KENTUCKY SUPREME COURT SUMMARIES
JUNE 2023 – APRIL 2024

ARBITRATION

***New Albany Main Street Properties v. Stratton*, 677 S.W.3d 345 (Ky. 2023).**

Opinion of the Court by Justice Thompson. All sitting. All concur.

An accountant employed by an opposing party in a separate lawsuit offered expert testimony during a court-ordered arbitration hearing, opining that New Albany Main Street Properties, LLC (New Albany) was systematically under-reporting income on its tax returns and failing to make proper payments under the terms of a lease. New Albany was able to establish that the accountant was incorrectly counting outgoing checks as incoming income rather than expenses. New Albany then filed suit against the accountant for defamation and professional malfeasance. A motion to dismiss was granted against New Albany on the basis that privilege, and a lack of duty, barred these claims. The Court of Appeals affirmed.

After granting discretionary review and hearing oral argument, the Court affirmed on the basis that: (1) further discovery was not required to determine whether the judicial statements privilege applied; (2) the judicial statements privilege applied to court-ordered arbitration; (3) the judicial statements privilege applied in the same manner to expert witnesses as it did to lay witnesses; and (4) a lack of duty owed bars a cause of action for professional malfeasance against an expert employed by the opposing party.

CIRCUIT COURT CLERK DISCIPLINE

***In re: Joseph Flynn*, 686 S.W.3d 193 (Ky. 2024).**

VanMeter, C.J.; Bisig, Conley, Keller, Nickell, and Thompson, JJ., sitting. VanMeter, C.J.; Bisig, Conley, Keller, and Nickell, JJ., concur. Thompson, J., concurs in result only. Lambert, J., not sitting.

Upon receipt of employee complaints, the Administrative Office of the Courts conducted an investigation and concluded that Pulaski Circuit Court Clerk Joseph "JS" Flynn engaged in unlawful workplace harassment and retaliation and created a hostile work environment. The Administrative Office of the Courts referred the matter to the Supreme Court, which then commenced an original action pursuant to Section 114(3) of the Kentucky Constitution to determine whether Flynn should be removed from office. The Supreme Court appointed a Special Commissioner to conduct an evidentiary hearing and requested that the Attorney General serve as Special Advocate to represent the

interests of the Commonwealth. Following a three-day evidentiary hearing, the Special Commissioner recommended Flynn's removal from office. Following additional briefing, the Supreme Court held that because the matter was an original action, it was subject to de novo review. The Supreme Court further held that the Special Advocate had the burden of proof to show good cause for Flynn's removal by clear and convincing evidence. Following review of the entirety of the three-day evidentiary hearing, the Supreme Court found this standard satisfied. First, the Supreme Court concluded Flynn created a hostile work environment by sexually and physically assaulting a subordinate employee on at least two occasions, and by engaging in repeated unwelcome physical touching of and sexually charged and humiliating comments to other subordinate employees. Second, the Supreme Court also concluded Flynn engaged in quid pro quo harassment by materially altering the conditions of employment for a subordinate employee who ended a relationship with him. Finally, the Supreme Court further concluded Flynn failed to perform his duties with courtesy and respect when he chased, yelled at, and cursed at a subordinate employee in front of co-workers and the public. The Supreme Court therefore removed Flynn as Pulaski Circuit Court Clerk and declared that office vacant.

CIVIL CHILDHOOD SEXUAL ABUSE

***Thompson v. Killary*, 683 S.W.3d 641 (Ky. 2024).**

Opinion of the Court by Chief Justice VanMeter. All sitting. Conley, Lambert, and Thompson, JJ., concur. Keller, J., concurs in result only. Nickell, J., concurs by separate opinion in which Thompson, J., joins. Bisig, J., concurs in part and dissents in part by separate opinion.

On review from the Court of Appeals' reversal of the trial court's order of dismissal of Defendants (now Appellees) due to the running of the statute of limitations for Killary's claim of childhood sexual abuse, the Supreme Court reversed. As a child, Killary was subjected to sexual abuse at the hands of her adoptive father, Rick Jackman, which only ended when Killary turned 18 in 2009. In 2017, the General Assembly amended the statute creating a civil action for childhood sexual abuse, KRS 413.249, to create a new triggering event: the conviction of the abuser. In 2018, Jackman was convicted of offenses related to the abuse. In that same year, Killary brought this action for childhood sexual abuse against Jackman and others alleged to have failed to stop or report the abuse. Appellees moved to dismiss. The trial court granted dismissal, finding the prior version of KRS 413.249 applied and that the action was time-barred. Killary appealed. During the pendency of the appeal, the statute was again amended, this time to add actions against third parties, to expressly make the 2017 amendments retroactive, and to allow for revival of

time-barred claims. A divided Court of Appeals reversed the trial court. The majority found Appellees had a vested right in the old statute of limitations, KRS 413.140(1)(a) (2007 amend.), but not the new limitation period created by the 2021 amendments and thus remanded the matter to the trial court to determine whether those parties owed a duty to Killary under the present KRS 413.249(5). The Supreme Court reversed the Court of Appeals, holding that although the Legislature made the 2017 amendments retroactive, Appellees held a vested right in their statute of limitations defense that could not be taken away by the General Assembly. Under the 2007 version of the statute in effect when the statute of limitations on Killary's claims first began to run, an action against Appellees needed to have been within five years. When that did not occur, Appellee's right to a statute of limitations defense vested and could not be divested by later actions of the Legislature. Accordingly, the claims against Appellees were properly dismissed.

CONSTITUTIONAL LAW

***ARKK Properties, LLC v. Cameron*, 681 S.W.3d 133 (Ky. 2023).**

Opinion and Order of the Court by Chief Justice VanMeter. All sitting. Bisig, Keller, Lambert, Nickell, and Thompson, JJ., concur. Conley, J., dissents by separate opinion.

This original action comes before the Court on a Petition for Supervisory Writ under § 110(2)(a) of the Kentucky Constitution, which confers upon the Court the power to issue all writs as may be required to exercise control of the Court of Justice. Petitioners challenge the constitutionality of Senate Bill 126's amendment to KRS 452.005, which grants a party or the intervening Attorney General in any action that challenges the constitutionality of a statute, executive order, administrative regulation, or administrative agency order, the unilateral authority, without a showing of cause, to transfer the case to another, arbitrarily-selected circuit court, thereby summarily divesting the circuit court in which the case was filed of any further jurisdiction over the case, including review of the propriety of the transfer request. The implementation of this transfer procedure mandates certain actions on the part of the Clerk of the Supreme Court and the Circuit Court Clerk. The Supreme Court granted the Petition for Supervisory Writ, finding that the issues presented fall within the Court's exclusive authority and jurisdiction as Senate Bill 126 commands actions to be taken by the Clerk of this Court, and circuit court clerks, both of whom are under the supervision of the Chief Justice and the Supreme Court. The Court further held that Senate Bill 126 is an unconstitutional encroachment by the legislative branch of government on the constitutionally conferred judicial powers of this Court, in violation of the 8 separation of powers doctrine of the Kentucky Constitution. The Court elected

not to extend comity to Senate Bill 126. Going forward, the Court directed the Supreme Court Clerk and all circuit court clerks presented with a "Notice of Transfer" filed pursuant to Senate Bill 126 to refrain from undertaking any of the duties imposed thereby.

***Graham, v. Secretary of State Michael Adams*, 684 S.W.3d 663 (Ky. 2023).**

Opinion of the Court by Justice Bisig. All sitting. Opinion of the Court Affirming. Nickell, J., concurs in part, dissents in part by separate opinion. Keller, J., concurs in part, dissents in part by separate opinion. Conley, J., dissents by separate opinion, in which Lambert, J., joins.

Rep. Derrick Graham, the Kentucky Democratic Party, and four voters appealed a Franklin Circuit Court judgment finding the General Assembly's 2022 legislative and Congressional apportionment plans constitutional. The Supreme Court granted transfer. Appellants argued on appeal that the apportionment plans were an unconstitutionally partisan gerrymander and violate Sections 1, 2, and 3 (equal protection, freedoms of speech and assembly), 6 (free and equal elections), and 33 (population equality and county integrity) of the Kentucky Constitution. The Supreme Court held that Appellants had standing to pursue their claims and that the question of whether an apportionment plan is unconstitutionally partisan is justiciable. The Court set forth the constitutional guardrails for consideration of such claims, and further held that the 2022 apportionment plans were not unconstitutionally partisan because they did not involve partisanship either rising to the level of a clear, flagrant, and unwarranted violation of constitutional rights or so severe as to threaten the democratic form of government. The Court also held the apportionment plans did not violate equal protection guarantees, the freedoms of speech or assembly, or the right to free and equal elections. Finally, the Court held that the apportionment plans also did not violate the population equality and county integrity provisions of Section 33. The Court noted that where actual compliance with that provision is possible, it is required. The Court further held that where actual compliance is not possible, even unnecessary deviations from Section 33 may be allowable, provided the deviations do not clearly and flagrantly disregard the purpose of that Section or threaten the democratic form of government. The Court thus affirmed the judgment of the Franklin Circuit Court.

<u>CONTRACT LAW</u>

***University of Kentucky*, 670 S.W.3d 903 (Ky. 2023).**

Opinion of the Court by Justice Conley. All sitting. VanMeter, C.J.; and Lambert, J., concur. Thompson, J., concurs in result only by separate opinion. Bisig, J., dissents by separate opinion in which Nickell, J., joins and Keller, J., joins in result only. Nickell, J., dissents by separate opinion in which Bisig, J., joins and Keller, J., joins in result only.

In March 2020, during the Spring Semester and in response to the COVID-19 pandemic, the University of Kentucky moved all classes to an online-only format and, the Appellees allege, virtually shut down its entire campus. The Students eventually brought a breach of contract claim against the University. The University moved to dismiss based on governmental immunity, arguing it had no written contract with Students to provide in-person classes or provide the services that were supported by the Students' fees. The trial court and Court of Appeals both ruled that the University did have a written contract within the waiver of KRS 45A.245(1) so that governmental immunity did not apply.

The Supreme Court affirmed. Based on the doctrine of incorporation, the Court ruled that the Student Financial Obligation the Students had to sign to register for courses explicitly stated the Students were entering a contractual obligation to pay tuition and fees. The University Bulletin was also provided to the Students during registration and the Bulletin listed the breakdown of tuition based on multiple variables, but chiefly showing that Students who were enrolled exclusively in online courses were charged less tuition than those who had registered for a combination of online and in-person classes. Students who were considered "off-campus" also paid less in fees than those who were "on-campus." The Bulletin also contained definitions of in-person and online classes. Because the Kentucky common law doctrine of incorporation by reference does not require specific language evincing that the incorporated document is to control, decide, or affect the relationship of the parties, it is enough that the two documents share mutuality of subject matter and the document to be incorporated is not in doubt, the incorporation by reference was satisfied here because the SFO specifically mentioned tuition and fees and the Bulletin explicitly identified the tuition and fee amounts. The Court also noted that the Bulletin was delivered simultaneously with the signing of the SFO, therefore it was also a factor supporting incorporation by 2 reference. Finally, the Court noted that tuition specifically is not set by the University but by the Council of Post-Secondary Education, therefore the contract should be read as expressly incorporating tuition since contracts based on a statute have the statute read into them.

***Pheonix American Admins. v. Lee*, 670 S.W.3d 832 (Ky. 2023).**
Opinion of the Court by Chief Justice VanMeter. VanMeter, C.J.; Bisig, Conley, Keller, Lambert, and Nickell, JJ., sitting. All concur. Thompson, J., not sitting.

The Supreme Court granted the petition of Phoenix American Administrators, LLC and Phoenix American Warranty Company, Inc. (collectively referred to as "Phoenix") for review of the Court of Appeals' opinion reversing the Jefferson Circuit Court's grant of summary judgment in favor of Phoenix. This case concerns a contract dispute in which a car owner, Plaintiff Curtis Lee, seeks to recover damages from Phoenix, the administrator of a guaranteed asset protection ("GAP") waiver addendum entered into by Lee, the car dealer and the lender during the course of Lee purchasing and financing a motor vehicle. The issues presented include: (1) whether the car owner, Lee, made a timely claim for GAP coverage by informing the GAP contract's third-party administrator, Phoenix, of his accident several weeks after it occurred; (2) whether Lee's failure to provide Phoenix with all the documents listed in the contract's claim procedures bars his claim; and (3) whether Lee could sue Phoenix for breach of contract when Lee, the car dealer, and the lender were the only parties who signed the contract. The Supreme Court affirmed the Court of Appeals' opinion but clarified a few points. First, the Court held that the Court of Appeals erred by not addressing the merits of Phoenix's privity argument. As the prevailing party in the trial court, Phoenix was not required to file a cross-appeal to preserve its alternate arguments. That said, the Supreme Court ruled that the trial court correctly held that privity of contract existed between Phoenix and Lee: because Lee was one of the intended beneficiaries of Phoenix's administrative obligations, Lee had standing to maintain a breach of contract action against Phoenix. Next, the Court affirmed the Court of Appeals' determination that summary judgment was premature since genuine issues of material fact exist as to the date when Lee first contacted Phoenix. Regarding whether Lee's alleged phone call to Phoenix was sufficient for purposes of submitting his claim pursuant to the GAP Waiver's 120-day submission deadline, the Supreme Court agreed with the Court of Appeals that the GAP Waiver's language distinguishing between submitting a claim and providing supporting documentation was ambiguous. Construing the ambiguous contract against Phoenix, the drafter, the Court concluded that a claim was submitted under the GAP Waiver when the car owner notified Phoenix that a total loss had occurred and because a factual dispute existed as to when Lee 3 first notified Phoenix that his car was totaled, summary judgment was improper. The Court remanded this case to the trial court with instructions to vacate its order granting summary judgment and allow Lee's breach of contract action to proceed.

Swyers v. Allen Fam. Partnership #1, LLC, Nos. 2022-SC-0478-DG, 2022-SC-0479-DG, 2024 WL 1145865, (Ky. Mar. 14, 2024).
Opinion of the Court by Justice Bisig. VanMeter, C.J.; Bisig, Conley, Keller, Nickell, and Lambert, JJ., sitting. All concur. Thompson, J., not sitting.

Appellees appealed from a judgment of the Jefferson Circuit Court calculating the appropriate distribution to LLC members of proceeds from the sale of the LLC's commercial real estate asset. The Court of Appeal reversed, and Appellant appealed to the Supreme Court. Appellant argued that pursuant to written contracts, the sale proceeds should be distributed according to each member's ownership interest in the LLC up to an $8 million sale price threshold, with amounts above that distributed one-third each to the original three LLC members. Appellees argued the contracts set forth an $8 million cash received threshold for these distributions. The Supreme Court, applying Indiana law, held that the trial court correctly concluded the written contracts set forth an $8 million sale price threshold. The Supreme Court thus reversed the Court of Appeals, affirmed the trial court's holding, and remanded for entry of a judgment correcting a purely mathematical error in the trial court's original judgment.

<u>CRIMINAL LAW</u>
***Commonwealth v. Melton*, 670 S.W.3d 861 (Ky. 2023).**
Opinion of the Court by Justice Nickell. VanMeter, C.J.; Bisig, Conley, Keller, Lambert, and Nickell, JJ., sitting. Bisig, Conley, and Lambert, JJ., concur. VanMeter, C.J., dissents by separate opinion in which Keller, J., joins. Thompson, J., not sitting.

Melton is the unmarried biological mother of a minor child. While Melton believed John Niemeier was the child's biological father, there had been no judicial determination of the child's paternity. However, Niemeier was granted full guardianship over the child by a district court.

Melton was charged with custodial interference and other related charges. The trial court excluded evidence of Niemeier's guardianship under KRE 403 after concluding the evidence would mislead the jury because parental custody is superior to any rights arising from guardianship. The Commonwealth filed an interlocutory appeal. A divided panel of the Court of Appeals affirmed.

On discretionary review, the Supreme Court reversed the decision of the Court of Appeals holding the trial court abused its discretion by excluding the guardianship evidence because such proof was highly probative of the ultimate question of Melton's guilt and was inextricably intertwined with the overall facts of the case. The Supreme Court noted that to hold otherwise would

amount to a premature directed verdict on the custodial interference charge and impair the Commonwealth's ability to prosecute the other related charges.

Chief Justice VanMeter dissented, joined by Justice Keller, and would have held the trial court did not abuse its discretion by excluding the guardianship evidence.

***Gasaway v. Commonwealth*, 671 S.W.3d 298 (Ky. 2023).**
Opinion of the Court by Justice Nickell. All sitting. Conley, Lambert, and Thompson, JJ., concur. VanMeter, C.J.; Bisig and Keller, JJ., concur in result only.

Gasaway's co-workers suspected him of drug possession after a small bag containing what they believed to be illegal drugs was discovered on the floor of the workplace. The next day a police officer came to the workplace and reviewed surveillance footage, which purported to show Gasaway dropping the bag. Gasaway, who was on active parole, denied possessing the drugs. A search of Gasaway's person did not reveal any incriminating evidence and, when requested, Gasaway denied permission to search his vehicle, which was located in the workplace parking lot. Two parole officers were thereupon summoned, and a warrantless search of the vehicle was commenced. The search revealed a methamphetamine pill, a small quantity of marijuana, and a device commonly used to thwart drug testing.

Gasaway was originally charged with possession of heroin, possession of methamphetamine, and possession of marijuana. The jury hung on the heroin charge, acquitted on the methamphetamine charge, and convicted on the marijuana charge. Gasaway was retried on a single count of heroin possession with the trial court denying his motion to suppress evidence obtained from the warrantless search. In denying the motion, the trial court determined evidence relating to the discovery of methamphetamine and marijuana along with the heroin was admissible because their discovery was inextricably intertwined with the heroin charge and was otherwise admissible to show intent. Gasaway was thereafter convicted of heroin possession.

On direct appeal, the Court of Appeals affirmed based on the decision of the Supreme Court in Bratcher v. Commonwealth, 424 S.W.3d 411 (Ky. 2014), which held parolees are subject to warrantless searches despite any conditions of parole to the contrary.

On discretionary review, while affirming the search of the vehicle on other grounds, the Supreme Court overruled Bratcher, holding a parolee search is subject to the ordinary Fourth Amendment test which balances the need for the search against the parolee's reasonable expectation of privacy under the

totality of the circumstances, including conditions of parole. The Supreme Court also held the trial court erred in determining the evidence of the other drugs which were of a different kind, found in a different location, and discovered on a different day, was inextricably intertwined with the heroin charge. Further, the Supreme Court held evidence of the other drugs was also inadmissible because intent was not at issue due to Gasaway having denied possessing the heroin. Finally, the Supreme Court held a witness is not permitted to interpret video recordings of events he or she did not witness in real time.

***Spalding v. Commonwealth*, 671 S.W.3d 693 (Ky. 2023).**
Opinion of the Court by Justice Conley. All sitting. All concur.

The trial court allowed three witnesses to testify via Zoom regarding the chain of custody over the objections of defense counsel. Spalding argued it was a violation of his rights to confront witnesses under the Sixth Amendment to the United States Constitution and Section 11 of the Kentucky Constitution. The jury convicted on two counts of trafficking in a controlled substance in the first-degree, second offense but acquitted on a third count. The jury recommended a sentence of twenty-seven years, but the trial court sentenced him to twenty years in prison.

The Supreme Court held the trial court erred when it allowed the three witnesses to testify via Zoom but found that error harmless beyond a reasonable doubt and thus affirmed the judgment of the trial court. Analyzing the issue under Maryland v. Craig, the Supreme Court found the trial court erred because there was not a sufficient finding of necessity to allow the chain of custody witnesses to testify remotely. 497 U.S. 836, 853 (1990).

***Johnson v.* Commonwealth, 676 S.W.3d 405 (Ky. 2023).**
Opinion of the Court by Justice Conley. All sitting. VanMeter, C.J.; Bisig, Lambert, and Nickell, JJ., concur. Keller, J., concurs in part and concurs in result only in part by separate opinion in which Thompson, J., joins.

Mark Johnson was convicted of two counts of third-degree burglary; one count of theft by unlawful taking, $500-$1000; and first-degree persistent felony offender. He was sentenced to twenty years in prison. He appealed arguing a juror unanimity error in the instructions for failing to instruct the jury to be unanimous as to which buildings he entered for each count of third-degree burglary, since the evidence supported that Johnson had entered two separate buildings for each count respectively. He also argued he was entitled to a directed verdict on one of the counts for third-degree burglary because the

greenhouse he entered did not qualify as a building under the statue. Finally, he argued two errors in the penalty phase. First, that the Commonwealth introduced evidence of amended or dismissed charges, as well as evidence of a misdemeanor conviction inaccurately portrayed as a felony to the jury. Second, that the Commonwealth had elicited misleading testimony regarding his eligibility for parole based on good-time credits should the jury convict him as a persistent felony offender.

The Supreme Court affirmed in part and reversed in part. The convictions for third-degree burglary were affirmed. The Court ruled that there was a juror unanimity error because the evidence did support the belief that Johnson had entered two separate buildings for each count and the instructions failed to distinguish between the buildings. The Court ruled that this was not simply a brute fact which supported an element of third-degree burglary because the statute supported charging Johnson with a separate crime for each building unlawfully entered. But this error was unpreserved at trial; consequently, the Court held there was no palpable error. In reaching this conclusion the Court specifically held "[t]here is no separate category of palpable error review for 'errors so fundamental as to threaten a defendant's entitlement to due process of law.'" The Court specifically overruled Johnson v. Commonwealth, 405 S.W.3d 439 (Ky. 2013), Kingery v. Commonwealth, 396 S.W.3d 824 (Ky. 2013), Martin v. Commonwealth, 456 S.W.3d 1 (Ky. 2015), and King v. Commonwealth, 554 S.W.3d 343 (Ky. 2018) to the extent they could be read to the contrary.

The Court reversed the persistent felony offender conviction. The Commonwealth had elicited direct testimony from the Circuit Court Clerk and a parole officer regarding several felony charges that either were amended or dismissed prior to final disposition, as well as mentioning a misdemeanor conviction inaccurately as a felony conviction. The Commonwealth mentioned the latter charge in its closing argument to argue to the jury the "time for mercy is past." Finally, the latter conviction was erroneously included on the instructions as a qualifying felony conviction. Thus, all these factors combined such that the Court ruled there was palpable error. It remanded for a new sentencing phase to be conducted. The Court otherwise affirmed the denial for directed verdict because the greenhouse did qualify as a building under the burglary statute. It declined to address Johnson's argument about improper testimony pertaining to parole eligibility since it reversed the persistent felony conviction as detailed above.

***Alderson v.* Commonwealth, 670 S.W.3d 884 (Ky. 2023).**
Opinion of the Court by Justice Thompson. All sitting. All concur.

Alderson was convicted after a jury trial on two counts of first-degree rape and two counts of first-degree sexual abuse based on his conduct toward three of his teenage sister's friends while the girls were having separate sleepovers at the family home. Alderson appealed on the basis that the trial court erred by: (1) allowing the prosecution to solicit victim impact testimony during the guilt phase of the trial; (2) permitting the prosecution to amend one first-degree rape count from "physically helpless" to "forcible compulsion" after dismissing the count for failure of proof that the victim was physically helpless; (3) denying a motion for separate trials despite the crimes being committed separately; (4) ruling that Alderson could not refresh the girls' memories with prior inconsistent statements without opening the door to the admission of the entirety of their video statements; and (5) permitting imposition of a jail fee without evidence there was an existing jail fee reimbursement policy.

(1) The Court reversed and remanded on the basis that allowing repeated and extensive victim impact testimony in the guilt phase of the trial (which was only partially preserved) was a serious and glaring error, there was no justifiable basis for admitting such testimony at this phase of the trial, and the error impacted Alderson's substantive rights. (2) The Court upheld the trial court's action allowing an amendment of a rape count after it had already been dismissed to a different method of committing the same crime, acknowledging this was technically improper but harmless as it did not prejudice Alderson. (3) The Court upheld the denial of the motion for separate trials as a joint trial did not violate Alderson's right to due process as the evidence as to each crime would have been properly admissible pursuant to KRE 404(b) because Alderson had a discernable modus operandi in how he assaulted each victim. (4) The Court ruled that the trial court erred by ruling that Alderson's attempts to refresh the witnesses' memories required the admission of their entire video statements and provided that on remand Alderson could properly refresh their memories with this video pursuant to KRE 612 without them becoming admissible evidence and only if he attempted to impeach them with their prior inconsistent statement would another portion of such video potentially need to be admitted into evidence pursuant to KRE 106. (5) The Court ruled that the trial court erred when it imposed jail fees without evidence of a jail fee reimbursement policy when no evidence of its existence was presented during sentencing.

***Stieritz v.* Commonwealth, 671 S.W.3d 353 (Ky. 2023).**
Opinion of the Court by Justice Nickell. All sitting. VanMeter, C.J.; Bisig, Conley, and Lambert, JJ., concur. Keller and Thompson, JJ., concur in result only.

Stieritz was convicted of complicity to attempted murder, complicity to seconddegree assault, and tampering with physical evidence. He received a total sentence of twenty years' imprisonment and appealed to the Supreme Court as a matter of right.

For his first claim of error, Stieritz argued he was entitled to a directed verdict on all charges. However, the Supreme Court held there was sufficient evidence to support the verdict. For his second claim of error, Stieritz argued the trial court erred by denying his motion for mistrial based on the mid-trial revelation that one of the victims had been tested for gunshot residue and the Commonwealth failed to notify the defense prior to trial. However, the Supreme Court determined that, while the failure to produce the test results was technically a discovery violation, the violation did not rise to level of prejudice necessary to warrant a mistrial. For his third contention of error, Stieritz argued he was entitled to a jury instruction on menacing as a lesserincluded offense of attempted murder. However, the Supreme Court held there was no basis to support a menacing instruction in light of evidence that Stieritz drove the car and provided a loaded gun to the shooter in a drive-by shooting, knowing that the shooter intended to fire upon an occupied vehicle. For his final contention of error, Stieritz argued the trial court improperly excluded evidence during the penalty phase establishing he had suffered a traumatic head injury after the events giving rise to his convictions. However, the Supreme Court concluded circumstances arising after the commission of a crime are irrelevant to the issues of mitigation and leniency, and therefore held the trial court had not abused its discretion by excluding the evidence.

***Payne v.* Commonwealth, 681 S.W.3d 1 (Ky. 2023).**
Opinion of the Court by Justice Nickell. All sitting. VanMeter, C.J.; Bisig, Conley, Keller, and Lambert, JJ., concur. Thompson, J., concurs in result only.

Payne used the internet to pose as a high school student to lure five young girls into providing him explicit videos and photographs. He also involved one of the minor victims in an actual sexual relationship.

At trial, Payne was convicted of twelve counts of possession of matter portraying a sexual performance by a minor; six counts of use of a minor in a sexual performance with a victim under age sixteen; and one count of use of minor in a sexual performance with a victim under age eighteen. He was

sentenced to a total of seventy years' imprisonment and appealed to the Supreme Court as a matter of right.

On direct appeal, Payne argued the trial court erred by denying his motion to suppress evidence obtained from a warrantless search of his cellphone. However, the Supreme Court held the evidence established Payne consented to the search by voluntarily handing the cellphone over to police.

Payne next argued he was improperly sentenced because the trial court failed to recognize that KRS 532.110(1)(d) allows for multiple sentences involving the same victim to be run concurrently. Specifically, Payne argued his sentences for offenses against the first victim could have been run concurrently to each other, but consecutively to the sentences imposed for offenses against the second victim, the third victim, and so on. However, the Supreme Court held that KRS 532.110(1)(d) mandates consecutive sentences in this situation. Contrary to Payne's argument, the plain language of the statute does not permit a trial court to order multiple sentences pertaining to the same victim to run concurrently with each other, but consecutive to the sentences pertaining to other victims.

***Robertson v. Commonwealth*, 677 S.W.3d 309 (Ky. 2023).**
Opinion of the Court by Justice Keller. All sitting. All concur.

Michael Robertson was convicted of two counts of rape for acts perpetrated upon his 9-year-old stepdaughter. On appeal to the Supreme Court, Robertson alleged that the trial court erred by allowing the victim's father, as her representative under Marsy's Law, to remain in the courtroom prior to his testimony. He asserted that this violated his right to the presumption of innocence, his right to confrontation, and his right to have witnesses separated under Kentucky Rule of Evidence (KRE) 615. The Court held that the trial court in this case did not err but set forth best practice for when the issue arises in the future. The Court explained that both the defense and the Commonwealth should consider in their trial preparations whether a conflict may arise between Marsy's Law and KRE 615. If there is an anticipated conflict, the parties should bring it before the court pretrial. At that time, the trial court should conduct a hearing at which the parties can discuss the potential conflict, and the Commonwealth can put forth its proposed order of witnesses and the basic substance of the victim's testimony. With that information, the trial court should, to the best of its ability, determine the impact of the conflict on the proposed testimony of the victim. Then the court should determine if, in the interest of maintaining the integrity of the trial, a different order of Commonwealth witness presentation is mandated. The Court emphasized that it trusts trial courts to use their discretion in making these determinations to

help ensure as fair a trial process as possible, within the parameters of Marsy's Law.

Robertson alleged several other errors by the trial court. The Supreme Court held that none of these alleged errors merited reversal of Robertson's convictions.

***Commonwealth v. Bembury*, 677 S.W.3d 385 (Ky. 2023).**
Opinion of the Court by Justice Lambert. Bisig, Conley, Keller, Lambert, Nickell, and Thompson, JJ., sitting. Bisig, Conley, and Nickell, JJ., concur. Nickell, J., concurs by separate opinion. Keller, J., dissents by separate opinion in which Thompson, J., joins. Thompson, J., dissents by separate opinion. VanMeter, C.J., not sitting.

Two bicycle officers patrolling the entertainment district in downtown Lexington observed an individual named Joseph Napier approach William Bembury. The officers knew Bembury to be a synthetic marijuana trafficker. The two men had a brief conversation and then walked away from the area together, prompting the officers to follow them. Napier and Bembury sat down at a picnic table in a public courtyard. One of the officers watched from the first level of a nearby parking garage as Bembury took money from Napier and placed it in his backpack, which was on the picnic table in front of him. Bembury then pulled a rolling paper out of his backpack, reached back into his backpack, and pulled out a substance. Bembury then sprinkled the substance into the rolling paper, rolled it, and gave it to Napier. Napier took the joint and walked away from the area. The officers followed Napier, stopped him, and confirmed that the substance in the joint was synthetic marijuana. One of the officers then went back to Bembury, who was still in the courtyard, and arrested and handcuffed him. One of the officers performed a cursory search of Bembury's backpack and then waited until the other officer came back to the courtyard. The other officer then performed a more thorough search of the backpack and found, inter alia, a golf ball sized baggie of synthetic marijuana. After Bembury's motion to suppress the evidence found in his backpack was denied, he entered a conditional guilty plea to one count of possession of synthetic drugs. The Court of Appeals reversed.

The Supreme Court reversed the Court of Appeals and held that the search of Bembury's backpack was permissible as a search incident to his lawful arrest. The Court noted that the U.S. Supreme Court has yet to address whether searches of portable containers found on an arrestee's person at the time of his or her arrest may be searched incident to a lawful arrest. It therefore adopted the "time of arrest" rule as adopted by several other state courts. Under the time of arrest rule, a portable container is considered part of an arrestee's

"person" for the purposes of a search incident to a lawful arrest if the container was in the arrestee's actual and exclusive possession, as opposed to constructive possession, at or immediately preceding the time of arrest such that the item must necessarily accompany the arrestee into custody.

***Barrett v. Commonwealth*, 677 S.W.3d 326 (Ky. 2023).**
Opinion of the Court by Justice Keller. All sitting. All concur.

The Court affirmed Jason Barrett's conviction of nine counts of Sexual Abuse in the First Degree for acts perpetrated against his minor stepdaughter. On appeal to the Supreme Court, Barrett asserted that the Commonwealth engaged in flagrant prosecutorial misconduct when the prosecutor told the jury in closing argument, "[t]hat [Barrett's] presumption of innocence, I would submit to you is gone because you've heard the proof beyond a reasonable doubt." The Court held that the prosecutor's closing argument remark was improper but not palpable error.

Barrett argued several other grounds for relief: (1) the trial court erred in allowing Barrett's stepdaughter to read printed screenshots of her diary entries; (2) the trial court erred in allowing the Commonwealth to question Barrett about his stepdaughter's credibility; and (3) the jury instructions violated Barrett's right to a unanimous verdict.

The Court held that the trial court did not err in allowing Barrett's stepdaughter to read aloud her diary entries because under KRE 801A, the diary entries were Barrett's stepdaughter's prior consistent statements that rebutted the defense's theory that she lied about the sexual abuse to the police. Further, the Court held that the trial court erred in allowing the Commonwealth to question Barrett about his stepdaughter's credibility, but the prosecutor's line of questioning did not rise to the standard of palpable error. Finally, the Court held that the jury instructions did not violate Barrett's right to a unanimous verdict because each instruction described a specific instance of sexual abuse testified to by Barrett's stepdaughter.

The prosecutor's improper comment in closing argument and the trial court's error in allowing the prosecutor to repeatedly question Barrett about his stepdaughter's credibility did not merit reversal of Barrett's convictions.

***Behrens v. Commonwealth*, 677 S.W.3d 424 (Ky. 2023).**
Opinion of the Court by Justice Bisig. All sitting. All concur.

Nicholas Behrens appealed as a matter of right from the Campbell Circuit Court judgment sentencing him to fifty years in prison for his convictions of three counts of first-degree sexual abuse, tampering with physical evidence, two counts of incest, two counts of sodomy, and one count of possession of matter portraying a sexual performance by a minor. All the convictions relate to sexual abuse perpetrated by Behrens against his eight-year-old son, Behrens' possession of child pornography, and Behrens' efforts to erase his digital footprint after law enforcement began its investigation.

The Supreme Court held the tampering instruction did not violate the unanimous jury verdict requirement. Applying Johnson v. Commonwealth, No. 2021-SC-0541-MR, 2023 WL 4037845, at *5 (June 15, 2023), the Court reasoned that Behrens' tampering charge resulted from the whole ensemble of incriminating data that Behrens sought to erase, including an iPad, MacBook, and iCloud account. The individual devices and accounts were all components of a sole evidentiary source: Behrens' digital footprint. The Court further held the trial court did not err in denying Behrens' renewed motion to sever the remaining child pornography charge after severing nineteen child pornography charges from the sex offense and tampering charges. The remaining child pornography charge was properly joined and Behrens did not suffer undue prejudice. Next, the Court held that the trial court did not err in admitting evidence of Behrens' adult messaging app communications because that evidence was strongly probative of both motive and knowledge for the crimes charged. Finally, the Court held that the Commonwealth's closing argument comments about the acts Behrens perpetrated against his son did not warrant reversal because the comments merely used layman's terms to describe the conduct, were isolated, did not mislead the jury, and the evidence in the case weighed heavily against Behrens. The Court affirmed the judgment of the Campbell Circuit Court.

***Meredith v. Commonwealth*, 677 S.W.3d 452 (Ky. 2023).**
Opinion of the Court by Justice Bisig. All sitting. All concur.

Joseph Meredith shot and killed Angela Kerr then recorded himself having sex with her corpse. Meredith was convicted by a Hardin Circuit Court of murder, abuse of a corpse, being a convicted felon in possession of a handgun, and being a first-degree persistent felony offender. The trial court sentenced Meredith to seventy years in prison consistent with the jury's recommendation.

On appeal, the Supreme Court held that the trial court properly admitted a limited portion of the abuse of a corpse video. The abuse of a corpse statute requires that a person treat a corpse in a way "that would outrage ordinary family sensibilities." Kentucky Revised Statute 525.120. As such, the video clip was relevant to the jury's determination of whether Meredith satisfied the elements of the crime. The video was probative, and not unduly prejudicial because the evidence was limited to only what was necessary to establish the elements of the offense. Additionally, the parties pointed to no other evidence of what the video depicted, what acts were perpetrated upon Kerr's corpse, or who any perpetrator may have been. Further, neither the trial court nor the Commonwealth was obligated to accept Meredith's offer to stipulate to the existence and contents of the videos, or his offer to show still photos taken from the videos. Next, the Court held that the trial court properly declined to instruct the jury on extreme emotional disturbance (EED) because Meredith's testimony regarding the events leading to the murder did not support an EED instruction. Meredith failed to establish that he was extremely disturbed, much less that he acted under the influence of any disturbance in killing Kerr. The Court affirmed the judgment of the Hardin Circuit Court.

***Martin v. Commonwealth*, 686 S.W.3d 77 (Ky. 2023).**
Opinion of the Court by Justice Bisig. VanMeter, C.J.; Bisig, Conley, Keller, Lambert, and Nickell, JJ., sitting. VanMeter, C.J.; Keller, and Lambert, JJ., concur. Nickell, J., dissents by separate opinion in which Conley, J., joins. Thompson, J., not sitting.

Christian Richard Martin appealed as a matter of right from the Christian Circuit Court judgment sentencing him to life without the possibility of parole for his convictions of three counts of murder, two counts of burglary, one count of arson, one count of attempted arson, and three counts of tampering with physical evidence. On appeal, Martin argued the trial court erred by 1) admitting hearsay statements that the victims feared him, 2) allowing his exwife and stepson to refuse to testify on Fifth Amendment grounds, 3) excluding certain alleged alternative perpetrator ("aaltperp") evidence, 4) admitting evidence of a bullet casing discovered by a lay witness and excluding evidence that witness failed a polygraph examination, 5) denying his motion for directed verdict on the arson and murder charges, and 6) allowing his two first-degree burglary convictions to stand in violation of double jeopardy principles. The Supreme Court held that the victims' statements of fear of Martin were properly admitted under the forfeiture by wrongdoing and state of mind exceptions to the hearsay rule. The Supreme Court further held the trial court properly permitted Martin's ex-wife and stepson to invoke the Fifth Amendment privilege. The Court also held that any error in excluding certain aaltperp

evidence was either not preserved or harmless, that the trial court properly allowed testimony regarding the discovered bullet casing and properly excluded testimony regarding the witness's failure of a polygraph examination, and that the evidence was sufficient to support a finding of two separate burglaries and thus there was no violation of double jeopardy principles. Finally, the Court held that while Martin was not entitled to a directed verdict on the murder charges, he was entitled to a directed verdict on the arson and attempted arson charges because there was no evidence to suggest the victims were alive when Martin started the fires. The Court thus reversed Martin's arson convictions and affirmed the remainder of the Christian Circuit Court's judgment and sentence.

***Moulder v. Commonwealth*, 681 S.W.3d 49 (Ky. 2023).**
Opinion of the Court by Justice Conley. All sitting. VanMeter, C.J.; Keller, Lambert, and Thompson, JJ., concur. Nickell, J., dissents by separate opinion in which Bisig, J., joins.

Larry Moulder appealed his convictions alleging several violations involving testimony of the victim and the failure of the trial court to strike a prospective juror, forcing him to use one of his preemptory strikes. The Supreme Court concluded the trial court should have struck the juror and declined to address any other issues. After a thorough review of the colloquy that occurred between the juror, the trial court, as well as counsel for both the defense and Commonwealth, the Court concluded that after five minutes the juror had not given an affirmative and unequivocal answer that she could be impartial and weigh the evidence fairly. Instead, it was evident she was troubled by there being a child-victim in the case. She had expressed clearly that this fact would make it difficult for her to be objective. The trial court, in front of the juror, told the Commonwealth that she could not be seated on the jury. The trial court then proceeded to tell the juror that he needed to hear her say that she could be fair and weigh the evidence fairly. Only after being told what she had to say if she wanted to be on the jury did she make an affirmative declaration that she could be fair and impartial. The Supreme Court held this was too far past the line of proper discretion and amounted to rehabilitation of the juror; the search for "magic words" that is prohibited by law. The Court reversed and remanded to the trial court.

***Carpenter v. Commonwealth*, 681 S.W.3d 36 (Ky. 2023).**
Opinion of the Court by Justice Lambert. All sitting. VanMeter, C.J.; Bisig, Conley, Nickell, and Thompson, JJ., concur. Keller, J., concurs in result only.

Carpenter was convicted by a jury of six counts of possession of matter portraying a sexual act by a minor (possession of child pornography). Carpenter challenged all six convictions on the basis that he was improperly denied a directed verdict because there was insufficient proof that he knowingly possessed two thumbnail images and four videos containing child pornography. He challenged the four convictions for possessing child pornography videos on the basis that the trial court did not conduct the Kentucky Rule of Evidence (KRE) 403 balancing test before allowing the videos into evidence. Held: The trial court did not err by denying a directed verdict. Considering the evidence as a whole, a reasonable jury could find Carpenter did not obtain the images and videos located within the unallocated space of 3 his computer by mistake or circumstance and that based upon the file names indicative of searches for pornography within the allocated space, Carpenter did indeed download and knowingly possess the items located within the unallocated space. However, the trial court abused its discretion by not viewing the videos before ruling that the videos were not unduly prejudicial and allowing them into evidence. The trial court needed to know what was in the videos to assess the potential prejudice to Carpenter against the evidence's probative value and properly exercise its discretion under KRE 403.

***Moreland v. Commonwealth*, 681 S.W.3d 102 (Ky. 2023).**
Opinion of the Court by Justice Conley. All sitting. All concur.

Daniel Moreland pled guilty to three Class C felonies. He agreed to a twenty-year sentence with ten years to be served in prison and ten years to be served on probation, commonly known as a split sentence. He served his ten years in prison and was released on probation. When the Commonwealth sought to revoke his probation, Moreland argued that split-sentences were not authorized by the probation statute, KRS 533.020(1). The Court of Appeals agreed and held the portion of his sentence ordering him to serve ten years on probation was void. The Court of Appeals' decision, however, would have let Moreland free after only serving ten years in prison. The Commonwealth appealed and the Court granted discretionary review.

The Court affirmed insofar as the probation statute did not authorize split sentences. Probation is not an inherent power of the judiciary but granted by statute, therefore the statutory text is controlling. The text of KRS 533.020(1) only authorizes probation when the defendant is not sentenced to imprisonment. The Court clarified, however, that an underlying prison

sentence is necessary before probation can be imposed because probation is in lieu of prison. Therefore, the statute means that when a defendant is ordered to serve any portion of his sentence in prison, he cannot serve the remaining portion on probation. The statutory scheme creates an "either/or" option, not a "both/and" option.

The Court reversed, however, insofar as the Court of Appeals' decision would have let Moreland go free from custody. The Court concluded that the proper remedy for a void order of probation is remand for resentencing. The fact that the trial court had ordered Moreland to only serve ten years of imprisonment was just as void as the order of probation, because the order that he be released after ten years effectively amounted to either a de facto probation order, or a grant of parole, or a commutation of sentence. In any case, the order invaded the power of the executive branch and could not be given effect. Therefore, the agreed upon sentence of twenty years in prison was still effective and remand was necessary for the trial court, the Commonwealth, and Moreland to agree on a new way to serve the sentence. The Court affirmed in part, reversed in part, and remanded to the trial court for resentencing.

***James v. Commonwealth*, 681 S.W.3d 60 (Ky. 2023).**
Opinion of the Court by Justice Bisig. All sitting. All concur.

Paul W. James appealed as a matter of right from the Grant Circuit Court judgment sentencing him to life in prison for his convictions of murder and tampering with a witness. James shot and killed Barry Kenner after longstanding animosity between the two families. During deliberations, the jury initially returned guilty verdicts on murder and three lesser-included offenses. After further instruction from the trial court and a clean set of instructions, the jury ultimately returned a guilty verdict on only the murder charge. On appeal, the Supreme Court held that the jury instructions did not yield a verdict that violated the unanimous verdict requirement, and the trial court properly denied James's motion for a mistrial. The Court reasoned that the jury instructions were typical stairstep instructions that were clear and explicit. The jury's initial set of verdicts resulted from confusion and failure to follow the instructions, not a lack of unanimity. Once the jury found James guilty of murder, that conviction precluded conviction on any lesser-included offense and was surplusage.

The Court also held that a portion of a police officer's testimony, during which he stated that James was not appropriately distraught in a police interview, were improper but did not constitute palpable error. Officers are permitted to testify about a person's demeanor and recount comments and behavior they personally observed. Additionally, a parole officer's partially incorrect testimony

regarding parole eligibility and meritorious good time credit did not render the trial fundamentally unfair because the officer later affirmed that, regardless of sentence length, James was not eligible for parole until he served twenty years. Finally, the Commonwealth's comments in closing argument during the penalty phase did not constitute palpable error. While the Commonwealth should not have stated that the victim's family asked that the jury impose a particular sentence, this statement was not egregious enough to render the overall trial unfair.

***Finch v. Commonwealth*, 681 S.W.3d 84 (Ky. 2023).**
Opinion of the Court by Justice Lambert. All sitting. VanMeter, C.J.; Bisig, Conley, Keller, and Nickell, JJ., concur. Thompson, J., concurs in result only by separate opinion.

Finch was found guilty of first-degree rape, first-degree sexual assault, and intimidating a participant in a legal process for crimes he committed against the fourteen-year-old daughter of his longtime live-in girlfriend. The results of the young girl's rape kit showed that Finch's semen was found in her vagina.

The Supreme Court held, first, that it was not palpable error for the Commonwealth to state during voir dire that Finch had a right not to testify and that his decision not to testify could not be held against him and to ask the venire, in the event he chose to testify, whether they could judge his credibility in the same manner as any other witness. The Court reasoned that the Commonwealth had accurately stated the law and then asked a question meant to assess whether the potential jurors could be impartial. And, because the statement occurred during voir dire, Finch had not yet decided whether to invoke his Fifth Amendment right. Next, the Court held that the trial court did not abuse its discretion by declining to strike two jurors for cause based on Finch's argument that the jurors' current and former employment, respectively, aligned them with victims of child sex abuse. Finch failed to present any reasonable ground that the jurors should have been struck apart from their employment, and the trial court therefore did not err by overruling his motions to strike. Finally, the Court held that cumulative error did not occur because: (1) the victim's testimony that she was being truthful was permissible because the defense alleged in opening that she was lying about the rape allegation; (2) the victim's mother and forensic interviewer did not improperly bolster her testimony; (3) no prejudicial error resulted from an investigating officer's testimony that Finch's DNA was obtained pursuant to a search warrant; and (4) the Commonwealth's closing argument did not make improper "golden rule" arguments, nor did it interject facts not in evidence in order to bolster the victim's credibility

***Riggle v. Commonwealth*, No. 2021-SC-0510, 2023 WL 8640832 (Ky. Dec. 14, 2023).**
Opinion of the Court by Justice Keller. All sitting. VanMeter, C.J.; Bisig, Conley, Lambert, and Thompson, JJ., concur. Nickell, J., concurs in part, concurs in result only in part, and dissents in part by separate opinion.

Riggle, Sr. (Senior), was convicted of three counts of sodomy in the first degree, eight counts of sexual abuse in the first degree, and three counts of intimidating a participant in the legal process stemming from years of inappropriate sexual conduct perpetrated on his three minor nieces. The Supreme Court held: (1) The trial court did not err in admitting testimony from other minor victims that Senior had similarly abused them. This testimony tended to prove that Senior had committed prior bad acts in furtherance of a common scheme or plan to cultivate a culture of unreported abuse in his household. Such evidence was admissible under the exceptions to the rule barring character evidence in KRE 404(b). (2) Testimony from one victim's school counselor confirming that the victim had previously reported Senior's abuse to the counselor did not amount to improper hearsay but was rather non-hearsay admissible for rehabilitative purposes. (3) Two of the trial court's jury instructions did present unanimous verdict issues, but those errors did not result in manifest injustice. (4) The trial court did not err in denying Senior's motion for a directed verdict because there existed sufficient evidence that Senior had made a "threat" under KRS 524.010(8) to support an intimidating a participant in the legal process charge. Senior's demand that the victim "swear on [her] little sister" not to tell anyone about his abuse constituted a "threat." (5) The trial court did not err in failing to sua sponte direct a verdict on one count of first-degree sexual abuse because the Commonwealth presented more than a scintilla of evidence that Senior had touched one of the victim's breasts.

***Berry v. Commonwealth*, 680 S.W.3d 827 (Ky. 2023).**
Opinion of the Court by Justice Conley. VanMeter, C.J.; Conley, Keller, Lambert, Nickell, and Thompson, JJ., sitting. VanMeter, C.J.; Conley, Keller, and Lambert, JJ., concur. Thompson, J., concurs in result only. Nickell, J., concurs in part and dissents in part by separate opinion. Bisig, J., not sitting.

Eric Berry broke into the house of his ex-girlfriend, Alford, and assaulted both she and her then-boyfriend. Berry searched throughout the house looking for Alford while she hid in her daughter's closet. Berry, though drunk, was able to communicate and repeatedly asked Alford's boyfriend and daughter where she was. When Berry finally found Alford, he began to strike her face repeatedly,

pulled off her pants and underwear, and only ceased his attack when police announced their presence at the front door. Berry was apprehended while attempting to flee. After his arrest, Berry was incarcerated for approximately 50 months between arrest and trial, including during the Covid-19 pandemic. After trial concluded, Berry sought an intoxication instruction for the jury, but it was denied. On appeal, Berry alleged his speedy trial right was violated; the trial court erred in refusing to give the intoxication instruction; and other minor issues.

The Court affirmed Berry's convictions in a five-to-one ruling with Justice Conley writing for the Court. Justice Nickell dissented on the intoxication instruction issue. Bisig, J., did not sit. The Court held there was no violation of Berry's speedy trial right because all the delays of his trial were due to valid reasons; namely, Berry's own motion practice and trial strategy, including a motion to retain private counsel, as well as the Covid-19 pandemic orders of the Supreme Court. The Court found no abuse of discretion in refusing to give the intoxication instruction because to merit such an instruction there must be some evidence supporting the inference that the defendant was not merely drunk, but so drunk as to not know what he was doing. The testimony was unanimous that Berry was looking for Alford in the house and that he intended to assault her. Although Alford's daughter did state that she did not believe Berry knew what he was doing, she immediately qualified that statement by testifying he was she looking for her mom. The Court held one piece of out-ofcontext testimony did not satisfy Berry's burden of proof, since intoxication is an affirmative defense. The Court held the trial court did not err in failing to sever a sexual abuse charge from a prior incident since Berry could not demonstrate prejudice. Finally, the Court also held the trial court did not err in refusing to allow prior testimony of Berry from a domestic violence hearing since KRE 804(b)(1) precludes that testimony where the party the testimony is offered against did not have a similar motive and opportunity to cross-examine Berry. The Commonwealth was not a party in the domestic violence hearing.

***Johnson v. Commonwealth*, 2023 WL 8639369 (Ky. 2023).**
Opinion of the Court by Justice Conley. All sitting. VanMeter, C.J.; Bisig, Keller, Lambert, and Nickell, JJ., concur. Thompson, J., concurs in result only.

In a case presenting numerous charges and extensive facts, Ruben Johnson challenged his convictions arguing the trial court erred in allowing the Commonwealth to cross-examine him about three prior misdemeanor battery convictions to rebut his testimony that he is a kindhearted person; that the trial court erred when it allowed police body cam footage showing an interview

with a neighbor; that the trial court erred in not polling the jury; and the trial court erred in not giving directed verdicts on several counts.

In a six-to-one ruling, with Justice Conley writing for the Court, and Justice Thompson concurring in result only, the Court affirmed in part and reversed in part Johnson's convictions. It held that Johnson's testimony of being kindhearted was an impermissibly broad claim to moral virtue that the Commonwealth was entitled to rebut with evidence that would otherwise be impermissible under the rule of curative admissibility. It held there was no constitutional error in showing the police body cam footage because the interview of the witness at the scene was not testimonial under the Sixth Amendment. The Court assumed without deciding that the testimony, under the Kentucky Rules of Evidence, was hearsay but concluded the erroneous admission was harmless. It held there was no error in refusing to poll the jury because Johnson did not assert that right at the trial court, and his trial counsel twice told the trial court that he did not believe polling the jury was necessary. Finally, the Court agreed that one charge of complicity to first-degree robbery merited a directed verdict since the trial court concluded that a lesser-included offense of fourth-degree assault was not proven for failure to show physical injury. Under the facts of this case, physical injury was a shared element with first-degree robbery so its absence in the lesser-included offense meant it was also absent for the greater offense. The Court reversed this conviction, as well as another fourth-degree assault conviction based on double jeopardy grounds. As to the other charges on which Johnson claimed he was entitled to a directed verdict, the Court disagreed and affirmed his convictions.

***Johnson v. Commonwealth*, 680 S.W.3d 814 (Ky. 2023).**
Opinion of the Court by Justice Conley. All sitting. All concur.

Jaikorian Johnson was walking with a friend when two young men on a moped approached them from behind. One of them, Corban Henry, brandished an airsoft pistol at him. Believing it was a real gun, Johnson drew his own pistol, fled in the opposite direction, and aimlessly fired five shots behind him. One of these bullets struck Henry and passed through him, also striking the moped's driver, Pittman. Henry later died from his wounds. At trial, Johnson was acquitted of murder and convicted of second-degree manslaughter as well as fourth-degree assault. He was also convicted of four counts of first-degree 4 wanton endangerment. In the penalty phase, Henry's mother gave a victim impact statement in which she accused Johnson of several additional crimes, including another act of wanton endangerment by shooting a gun over a candlelight vigil and acts of intimidation against her own person. She also accused Johnson of bragging on social media about killing her son. On appeal,

Johnson argued the trial court erred by excluding witness testimony that would have put before the jury that the two victims were on their way to rob another man when the shooting occurred; the trial court erred in refusing to give a directed verdict on the wanton endangerment counts since there was no person in the vicinity of Johnson when he fired his pistol four additional times; and the victim impact testimony of Henry's mother was palpable error.

In a unanimous opinion with Justice Conley writing for the Court, the Court upheld Johnson's convictions. It held that the trial court properly excluded the testimony regarding the alleged robbery scheme of the victims because Johnson introduced no evidence that he was aware prior to the shooting that the victims intended to rob him. Since Johnson was not aware of the alleged robbery scheme, it was irrelevant to demonstrating his fear of the victim. The Court also held that the trial court did not err in refusing the directed verdicts on the wanton endangerment counts. Although the Court agreed with Johnson's argument that the Commonwealth must demonstrate with evidence that an actual person was in the vicinity for first-degree wanton endangerment, the Court also held that Pittman was in the vicinity of Johnson when he fired the shots, as evidenced by the fact that he was on the same moped when Henry was struck with a bullet, and in fact was also struck with that same bullet himself. It was not clearly unreasonable for the jury to conclude Pittman was in the vicinity of the other four shots based on this evidence. Finally, the Court reversed Johnson's sentence. It concluded that uncharged acts of misconduct are not admissible in the penalty phase and nothing in Section 26A of the Kentucky Constitution altered that rule. The Court concluded that the accusations of criminal conduct made by Henry's mother surely caused the jury to question its previous conclusion that Johnson had acted with imperfect self-defense as evidenced by its recommendation of the maximum sentence, therefore there was palpable error. The Court remanded for a new penalty phase.

***Stephens v. Commonwealth,* 680 S.W.3d 887 (Ky. 2023).**
Opinion of the Court by Justice Thompson. All sitting. All concur. The Court reversed and remanded a rape conviction because the Commonwealth's pervasive vouching and bolstering evidence rendered the trial fundamentally unfair. In this "he said/she said" case, which was devoid of any physical evidence, allowing other witnesses to testify to the child victim's 5 hearsay statements and to their belief in her veracity constituted palpable error. Such testimony encouraged the jury to render its decision based on what others believed, rather than to exercise independent judgment. It was also improper to allow victim impact evidence to be admitted during the guilt phase of the trial.

***Commonwealth v. Paradise Burkhead*, 680 S.W.3d 877 (Ky. 2023).**
Opinion of the Court by Justice Bisig. All sitting. All concur.

Paradise Burkhead was charged with crimes committed while she was a juvenile and her case was transferred to Jefferson Circuit Court for prosecution as an adult pursuant to a then-existing statute which required mandatory transfer. Subsequently, a new juvenile transfer statute took effect which eliminated the mandatory transfer requirement and instead vested district courts with sole discretion to determine, based on prescribed factors, whether a juvenile firearm case should be transferred to a circuit court. Kentucky Revised Statute (KRS) 635.020(4). Burkhead sought to take advantage of this new statute by a motion to transfer her case back to district court for a second transfer hearing. Over the Commonwealth's objection, the circuit court granted the motion. The Commonwealth filed an interlocutory appeal from the district court's transfer order and the Court of Appeals affirmed.

The Supreme Court concluded that the interlocutory appeal was proper because all conditions of KRS 22A.020(4), which permits an interlocutory appeal in criminal cases, were satisfied. The appeal did not suspend the proceedings, was taken under the normal rules, and was approved by the Attorney General as "important to the correct and uniform administration of the law." KRS 22A.020(4). The Court also determined that the circuit court erred by ordering a second transfer hearing. KRS 446.110 states that no new law shall be construed to repeal a former law, except that "the proceedings thereafter had shall conform, so far as practicable, to the laws in force at the time of such proceedings. . .." The Court construed "proceedings" as used in KRS 446.110 narrowly and as referring to the distinct phases of a case, i.e., arraignment, sentencing, suppression hearings, etc. A trial court must always look to current procedural law when making procedural decisions in a case. Because Burkhead's juvenile transfer hearing occurred when the prior statute was in effect, that prior statute applied to that stage of the proceedings. The Court reversed the Court of Appeals and remanded the case to Jefferson Circuit Court where Burkhead will have a full resolution of her legal issue.

***Sanchez v. Commonwealth*, 680 S.W.3d 911 (Ky. 2023).**
Opinion of the Court by Justice Lambert. All sitting. All concur.

Jose Sanchez was convicted of five counts of first-degree rape and four counts of third-degree rape—all of which were perpetrated against his longtime live-in girlfriend's daughter, who was under the age of sixteen at the time of the offenses. Sanchez appealed his resulting seventy year conviction, arguing: (1)

that the trial court erred by permitting a nurse that examined the victim to repeat the victim's statement that "my dad made me have sex with him"; (2) that the Commonwealth failed to authenticate text messages between Sanchez and the victim and failed to authenticate videos the victim recorded of Sanchez raping her; (3) that the trial court erred by failing to provide a missing evidence instruction for Sanchez's cellphone; (4) that the jury instructions for each of the first-degree rape instructions contained a unanimous verdict violation; (5) that the trial court erred by imposing public defender fees; and (5) that cumulative error occurred.

The Supreme Court held, first, that although the trial court erred by allowing the nurse to repeat the victim's statement identifying Sanchez as the perpetrator, the error was harmless. Second, the Court held that the text messages between Sanchez and the victim and the videos recorded by the victim were properly authenticated. Third, the Court held Sanchez was not entitled to a missing evidence instruction for his cellphone. Fourth, the Court held that Sanchez waived his ability to challenge the first-degree rape instructions on appeal, but nevertheless concluded he would not be entitled to relief under review for palpable error. Fifth, the Court held that the trial court

***Commonwealth v. Roark*, 686 S.W.3d 124 (Ky. 2024).**
Opinion of the Court by Justice Bisig. VanMeter, C.J.; Bisig, Conley, Keller, Lambert, and Nickell, JJ., sitting. All concur. Thompson, J., not sitting.

The Court of Appeals reversed defendant Roark's conviction for manufacturing methamphetamine, holding that the underlying jury instruction violated Roark's right to a unanimous verdict. Consistent with KRS 218A.1432, that instruction allowed the jury to find Roark guilty if it found either that 1) he had knowingly manufactured methamphetamine, or 2) he knowingly had in his possession certain meth-making materials with intent to manufacture methamphetamine.

The Supreme Court granted discretionary review and held that the jury instruction was a permissible combination instruction that did not violate the right to a unanimous verdict because it allowed the jury to convict on either of two theories of criminal liability, both fully supported by the evidence. First, the theory of completed manufacture was supported by evidence showing Roark's possession of a meth lab and a connected bottle containing methamphetamine, as well as additional equipment and materials used in the manufacture of methamphetamine. Second, the theory of possession of materials used in the manufacture of methamphetamine was supported by this same evidence. The Supreme Court therefore reversed the Court of Appeals and affirmed the judgment and sentence of the trial court.

***Helmick v. Commonwealth*, 686 S.W.3d 158 (Ky. 2024).**
Opinion of the Court by Justice Keller. VanMeter, C.J.; Bisig, Keller, Lambert, Nickell, and Thompson, JJ., sitting. All concur. Conley, J., not sitting. Kory E. Helmick was convicted of two counts of sodomy in the third degree, one count of sodomy in the first degree, one count of sexual abuse in the first degree, and one count of unlawful use of an electronic communication system to procure a minor to engage in sexual or other prohibited activity. Helmick received a total sentence of thirty-one years in prison. His conviction stemmed from sexual abuse he perpetrated against J.K., a foster child who was placed in his home. On appeal to the Kentucky Supreme Court, Helmick alleged the trial court erred in denying his motion to continue the trial. Second, he alleged that insufficient proof was adduced at trial to support the conviction of sodomy in the first degree. Finally, he alleged his right to be free from double jeopardy was violated when he was convicted of both sodomy in the first degree and sodomy in the third degree.

The Supreme Court affirmed Helmick's convictions. The Court determined that the trial court did not err in denying Helmick's motion to continue because the motion was not accompanied by an affidavit as required by Kentucky Rule of Criminal Procedure (RCr) 9.04. The Supreme Court further held that J.K.'s testimony that he was "incapacitated" and "incapable of moving" satisfied the "physically helpless" element of sodomy in the first degree, and therefore the trial court did not err in denying Helmick's motion for a directed verdict on that charge. Finally, the Supreme Court held that Helmick's double jeopardy rights were not violated because the jury instructions made clear that each conviction was based on a single, independent criminal act.

***Commonwealth v. Davis*, 686 S.W.3d 167 (Ky. 2024).**
Opinion of the Court by Justice Keller. VanMeter, C.J.; Bisig, Conley, Keller, Lambert, and Nickell, JJ., sitting. All concur. Thompson, J., not sitting.

Ahmad Rashad Davis was indicted on one count of Medicaid fraud and one count of theft by deception. Davis and the Commonwealth entered into a plea agreement, Davis pleaded guilty to Medicaid fraud, and his theft by deception charge was dismissed. The trial court's judgment did not specify the circumstances underlying the dismissal of that theft by deception charge. Years later, Davis filed a petition to expunge his theft by deception charge.

KRS 431.076(1) makes eligible for expungement only those dismissed charges that were not dismissed "in exchange for a guilty plea to another charge." The

trial court, relying solely on the language of the sentencing court's judgment, granted Davis's expungement petition.

The Supreme Court granted review to consider whether the trial court was precluded, as a matter of law, from looking beyond the sentencing court's judgment in determining whether Davis's dismissed charge was dismissed "in exchange for a guilty plea to another charge." The Supreme Court held that trial courts, in determining expungement eligibility, are not prohibited from considering other evidence outside of the sentencing court's final judgment of conviction. Accordingly, the Supreme Court vacated the trial court's order granting Davis's expungement.

***Couch v. Commonwealth*, 686 S.W.3d 172 (Ky. 2024).**
Opinion of the Court by Chief Justice VanMeter. All sitting. Bisig, Conley, Keller, Lambert, and Nickell, JJ., concur. Thompson, J., concurs in result only.

This matter of right appeal challenged the trial court's failure to suppress the fruits of a search of Couch's electronic devices. Couch further challenged the constitutionality of KRS 531.330 and KRS 531.340, alleged prosecutorial misconduct, and alleged the trial court failed to consider her Presentence Investigation Report. The Supreme Court affirmed. Couch became the subject of an investigation after Kenton County police received a tip that pornographic images of minors were circulating online. Police were able to connect the social media account circulating the images to Couch. Subsequent search warrants allowed police to examine Couch's electronic devices which confirmed that Couch possessed and distributed matter portraying a sexual performance by a minor. Prior to trial, Couch moved to suppress evidence collected pursuant to the warrants. Couch also challenged the constitutionality of KRS 531.330 and 531.340, but failed to provide the required notice to the Attorney General pursuant to KRS 418.075. The trial court denied the suppression motion and Couch entered a conditional guilty plea. Couch was sentenced to 20 years' imprisonment and appealed as a matter of right.

The Supreme Court affirmed the trial court. As to the constitutionality of KRS 531.330 and 531.340, recognizing that the Court refuses to address arguments that a statute is unconstitutional unless these notice provisions are fully satisfied, the Court declined to reach the constitutional question as Couch failed to provide notice to the Attorney General. As to the sufficiency of the search warrants, the Court found the warrants were supported by probable cause because police had linked the IP address used to post illegal material to Couch; the warrants were not required to identify the criminal statutes violated, although the warrants here did in any event; and finally, the warrants established a nexus between posting the illegal material and Couch's residence

because the IP address linked to Couch was also linked to that residence. Regarding alleged errors by the prosecution and the trial court's failure to consider Couch's PSI, Couch failed to identify in the record where those errors occurred, and accordingly the Court declined to address the issues.

***Bowman v. Commonwealth*, 686 S.W.3d 230 (Ky. 2024).**
Opinion of the Court by Justice Lambert. All sitting. VanMeter, C.J.; Bisig, Conley, Keller, and Nickell, JJ., concur. Thompson, J., concurs in result only.

Bowman was convicted of murder, tampering with physical evidence, being a convicted felon in possession of a firearm, and being a first-degree persistent felony offender in relation to the shooting death of James Mentee, Jr. The shooting occurred at a bar owned by Mentee, and the events leading up to and immediately following the shooting were captured by the bar's security cameras. After Bowman pointed his gun at Mentee's head at close range, he and Mentee began struggling over the gun and ended up out of frame such that the shooting itself was not captured, nor was any audio. Bowman was shot in the foot/ankle area by one of the bar's security guards as he was walking away from the bar after the shooting. Bowman testified in his own defense that Mentee accidentally shot himself during the struggle.

The Court first held that the trial court did not err by denying in part Bowman's motion to suppress two statements he made to law enforcement at the hospital on the night of the shooting pursuant to Miranda v. Arizona, 384 U.S. 436 (1966) because Bowman was not in custody for Miranda purposes during the first statement and because the officer did not ignore an unequivocal invocation of his right to remain silent during the second statement. The Court next held that the trial court erred by allowing the lead detective to narrate portions of the bar's security camera footage without having the requisite personal knowledge to do so under KRE 701 and KRE 602, but the error was not palpable. Third, the Court held that the trial court did not err by providing the jury with an initial aggressor limitation instruction because Bowman's act of pointing a gun at Mentee's head at close range was sufficient to satisfy KRS 503.010's definition of "physical force," i.e., "force. . . directed toward the body of another person." Finally, the Court held that the trial court violated RCr 9.88 in the manner it polled the jury following each phase of Bowman's trifurcated trial, but those errors were not palpable.

***Roberson v. Commonwealth,* No. 2022-SC-0158-MR, 2024 WL 1709317 (Ky. Apr. 18, 2024).**
Opinion of the Court by Justice Keller. All sitting. All concur.

A Logan County jury convicted Demetrius Roberson of one count of murder, one count of robbery in the first degree, nine counts of wanton endangerment in the first degree, and one count of attempted murder. On appeal to the Kentucky Supreme Court, Roberson alleged several errors by the trial court including that the trial court erred in excluding hearsay evidence that another man admitted shooting the victim, that the trial court erred in admitting deposition testimony, and that the trial court erroneously failed to sequester the jury during its guilt-phase deliberations.

The Supreme Court affirmed Roberson's convictions. The Court held that the trial court did not abuse its discretion in excluding the hearsay evidence regarding an alternate perpetrator, as the testimony was prohibited by Askew v. Commonwealth, 768 S.W.2d 51 (Ky. 1989). The Court also held that the trial court did not abuse its discretion in admitting deposition testimony despite the witness invoking his Fifth Amendment privilege against self-incrimination to some questions on cross-examination because those questions only went to collateral issues. The Court also held that Roberson waived any objection to the trial court's failure to sequester the jury; however, the Court did express concern with the trial court's decision to allow jurors to separate during the lunch break in the middle of guilt-phase deliberations.

***Conn v. Kentucky Parole Board,* No. 2022-SC-0198-DG, 2024 WL 1708578 (Ky. Apr. 18, 2024).**
Opinion of the Court by Chief Justice VanMeter. All sitting. Bisig, Conley, Lambert, and Nickell, JJ., concur. Keller, J., concurs in result only by separate opinion in which Thompson, J., joins.

On review from the Court of Appeals' judgment affirming the Franklin Circuit Court's summary judgment in favor of the Kentucky Parole Board (the "Board"). The Supreme Court affirmed. The sole issue of the case is whether the Board has the power to issue a serve-out to an inmate who is serving a life sentence and is parole eligible. Every Appellant was duly convicted and sentenced to life imprisonment by a trial court. Appellants brought this action in Franklin Circuit Court challenging certain administrative regulations of the Board. Among their claims, Appellants alleged that the Board does not have the statutory authority to serve-out a life sentence and that such a practice violates the constitutional separation of powers. The Franklin Circuit Court concluded as a matter of law that the Board was within its statutory authority to issue a serve-out on a life sentence and granted summary judgment to the Board on

this lone issue, leaving Appellants' other claims intact. The Kentucky Court of Appeals affirmed the Franklin Circuit Court. The Court of Appeals reasoned that the legislature had not prohibited the Board from authorizing serve-outs on life sentences as previously addressed in Simmons v. Commonwealth, 232 S.W.3d 531 (Ky. App. 2007).

The Supreme Court holds that our legislature has created clear exceptions in KRS 439.3403 regarding deferral limitations for inmates serving life sentences, and those exceptions allow the Board to order a serve-out to those inmates. The Board does not overstep its authority by ordering serve-outs because the Board is simply making a determination of parole eligibility within the lawfully ordered sentence set by the trial court. This power does not encroach upon the judiciary's sentencing prerogatives, nor can the Court discern any other constitutional infirmity present in the exercise of that power. If the Board does not alter the sentence adjudged by the court, and it follows its own statutory and administrative guidelines, the Board has wide discretion in its decision to grant or deny parole. A serve-out, then, is authorized by the legislature and not constitutionally impermissible. Appellants are each properly subject to the imposition of a serve-out by virtue of their sentence. Accordingly, the Supreme Court affirms the Franklin Circuit Court's judgment as affirmed by the Court of Appeals.

***Woodall v. Commonwealth*, No. 2022-SC-0232-MR, 2024 WL 1708575 (Ky. Apr. 18, 2024).**

Opinion of the Court by Justice Keller. All sitting. All concur. Thompson, J., concurs with separate opinion in which Conley and Lambert, JJ., join.

In 1998, Robert Keith Woodall was sentenced to death for the kidnapping, rape, and murder of a teenage girl. In 2015, Woodall filed a Motion to Vacate the Death Sentence Due to Intellectual Disability, pursuant to Kentucky Rule of Civil Procedure (CR) 60.02, or in the alternative, CR 60.03. The trial court denied his motion without a hearing. The Kentucky Supreme Court reversed and remanded. See Woodall v. Commonwealth, 563 S.W.3d 1 (Ky. 2018). On remand, the trial court held an evidentiary hearing and again denied Woodall's motion. Woodall again appealed to the Supreme Court.

Woodall argued that he is intellectually disabled, and therefore the Eighth Amendment to the United States Constitution prohibits his execution. He argued that the trial court's finding that he did not prove by a preponderance of the evidence that he is intellectually disabled was not supported by substantial evidence. Woodall also argues that the trial court erred in admitting and relying on an expert report generated pursuant to an evaluation of Woodall at the Kentucky Correctional Psychiatric Center (KCPC) in 1998 without

requiring that the expert testify at the hearing and be subject to cross-examination. Woodall argued that this violated both his Confrontation Clause rights and his Due Process rights. He further argued that the expert report was not relevant and should have been excluded on that basis as well.

The Supreme Court held that the trial court did not abuse its discretion in determining that the KCPC expert report was sufficiently relevant to warrant admission into evidence. The Court also held that Woodall's Due Process rights were not violated, relying on Ford v. Wainwright, 477 U.S. 399 (1986). The Court noted that Woodall was granted funding to hire an expert who opined that he is intellectually disabled and was able to call other witness and cross-examine the witnesses the Commonwealth called. Given all the circumstances, the Court concluded that Woodall had a full and fair opportunity to be heard at his CR 60.02 hearing. The Court also noted that there was no precedent to support extending the Confrontation Clause's protections to a post-conviction collateral attack on a death sentence. Therefore, the Court held that Woodall's Confrontation Clause rights were not violated by the admission of the KCPC expert report without the opportunity to cross-examine the expert. Finally, the Court held that the trial court's factual finding that Woodall did not prove that he is intellectually disabled by a preponderance of the evidence is supported by substantial evidence. Accordingly, the Supreme Court affirmed the trial court.

***Commonwealth v. Ullman,* No. 2022-SC-0293-DG, 2024 WL 1709800 (Ky. Apr. 18, 2024).**

Opinion of the Court by Justice Lambert. VanMeter, C.J.; Bisig, Conley, Keller, Lambert, and Nickell, JJ., sitting. VanMeter, C.J.; Bisig, Conley, and Nickell, JJ., concur. Keller, J., concurs in result only. Thompson, J., not sitting.

Ullman pleaded guilty to three counts of distribution of a matter portraying a sexual performance by a minor. He was sentenced to twelve years imprisonment, probated for five years. Ullman's conditions of probation included completion of a community-based sex offender treatment program (SOTP). The circuit court later revoked his probation for violating several conditions of his probation, including his failure to complete SOTP. Nearly two years after his probation was revoked, Ullman filed a combined CR 60.02 and RCr 11.42 motion for relief. The circuit court granted his CR 60.02 motion based on its finding that participation in an SOTP could not be imposed as a condition of probation because Ullman was not convicted of a "sex crime" as that term is defined by KRS 17.500. The circuit court ordered that Ullman be released and returned to probation for five years. The Court of Appeals affirmed.

The Supreme Court of Kentucky reversed the Court of Appeals, reinstated the circuit court's revocation order, and remanded for consideration of Ullman's RCr 11.42 claim. The Court first held that Ullman's challenge to his conditions of probation was untimely, as a condition of probation is to be challenged when it is imposed and before an individual's probation is revoked due to a violation of the challenged condition. Ullman's sentence of twelve years, probated for five years, was within the available penalty range for his convictions and did not otherwise violate a sentencing statute. It was therefore not an illegal sentence, which could be challenged at any time. The Court went on to conclude that, in accordance with KRS 533.030, a trial court may impose SOTP as a condition of probation for a defendant that was not convicted of a "sex crime" as defined by KRS 17.500 if the court finds that the condition is reasonably necessary to ensure that the defendant will lead a law-abiding life or will assist him or her in doing so and that the condition is reasonable. The Court declined to address Ullman's argument that the circuit court failed to make the required findings under KRS 439.3106 prior to revoking his probation, as he failed to preserve that issue and did not request review for palpable error. Nevertheless, the Court remanded to the circuit court for a finding concerning whether his revocation hearing counsel's failure to challenge the circuit court's omission under KRS 439.3106 constituted ineffective assistance of counsel per RCr 11.42; a fact-finding court had not addressed the issue because the circuit court granted Ullman relief under CR 60.02.

INSURANCE

***Kentucky State University v. Darwin National Assurance Co.*, No. 2021-SC-0130-DG, 2023 WL 4038589 (Ky. June 15, 2023).**

Opinion of the Court by Chief Justice VanMeter. All sitting. Conley, Keller, and Nickell, JJ., concur. Lambert, J., concurs in part and dissents in part by separate opinion in which Bisig and Thompson, JJ., join. The primary issue before the Court was whether the Darwin National Assurance Company, now known as Allied World Specialty Insurance Company ("Allied World"), claims-made-and-reported management liability policy ("Policy") issued to Kentucky State University ("KSU") provided coverage when KSU did not comply with the Policy's notice provisions. The Franklin Circuit Court, finding ambiguity in the notice provisions, applied the notice-prejudice rule adopted in Jones v. Bituminous Casualty Corp., 821 S.W.2d 798 (Ky. 1991), and granted summary judgment in favor of KSU. The Court of Appeals reversed, concluding that the notice-prejudice rule did not apply to the Policy and that summary judgment in favor of Allied World was warranted. The Supreme Court granted discretionary review and affirmed the Court of Appeals. The Supreme Court held that the rationale for applying the notice-prejudice rule in Bituminous Casualty does

not exist in this case and remanded the case to the Franklin Circuit Court with directions to enter a judgment in favor of Allied World. The Supreme Court further clarified that, generally, the notice prejudice rule shall not apply to a claims-made-and-reported policy that contains unambiguous notice requirements as a condition precedent to coverage.

***Megrongile v. Allstate Property & Casualty Ins. Co.*, 671 S.W.3d 293 (Ky. 2023).**
Opinion of the Court by Chief Justice VanMeter. VanMeter, C.J.; Conley, Keller, Lambert, and Nickell, JJ., and Chadwick A. McTighe, S.J., and C. 10 Michael Reynolds, S.J., sitting. All concur. Bisig and Thompson, JJ. Not sitting.

On review from the Court of Appeals' affirmation of the trial court's order directing Dr. Megronigle to pay attorney's fees to Allstate pursuant to CR 37.02(3). The Supreme Court reversed and remanded. Dr. Megronigle was a non-party participant in an automobile negligence case involving Allstate. Dr. Megronigle took MRIs of and performed chiropractic treatment on the plaintiffs in the negligence action. Allstate disputed the amounts charged by Dr. Megronigle and served Dr. Megronigle with subpoenas directing him to turn over a variety of documents related to his business practices. Megronigle objected to the subpoenas and the trial court entered a limited protective order. After Dr. Megronigle unsuccessfully sought a writ of prohibition from the Court of Appeals, Allstate moved to compel and for an award of costs and fees pursuant to CR 37.02(3). A divided Court of Appeals affirmed. The Supreme Court reversed the Court of Appeals, finding the express language of CR 37.02(3) allows for sanctions only against another party. As Dr. Megronigle was brought into the case solely by virtue of a subpoena, he was not a "party" as contemplated by CR 37.02(3) and accordingly not subject to its provisions. The Supreme Court further explained that other mechanisms for sanctioning non-parties exists within the Civil Rules such that expansion of CR 37.02(3) beyond its language was unnecessary.

***Reknot v. Secura Supreme Ins. Co.*, 671 S.W.3d 282 (Ky. 2023).**
Opinion of the Court by Justice Nickell. Bisig, Conley, Keller, Lambert, Nickell, and Thompson, JJ, sitting. Bisig, Conley, Keller, and Lambert, JJ., concur. Thompson, J., dissents by separate opinion. VanMeter, C.J., not sitting.

Renot was injured in a motor vehicle collision and filed suit against the other driver. She also instituted a direct action against her underinsured motorists' (UIM) carrier, Secura Supreme Insurance Company. Renot settled her claims against the other driver and a jury trial was held on her UIM claim. The jury

returned a verdict in favor of Secura and Renot appealed. The Court of Appeals affirmed.

On discretionary review, the Supreme Court affirmed in part and reversed in part. The primary issue presented was whether David Porta, Ph.D., Secura's biomechanical expert, who was not a medical doctor, was qualified to testify that Renot's preexisting knee degeneration was not exacerbated by the collision. The Supreme Court held the trial court had appropriately concluded in pretrial rulings that Dr. Porta was qualified to offer testimony relative to his field of expertise and the generalized forces and mechanics of injury typically associated with collisions similar to the one at issue. The Supreme Court further held the trial court had correctly determined in pretrial rulings that Dr. Porta was unqualified to provide expert opinions on medical diagnoses or causation and had appropriately prohibited him from offering such testimony. However, the Supreme Court held the trial court thereafter erred in allowing Dr. Porta's trial testimony to cross its well-demarcated evidentiary line to offer testimony regarding medical causation, and to thereby invade the exclusive province of medical doctors. The trial court's failure to disallow such testimony was held to have constituted reversible error and the Court of Appeals was deemed to have erred in not so finding. Thus, reversal and remand for a new trial was required.

The Supreme Court also rejected Renot's assertion that she should have been permitted to present testimony regarding coverage or payments of personal injury protection (PIP) or basic reparations benefits as evidence of Secura's admission or concession a causal connection existed between the collision and her subsequent medical bills. The Supreme Court held PIP and UIM benefits are separate and independent, do not overlap, and do not provide duplicative coverage for the same loss. The Supreme Court held PIP benefits are paid without regard to fault, and thus cannot serve as an admission of a causal link between an automobile collision and a claimed injury. Thompson, J., dissented, concluding Dr. Porta's testimony did not influence the verdict and thus, any error related to his testimony was harmless.

***Estate of Bramble v. Greenwich Ins. Co.*, 671 S.W.3d 347 (Ky. 2023).**
Opinion of the Court by Chief Justice VanMeter. VanMeter, C.J.; Bisig, Conley, Keller, Lambert, and Nickell, JJ., sitting. All concur. Thompson, J., not sitting.

On review from the Court of Appeals' reversal of judgment in favor of the heirs of Ben and Lillian Salyer ("the Heirs") based on the Estate's failure to establish insurance coverage before filing a third-party bad faith complaint. The Supreme Court reversed and remanded. In early 2007, the Heirs brought this action against J.D. Carty Resources for trespass to natural gas wells owned by

the Heirs. Carty was insured by Greenwich and defended Carty under a reservation of rights. Carty ultimately settled the matter but defaulted almost immediately after judgment was entered. The Heirs then sought and were granted leave to amend their complaint to assert claims against Greenwich for violation of the UCSPA and bad faith. The Heirs obtained partial summary judgment against Greenwich establishing the Heirs had established the first element of Wittmer v. Jones, 864 S.W.2d 885 (Ky. 1993) that the Greenwich policies covered Carty's actions. This order was made final and appealable. Greenwich timely appealed, but the appeal was dismissed as interlocutory. On remand, litigation resumed and the parties went to trial in April 2018. The Heirs were awarded $15,134,000 in compensatory and punitive damages. The judgment was appealed and in a plurality decision the Court of Appeals reversed the judgment, finding the Heirs were improperly permitted to pursue their claims in violation of Pryor v. Colony Ins. Co., 414 S.W.3d 424 (Ky. App. 2013), as coverage had not been conclusively established. The Supreme Court reversed the Court of Appeals finding that nothing in our jurisprudence on third-party bad faith claims required a claimant to seek a final and conclusive judicial determination of coverage prior to filing such a claim. Here, the first step in satisfying the first prong of Wittmer was the trial court's finding that Greenwich's policies covered Carty's actions. To the extent the language in Pryor suggests otherwise, such language was in error.

PROPERTY

***Ferrill v. Stockyards Bank & Trust Co.*, 671 S.W.3d 339 (Ky. 2023).**
Opinion of the Court by Chief Justice VanMeter. All sitting. All concur.

On review from the Court of Appeals' reversal of the trial court's grant of judgment in favor of Estate for Bank's failure to timely file their claims for voluntary waste. The Supreme Court affirmed in part and reversed in part. This matter arose from a life estate granted to Willena and Guy Ferrill. Shortly after the grant of the life estate, the Ferrills began acting in a manner that invaded and depleted the corpus of the estate. The Bank, acting as trustee, became aware of the wasteful transactions not long after their occurrence but elected to not immediately bring an action against the Ferrills for waste. The final wasteful transaction occurred in 2011 and in 2013 the Bank brought an action for voluntary waste under KRS 381.350 against Willena Ferrill, then still living. The action lingered for a lengthy period until Ferrill moved for summary judgment on statute of limitations grounds, arguing many of the transactions occurred more than five years prior to the institution of the action and any counts based on those transactions were time-barred. The trial court agreed and granted judgment for Ferrill on most of the Bank's waste claims. The dismissed claims were subsequently appealed to the Court of Appeals which

reversed the trial court's ruling as to the dismissed waste claims, the appellate court finding the statute of limitations for the waste claims did not begin to run until Willena Ferrill's death in 2021. The Supreme Court reversed the Court of Appeals insofar as it found the statute of limitations for voluntary waste commenced upon the death of the life tenant, but otherwise affirmed on the various other claims. The Court recognized Kentucky's longstanding distinction between voluntary and permissive waste and reaffirmed that the five-year statute of limitations for voluntary waste begins when the waste is committed. The Court did not address application of the discovery rule. Because many of the Bank's waste claims were brought more than five years after the waste was committed, the trial court was correct in granting summary judgment for the estate as to those claims.

WORKERS' COMPENSATION

***Letcher Co. Bd. of Edu. v. Hall*, 671 S.W.3d 374 (Ky. 2023).**

Opinion of the Court by Justice Bisig. VanMeter, C.J.; Bisig, Conley, Keller, Lambert, and Nickell, JJ., sitting. All concur. Thompson, J., not sitting.

Roger Hall suffered a work-related injury after being exposed to asbestoscontaining material while working for the Letcher County Board of Education (Letcher County). An Administrative Law Judge (ALJ) determined that the Department of Workers' Claims has jurisdiction to hear Hall's claim, and that Hall is permanently and totally disabled and is entitled to medical benefits. As to jurisdiction, the Workers' Compensation Board (Board) and the Court of Appeals affirmed the ALJ. On appeal, the Supreme Court affirmed the Court of Appeals.

Letcher County argued that Hall should have brought his claim before the Board of Claims, which is part of the Public Protection Cabinet and has authority to compensate persons for damages sustained as a proximate result of negligence on the part of the Commonwealth, including school district boards of education. Under the facts of Hall's case, a workers' compensation action and a Board of Claims claim are two different types of proceedings with two different avenues of redressability. Simply put, Hall's request for a workers' compensation remedy requires no showing of negligence and in no way constitutes a claim for "damages sustained . . . as a proximate result of negligence on the part of the Commonwealth . . . ." KRS 49.020(5). Workers' Compensation was specifically designed to compensate injured employees, regardless of fault, and requiring an injured employee to initiate and prove a negligence claim before the Board of Claims directly contradicts the Act and its purpose. His workers' compensation claim therefore does not fall within the exclusive jurisdiction of the Board of Claims.

***Farley v. P&P Construction*, 677 S.W.3d 415 (Ky. 2023).**
Opinion of the Court by Justice Thompson. All sitting. All concur.

Opinion of the Court by Justice Thompson. All sitting. All concur. Certain medical providers of treatments to an injured worker did not submit their billings to either the worker's employer or its insurance carrier within 45-days of the services being provided and the employer rejected those billings. The Administrative Law Judge ruled that the 45-day billing requirement found KRS 342.020(4) had no effect until after a determination of liability had been made and ruled the employer liable. The Workers' Compensation Board affirmed.

However, the Court of Appeals reversed, and Farley appealed as a matter of right.

This Court affirmed the Court of Appeals decision on the basis that (1) KRS 342.020(4) is unambiguous; (2) the statute specifically requires medical providers to submit their billings within 45-days of service regardless of whether a determination of liability has been made; (3) employers and their insurance carriers are therefore not responsible for payment of billings submitted to them after the 45-day period; and (4) 803 KAR 25:096 § 10(3) prohibits medical providers from, in turn, billing patients for services which have been denied for failure to submit bills within 45 days as required by KRS 342.020(4).

***Wolfe v. Kimmel*, 681 S.W.3d 7 (Ky. 2023).**
Opinion of the Court by Justice Lambert. VanMeter, C.J.; Bisig, Conley, Keller, Lambert, and Thompson, JJ., sitting. All concur. Nickell, J., not sitting.

Shan Wolfe was the vice president of GenCare, Inc., an in-home healthcare company that she co-owned with her business partner Robin Lampley. Wolfe sought legal advice from Joe Kimmel regarding her desire to exit GenCare and start her own in-home healthcare company, Legacy In Home Care, Inc. Kimmel advised Wolfe that she could begin Legacy, solicit GenCare customers for their business, and ask GenCare employees to work for Legacy, all before she ever resigned from GenCare. Wolfe took each of these actions and was sued by Lampley and GenCare shortly after she resigned from GenCare. In August 2016, Wolfe met with another attorney, Todd Farmer, who immediately and repeatedly reprimanded her for following Kimmel's advice and advised her to settle the case with Lampley as soon as possible, as she would undoubtedly lose if the case went to trial and would owe a substantial amount of money. In July 2017, Wolfe settled the suit with Lampley. Wolfe then filed a professional malpractice claim against Kimmel in February 2018. The trial court dismissed

Wolfe's claim, finding that it was time barred under KRS 413.245, the applicable one-year statute of limitations, and the Court of Appeals affirmed.

The Supreme Court granted discretionary review solely to determine on what date Wolfe's damages became irrevocable and non-speculative sufficient to trigger the statute of limitations. Previously, in Alagia, Day, Trautwein & Smith v. Broadbent, 882 S.W.2d 121 (Ky. 1994), the Court held that for a nonlitigation legal malpractice claim, damages become irrevocable and nonspeculative when a claimant can state with certainty the exact dollar amount in damages he or she incurred because of the defendant's negligence. The Court held that Broadbent was wrongly decided, as Kentucky law has never required sum certain damages to state a claim for negligence. Moreover, for non-legal malpractice claims, damages are considered irrevocable and nonspeculative when a claimant is reasonably certain that damages will indeed flow from the negligent act. Broadbent accordingly also created a disparity between when the statute of limitations is triggered for non-litigation legal malpractice claims versus non-legal malpractice claims. The Court therefore overruled Broadbent and its progeny and held that for non-litigation legal malpractice claims damages are considered fixed and non-speculative when a claimant is reasonably certain that damages will indeed flow from a defendant's negligence. The Court further held that Wolfe's damages became fixed and non-speculative in August 2016, making her February 2018 claim time barred under KRS 413.245.

***Rodarte v. Bluelinx Co.*, 677 S.W.3d 469 (Ky. 2023).**
Opinion of the Court by Justice Lambert. All sitting. All concur.

Rodarte sustained a work-related knee injury in January 2016. After he returned to work from that injury, he sustained a second, work-related injury to his shoulder in August 2018. Rodarte filed a Form 101 for his knee injury in March 2019, and a settlement agreement for that injury was reached in October 2019. The settlement agreement contained no language regarding his shoulder injury. Rodarte filed a Form 101 for his shoulder injury in December 2020. BlueLinx denied his shoulder claim and asserted that it should have been joined to his knee claim before a settlement was reached for that injury in accordance with KRS 342.270, the joinder statute for worker's compensation claims. Rodarte filed a motion to reopen his knee claim, asserting there was a mutual mistake of fact because both parties had intended to include language regarding his shoulder injury in the settlement agreement for his knee claim, which BlueLinx did not concede. The ALJ denied the motion to reopen, and a different ALJ dismissed his shoulder claim.

In separate opinions, the Worker's Compensation Board affirmed the denial of the motion to reopen but reversed the dismissal of the shoulder claim. The Board concluded that Rodarte's shoulder claim had not accrued when the settlement agreement for his knee injury was reached because he was still receiving TTD payments for his shoulder injury. The Court of Appeals consolidated the cases; it affirmed the denial of the motion to reopen the knee injury claim but reinstated the ALJ's ruling that Rodarte should have joined his shoulder claim to his knee claim prior to the settlement agreement being reached. The court reasoned that Rodarte's shoulder injury claim accrued the day he was injured and while the payment of TTD benefits tolled the statute of limitations, it did not change the date his claim accrued.

The Supreme Court affirmed the Court of Appeals. It first held that the motion to reopen his knee claim was properly denied, as it did not satisfy any of the statutory requirements to reopen fraud, newly discovered evidence, mistake, or change of disability. The Court also held that Rodarte's shoulder claim accrued on the date he was injured, and that the payment of TTD benefits tolled the statute of limitations, but did not change the date of accrual. KRS 342.270(1) provides that when "the application [for resolution of a claim] is filed by the employee . . . he or she shall join all causes of action against the named employer which have accrued and which are known," and that failure to join an accrued cause of action "will result in such claims being barred under this chapter as waived by the employee." Consequently, because Rodarte's cause of action for his shoulder injury had accrued when the settlement agreement for his knee injury was reached, the ALJ was correct in dismissing his shoulder claim as barred.

***Tennco Energy Co. v. Lane*, 677 S.W.3d 445 (Ky. 2023).**
Opinion of the Court by Justice Keller. VanMeter, C.J.; Bisig, Conley, Lambert, and Nickell, JJ., sitting. All concur. Thompson, J., not sitting.

An ALJ dismissed Richard Lane's coal workers' pneumoconiosis (CWP) claim against Tennco Energy, Inc. after determining Lane failed to provide Tennco with timely notice of his claim pursuant to KRS 342.316(2). The Workers' Compensation Board reversed and remanded, after concluding that a prior CWP claim settled in 2005 against a former employer had no bearing on Lane's statutory duty to give notice to Tennco. The Court of Appeals affirmed the Board. The Supreme Court interpreted KRS 342.316(2) to have triggered Lane's obligation to provide Tennco with notice of his subsequent CWP claim when he was reasonably apprised that he had sustained a harmful change in his CWP condition attributable to his employment with Tennco. The Supreme Court

affirmed the Court of Appeals' reversal of the ALJ's conclusions as to notice and remanded to the ALJ for additional findings of fact.

***Hicks v. Kemi*, 686 S.W.3d 215 (Ky. 2024).**
Opinion of the Court by Justice Nickell. VanMeter, C.J.; Bisig, Conley, Keller, Nickell, and Thompson, JJ., sitting. VanMeter, C.J.; Bisig and Conley, JJ., concur. Keller, J., dissents by separate opinion in which Thompson, J., joins. Lambert, J., not sitting.

Hicks worked in a Kentucky coal mine for about twenty-one years before he was asked to transfer to a mine in West Virginia owned by a subsidiary of his employer. Although he remained a Kentucky resident, for seventeen months he commuted and worked as an underground foreman in West Virginia six days and sixty hours a week. He would occasionally visit the Kentucky headquarters or other mines of the parent company for safety training or to pick up supplies for the West Virginia mine. He sustained a work-related injury in the West Virginia mine and did not return to work. Hicks filed a claim for workers' compensation benefits in Kentucky. The employer and its insurance company moved to dismiss for lack of jurisdiction as the accident did not occur in this state and the extraterritorial coverage statute—KRS 342.670—could not save the claim. The ALJ concluded Hicks' employment was "principally localized" in Kentucky and awarded benefits. The Board affirmed. The Court of Appeals reversed and remanded upon concluding the ALJ and Board had misconstrued KRS 342.670 and erred in concluding the employment was principally localized in Kentucky.

On discretionary review, the Supreme Court affirmed the Court of Appeals. The sole question to be addressed was in which state Hicks' employment was "principally localized" for purposes of KRS Chapter 342 benefits. In analyzing the language of the statute, the Supreme Court held for employment to be principally localized in a particular state, the employer must have a place of business in that state from which the employee regularly works at or from, and such inquiry is limited to the employee's status at the time of injury. Under the facts of this case, because the employer had a place of business in both Kentucky and West Virginia, the question became where Hicks "regularly" worked at or from. Because nearly all of Hicks' work was completed in West Virginia and he performed no "substantial" work in Kentucky, the Supreme Court concluded his employment was principally localized in West Virginia, thereby precluding application of the extraterritorial coverage provisions of KRS 342.670. Therefore, the employee was not entitled to apply for or receive benefits under KRS Chapter 342.

WRITS

***State Farm Mut. Auto Ins. Co. v. Edwards*, 670 S.W.3d 873 (Ky. 2023).**
Opinion of the Court by Justice Keller. All sitting. All concur.

Betty Irvin was involved in an automobile collision with Deborah Combs. Combs was insured by State Farm. The day after the accident, a State Farm Claim Specialist contacted Irvin by phone and attempted to settle the claim. State Farm asserts that during this phone conversation, State Farm and Irvin reached an oral agreement whereby Irvin accepted $1,530.00 to settle the claim.

Subsequently, Irvin filed suit in Jefferson Circuit Court against Combs and State Farm. She asserted a negligence claim against Combs and a third-party statutory bad faith claim against State Farm. Both Combs and State Farm asserted the oral settlement agreement as a defense to the negligence claim. State Farm filed a motion to bifurcate for trial the bad faith claim from the negligence claim and to stay discovery on the bad faith claim until the negligence claim was resolved. The trial court denied this motion. It eventually entered an order compelling State Farm to provide the claims file to Irvin and to respond to all discovery requests. State Farm then filed a petition for a writ of prohibition in the Court of Appeals to prevent the trial court from enforcing its discovery orders. The Court of Appeals denied that petition, and State Farm appealed to the Supreme Court.

State Farm argued that by denying its writ petition, the Court of Appeals erroneously allowed discovery on a bad faith claim that had not accrued and was not yet ripe; discovery that was unrelated to the pending tort claim; and discovery that depended on legal theories Kentucky law does not recognize. State Farm also argued that the Court of Appeals erroneously allowed discovery of materials that were protected by the attorney-client privilege and the workproduct doctrine.

The Supreme Court held that there was no adequate remedy by appeal for either of these alleged errors. The Court further held that because State Farm's defense to the tort claim was, in large part, the basis for Irvin's bad faith claim, the administration of justice would not suffer a great and irreparable injury if the Court failed to grant the writ petition on the basis that the bad faith claim was not yet ripe. Regarding State Farm's argument that the ordered discovery would violate the attorney-client privilege and the work-product doctrine, the Supreme Court held that State Farm's privilege log was insufficient to establish a privilege and that the trial court did not err in ordering the discovery. Accordingly, the Supreme Court affirmed the Court of Appeals.

***S.I.A. Limited v. Wingate*, 677 S.W.3d 487 (Ky. 2023).**
Opinion of the Court by Justice Thompson. All sitting. All concur.

SIA is a Gibraltar corporation that operated an internet gambling site. The Commonwealth of Kentucky filed a civil action against SIA pursuant to the Loss Recovery Act seeking damages from SIA's gambling winnings which were illegally obtained from Commonwealth residents. SIA asked for and was granted extended time to respond to discovery and then voluntarily dissolved without prior notice.

Gibraltar law does not allow lawsuits to continue against dissolved corporations. SIA argued that based on its dissolution, it was no longer subject to the jurisdiction of our courts. When the trial court did not agree, SIA sought a writ of prohibition before the Court of Appeals; when this was not granted, SIA appealed.

The Court affirmed on the basis that: (1) the Court of Appeals did not abuse its discretion in denying a first-class writ because the circuit court has subject matter jurisdiction over this type of case and the parties and, therefore, was not proceeding outside of its jurisdiction; (2) the Court of Appeals did not abuse its discretion in denying a second-class writ because: (a) the circuit court is not acting erroneously within its jurisdiction (it did not need to respect SIA's corporate structure where crimes were being committed, damages might be available from a successor in interest or others, and discovery was appropriate for the Commonwealth to explore who was potentially liable); (b) there is an adequate remedy by appeal (because the only objection to discovery was based on the dissolution of the company, not that discovery would violate a privilege); and (c) no great injustice or irreparable injury will result if the petition is not granted (it is not a great injustice for a corporation which attempts to avoid liability by dissolving to have to continue with an established lawsuit); and (3) under the unclean hands doctrine our courts are not required to provide SIA with equitable relief (because it appears SIA fraudulently dissolved without notice for the purpose of avoiding liability).

***Aldava v. Johnson*, 686 S.W.3d 205 (Ky. 2024).**
Opinion of the Court by Chief Justice VanMeter. All sitting. Bisig, Conley, Keller, Lambert, and Nickell, JJ., concur. Thompson, J., concurs in result only.

This matter of right appeal challenged the Court of Appeal's determination that Kentucky had jurisdiction under the UCCJEA to hear a custody matter involving the minor child, H.A. H.A. was born in Texas in 2019. H.A.'s father is a wind turbine blade technician whose job requires him to relocate for indefinite periods of time. When H.A. was around 1 year old, H.A.'s parents

relocated to Washington for the father's job. The family stayed in Washington for little over 4 months before returning to Texas. When H.A.'s father was again dispatched to another site 1 month after the family returned, H.A.'s mother took the child to Kentucky and sought an EPO against the father. As part of the EPO petition, mother also sought temporary custody of H.A., which the court granted. The Father subsequently initiated custody proceedings in Texas, thus two parallel custody proceedings were active in Kentucky and

Texas. Mother sought a determination in Kentucky as to which state had jurisdiction under the UCCJEA. The family court determined the family's relocation to Washington severed H.A.'s Texas residency and the child had not resided anywhere long enough to have a home state for UCCJEA purposes. Accordingly, the family court found the EPO was the sole basis for jurisdiction over H.A. and jurisdiction for custody matter was properly in Kentucky. Father filed an original action for a writ of prohibition with the Court of Appeals. The Court of Appeals denied the writ, finding the Texas courts had not assumed jurisdiction over H.A. and sufficient evidence supported the family court's determination. Following denial of the writ, Father then sought a UCCJEA jurisdiction determination from the Texas court which found the trip to Washington to have been a temporary absence from Texas, thus making Texas H.A.'s home state and granting Texas jurisdiction over the custody dispute. In the midst of this jurisdictional morass, the Supreme Court affirmed the Court of Appeals. Recognizing that Kentucky courts have never definitively addressed the standard to be applied when analyzing a "temporary absence" under the UCCJEA, the Court settled upon an objective standard that emphasizes simply where the child was living in the six months preceding the child custody proceeding and eschews a subjective analysis of the parents' intent and other factors. Applying this simplified standard, the Court found that H.A.'s relocation to Washington interrupted his residency in Texas such that no state could assert initial, home state jurisdiction over H.A. Accordingly, the sole basis for any state to assert jurisdiction was the temporary custody order in the EPO and Kentucky rightfully has jurisdiction over the custody of H.A.

FAMILY LAW

***Cabinet for Health & Fam. Servs. v. D.W.*, 680 S.W.3d 856 (Ky. 2023).**
Opinion of the Court by Justice Conley. All sitting. VanMeter, C.J.; Bisig and Nickell, JJ., concur. Keller, J., concurs in part and dissents in part by separate opinion. Thompson, J., dissents by separate opinion in which Lambert, J., joins.

In a split decision, the Court ruled the Court of Appeals had no jurisdiction to hear D.W.'s appeal of the termination of his parental rights because his

attorney intentionally filed an electronic notice of appeal in a related dependency, neglect, and abuse case, when the controlling statute and eFiling rules unambiguously state that a notice of appeal must be conventionally filed for TPR cases once they are sealed.

The Court's reasoning was based on the operative language of KRS 625.108(2) which directs a clerk of the circuit court to seal TPR cases upon entry of the final order. The Court held a final order is the order of the trial court resolving the issues in the case and determining whether the plaintiff has or has not proven himself entitled to the relief sought. As such, the circuit clerk acted properly in sealing the TPR case after entry of the final order terminating D.W.'s parental rights. D.W. had thirty days from entry of that order to file his appeal. Based on the relevant Administrative Order, eFiling is not allowed for sealed cases. Therefore, D.W. had to file his notice of appeal conventionally. Instead, his attorney eFiled the notice of appeal in a related DNA case with a notation to the proper TPR case. The Court held this was not good enough, as there is no substantial compliance rule for timely filing a notice of appeal in a correct case. Because no notice of appeal was ever filed in the TPR case, the Court of Appeals had no jurisdiction, and it was reversed.

IMMUNITY

***Browne v. Poole*, 680 S.W.3d 810 (Ky. 2023).**

Opinion of the Court by Chief Justice VanMeter. All sitting. All concur.

On appeal from the Court of Appeals' decision vacating the Fayette Circuit Court's judgment dismissing Timothy Poole's complaint, the Supreme Court reversed, and affirmed the circuit court, albeit on different grounds. Poole, the plaintiff and appellee in this matter, was one of eighteen individuals who, on November 30, 2020, received an incorrect bar exam result. In Poole's case, he was told he had passed the bar exam. Three days later, Valetta Browne, Executive Director of the KYOBA, notified Poole that, due to a data entry error, Poole's exam result notification was erroneous, and that Poole had not passed the bar examination. In April 2021, Poole, through counsel, filed the instant action in Fayette Circuit Court, alleging Browne had negligently performed her duties and caused Poole damages from "emotional duress and suffering, loss of employment opportunities, loss of income, humiliation, embarrassment, out of pocket expenses [and] other damages[.]" Poole's prayer for relief sought compensatory damages in an amount to be shown at trial, costs and reasonable attorney fees, and prejudgment and postjudgment interest. Browne moved to dismiss, citing the circuit court's lack of jurisdiction and her entitlement to official immunity. The circuit court granted dismissal on jurisdictional grounds, noting that the Supreme Court of Kentucky is vested with sole jurisdiction over all controversies surrounding its authority to

supervise the legal profession, including the conduct at bar. On appeal, the Court of Appeals reversed, acknowledging this Court's sole authority over bar admissions under Kentucky Constitution § 116, but holding that our constitution limits this Court to "appellate jurisdiction only," KY. CONST. § 9 110(2)(a), and correspondingly grants to circuit courts "original jurisdiction of all justiciable causes not vested in some other court." KY. CONST. § 112(5). The Court of Appeals concluded these provisions necessitated that a negligence action arising from the execution of bar admissions be brought in circuit court. The Court of Appeals did not address Browne's alternative arguments for affirmance based on immunity, merely noting that Poole's arguments related to immunity were moot. On discretionary review, the Supreme Court emphasized its plenary power over bar admissions, KY. CONST. § 116, and that the acts Poole complains of were performed by Browne in obedience to duties imposed upon her by this Court, pursuant to our sole constitutional authority to "govern admission to the bar." Accordingly, the Court concluded Browne was entitled to absolute immunity in performing these judicial functions at the Court's direction and thus affirmed the circuit court's dismissal of Poole's complaint.

MEDICAL MALPRACTICE

***Saint Elizabeth Med. Ctr., Inc. v. Arnsperger*, 686 S.W.3d 132 (Ky. 2024).**
Opinion of the Court by Justice Conley. All sitting. All concur.

On December 14, 2015, Arnsperger underwent surgery on his left ankle that involved an intentional fracturing of his ankle bone and its realignment by placing two screws in the bone. During surgery, the drill bit failed and scattered metal shards throughout the ankle. Consequently, the surgeon was only able to place one screw in. On numerous occasions in the subsequent days, Arnsperger was told by his surgeon he needed to get x-rays to confirm his ankle had been properly aligned. On December 18, 2015, when he was being pushed in a wheelchair to receive these x-rays, a collision occurred with a desk. The nature of that collision is a factual dispute. The x-rays confirmed that his ankle bone was not correctly aligned. Arnsperger alleged in his Complaint that the collision caused his ankle to be misaligned. St. Elizabeth contends the ankle bone had not been properly aligned at the December 14 surgery. The trial court concluded that expert medical testimony would be required as to causation. Arnsperger proposed two experts, but both denied that they would testify as to causation and neither offered an opinion as to the cause of Arnsperger's misaligned bone. The trial court granted summary judgment to St. Elizabeth. On appeal, the Court of Appeals reversed by holding that expert testimony was not necessary to establish the duty or breach thereof

of an employee pushing a wheelchair-bound patient, and that no expert was necessary to link Arnsperger's claimed injury to the collision. St. Elizabeth sought discretionary review which was granted.

Upon review, a unanimous Court reversed the Court of Appeals. The Court held that the issue in this case was not the duty or breach of an employee pushing a wheelchair-bound patient, but whether the allegedly negligent acts of that employee caused Arnsperger's ankle to be misaligned. The Court held that the Layman's Exception for medical malpractice cases was nothing other than res ipsa loquitur and that doctrine only applied when causation was established—i.e., the facts in evidence must not only support an inference of negligence as to the tortfeasor but exclude any other cause that could be attributed to another person or was outside the tortfeasor's control. The Court determined that the facts in this case would have supported an inference that the ankle was misaligned due to the December 14 surgery because St. Elizabeth had proposed an expert who would testify to that effect, and no expert was proposed by Arnsperger who would testify the ankle misalignment was due to the desk collision. The Court further held that this was true whether Arnsperger had brought a medical malpractice case or was considered an ordinary negligence case. Even assuming this is a case of ordinary negligence, the Court reasoned that the trial court had determined expert testimony was necessary and this decision was within its discretion to make. Finally, the Court held that the question of whether Arnsperger's ankle bone had been correctly aligned at the December 14 surgery or injured on December 18 was not a question within the common knowledge of a jury. Arnsperger's own surgeon could not conclusively determine the bone had been correctly aligned absent x-rays, therefore the jury could not make an inference that the bone had been correctly aligned after the surgery without the aid of expert testimony. Thus, Arnsperger's failure to produce an expert who would testify that the ankle bone had been misaligned as a result of the desk collision was a failure of proof warranting summary judgment. The Court of Appeals was reversed and the trial court's summary judgment was reinstated.

***McMillin v. Sanchez,* 686 S.W.3d 145 (Ky. 2024).**
Opinion of the Court by Justice Conley. VanMeter, C.J.; Bisig, Conley, Keller, Lambert, and Nickell, JJ., sitting. All concur. Thompson, J., not sitting.

The trial court dismissed a medical malpractice claim because the plaintiff failed to file a certificate of merit as required by KRS 411.167. The Court of Appeals affirmed in part and reversed in part the trial court's judgment. The Court of Appeals affirmed the trial court's determination that a certificate of merit is required to be filed with the complaint but reversed and remanded

back to the trial court in order to consider whether the plaintiff should be afforded more time to file the certificate under CR 6.02. The Supreme Court affirmed in part and reversed in part.

The Supreme Court affirmed the Court of Appeals holding that the certificate of merit is required to be filed with the complaint by all parties, whether represented by counsel or not, but reversed the Court of Appeals decision to remand it back to the trial court. The Supreme Court held that the purpose of KRS 411.167 was to prevent the filing of meritless lawsuits and, therefore, the requirements of the statute must be strictly complied with.

***McWhorter v. Baptist Healthcare System, Inc.*, 686 S.W.3d 142 (Ky. 2024).**
Opinion of the Court by Justice Conley. VanMeter, C.J.; Bisig, Conley, Keller, Lambert, and Nickell, JJ., sitting. All concur. Thompson, J., not sitting.

The trial court dismissed the plantiffs' medical malpractice claim for failing to file a certificate of merit with the complaint as required by KRS 411.167. The Court of Appeals affirmed the judgment of the trial court holding that the certificate of merit needs to be filed with the complaint.

The Supreme Court affirmed the Court of Appeals, though on different grounds. Although the Supreme Court agreed that the certificate of merit is required to be filed with the complaint, they ultimately held that the Appellant failed to adequately preserve their issues.

EMPLOYMENT LAW

***Turner v. Norton Healthcare, Inc.*, 681 S.W.3d 26 (Ky. 2023).**
Opinion of the Court by Justice Conley. All sitting. All concur.

Turner was diagnosed with breast cancer. Her employer, Norton, approximately eight months after her diagnosis, fired her alleging at least twenty-one instances of missing narcotics. Turner filed suit pursuant to the Kentucky Civil Rights Act against Norton Healthcare, alleging discrimination based on disability or perceived disability. The jury found in favor of Turner. Norton filed a motion notwithstanding the verdict, arguing that Turner had failed to produce any evidence that she was substantially limited in the performance of a major life activity, thus demonstrating a qualifying disability pursuant to the KCRA. Turner argued the Americans with Disabilities Amendments Act of 2008 by Congress applied to the KCRA (originally passed in 1992). The trial court ruled in favor of Turner. The Court of Appeals reversed, holding the ADAAA did not apply to the KCRA; and, under the KCRA, Turner had failed to establish a

qualifying disability. Turner sought discretionary review which the Supreme Court granted.

The Supreme Court, with Justice Conley writing, unanimously affirmed the Court of Appeals on different grounds. The Court found that because under either the KCRA or ADAAA Turner had failed to present sufficient evidence of a qualifying disability, the question of whether the ADAAA applied to the KCRA was a secondary issue unnecessary to answer to reach resolution in the case. Under the KCRA, Turner had to establish she was substantially limited in the performance of a major life activity. Turner unequivocally testified at trial that she was never substantially limited in the performance of a major life activity. Under the ADAAA, which acknowledges "normal cell growth" is a major life activity, Turner nonetheless failed to present any evidence regarding normal cell growth at trial. Federal courts applying the ADAAA have ruled that disabilities which require a medical explanation to understand, even those which are otherwise self-evident like cancer, must be supported by qualifying expert testimony. Turner did not have an expert testify about her breast cancer thus, she failed to present sufficient evidence regarding normal cell growth.

ESTATE LAW

***Mr. Roof of Louisville, LLC v. Estate of Henry*, 681 S.W.3d 115 (Ky. 2023).** Opinion of the Court by Chief Justice VanMeter. VanMeter, C.J.; Conley, Keller, Lambert, Nickell, and Thompson, JJ., sitting. Conley, Lambert, Nickell, and Thompson, JJ., concur. Keller, J., dissents by separate opinion. Bisig, J., not sitting.

On review from the Court of Appeals' reversal of the trial court's dismissal of the civil actions of the respective estates of Ayanna Henry and Lena Bailey, the Supreme Court reversed. Ayanna Henry was found deceased in the basement of her family home. Upon arrival of first-responders, other members of Ayanna's family reported headaches and flu-like symptoms which were later determined to be the result of exposure to elevated levels of carbon monoxide in the home. These elevated levels are alleged to have been caused by some combination of a faulty repair to the home's gas water heater and disrupted ventilation from the water heater through the roof. Shanita Bailey was appointed administrator of Ayanna's estate and brought an action for wrongful death in that capacity against several defendants. Additional claims for personal injury were also made by Shanita, individually; Lena Bailey, individually; and Shanita as next friend of Aniya Henry. Lena passed away shortly after the action began and Shanita was appointed administratrix of Lena's estate shortly thereafter. A few months after Shanita's appointment, she too passed away. This time, no new administrator of any of the estates was

appointed until over two years after Shanita's death. During this period, the case was practiced as though nothing had changed and Defendants were unaware the estates lacked an administrator. Upon discovery of this fact, Mr. Roof and American Water Heater moved to dismiss the claims of Shanita, individually; as administratrix of Ayanna's Estate; and as administratrix of Lena's Estate. The trial court granted the motion, concluding the statutory time limit on revival found in KRS 395.278 applied and the claims were not timely revived. On appeal, the Court of Appeals reversed, holding the death of the appointed individual does not cause the action to abate, but merely requires a new substitution with another representative, an action not bound by the time limit of KRS 395.278. The Supreme Court reversed the Court of Appeals, looking to the history of KRS 395.280 to explain its relationship to KRS 395.278, KRS 411.140 and CR 25.01 and how that relationship shows the one-year time limit in KRS 395.278 was intended to apply in instances involving successive administrators. The Court clarified that the personal representative is not a nominal party, but rather is almost always the necessary real party in interest in postmortem litigation. Further, "successor" in the context of estate administration refers to a second or subsequent person or entity appointed by the district court, not just the initial person or entity appointed to administer the estate. Under these principles, any time the administrator of an estate dies or is removed, the one-year limitation period on revival in KRS 395.278 applies. Accordingly, the trial court was correct in dismissing the claims for failure to timely revive.

INSURANCE

***Combs v. Spicer*, 686 S.W.3d 151 (Ky. 2024).**

Opinion of the Court by Justice Thompson. All sitting. Bisig, Conley, Keller, Lambert, and Nickell, JJ., concur. VanMeter, C.J., concurs in result only.

Combs operated an ATV while intoxicated which resulted in the death of his wife Tiara Combs. In order for Tiara's estate to recover insurance proceeds, Comb's mother-in-law, Teresa Spicer, acting in her capacity as a coadministrator of Tiara's estate, released both the carrier and Combs from further liability for the deadly accident. Spicer, in her personal capacity, later sued Combs under a theory of Intentional Infliction of Emotional Distress (IIED) alleging that he misled her about the cause of the wreck. The Breathitt Circuit Court dismissed Spicer's complaint, ruling that the earlier release barred her claim.

The Court of Appeals reversed, and Combs sought and was granted discretionary review.

Following oral argument, this Court affirmed the Court of Appeals decision on the basis that Spicer only entered the release as "Personal Representative of the Estate" and not in her individual capacity. Further, while the release did state that Spicer signed the release not only "on behalf of the Estate" but also on behalf of "its principals, agents, successors, heirs, personal representatives," the only claims released were those possessed by the estate, not Spicer's personal claims.

ATTORNEY DISCIPLINE

***Inquiry Comm'n v. Goldy*, 670 S.W.3d 829 (Ky. 2023)**

All sitting. Conley, Keller, Lambert, Nickell, and Thompson, JJ., concur. VanMeter, C.J., and Bisig, J., dissent without separate opinion.

This Court had temporarily suspended Ronnie L. Goldy, Jr., for ethical violations centering around his relationship with a female inmate during his tenure as Commonwealth's Attorney. Goldy filed a motion to terminate the temporary suspension, which the Court granted. Goldy was impeached as Commonwealth's Attorney and is, therefore, no longer in that position. The Court looked to SCR 3.165(4), which states "[T]he Respondent may for good cause request dissolution or amendment of any such temporary order by petition filed with the Court . . . ." The Court then defined "good cause" as a "legally sufficient reason." Here, after Goldy lost his position as Commonwealth's Attorney on which the Court's original probable cause determination was based. The Court held "there was no longer probable cause to believe he poses a substantial threat to the public by abusing the power of an office he no longer holds." The Court dissolved Goldy's temporary suspension.

***Kentucky Bar Ass'n v. Boling*, 670 S.W.3d 845 (Ky. 2023).**

All sitting. VanMeter, C.J.; Bisig, Conley, Keller, and Lambert, and Nickell, JJ., concur. Thompson, J., concurs in part and dissents in part by separate opinion.

The Kentucky Bar Association initiated disciplinary proceedings against Richard Boling in February 2020. The Trial Commissioner rendered his findings and the parties agreed to submit them to the Court pursuant to SCR 3.370. The Trial Commissioner recommended Boling be suspended from the practice of law for five years for committing various ethical violations and the Court agreed with the recommended discipline. Boling was previously a Commonwealth's Attorney. After his term in that office, he went back into private practice for a time before being re-elected as the Commonwealth's

Attorney. Boling wrote a letter to then-Governor Matt Bevin urging Bevin to commute the sentence of an individual convicted of sexual assault in the community during the time Boling was out of the Commonwealth's Attorney's office. He indicated in his letter to Bevin the prosecution had been politically motivated. Boling subsequently publicly apologized for the letter and apologized to the circuit court judges in person. The judges indicated they were going to file KBA complaints and did not feel comfortable with Boling practicing in their courtrooms in the interim. The Inquiry Commission issued a complaint alleging Boling violated SCR 3.130(3.3)(a)(1) (false statement to tribunal) and SCR 3.130(8.2)(a) (false statements about a judge, adjudicatory officer, public legal officer, or candidate for election or appointment to judicial or legal office). Boling filed a motion for consensual discipline pursuant to SCR 3.480(2). This Court rejected that motion, finding Boling's conduct was particularly egregious because of Boling's position as the Commonwealth's Attorney at the time of the conduct.

In another disciplinary filed against Boling, he was accused of prosecutorial misconduct. A woman who had been mentally ill since her childhood stood accused of two counts of arson and six counts of attempted murder. The complaint alleged the woman had been harassing her neighbors, an interracial couple and their four interracial children, by threatening them and yelling racial slurs at them. Boling avoided eliciting evidence from a state police detective concerning the woman's intoxication. During a lunch break, Boling and the officer discussed her intoxication at the counsel table, not realizing the court's video system was still recording them. Boling said to the officer "I thought about putting you back on and saying did she look like she was high." The officer responded "[w]ell she was out of her fricking mind." Boling laughed and responded, "[t]hat's why I didn't ask that question. The discussion continued about how nothing about the woman being "methed-out" was on the record.

The defense later requested a voluntary intoxication defense and Boling opposed that motion, stating he did not believe there had been sufficient evidence she was so intoxicated that she didn't know what she was doing. In closing, Boling relied on the fact that "not one single witness testified to you that she appeared under the influence . . . ." The defendant was convicted and received a life sentence.

Boling was charged with violating SCR 3.130(3.3)(a)(1) and SCR 3.130(8.4)(c) for knowingly making false statement to the tribunal and failing to correct them and for engaging in dishonest conduct. This Court ultimately reversed the underlying criminal case and remanded for a new trial. The Court held reversal was warranted because Boling's alleged misconduct was flagrant. Again, Boling sought consensual discipline and this Court rejected his motion. The Court

noted Boling had misused his position of trust and committed flagrant misconduct.

The disciplinary case proceeded to the KBA Trial Commissioner, who recommended a five-year suspension. The Court agreed and adopted that sanction.

***Kentucky Bar Ass'n v. Hamdiyah*, 670 S.W.3d 841 (Ky. 2023).**
All sitting. All concur.

Kareem Shahir Hamdiyah has failed to answer charges in three separate disciplinary matters before the KBA. The KBA moved the Court to indefinitely suspend him from the practice of law pursuant to SCR 3.167(1). In addition to failing to respond to the KBA charges, Hamdiyah had also been arrested in Laurel County on several criminal offenses including: Trafficking in a Controlled Substance, 1st degree, 1st offense (opiates); Possession of a Controlled Substance,1st degree, 1st offense (methamphetamine); Resisting Arrest; Fleeing or Evading Police, 2nd Degree (on foot); and Tampering with Physical Evidence. The Court indefinitely suspended Hamdiyah for his failure to participate in the disciplinary process.

***Parks v. Kentucky Bar Ass'n*, 642 S.W.3d 719 (Ky. 2023).**
Opinion and Order of the Court. All sitting. All concur.

D. Steven Parks applied for reinstatement to the practice of law pursuant to SCR 3.502(2). The Character and Fitness Committee recommended the Board of Governors not reinstate Parks. The Board agreed with the Committee and recommended the Supreme Court deny Parks' application for reinstatement. Previously, Parks had applied for reinstatement and asserted he had not been adjudicated bankrupt, when, in fact, he had been. Parks also stated in the application he had never been a party to a civil or administrative proceeding other than a divorce action, when he applied for reinstatement. He also asserted he had never been charged with fraud in any legal proceeding when he was the subject of an adversarial proceeding in his bankruptcy case alleging he had engaged in fraud. Parks also represented in the application he had not been previously charged with unprofessional or unethical conduct or had disciplinary proceedings against him, when he had in fact received a private admonition in the past. The Court elected not to review the recommendation as allowed under SCR 3.370(9) and adopted the recommendation to deny reinstatement pursuant to SCR 3.370(10).

***Null v. Kentucky Bar Ass'n*, No. 2022-SC-0422-KB, 2022 WL 19330699 (Ky. Aug. 24, 2023).**
Opinion and Order of the Court. VanMeter, C.J.; Bisig, Conley, Keller, Lambert, and Thompson, JJ., sitting. All concur. Nickell, J., not sitting.

In 2022, the Court resolved eight separate disciplinary actions taken against Richard David Null and imposed a one-year suspension from the practice of law with 180 days of such suspension to be served and the remainder probated for two years subject to certain conditions. The Court ordered Null to show cause why the remainder of his suspension should be imposed. Null failed to respond. Therefore, the Court imposed the remainder of his suspension, totaling one year.

***O'Neill v. Kentucky Bar Ass'n*, 677 S.W.3d 376 (Ky. 2023).**
Opinion and Order of the Court. All sitting. All concur.

Shameka Lynn O'Neil and the Kentucky Bar Association reached a negotiated sanction for O'Neil's admitted violations of SCR 3.130(3.4)(c) and 3.130(3.5)(d). Under the terms of the negotiated sanction, O'Neil would receive a public reprimand. When representing a client at a district court Zoom hearing, O'Neil spoke over the judge on multiple occasions, and told the court "I bet I don't appear again. Goodbye." before closing the Zoom meeting after the court had denied her motion to withdraw from the case. After the court told her to appear the following morning, she sent an email to the judge threatening to file a complaint against the judge. The judge entered an order finding her in direct criminal contempt because of her refusal to abide by the court order requiring her appearance. The Supreme Court agreed the negotiated sanction was appropriate and publicly reprimanded O'Neil.

***Kentucky Bar Ass'n v. Hargrove*, 677 S.W.3d 382 (Ky. 2023).**
Opinion and Order of the Court. All sitting.

VanMeter, C.J.; Bisig, Conley, Keller, and Thompson, JJ., concur. Nickell, J., concurs in result only. Lambert, J., dissents without separate opinion. David Lee Hargrove was the Graves County Commonwealth's Attorney at the time he was accused of violating the Rules of Professional Conduct. A trial commissioner suspended Hargrove from the practice of law for 150 days, ordered he complete trust accounting training, and ordered he pay the costs associated with the disciplinary proceeding. While Commonwealth's Attorney, he maintained a private law office. Hargrove opened an escrow account that was meant to process grant funding as well as receive forfeited monies for the Commonwealth's Attorney. Hargrove did not like the process for submitting

forfeited money and decided to just use the funds directly to pay expenses he deemed associated with his official duties. Hargrove maintains he never personally profited from the expenditures and claimed to be a "poor record keeper." Hargrove was indicted for abuse of public trust, a class C felony, KRS 522.050(3)(b). Hargrove entered an Alford plea and paid almost $30,000 reimbursement. Neither Hargrove nor the KBA filed an appeal from the trial commissioner's report. The Court adopted the recommendation and suspended Hargrove from the practice of law for 150 days, complete trust account training, and pay the costs associated with the disciplinary proceedings.

***Kentucky Bar Ass'n, Hale*, 677 S.W.3d 382 (Ky. 2023).**
Opinion and Order of the Court. All sitting. All concur.

Leila Louise Hale was publicly reprimanded by the Nevada Supreme Court for prematurely taking attorney fees from client funds being held in trust and failing to disburse the remaining funds held in trust after negotiating medical liens. Kentucky has comparable rules to the Nevada rules under which she was disciplined. The KBA filed a petition for reciprocal discipline pursuant to SCR 3.435. The Court imposed identical discipline as required by SCR 3.435(4).

***Sowell v. Kentucky Bar Ass'n*, 677 S.W.3d 354 (Ky. 2023).**
Opinion and Order of the Court. All sitting. All concur.

Bradley Stuart Sowell was suspended from the practice of law in 2020 and sought reinstatement of his license pursuant to SCR 3.502. The Board of Governors recommended his license be reinstated, as does the Character and Fitness Committee. Sowell has been involved with KYLAP and made great strides in his recovery. Since failing a drug test in 2019, he has been continually compliant with KYLAP demands regarding sobriety. He fulfilled the two-year waiting period before reapplying to be admitted to the practice of law. The Court granted Sowell's application for reinstatement to the practice of law.

***Ousley v. Kentucky Bar Ass'n*, 677 S.W.3d 380 (Ky. 2023).**
Opinion and Order of the Court. All sitting. All concur.

Robert Brian Ousley and the Kentucky Bar Association negotiated a sanction of a five-year suspension from the practice of law. The Court agreed the sanction was appropriate and granted Ousley's motion. Ousley was charged with firstdegree burglary in 2019 and entered an Alford plea to an amended charge of second-degree burglary. He was automatically suspended from the practice

of law pursuant to SCR 3.166 following his felony conviction. The Court found Ousley had violated SCR 3.130(8.4)(b) and granted his motion for a negotiated sanction, suspending him from the practice of law for five years.

***Kentucky Bar Ass'n v. Cohen*, 677 S.W.3d 356 (Ky. 2023).**
Opinion and Order of the Court. All sitting. All concur.

The Court adopted the Board of Governors' recommendation that David Alan Cohen be suspended from the practice of law for three years followed by two years' probation. Cohen was employed by a law firm as a contract senior associate. He accepted a client without disclosing the client or the fee to the firm. It was later discovered he had been providing "off the books" legal services for years. Cohen had also submitted fraudulent expense forms to the firm and taken blank checks from the firm's operating account and written the checks to himself. The Court found Cohen had violated one count of SCR 3.130(1.15)(a) and one count of SCR 3.130(8.4)(c).

***Wheeler v. Kentucky Bar Ass'n*, 677 S.W.3d 361 (Ky. 2023).**
Opinion and Order of the Court. VanMeter, C.J.; Bisig, Conley, Keller, Lambert, and Nickell, JJ., sitting. All concur. VanMeter, C.J., concurs by separate opinion in which Bisig and Conley, JJ., join. Thompson, J., not sitting. Joe

Steward Wheeler filed a motion to resign under terms of permanent disbarment. The KBA did not object and the Court granted the motion. Wheeler was indicted on one count of theft by unlawful taking or disposition ($10,000 or more) and one count of theft by unlawful taking ($1,000 or more). Wheeler entered an Alford plea to the charges. In his plea agreement, Wheeler admitted to taking funds form one of his clients and depositing them into his own account.

***Miller v. Kentucky Bar Ass'n*, 677 S.W.3d 365 (Ky. 2023).**
Opinion and Order of the Court. All sitting. All concur.

Tony Brandon Miller and the KBA negotiated a sanction of a 181-day suspension from the practice of law. The Court agreed this was an appropriate sanction for violating SCR 3.130(1.3), SCR 3.130(1.4)(a), SCR 3.130(1.16)(d), SCR 3.130(1.7)(a)(2), SCR 3.130(3.3)(a)(1), SCR 3.130(4.2), and two counts of SCR 3.130(8.1)(b). Miller had been communicating with a client via the adultcontent website "Only Fans." He appeared for this client in another matter on which she was being represented by another attorney and lied to the court

about the reason for the client's absence from court. In another case, Miller was paid a retainer and service fees by a client. After paying Miller, the client was unable to get in contact with him.

***Boling v. Kentucky Bar Ass'n*, 677 S.W.3d 369 (Ky. 2023).**
Opinion and Order of the Court. All sitting. VanMeter, C.J.; Bisig, Conley, Keller, and Lambert, JJ., concur. Nickell and Thompson, JJ., dissent without separate opinion.

Richard Boling and the KBA entered a negotiated sanction pursuant to SCR 3.480(2). The Court concluded the proposed sanction was inadequate and denied the motion. Boling was prosecuting a drug-overdose, second-degree manslaughter case when he knowingly misrepresented evidence to the grand jury. The circuit court concluded Boling "intentionally elicited and presented false testimony in order to elevate the degree of the offense with which [the defendant] was charged." The proposed negotiated sanction calls for a oneyear suspension from the practice of law to run concurrently with the five-year sanction already imposed in another KBA matter against Boling. The Court considered the aggravating factors of prior disciplinary offenses and a pattern of misconduct. The Court pointed out that if Boling's sanction in this case were to run concurrently with his prior suspension, it would result in no separate sanction for his misconduct in this case. The Court noted a one-year sanction is likely appropriate in this instance, but that this instance of serious misconduct deserves separate discipline. The matter was remanded to the KBA for further proceedings.

***Lawrence v. Kentucky Bar Ass'n*, 677 S.W.3d 364 (Ky. 2023).**
Opinion and Order of the Court. All sitting. All concur.

Meredith Lynn Lawrence was suspended from the practice of law for five years following his conviction for tax fraud. He now seeks reinstatement to the practice of law. He paid full restitution in that matter and has been compliant with the terms of his suspension. The Character and Fitness Committee noted he has demonstrated worthiness of trust and confidence of the public, possessed sufficient professional capabilities to serve as a lawyer, and acknowledged his wrongdoing. The KBA did not oppose Lawrence's motion for reinstatement and the Board of Governors recommended the motion be granted. The Court approved Lawrence's reinstatement subject to certain conditions.

***Tejeda v. Kentucky Bar Ass'n*, No. 2022-SC-0470-KB, 2023 WL 6359830, (Ky. Sept. 28, 2023).**
All sitting. Conley, Keller, Lambert, and Thompson, JJ., concur. Nickell, J., dissents by separate opinion in which VanMeter, C.J., and Bisig, J., join.

The Supreme Court of Kentucky suspended Roderick Anibal Tejeda from the practice of law for four years after he pleaded guilty to reckless homicide stemming from an automobile accident. He was automatically suspended from the practice of law the day after pleading guilty pursuant to SCR 3.166. For the offense, Tejeda was charged with violating SCR 3.130-8.4(b). The Kentucky Bar Association negotiated a sanction with Tejeda. The Court granted his motion to impose the negotiated sanction pursuant to SCR 3.480(2). In 2018, Tejeda applied for reinstatement. The KBA Board of Governors voted unanimously to reinstate Tejeda to the practice of law. The Supreme Court ordered further review pursuant to SCR 3.370(9). After review, the Court determined to accept the Board's recommendation to reinstate Tejeda with conditions.

While on probation, Tejeda, an admitted recovering alcoholic, completed a sixmonth inpatient treatment program and became a peer mentor, helping other patients who entered the program. Tejeda was continuously employed during his suspension, either as a certified alcohol and drug counselor or as a commercial truck driver. He maintained sobriety throughout his probation in the criminal case and was released. However, in 2019, Tejeda experienced a relapse during which he was drinking around a twelve-pack of beer daily. In December 2019, Tejeda attended the Kentucky Law Update, where he saw Kentucky Lawyers Assistance Program Director, Yvette Hourigan. Hourigan smelled alcohol on Tejeda and requested a meeting with him and his sponsor. Tejeda denied consuming alcohol but did recommit himself to participate in AA and has remained sober since. In 2021, Tejeda apologized to Hourigan and disclosed the circumstances of his relapse to the Character and Fitness Committee. Character and Fitness conducted a formal hearing. At the end of the hearing, Bar Counsel agreed to recommend Tejeda's reinstatement conditioned on him submitting to immediate enhanced monitoring with KYLAP. Bar Counsel withdrew its agreement to conditional reinstatement after Tejeda advised he could not comply with the immediate enhanced monitoring because he was living out-of-state as a commercial truck driver. Character and Fitness approved Tejeda's reinstatement but conditioned such approval on Tejeda immediately submitting to enhanced monitoring as previously negotiated by Bar Counsel.

Tejeda appealed to the Board of Governors and sought to remove the requirement of immediate enhanced monitoring. Bar Counsel opposed his reinstatement. The Board unanimously recommended his reinstatement and concluded the imposition of enhanced monitoring on a pre-reinstatement basis

was unduly burdensome due to the nature of Tejeda's employment. Instead, the Board recommended the imposition of enhanced monitoring within ninety days of reinstatement in addition to any conditions arising from Tejeda's prior KYLAP agreement which would continue under a new agreement for a period of five years.

After carefully reviewing the record, the Court "acknowledge[d] the substantial and praiseworthy efforts Tejeda has made toward positive change." The Court disagreed with the Board's holding that Tejeda could wait to start the enhanced monitoring after his reinstatement. Instead, the Court held that Tejeda must acquire and maintain a Kentucky residence so as to allow direct and unhindered KYLAP monitoring.

***Kentucky Bar Ass'n v. Hogan*, 677 S.W.3d 436 (Ky. 2023).**
All sitting. All concur.

Michael Todd Hogan, the County Attorney of Lawrence County, was suspended from the practice of law pursuant to SCR 3.166. The current case is a default case pursuant to SCR 3.210 in which the Board of Governors recommended the Court find Hogan guilty of violating SCR 3.130(8.4)(b) and permanently disbar Hogan from the practice of law. The Court agreed and adopted the Board's recommendation.

Hogan was indicted on fifteen federal counts related to wire fraud, theft, and bribery. As part of his conditions of release, Hogan was prohibited from prosecuting cases on behalf of the Lawrence County Attorney's Office. Hogan entered into a plea agreement on the federal charges, in which he agreed to resign as the Lawrence County Attorney and was sentenced to a total of fortytwo months in prison. Hogan also agreed to pay over half a million dollars in restitution.

Hogan was charged with violating SCR 3.130(8.4)(b) and failed to respond to the charge. The Board of Governors moved the Supreme Court to impose discipline pursuant to SCR 3.210. The Board of Governors and Office of Bar Counsel posited the appropriate sanction for Hogan is permanent disbarment. The Court agreed and permanently disbarred Hogan.

***Price v. Kentucky Bar Ass'n*, 677 S.W.3d 465 (Ky. 2023).**
All sitting. All concur.

Philip R. Price moved the Supreme Court to impose a sanction of a 30-day suspension, probated for one year with conditions. The KBA did not object to the sanction. The Court granted the motion.

One of Price's clients was a veteran Price represented in a personal injury claim for injuries arising out of a car accident. The client was a veteran and received care at the VA hospital for his injuries. The VA determined the client did not meet eligibility requirements for payment for service-connected care. The client provided Price with the letter from the VA making that statement. The VA later asserted a lien against any future medical payments and noticed both attorneys in the case. Price's client executed a settlement and Price sent the client "a letter regarding the settlement, the contents of which can only be described as unclear."

The letter stated Price had reduced his fee by $63,500.00 but would "collect this back before disbursing the balance of the escrow account" to the client. The letter also stated no money was being withheld to pay any outstanding medical bills and/or obligations that may exist in related to the accident. Then, in the next sentence, the letter stated Price would be withholding $100,000 to negotiate the payment of the outstanding VA lien. Price did not pay the VA lien and told his client he was negotiated a reduction of the lien and led her to believe she was entitled to any funds remaining in the escrow account. Price eventually sent the lien payment to the VA but did not inform his client. Price ultimately took no fee in the case.

The Kentucky Bar Association Inquiry Commission charged Price with violating SCR 3.130(1.3), SCR 3.130(1.4)(a)(3), SCR 3.130(1.4)(b), and SCR 3.1308.4(c). Price admitted to all four charges. He and the KBA agreed to a negotiated sanction of a 30-day suspension, probated for one year. The Court accepted the terms of the negotiated sanction.

***Kentucky Bar Ass'n v. Curlin*, No. 2023-SC-0085-KB, 2023 WL 6357675 (Ky. 2023).**
All sitting. All concur.

David Curlin was a family court judge in Henderson County whose term of office began in January 2023. A month later, the KBA asked the Supreme Court to indefinitely suspend Curlin from the practice of law for failing to answer charges issued by the Inquiry Commission in two separate bar complains, each related to legal services he performed prior to his election as a judge. In spite of the fact he had personally signed for the charges, Curlin

claimed he did not receive them when ordered to show cause why he should not be suspended from the practice of law. After the Court denied the KBA's initial request Curlin be indefinitely suspended, the Court also ordered that Curlin file a formal answer to each of the Charges. Curlin failed to do so. The Court indefinitely suspended him from the practice of law pursuant to SCR 3.167.

***Kentucky Bar Ass'n v. Oliver*, 681 S.W.3d 59 (Ky. 2023).**
All sitting. All concur.

Brittany Lawryn Oliver failed to respond to three separate bar complaints in these cases alleging she had not performed work after being hired to assist in filing three bankruptcy actions for three sets of clients. Her clients had all paid her advance fees, none of which she returned even though she had done no work on the cases. The Inquiry Commission issued formal charges against Oliver in all three cases. She did not respond to any of the charges. The Court indefinitely suspended Oliver from the practice of law pursuant to SCR 3.167 for her failure to file answers to the charges.

***Kentucky Bar Ass'n v Rosenburg*, 681 S.W.3d 110 (Ky. 2023).**
All sitting. All concur.

Jay Arthur Rosenburg was permanently disbarred from the practice of law in Virginia and the District of Columbia. The Supreme Court of Kentucky ordered Rosenburg to show cause why he should not be subject to reciprocal discipline and permanently disbarred in the Commonwealth of Kentucky pursuant to SCR 3.435. Rosenburg failed to respond to the show cause order. The Court permanently disbarred him from the practice of law. Rosenburg's underlying conduct in Virginia involved his practice of law there without a license. Rosenburg had contracted a firm in India to prepare first drafts of deeds for his office, which turned out more than 2,000 deeds per year. No one in the firm was licensed to practice law in Virginia and the documents did not appear to have even been proofread by a Virginia lawyer, as they contained many spelling and grammar errors—and even substantive mistakes. Rosenburg admitted to this misconduct in Virginia and failed to show cause why identical discipline should not be imposed in Kentucky.

***Kentucky Bar Ass'n v. Weiner*, 681 S.W.3d 79 (Ky. 2023).**
All sitting. All concur.

Eric Tuley Weiner failed to file any answer to a total of ten charged counts of misconduct and they were handled as a default case pursuant to SCR 3.210(1). The Kentucky Bar Association's Board of Governors considered the ten counts against Weiner and found him guilty on eight of them. The majority of the Board recommended Weiner be permanently disbarred from the practice of law. The Court agreed with the Board's recommendation and permanently disbarred Weiner.

In one of the cases underlying Weiner's discipline, he had instructed his client he was paying the client's creditors with a portion of the client's workers' compensation settlement proceeds. Weiner failed to pay any creditors with the money. He also failed to file a motion with the workers' compensation administrative law judge seeking attorney's fees, which he also withheld from the settlement. Weiner was charged with violating SCR 3.130(1.15)(a), (1.16)(d), (8.4)(c), (1.4), and (8.1)(b).

In the other case, another attorney in Weiner's office represented a client in a social security claim. While the claim was still pending, the client asked Weiner to represent her in another case against the insurer which had been paying her long-term disability benefits when it ceased paying those benefits. Weiner sent a demand letter to the insurance company but failed to inform the client about any subsequent communications. The client was eventually awarded social security disability benefits. Weiner later contacted the client to tell her he had gotten a check from the insurance company. The client picked up the check, which was written on Weiner's account. The client tried to cash the check several times before she was able to. Weiner never informed the client of the terms of the settlement with the insurance company. When the client tried to contact him at his office but was informed he was no longer there due to substance use disorder.

When the insurance company contacted the client a few years later, it informed her its medical board had determined she could return to work. It also demanded return of the check, as she had been awarded social security benefits. It was then she learned the total amount of the check sent to Weiner, because that was the amount her insurance company now demanded repaid. It turned out Weiner had kept a little over $8,000 but had never accounted for these funds to his client. In connection with this second client, Weiner was charged with violating SCR 3.130 (1.3), two counts of (8.4)(c), (1.4), (1.16)(d), and (8.1)(b).

The Supreme Court adopted the recommendation of the Board of Governors and held Weiner was guilty of eight of the ten charged counts. It also agreed

with the Board's recommendation to permanently disbar Weiner from the practice of law.

***Inquiry Comm'n v. Cox*, 681 S.W.3d 112 (Ky. 2023).**
All sitting. All concur.

The Inquiry Commission of the Kentucky Bar Association sought a temporary suspension of Jared Andrew Cox from the practice of law. The Inquiry Commission asserted there was probable cause that Cox poses a substantial threat of harm to the public pursuant to SCR 3.165(1)(b), (c), and (d). Cox had been convicted of a crime and the actions leading to his conviction put in grave issue whether Cox has the moral fitness to continue practicing law. The Commission also asserts Cox is addicted to intoxicants or drugs which deprived him of the physical and mental fitness to continue to practice law. Cox responded to the petition, setting forth mitigating circumstances and arguing he should not be subject to the temporary suspension.

Cox and his wife were involved in an altercation in which he physically assaulted his wife. He admitted he was heavily intoxicated at the time. His wife got an EPO against him and he was ordered to remain at least five hundred feet away from her and refrain from any contact or communication. A three-year DVO was subsequently entered. Cox texted his wife on several occasion and mailed her numerous letters in violation of the DVO. He also forced entry into the marital home. He was found in contempt of the DVO and sentenced to one-hundred-eighty days in jail.

Cox has several pending criminal charges including first-degree strangulation, second-degree burglary, intimidating a participant in the legal process, third-degree terroristic threatening, and twelve counts of violating an EPO/DVO. The Court granted the Commissions petition and temporarily suspended Cox from the practice of law.

***Kentucky Bar Ass'n v. Powell*, 681 S.W.3d 152 (Ky. 2023).**
All sitting. All concur. A Kentucky Bar Association trial commissioner found Kayce Renae Powell had committed four counts of misconduct in two separate cases. Specifically, Powell was found to have violated SCR 3.130(3.4)(f), (8.2)(a), (3.5)(d), (8.1)(b), (1.3), (1.4)(a) and (b), (1.6), and (1.16)(d). The KBA Board of Governors adopted the trial commissioner's findings and conclusions and unanimously recommended Powell be suspended from the practice of law for one year and return any unearned fees connected to one of the cases.

In the first case, Powell was displeased with losing a will contest. She alleged a conspiracy in which the trial judge, two trial defense counsel, and the Court of Appeals had all conspired against both her and her client. Powell sued the two defense counsel, filed bar complaints against them, and filed several Judicial Conduct Commission complaints against the trial judge. The KBA trial commissioner and Board of Governors found she filed these complaints and lawsuits to gain an advantage in the case.

In the second case, Powell was representing a client when she closed her office. Without her client's knowledge, she discussed the case with another attorney and wanted him to take over. The client tried in vain for months to contact Powell. She had paid Powell a retainer that was never accounted for.

The Supreme Court agreed with the findings and recommendations of the trial commissioner, found Powell had violated the rules of professional conduct in the ways described by the trial commissioner, and held a one-year suspension from the practice of law was the appropriate sanction.

***Boling v. Kentucky Bar Ass'n*, 680 S.W.3d 849 (Ky. 2023).**
All sitting. VanMeter, C.J.; Bisig, Conley, Keller, Lambert, and Nickell, JJ., concur. Thompson, J., concurs in result only.

Richard Boling moved the Supreme Court to impose a sanction to resolve a pending disciplinary proceeding against him. The KBA did not object to the sanction. The Court granted the motion. Boling was the Christian County Commonwealth's Attorney at the time of the underlying conduct. He has since resigned. In presenting a case to a grand jury seeking an indictment for manslaughter in a drug-related death, Boling knowingly represented text messages had been sent between the two individuals for which he sought indictments prior to drug overdose of another individual. The messages seemed to acknowledge the pills in question should be handled with care and discussed whether someone should use all of them at once. Boling used these messages as evidence that the individuals he sought to indict knew of the potency of the drugs before giving them to the deceased individual. However, Boling knew these messages were not actually sent until two days after the individual's death. Therefore, they could not have been evidence of wanton conduct related to the death. In dismissing the indictment, the circuit court concluded Boling "intentionally elicited and presented false testimony in order to elevate the degree of the offense with which Henderson was to be charged. This conduct was a flagrant abuse of the grand jury process."

Based on the circuit court order, the Kentucky Bar Association Inquiry Commission issued a four-count charge against Boling alleging he violated: (1)

SCR 3.130(3.3)(a)(1) by knowingly making a false statement to the grand jury regarding the date of the text messages and/or by failing to correct that same false statement; (2) SCR 3.130(3.3)(a)(3) for knowingly offering evidence he knew to be false and failing to take remedial measures once he knew of its falsity; (3) SCR 3.130(3.8)(a) for prosecuting a charge that he knew was not supported by probable cause; and (4) SCR 3.130(8.4)(c) by engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation.

Boling filed a motion for consensual discipline pursuant to SCR 3.480(2). Boling sought a one-year suspension to run concurrently with the five-year sanction already imposed in the factually unrelated case of Kentucky Bar Ass'n v. Boling, 670 S.W.3d 845 (Ky. 2023). The Court determined the sanction should not run concurrently with the previously-imposed five-year suspension and remanded to the KBA for further disciplinary proceedings in Boling v. Kentucky Bar Ass'n, 677 S.W.3d 369 (Ky. 2023).

In a second motion for consensual discipline, the KBA and Boling now agree a one-year suspension to run consecutive to the previous five-year suspension is the proper sanction. The Court agreed the sanction was appropriate and imposed the discipline.

***Inquiry Comm'n v. Tabler*, 681 S.W.3d 164 (Ky. 2023).**
All sitting. All concur.

The Kentucky Bar Association Inquiry Commission petitioned the Supreme Court for an order temporarily suspending Gary Alan Tabler from the practice of law. The Inquiry Commission presented evidence of probable cause to believe Tabler was or had been misappropriating funds he held for others for his own use and that this conduct poses a substantial threat of harm to his clients or the public. Tabler did not respond to the petition. SCR 3.165(1)(a) permits the temporary suspension of an attorney if "[i]t appears that probable cause exists to believe that an attorney is or has been misappropriating funds the attorney holds for others to his/her own use or has been otherwise improperly dealing with said funds." Further, SCR 3.165(1)(b) permits the Inquiry Commission to petition this Court for an order of temporary suspension if "[i]t appears that probable cause exists to believe that an attorney's conduct poses a substantial threat of harm to his clients or to the public." The Court found probable cause existed and temporarily suspended Tabler from the practice of law.

***Clooney v. Kentucky Bar Ass'n*, 680 S.W.3d 885 (Ky. Dec. 14, 2023).**
All sitting. All concur.

Andrew Nicholas Clooney filed a motion to resign from the Kentucky Bar Association under terms of permanent disbarment. SCR 3.480(3) allows "[a]ny member who has been engaged in unethical or unprofessional conduct . . . to withdraw his membership under terms of permanent disbarment . . .." The KBA expressed no objection.

In 2019, the Supreme Court suspended Clooney in two separate cases. In 2019-SC-000114-KB, the Court suspended Clooney indefinitely for failing to answer a Bar Complaint. The Court also suspended him temporarily in 2021-SC-000595-KB because it found probable cause Clooney was misappropriating client funds and posed a risk to clients or the public.

In 2023, Clooney pleaded guilty to one count of wire fraud and one count of willful failure to pay taxes, both felonies. He was sentenced to serve two years and nine months in federal prison. Clooney admits the victims listed in his plea agreement include those listed in the Court's temporary suspension order.

Clooney admits he violated SCR 3.130(8.4)(b) which states "[i]t 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." He also admits to violating SCR 3.130(8.4)(c) which states "[i]t is professional misconduct for a lawyer to . . . engage in conduct involving dishonesty, fraud, deceit or misrepresentation." The Court granted Clooney's motion to withdraw under terms or permanent disbarment.

***Miranda v. Kentucky Bar Ass'n*, 680 S.W.3d 844 (Ky. 2023).**
All sitting. All concur.

Mary Ann Miranda moved the Supreme Court to impose a negotiated sanction pursuant to SCR 3.480(2). The Kentucky Bar Association did not oppose the motion and the Supreme Court granted it. Miranda filed a federal employment discrimination suit against the University of Kentucky. UK filed a motion for summary judgment and Miranda failed to respond. After the federal court granted summary judgment, Miranda filed a motion requesting the court to reconsider due to excusable neglect. The court granted relief on equitable grounds and ordered Miranda to respond "with specificity" to the analysis underlying the order of summary judgment.

Miranda again failed to respond. The federal court entered an order requiring Miranda to show cause why she should not be subject to discipline under the federal local rules of civil practice. Miranda untimely filed a response to the

order and a response to the motion for summary judgment. Miranda failed to keep her client reasonably informed about the case and failed to reply to requests for information. The client eventually asked for her file, which Miranda never returned. The client filed a complaint to which Miranda did not respond.

The Inquiry Commission charged Miranda for failing to: (1) act with reasonable diligence and promptness in representing a client in violation of SCR 3.130(1.3); (2) keep the client reasonably informed about the status of the matter in violation of SCR 3.130(1.4)(a)(3); (3) return the client's file upon request in violation of SCR 3.130(1.16)(d); and (4) respond to a lawful demand for information from an admissions or disciplinary authority in violation of SCR 3.130(8.1)(b).

In a separate case, Miranda was paid $1,000 by a client to probate the client's father's will and prepare a quitclaim deed. Miranda told the client she would hold the check until the representation was complete but cashed the check. Miranda stopped responding to messages sent from the client until the client requested a refund and threatened contacting the KBA. After Miranda again failed to communicate with the client, the client sent Miranda a letter terminating the representation and requesting Miranda return the advance fee and any documents in her possession. Miranda neither replied to the letter nor returned the fee or documents.

The Inquiry Commission charged Miranda for failing to: (1) act with reasonable diligence and promptness in representing a client in violation of SCR 3.130(1.3); (2) promptly comply with reasonable requests for information in violation SCR 3.130(1.4(a)(4); (3) return documentation and any unearned portion of her prepaid fee in violation of SCR 3.130(1.16)(d); and (4) respond to a lawful demand for information for an admissions or disciplinary authority in violation of SCR 3.130(8.1)(b).

Miranda and the KBA negotiated a sanction pursuant to SCR 3.480(2). The Court determined the negotiated sanction of a 181-day suspension probated for two years appropriate for violating SCR 3.130(1.4)(a)(3), (1.4)(a)(4), (1.16)(d) and (8.1)(b) and granted the motion to impose the sanction.

***Inquiry Comm'n v. Worthington*, 686 S.W.3d 156 (Ky. 2024).**
All sitting. All concur.

The Kentucky Bar Association Inquiry Commission petitioned the Supreme Court for the temporary suspension of James Worthington. The Inquiry Commission detailed how Worthington drafted and made himself trustee over a trust. Worthington admits he misappropriated funds totaling more than

$184,000. In another matter, Worthington acted as both executor and attorney for an estate. When he was replaced as executor, the new executors discovered discrepancies involving $151,000 in withdrawals.

The Court temporarily suspended Worthington from the practice of law pursuant to SCR 3.165(1)(a).

***Johnson v. Kentucky Bar Ass'n*, 686 S.W.3d 182 (Ky. 2024).**
All sitting. All concur.

Charlotte Johnson moved the Supreme Court for consensual discipline pursuant to SCR 3.480. Johnson was initially charged with ten counts of misconduct stemming from one case. She asked the Court to impose discipline for five of those counts and dismiss the remaining five. She proposed a sanction of a sixty-day suspension, with thirty days to serve and thirty probated for two years and payment of costs. The Kentucky Bar Association agreed with Johnson. The Court accepted the proposed sanctions as adequate.

In the underlying case, Johnson had undertaken the representation of a married couple in a bankruptcy action. Johnson missed several filing deadlines and failed to carry through on action discussed with her clients. Specifically, Johnson failed to file a notice to convert a Chapter 13 bankruptcy to Chapter 7 once it was evident her clients could not make the payments under the debt restructuring plan.

Johnson admitted her conduct violated SCR 3.130(1.1) in her several failures to file the appropriate motion to convert the case to Chapter 7, SCR 3.130(1.2) for her failure to abide by the agreed objective of her representation, and SCR 3.130(1.3) for her failure to exercise reasonable diligence in complying with the bankruptcy court's order. The Court dismissed Counts 4 and 5 based on mitigating circumstances. The Court found Johnson committed violations of SCR 3.130(1.16) for failing to take reasonable steps to protect her clients and Count 7 for violating SCR 3.130(3.1) for bringing a claim she knew was without basis in fact. Because Johnson had been the sole-caregiver for her ailing (and now deceased) mother, the Court found mitigating circumstances as to the other five counts and dismissed them.

The Court agreed the negotiated sanction was appropriate and suspended Johnson from the practice of law for sixty days, with thirty probated and thirty to serve.

***Calmes v. Kentucky Bar Ass'n*, 686 S.W.3d 189 (Ky. 2024).**
All sitting. All concur.

Nicholas Scott Calmes and the Kentucky Bar Association negotiated a sanction to resolve two pending disciplinary proceedings against Calmes. Calmes moved the Supreme Court to enter the sanction and the Court agreed it was adequate for Calmes's violations.

A client hired Calmes to represent him in a contractual dispute. Calmes misrepresented to the client that the case had been filed, there were court dates scheduled, and the other party was interested in a settlement. The client later discovered all that information was false. The Inquiry Commission issued a three-count charge against Calmes alleging he violated SCR 3.130(1.3) by failing to represent his client's interests promptly and diligently, SCR 3.130(8.4)(c) by misrepresenting the facts to his client, and SCR 3.130(8.1(b) by failing to respond to a lawful request for information in the disciplinary process. Calmes admitted to these violations.

In the second KBA file open against Calmes, he represented a client in a property dispute. Calmes sent a warning letter to a trespassing neighbor but did not follow through with filing suit as he promised his client. The Inquiry Commission issued a two-count charge against Calmes for violating SCR 3.130(1.3) for failing to diligently act on behalf of his client and SCR 3.130(8.1)(b) for failing to respond to a lawful demand for information from a disciplinary authority. Calmes admitted to these violations.

Calmes and the KBA negotiated a sanction in which Calmes would be suspended for thirty days, probated for two years with conditions. The Court agreed this discipline was appropriate and granted the motion.

***In re: Ronnie Lee Goldy, Jr.*, 686 S.W.3d 250 (Ky. 2024).**
All sitting. All concur.

Ronnie Lee Goldy was convicted of multiple felonies in federal court. SCR 3.166(1) provides, in pertinent part, "[a]ny member of the Kentucky Bar Association who . . . is convicted by a judge or jury of a felony . . . shall be automatically suspended from the practice of law in this Commonwealth." The suspension is automatic, begins the day after a guilty plea or finding of guilt, and remains in effect until "dissolved or superseded by order of the Court." Id. Accordingly, Ronnie Lee Goldy, Jr. was automatically suspended from the practice of law.

***In re: Gary Alan Tabler*, No. 2024-SC-0027-KB, 2024 WL 1709625 (Ky. Apr. 18, 2024).**
Opinion and order. All sitting. All concur.

The Kentucky Bar Association filed a motion to the Supreme Court seeking the indefinite suspension of Gary Alan Tabler from the practice of law pursuant to SCR 3.167 after Tabler failed to file an answer to a charge against him. The charge related to Tabler's work as the administrator of an estate for ten years. As administrator, Tabler failed to file timely estate inventories and periodic settlements. He also failed to properly distribute estate assets to the heirs. The district court ultimately relieved him of his duties and appointed a public executor. Once removed, Tabler refused to turn over any documentation related to the estate, despite orders from the court that he do so. The public executory finally subpoenaed the estate's bank records and discovered Tabler had written thirty checks to himself from the estate's bank account amounting to more than $180,000 in misappropriated funds.

Tabler's counsel initially responded to the bar complaint filed against him by the public administrator. However, Tabler's counsel was later permitted to withdraw from the case. The Office of Bar Counsel filed a petition for a temporary suspension pursuant to SCR 3.165(1)(a) alleging Tabler had improperly used client funds. Tabler attempted to file a response to the Inquiry Commission but was informed he needed to file his response to the Court. He failed to do so. The Supreme Court temporarily suspended Tabler in December 2023.

In October 2023, the Inquiry Commission issued a charge against Tabler for violations of SCR 3.130(1.3) (acting with reasonable diligence), (1.15)(a) (holding property of clients separately from own), (1.16)(d)(protecting client's interests upon termination), and (8.4)(c) (conduct involving dishonesty, fraud, deceit, misrepresentation). Tabler failed to file an answer to the charge. The KBA sought an order indefinitely suspending Tabler from the practice of law and the Supreme Court granted that order.

***In re: Brian Allen Logan,* No. 2024-SC-0052-KB, 2024 WL 1708585 (Ky. 2024).**
Opinion and order. All sitting. All concur.

The Inquiry Commission of the Kentucky Bar Association petitioned the Supreme Court to enter an order temporarily suspending Brian Allen Logan from the practice of law pursuant to SCR 3.165(1)(a) and (b). The Inquiry Commission asserted there is probable cause to believe Logan was or had been misappropriating funds he held for others to his own use and that his conduct

poses a substantial threat of harm to his clients or the public. Logan responded to the petition in partial opposition to the temporary suspension. Logan was named executor of a client's estate. When the client died, Logan promptly filed to probate the will, estimating the value of the estate at $425,000. The bulk of the estate was to be divided amongst three charities. In total, Logan misappropriated $416,475 of the estate's assets. Logan failed to file an estate inventory, period settlements, or tax returns, resulting in loss to the estate of an additional $30,000. Between May 2020 and March 2023, Logan made nine payments to the estate for a total repayment of just over $10,000. He resigned as executory in August 2023 and the public administrator was appointed to serve as executor of the estate. Logan selfreported to the KBA through counsel his improper conversion of estate funds to his personal use.

The Inquiry Commission issued a three-count complaint for violations of SCR 3.130(1.15) (safekeeping of property), (8.4)(b)(committing a criminal act reflecting adversely on the lawyer's trustworthiness or fitness as a lawyer in other respects), and (8.4(c) (conduct involving dishonesty, fraud, deceit, misrepresentation). Logan filed a response admitting his conduct violated the relevant rules. He cashed out his retirement plan and made a restitution payment of $75,000 to the estate. The public administrator prepared an inventory revealing approximately $275,000 of misappropriated funds remained to be repaid.

The Inquiry Commission filed the underlying petition asserting Logan was or had been misappropriating funds he held for others to his own use or had otherwise been improperly dealing with those funds and that his conduct poses a substantial threat of harm to his clients or the public.

SCR 3.165(1)(a) permits the temporary suspension of an attorney if "[i]t appears that probable cause exists to believe that an attorney is or has been misappropriating funds the attorney holds for others to his/her own use or has been otherwise improperly dealing with said funds." SCR 3.165(1)(b) permits the Inquiry Commission to petition this Court for an order of temporary suspension if "[i]t appears that probable cause exists to believe that an attorney's conduct poses a substantial threat of harm to his clients or to the public." The Court agreed with the Inquiry Commission that probable cause exists to temporarily suspend Logan under SCR 3.165(1) and entered said suspension.