

**KENTUCKY SUPREME COURT
SEPTEMBER 2021**

CRIMINAL LAW:

Commonwealth of Kentucky v. Mikel Crumes

[2019-SC-0278-DG](#)

September 30, 2021

Opinion of the Court by Justice Hughes. All sitting; all concur. Criminal Appeal, Discretionary Review Granted. Mikel Crumes was convicted of robbing and being complicit in the 2011 murder of Dre'Shawn Hammond. After his co-defendant recanted his testimony incriminating Crumes, Crumes moved the trial court to grant a new trial under Kentucky Rule of Civil Procedure (CR) 60.02, the grounds being that the newly discovered evidence warranted a reversal of his conviction. Crumes also sought a new trial under Kentucky Rule of Criminal Procedure (RCr) 11.42, alleging he received ineffective assistance of counsel because his trial counsel did not request a *Daubert* hearing to challenge the admissibility of the cell phone evidence indicating the location of Crumes's phone at the time of the robbery and murder. The trial court denied both motions. In particular, the trial court denied the CR 60.02 motion, finding the co-defendant's new testimony declaring Crumes's innocence not credible and the other evidence at trial sufficient to support the jury's verdict even without the co-defendant's testimony. In contrast to the trial court, the Court of Appeals concluded that the co-defendant's recantation was credible and was persuaded that absent the co-defendant's original testimony, a different verdict could have reasonably resulted. The Court of Appeals vacated Crumes's conviction and remanded the case for a new trial based upon Crumes's CR 60.02 motion. *Held:* The trial court properly denied Crumes's RCr 11.42 and CR 60.02 motions for a new trial. As to the RCr 11.42 motion, Crumes failed to show he was prejudiced by a lack of a *Daubert* hearing. As to the CR 60.02 motion, because the trial court's credibility assessment was supported by competent, substantial evidence, an appellate court must afford deference to the trial court's determination. In this case, the Court of Appeals improperly substituted its own finding that the co-defendant's original trial testimony was false and his post-conviction testimony was truthful.

Jose Eladio Ortiz v. Commonwealth of Kentucky

[2019-SC-0704-DG](#)

September 30, 2021

Opinion of the Court by Justice Conley. Minton, C.J.; Conley, Hughes, Keller, Lambert, and VanMeter, JJ., sitting. All concur. Nickell, J., not sitting. The Kentucky Supreme Court granted discretionary review to determine whether the Court of Appeals made the right decision in reversing Logan Circuit Court's denial of a writ of prohibition filed by the Commonwealth. The underlying issue of the writ was whether the Logan District Court properly suppressed a blood alcohol concentration result collected from Jose Eladio Ortiz. Mr. Ortiz is a Spanish-speaking person suspected of drunk driving. Mr. Ortiz was read Kentucky's implied consent law by his arresting officer in English, not Spanish, before submitting to a blood draw. This created an issue about whether Mr. Ortiz had been sufficiently informed before giving his consent to the blood draw. The Court of Appeals reversed the lower court's denial, granting the Commonwealth's writ of prohibition. The Court was asked to address the substantive issue concerning informed consent underlying the writ. However, the Court did not need to weigh in on the substantive issue because the Commonwealth did not meet

one of the threshold requirements for a second-class writ. The Supreme Court reversed and remanded the issue to the Logan Circuit Court for the reinstatement of the writ.

Roger Epperson v. Commonwealth of Kentucky
[2019-SC-0724-MR](#)

September 30, 2021

Opinion of the Court by Justice Conley. All sitting. Hughes, Lambert, and VanMeter, JJ., concur. Minton, C.J., Keller and Nickell, JJ., concur in result only. Roger Epperson filed a second RCr. 11.42 motion arguing a structural error occurred during his trial when his attorneys conceded guilt contrary to his express desire to maintain actual innocence. He argued he was entitled to a new trial per *McCoy v. Louisiana*, 138 S.Ct. 1500 (2018). The trial court refused to conduct a hearing and denied the motion. Its conclusion was that the opinion of *Epperson v. Commonwealth*, No. 2017-SC-000044-MR, 2018 WL 3920226 (Ky. Aug. 16, 2018) controlled as it had already considered *McCoy's* application. As such, ruled the trial court, Epperson's motion was also an improper successive collateral attack.

The Kentucky Supreme Court affirmed the trial court's decision. It concluded that *McCoy* holds defense counsel "may not admit her client's guilt of a charged crime over the client's intransigent objection to that admission." *McCoy*, 138 S.Ct. at 1510. Epperson's case is not governed by *McCoy* since he cannot show in the record where at trial he made "vociferous," "adamant," or "intransigent" objections to his attorney's conduct. The Court further clarified that such objections must be made on the record to the trial court. Finally, the Court held *McCoy* intended to distinguish between strategic disputes conceding elements of a crime and conceding guilt to the crime charged *in toto*. The Court briefly reviewed its prior ruling from 2018 and determined Epperson's case was not governed by *McCoy* for the above-stated reasons.

Commonwealth of Kentucky v. Ikia Anderson Clayborne
[2020-SC-0058-DG](#)

September 30, 2021

Opinion of the Court by Justice Keller. All sitting. Minton, C.J.; Hughes, and Nickell, JJ., concur. Conley, J., dissents by separate opinion in which Lambert and VanMeter, JJ., join. Ikea Clayborne was convicted of first-degree possession of cocaine following an investigation at a traffic stop. At the stop, Clayborne was a passenger in the vehicle. The traffic stop was lawfully initiated. Before the officer had completed writing the driver a citation for driving with a suspended license, a K-9 investigative unit arrived, conducted a canine sniff search around the exterior, and alerted to the presence of cocaine at the passenger side of the vehicle. Clayborne moved to suppress the evidence, claiming that the stop was unlawfully extended and that the officer has no reasonable, articulable suspicion to call the K-9 unit and conduct the search. The trial court denied Clayborne's motion to suppress.

The issues before the Supreme Court included whether the trial court erred by failing to suppress the evidence acquired pursuant to the K-9 unit's search. The Supreme Court reversed the trial court's ruling. Specifically, the Court held that the stop was extended because the officer abandoned the purpose of the stop (addressing a suspended license) to run a criminal investigation, and that investigation was not simultaneous to the execution of the initial purpose of the stop. The Court also held

that the Commonwealth failed to meet its burden to establish reasonable, articulable suspicion.

Commonwealth of Kentucky v. James Perry
[2020-SC-0279-DG](#)

September 30, 2021

Opinion of the Court by Justice Hughes. All sitting. Minton, C.J.; Keller and Nickell, JJ., concur. Lambert, J., dissents by separate opinion, in which Conley and VanMeter, JJ., join. Criminal Appeal, Discretionary Review Granted. James Perry and a friend were walking down Lawrenceburg's main street on their way to an area nursing home when Officer Doty, on patrol that morning, saw them. Officer Doty pulled into the nursing home parking lot, exited his vehicle, and approached them because Perry usually had outstanding arrest warrants and narcotics on his person and his companion also was known to possess and traffic narcotics. Perry consented to a search. Perry was subsequently indicted on two counts of first-degree possession of a controlled substance (heroin and methamphetamine), possession of drug paraphernalia, and possession of a legend drug (gabapentin) which had not been prescribed for him. The trial court granted Perry's suppression motion, concluding that Officer Doty lacked the prerequisite reasonable suspicion that Perry was involved in criminal activity in order to conduct a lawful Terry stop. The Court of Appeals affirmed that decision. Held: Despite the Commonwealth's arguments otherwise, substantial evidence supported the trial court's findings of fact that Officer Doty stopped Perry without reasonable suspicion and Perry, in view of all of the circumstances surrounding the incident, would not have believed that he was free to leave. Given these findings, the trial court's legal conclusions that the evidence against Perry was the result of an illegal search and must be suppressed were legally sound. Even if it were erroneous for the trial court and the Court of Appeals to consider Officer Doty's mindset when he decided to stop Perry and his companion, the trial court could infer from the officers' collective testimony that a reasonable person would have believed he was not free to leave when encountering first Officer Doty and then Officer King who arrived in his vehicle shortly after Officer Doty had exited his own patrol car.

Dylan Tyler Minch v. Commonwealth of Kentucky
[2020-SC-0366-MR](#)

September 30, 2021

Opinion of the Court by Chief Justice Minton. All sitting; all concur. Dylan Tyler Minch appealed as a matter of right a judgment imposing a seventy-year sentence for convictions on forty counts of possession or viewing of a matter depicting a sexual performance by a minor, seven counts of the use of a minor under sixteen in a sexual performance, and one count of sexual abuse of a minor under twelve. He argued on appeal that 1) he was denied a fair trial on the sexual abuse and sexual performance charges because they were tried jointly with the possession charges, 2) pornographic images that were not connected to the indicted charges were used improperly as Kentucky Rule of Evidence (KRE) 404(b) evidence against him and rendered his trial unfair, 3) the trial court erred in denying his motion for a continuance because he needed to review the KRE 404(b) evidence used against him, and 4) the cumulative effect of these errors compels reversal. After review, we found it necessary to reverse Minch's convictions because the trial court erred in allowing the Commonwealth to use a voluminous number of unindicted images as KRE 404(b) evidence. Further,

because we reversed, we declined to address Minch's arguments that his conviction should be reversed on the bases of cumulative error and the trial court's failure to grant his motion to continue.

Darren Bounds v. Commonwealth of Kentucky
[2020-SC-0492-MR](#)

September 30, 2021

Opinion of the Court by Justice VanMeter. All sitting; all concur. Darren Bounds appeals as a matter of right his convictions on twenty counts of possession of matter portraying a sexual act of a minor, KRS 531.355. The primary issue presented was whether the Campbell Circuit Court erred in denying Bounds' motion for directed verdict on the grounds that the Commonwealth failed to prove Bounds knowingly possessed child pornography. The Supreme Court held that the trial court did not err on that basis, but that one of Bounds' convictions violated double jeopardy since two offenses related to a single downloaded video depicting different individuals and minors engaging in discrete acts of sexual conduct; but which had the same computer file name and hash value. The Court held that the one video constituted a continuing course of conduct which may only be punished once. Ky. Const. § 13; KRS 505.020(1)(c). Accordingly, the Court vacated one of the convictions as violative of double jeopardy and remanded to the trial court for the entry of a new judgment.

FAMILY LAW:

J.S.B. v. S.R.V.

[2021-SC-0008-DGE](#)

September 30, 2021

Opinion of the Court by Justice Lambert. All sitting; all concur. A family law case involving adoption and custody issues. J.S.B. and S.R.V. were married for nearly six years; the marriage produced no children. Eventually, they divorced. During a period of reconciliation, they had two children. S.R.V. led J.S.B. to believe the children were his: he was present for their births, he is listed as the father on both of their birth certificates, and both children carry his surname. Less than two years after the birth of the youngest child, the parties permanently separated. After the separation, they agreed to a non-court ordered timesharing arrangement wherein J.S.B. was the primary caregiver, and S.R.V. was the primary financial provider. Later, S.R.V. filed for a petition for sole custody of the children wherein she alleged that J.S.B. was not the biological father of either child. Genetic testing proved that J.S.B. was not the father of either child. S.R.V. never identified the natural father of either child. In response to S.R.V.'s petition for sole custody, J.S.B. filed petitions to adopt both children and petitions for custody. J.S.B.'s adoption petitions did not request that S.R.V.'s parental rights be terminated; he only sought to have the putative natural fathers' rights terminated. The circuit court ruled on the adoption petitions first: it allowed J.S.B. to adopt both children by terminating the children's putative fathers' rights while leaving S.R.V.'s parental rights intact. The court then awarded joint custody to the parties and made J.S.B. the primary residential custodian of both children.

The Kentucky Supreme Court held: (1) KRS 199.520 requires that an adoption terminate the rights of both biological parents, with the single exception of a stepparent adoption. Therefore, the adoption orders must be vacated because they terminated the biological fathers' rights, but not the biological mother's rights. (2)

Mullins v. Picklesimer, 317 S.W.3d 569 (Ky. 2010), which held that a biological parent can partially waive their superior custodial rights to a non-biological parent, was not contingent upon the fact that the case involved a same-sex couple. Therefore, the legalization of same-sex marriage in *Obergefell v. Hodges*, 576 U.S. 644 (2015), did not affect the doctrine of partial waiver established in *Picklesimer* in any way. The Court therefore remanded to the circuit court for further custody proceedings to determine whether S.R.V. waived her superior custodial rights to J.S.B.

INSURANCE:

James D. Nichols v. Zurich American Insurance Company

2020-SC-0284-DG

September 30, 2021

Opinion of the Court by Justice VanMeter. All sitting; all concur. Nichols appeals the decision by the Jefferson Circuit Court and affirmed by the Court of Appeals finding that Zurich Insurance had a reasonable basis for denying Nichols' claim for underinsured motorists benefits under the commercial policy purchased by Miller Pipeline. Nichols argued that Zurich's failure to respond to his *Coots* notice, its subsequent delays in negotiating a settlement with him, and its attempt to retroactively amend the insurance policy nearly three years after the accident occurred constituted bad-faith under the UCSPA and common law principles of good faith and fair dealing. KRS 304.12-230; *Indiana Ins. Co. v. Demetre*, 527. S.W.3d 12, 26 (Ky. 2017). Zurich countered, arguing that because Miller did not intend to purchase the UIM, Zurich acted reasonably when it denied Nichols' claim and retroactively amended the policy. The Supreme Court held that Zurich's claim of mutual mistake was not reasonable because the contract between Zurich and Miller Pipeline was clear and complete. Moreover, Zurich's failure to meaningfully engage with Nichols in settlement discussions and its attempt to add a UIM rejection to the original policy violated KRS 304.12-230(1, 2, 5). Additionally, the Supreme Court held that Nichols is entitled to the internal Zurich documents relating to its initial denial of Nichols' claim because of the extraordinary delay between Nichols' notice to Zurich and Zurich taking any action in the matter.

PREMISES LIABILITY:

Leshai Phelps v. Bluegrass Hospitality Management, LLC

2019-SC-0613-DG

September 30, 2021

Opinion of the Court by Justice Nickell. All sitting; all concur. Phelps slipped and fell at a restaurant managed by Bluegrass Hospitality Management, then filed a premises liability claim. After about two years of discovery had taken place, Fayette Circuit Court granted Bluegrass Hospitality Management's motion for summary judgment.

On appeal, the Court of Appeals affirmed the grant of summary judgment citing two grounds. First, the condition of the floor was open and obvious to Phelps. Second, Phelps had failed to produce sufficient evidence of negligence by BGH to establish a material issue of fact existed.

On discretionary review, the Supreme Court first held Phelps failed to produce proof of a material fact—that being any evidence of a hazardous condition on BGH's premises. Phelps would have needed some corroborative proof beyond her own speculative testimony and belief to create a material issue of fact. Second, the Supreme Court

agreed with Phelps the Court of Appeals had misapplied the open and obvious doctrine as an alternative ground to grant summary judgment in her case, but this did not rise to the level of reversible error. Under a comparative fault system of negligence like Kentucky has now, the open and obvious nature of a hazard is only a circumstance the trier of fact can consider in apportioning fault. Only in rare instances where a plaintiff's conduct in the face of an open and obvious hazard is so clearly only the fault of plaintiff's injury is summary judgment warranted.

Craig Bramlett, et al. v. Arnold J. Ryan, Jr., et al.
2020-SC-0232-DG

September 30, 2021

Opinion of the Court by Chief Justice Minton. All sitting; all concur. Craig Bramlett and Stephanie Cline, individually and as co-administrators of the estate of Landon Bramlett, brought a tort action in Pike Circuit Court against A.J. and Pam Ryan alleging negligent operation of the Ryans' residential swimming pool, negligent supervision, and gross negligence resulting in the drowning death of Landon Bramlett, which occurred at a pool party hosted by the Ryans at their home. The circuit court granted summary judgment in favor of the Ryans, finding that the Ryans owed no duty to warn Landon of the danger posed by swimming in the pool and finding that the Ryans fulfilled any duty owed to supervise and control the conduct of the children present at the pool party. The Court of Appeals affirmed.

The Kentucky Supreme Court accepted discretionary review to determine the applicability of the common law distinctions of licensee and invitee in identifying the scope of duty owed by the Ryans to the Bramletts. The Court first determined that disputes of material fact existed as to the conditions and circumstances surrounding Landon's death, and those disputed facts were sufficient to convince a reasonable jury that the Ryans breached their duty, whatever it may be, to Landon. As such, the Court held that the trial court erred in granting summary judgment.

The Court next held that a property owner owes a reasonable duty of care to guests invited to her property to participate in an activity. The Court specified that the determination of the existence of a duty is still a legal question for the trial court to determine. However, the court need only consider (1) whether the property owner invited or ratified the presence of the guest on the premises, and (2) whether the guest was injured or harmed in the course of or as a result of an activity taking place on the premises. If both requirements are met, the property owner owes a duty of reasonable care to the guest as a matter of law. Accordingly, the Court reversed the Court of Appeals and remanded the case to the circuit court for further proceedings.

WORKERS COMPENSATION:

Wonderfoil, Inc. v. Richard Russell, et al.
2020-SC-0301-WC

September 30, 2021

Opinion of the Court by Justice Keller. All sitting; all concur. Richard Russell sustained a work-related injury while employed by Wonderfoil, Inc. He initiated a claim for benefits pursuant to Kentucky Revised Statutes (KRS) Chapter 342, the Workers' Compensation chapter. An Administrative Law Judge (ALJ) granted permanent partial disability (PPD) benefits to Russell but found certain medical expenses were submitted untimely and were therefore non-compensable. Russell

appealed the ALJ's denial of those medical expense benefits to the Workers' Compensation Board (the Board). The Board reversed the ALJ finding the expenses were submitted timely. Wonderfoil then appealed to the Court of Appeals, which affirmed the Board's decision.

The Supreme Court interpreted 803 KAR 25:096, § 11 by viewing it in the context of the entire workers' compensation regulatory scheme. The Court concluded that the regulatory scheme governing workers' compensation claims anticipates that medical expenses will be provided to the employer pre-award and throughout the litigation of the claim. It held that 803 KAR 25:096, § 11's application only post-award best effectuates the intent of the Commissioner of the Department of Workers' Claims and prevents an absurd result. In so doing, the Court affirmed the Court of Appeals.

WRIT OF PROHIBITION:

Gail Harkins, APRN, et al. v. Honorable Gayle House, Judge, Clay Circuit Court, et al.

AND

Lenora Campbell, APRN, et al. v. Honorably Oscar Gayle House, Judge, Clay Circuit Court, et al.

AND

David Scott Wells as Personal Representative and Administrator of the estate of Loretta Wells, Real Party in Interest, et al. v. Gail Harkins, APRN, et al.

[2019-SC-0216-MR](#)

[2019-SC-0217-MR](#)

[2019-SC-0244-MR](#)

September 30, 2021

Opinion of the Court by Justice Nickell. All sitting; all concur. In separate medical malpractice actions, defendant medical providers asserted trial court erred in disqualifying their counsel of choice several years after litigation began. Plaintiffs filed numerous disqualification motions in both cases. No prior attorney-client relationship existed between Plaintiffs and defense counsel. Trial court concluded Plaintiffs had standing to assert conflicts of opposing counsel and, finding actual conflicts, disqualified defense counsel. Medical providers sought writs of prohibition. Court of Appeals adopted minority rule regarding disqualification and denied writs in each case, likewise finding Plaintiffs had standing and actual conflicts existed.

In combined appeals, medical providers contended trial court erred in concluding their attorneys had actual conflicts of interest requiring disqualification based on their multiple representation of parties and fact witnesses and further that Court of Appeals erred in denying writs. In reversing, the Supreme Court expressly rejected minority view adopted by the Court of Appeals, instead holding as a general rule a party must be a current or former client of attorney against whom conflict is asserted and disqualification is sought. Absent unethical change of sides or open and obvious violation compelling a court to act, ability of non-client to champion rights of opponent typically does not exist. Here, Supreme Court concluded Plaintiffs' intent in seeking disqualification was to gain a tactical advantage, the sort of weaponizing which should be avoided. The matters were remanded to the Court of Appeals with directions to enter the requested writs.

ATTORNEY DISCIPLINE:

H. Harris Pepper, Jr. v. Kentucky Bar Association
2021-SC-0181-KB

September 30, 2021

Opinion and Order of the Court. Conley, Hughes, Keller, Lambert, Nickell, and VanMeter, JJ., concur. Minton, C.J., not sitting. Pepper was automatically suspended from the practice of law in February 2020, when he entered a guilty plea in federal court to the charge of conspiracy to commit money laundering. He was sentenced to one year and one day in prison, probated for five years, with conditions, and fined \$100,000.

Pepper, who had no prior disciplinary history, moved the Supreme Court under SCR 3.480(2), the reciprocal discipline rule, to impose upon him a suspension for five years or until the time he has satisfied in full the terms and conditions of probation in his federal criminal case, whichever event occurs first. As a condition of his suspension, Pepper would be required to participate in KYLAP. Bar Counsel did not file an objection.

The Court approved the proposed sanction in part, holding that a full, five-year suspension with conditions was appropriate given the severity and nature of Pepper's crime. The Court further noted that the five-year suspension would give Pepper sufficient time to address his addiction and mental health so he could regain the trust of his clients, the public, the courts, and the KBA.

Michael O. Murray v. Kentucky Bar Association
2021-SC-0247-KB

September 30, 2021

Opinion and Order of the Court. All sitting; all concur. Murray moved the Court to enter an order resolving the pending disciplinary proceeding against him by imposing a one-year suspension from the practice of law under a negotiated sanction. The disciplinary proceeding at issue arose in connection with Murray's employment as General Counsel and Vice President to Kentucky Community and Technical College System. Although Murray was a licensed attorney in Indiana, he was never admitted to the practice of law in Kentucky. This, Murray admitted, violated SCR 3.130(5.5)(a) and (b), which address the unauthorized practice of law.

Upon review of the facts, relevant case law, and Murray's lack of disciplinary history, the Court concluded that the proposed sanction was appropriate and ordered Murray suspended from the practice of law for one year.

Kentucky Bar Association v. Eric Tuley Weiner
2021-SC-0284-KB

September 30, 2021

Opinion and Order of the Court. All sitting; all concur. In this default case under Supreme Court Rule (SCR) 3.210, the KBA Board of Governors (the Board) recommended that the Supreme Court find Weiner guilty of violating: four counts of SCR 3.130(1.3); six counts of SCR 3.130(1.4); SCR 3.130(1.5)(f); SCR 3.130(1.16)(d); SCR 3.130(3.4)(c); seven counts of SCR 3.130(8.1)(b); and SCR 3.130(8.4)(c). For these violations, which stem from multiple KBA disciplinary cases, the Board recommended Weiner be suspended from the practice of law for five years, with three years to serve

and the remaining two years to be probated on the condition Weiner: enter into and comply with a Kentucky Lawyers Assistance Program (KYLAP) Monitoring Agreement; attend and successfully complete the Ethics and Professionalism Enhancement Program (EPEP); pay restitution; and be required to pay the costs of this action. The Court agreed with and adopted the Board's recommendation and sanctioned Weiner accordingly.

Kentucky Bar Association v. Greta Lynne Dawson Noe
[2020-SC-0584-KB](#)

September 30, 2021

Opinion and Order of the Court. All sitting. Minton, C.J.; Conley, Hughes, Lambert, Nickell, and VanMeter, JJ., concur. Keller, J., concurs in part and dissents in part by separate opinion. Noe was charged in two separate disciplinary matters, which were consolidated. In the first, the Board of Governors found Noe guilty of violating SCR 3.130(1.30), (1.4)(a)(3), (1.5)(a)(4), and (8.1)(b) and recommended she be suspended from the practice of law for thirty days and ordered to pay all associated costs. In the second case, the Board found that it lacked jurisdiction because Noe had not been properly served. Accordingly, the Board recommended the second case be dismissed with prejudice.

In the first case, the Inquiry Commission sent the Charge by certified mail to Noe's bar roster address. It was returned unserved so, instead, the Commission served Noe through the KBA's Executive Director under SCR 3.035(2). Again, the Charge was returned. Because of this, in the second case, the Inquiry Commission did not attempt to serve Noe directly. Rather, the Commission served the Charge upon Noe through the Executive Director.

Upon review of the record and relevant rules, the Supreme Court adopted the Board's recommendation in the first case and suspended Noe from the practice of law for thirty days. In the second case, the Court agreed that the Charge must be dismissed because it was not properly served. The Court, however, concluded that dismissal without prejudice was more appropriate.

Dean Stuart Jackson v. Kentucky Bar Association
[2021-SC-0232-KB](#)

September 30, 2021

Opinion and Order of the Court. All sitting; all concur. Pursuant to SCR1 3.480(2), Jackson moved the Supreme Court to enter an order resolving the pending disciplinary proceeding against him by imposing a 61-day suspension, probated for two years, subject to conditions. His motion was the result of an agreement negotiated between Jackson and the KBA under SCR 3.480(2) to resolve Jackson's admitted violation of SCR 3.130(1.8)(a) (in effect through July 14, 2009), which governed conflicts of interest between attorneys and their clients. Specifically, Jackson admitted he violated the rule by obtaining a loan from his client in 2006.

The Court noted that Jackson had been practicing law in Kentucky for over twenty-seven years and had no history of prior discipline. The Court further cited Jackson's cooperation in resolving this matter and his compliance with making timely restitution to his former client. Given these factors, the Court concluded that the consensual disciplinary sanction was appropriate.

Opinion and Order of the Court. All sitting; all concur. In February 2019, the Supreme Court accepted Fink's motion for consensual discipline seeking a five-year suspension, retroactive from August 2015. The discipline was based on Fink's conviction for drug-related offenses in Indiana.

In August 2020, Fink filed an application for reinstatement, which was referred to the Character and Fitness Committee under SCR 3.510(3). The Committee determined that Fink had complied with all the requirements of her consensual discipline. Letters and affidavits from attorneys and coworkers were favorable to her character and fitness and supported her application for reinstatement. Accordingly, the Committee concluded that Fink met her burden of proof and unanimously recommended that Fink be reinstated to the practice of law.

The Board of Governors voted unanimously to adopt the Findings of Fact, Conclusions of Law and Recommendation of the Character and Fitness Committee and further recommended that a member of the KBA serve as a mentor to Fink for three years and that Fink continue her involvement with KYLAP for a minimum of five years. Fink objected to the additional requirements.

Upon review, the Court disagreed with the Board's recommendation for a mentor. But given the serious nature of the drug offenses and obvious benefits of maintaining sobriety, the Court agreed with the Board's recommendation to require Fink to continue her involvement with KYLAP for an additional five years.

Accordingly, based upon the record and its finding that Fink had been rehabilitated and completed all terms necessary requirements, the Court agreed with and accepted the Board's recommendation that Fink be reinstated to the practice of law.