the KBA's motion and ordered that Riggs-Horton be suspended from the practice of law in Kentucky for a period of six months, with such suspension stayed on condition Riggs-Horton engage in no further misconduct.

B. Kentucky Bar Association v. Gerry L. Calvert II 2020-SC-0117-KB September 24, 2020

Opinion and Order of the Court. All sitting. Minton, C.J.; Hughes, Lambert, Keller, and Wright, join. VanMeter, J., concurs in part and dissents in part by a separate opinion in which Nickell, J., joins. Based on Calvert's actions and inactions as an appointed Trustee, the Inquiry Commission filed a charge against him in June 2016. The charge alleged Calvert had committed two counts of professional misconduct. Namely, the Commission charged Calvert with violating Supreme Court Rule (SCR) 3.130- 3.4(c) when he failed to provide an accounting for the Trust as ordered by the Owen District Court and SCR 3.130-8.4(c) when he fraudulently transferred Trust funds to himself for his personal use. After a hearing, the KBA Trial Commissioner found Calvert had violated the charged rules. She recommended that Calvert be suspended from the practice of law in the Commonwealth for five years for his violations, participate in Kentucky Lawyers Assistance Program (KYLAP) and comply with its conditions, and pay the costs associated with the disciplinary proceeding pursuant to SCR 3.450(2).

Calvert filed a notice of appeal to the Board of Governors pursuant to SCR 3.360(4) and SCR 3.365. After hearing the parties' oral arguments, the Board of Governors adopted the Trial Commissioner's recommendations by a vote of 19-0, noting that her findings were supported by substantial evidence. Thereafter, Calvert filed a notice of review pursuant to SCR 3.370(7), arguing to the Supreme Court that the sanction recommended by the Board was excessive. After careful review of Calvert's file, the Court saw no reason to upset the Trial Commissioner's recommendation or the Board's findings of facts and conclusions of law and sanctioned Calvert accordingly.

The Court also overruled the provisions of *Ky. Bar Ass'n v. Profumo*, 931 S.W.2d 149 (Ky. 1996) and *Clay v. Eager*, 444 S.W.2d 124, 127 (Ky. 1969) holding that double fee is

permitted when a testator or settlor explicitly names an attorney to serve as both fiduciary and attorney. The Court noted that while it agreed it is a testator or settlor's right to name the same attorney to serve as both a trust's trustee and attorney, it disagreed that the attorney may receive fees for both.

C. Kentucky Bar Association v. John Scott Benton
[2020-SC-0181-KB](#) September 24, 2020

Opinion and Order of the Court. All sitting; all concur. In September 2013, Benton was charged and arrested for receiving stolen property valued over \$10,000. In April 2016, he was found guilty by a Fayette County jury and was later sentenced to seven years in prison, as recommended by the jury. Benton appealed his conviction. The Court of Appeals affirmed the conviction, and this Court denied review, making his conviction final.

Based upon Benton's conviction of receiving stolen property over \$10,000, the Inquiry Commission charged him with violating SCR 3.130(8.4)(b), which states 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." The Inquiry Commission's Complaint was sent via certified mail to Benton at his bar roster address on May 10, 2019, but it was returned undeliverable and unable to forward. Service of the charge was ultimately made upon the KBA's Executive Director under SCR 3.035(2). Benton filed no response.

The Board of Governors found Benton guilty of violating SCR 3.130(8.4)(b) in a vote of 18-0 and recommended he be permanently disbarred from the practice of law. Neither the KBA's Office of Bar Counsel nor Benton sought review of the Board's decision under SCR 3.370(7), and the Supreme Court declined to undertake review pursuant to SCR 3.370(8). Accordingly, the Court permanently disbarred Benton from the practice of law in the Commonwealth.

D. Gretchen Renee Nunn v. Kentucky Bar Association
[2020-SC-0194-KB](#) September 24, 2020

Opinion and Order of the Court. All sitting; all concur. In January 2016, Nunn was suspended from the practice of law for her failure to comply with the minimum continuing legal education ("CLE") requirements. Nunn did not realize she had been suspended and continued to practice law until September 2019. Between 2016 and 2019 Nunn represented numerous clients as an attorney with her law firm. Upon becoming aware of her suspension, Nunn transitioned into a role as a paralegal and self-reported the facts relating to her suspension to the Office of Bar Counsel.

In February 2020, the Inquiry Commission filed a charge against Nunn containing two counts in violation of SCR 3.130(5.5)(a) and 3.130(5.7)(a). Nunn admitted to violating SCR 3.130(5.5)(a) when she represented clients during the years she was suspended from the practice of law, and to violating SCR 3.130(5.7)(a) by providing legal advice, appearing in court, and other acts that constitute the practice of law while suspended.

Nunn moved the Court to accept her negotiated sanction of a public reprimand. The KBA did not object to Nunn's motion. After review of the record, including Nunn's compelling mitigation evidence, her lack of a prior disciplinary history, and her cooperation throughout the disciplinary proceedings, the Court granted Nunn's motion and publicly reprimanded her.

E. Kentucky Bar Association v. Thomas Steven Poteat
[2020-SC-0227-KB](#) September 24, 2020

Opinion and Order of the Court. All sitting; all concur. The Inquiry Commission filed a five-count Charge against Poteat arising from his failure to cease practicing law following his suspension. The Charge asserted violations of SCR 3.130(1.4)(a)(5); SCR 3.130(8.4)(c); SCR 3.130(3.4)(c); and SCR 3.130(8.1)(b). Poteat was personally served with the Charge but he did not file an answer or respond otherwise. After due deliberation, the Board of Governors voted to find Poteat guilty of violating the five Supreme Court Rules as charged. After making findings and considering Poteat's disciplinary record, seven known applicable aggravating factors, and no known applicable mitigating factors, the Board voted in favor of permanent disbarment.

Upon reviewing the record, the Supreme Court agreed with the majority of the Board that Poteat's permanent disbarment was appropriate to protect the public and the administration of justice. The Court noted that Poteat failed to answer any of the current charges, had a disciplinary history showing a pattern of dishonesty in communication with clients, and had repeated violations of the unauthorized practice of law. The Court further concluded that Poteat's conduct showed a disregard for the Court of Justice and the rules of ethics. Accordingly, Poteat was permanently disbarred from the practice of law in Kentucky.