KENTUCKY LAW UPDATE

2025

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Kentucky Supreme Court Update

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Compiled and Edited by:
The Kentucky Bar Association
Office of Continuing Legal Education
for
Kentucky Bar Association
2025 Kentucky Law Update

Published and Printed by:
Kentucky Bar Association, August 2025

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I. ADMINISTRATIVE LAW

A. *Boone Development, LLC v. Nicholasville Board of Adjustment,* 709 S.W.3d (2024)

Opinion of the Court by Justice Nickell. All sitting. VanMeter, C.J., concurs in part and dissents in part by separate opinion in which Bisig and Keller, JJ., join. Conley, J., concurs in part and dissents in part by separate opinion in which Lambert and Thompson, JJ., join. Boone Development filed a declaratory judgment action seeking a declaration of rights that it did not have to build a road extension and bridge as required by the letter of credit demands of the Nicholasville Planning Commission (NPC), arguing such improvements would be located almost entirely on land it did not own. The NPC asserted Boone had not exhausted its administrative remedies. Boone countered by arguing the NPC had decided nothing. The trial court agreed with Boone and instructed the NPC to make a decision. The NPC complied and issued an order affirming its prior development requirements including construction of the road extension and bridge. The Board of Adjustment affirmed, and, on appeal, the Jessamine Circuit Court affirmed the Board. Boone appealed and the Court of Appeals concluded it lacked jurisdiction to hear the case because Boone failed to post the statutorily required appeal bond. The Supreme Court granted discretionary review.

Initially, the Court noted in the contemporaneously rendered decision in *Bluegrass Trust v. Lexington-Fayette Urban County Government Planning Commission*, 701 S.W.3d 196 (Ky. 2024), the appeal bond provisions of KRS 100.3471 were held to impose an unconstitutional burden on the right to appeal and therefore concluded the Court of Appeals erred in determining it lacked jurisdiction to hear the matter. On the merits, the Court first concluded the Board acted within its legislatively granted powers as KRS 100.257 and KRS 100.261 provide a clear grant of power to the Board to hear appeals from decisions of the NPC. Next, Boone's assertion it was denied due process was rejected as the Board gave it a hearing, took and weighed evidence, made a finding based on that evidence, and issued an order supported by the evidence. Nothing more was required to satisfy procedural due process, and the Board did not act arbitrarily. The Court also rejected Boone's assertion it presented such strong evidence to the Board that the record compelled a conclusion that the Board's decision was unreasonable and arbitrary. After thoroughly reviewing the evidence presented, the Court concluded Boone's proof was not so overwhelming that no reasonable person could reach the same conclusion as the Board. Thus, the trial court's decision was affirmed in all respects.

B. *Bluegrass Trust for Historical Preservation v. Lexington Fayette Urban County Government Planning Commission*, 701 S.W.3d 196 (Ky. 2024)

Opinion of the Court by Justice Conley. All sitting. Lambert, Nickell, and Thompson, JJ., concur. VanMeter, C.J., concurs in part and dissents in part by separate opinion in which Bisig and Keller, JJ., join. The constitutionality of KRS 100.3471(1) was at issue in this case. The statute imposed an appeal bond on all appeals from KRS Chapter 100 cases seeking review in the Court of Appeals. The statute allowed the judge of the circuit court to impose a bond up to $100,000 if the appeal was thought to be taken in good faith, and up to $250,000 if the appeal was thought to be taken in bad faith. The Court of Appeals had ruled the statute constitutional on the basis of Ky. Const. §111(2) and *Commonwealth v. Farmer*, 423 S.W.3d 690, 692 (Ky. 2014).

The Court concluded that Ky. Const. §115 guaranteeing one matter of right appeal in all cases civil and criminal negated the authority of the General Assembly to impose appeal bonds. Prior to the passage of that section in 1974, there was no guaranteed right of appeal from a court judgment in any case. Therefore, all appeal bonds were within the General Assembly's authority to bestow a right of appeal under whatever conditions it determined to be appropriate. With the passage of §115, the Court concluded that is simply no longer true. The Court further distinguished *Farmer* as inapplicable because that case was construing the General Assembly's authority to grant a right of interlocutory appeal in certain circumstances to the Commonwealth in criminal cases. Because this case was neither criminal nor concerned an interlocutory order, *Farmer* was inapplicable. The issue then became interpreting §§115 and 111(2) together. The Court ruled these provisions do not truly conflict. Section 115 is a specific right granted to all Kentuckians, while the language of §111(2) is a general clause that authorizes the General Assembly to create a right of appeal in those situations where a right of appeal would not exist by virtue of the Constitution. Finally, the Court rejected the application of comity because there was no grey area that was difficult to define between the Court's authority to regulate practice and the procedure of the Court of Justice and the General Assembly's authority. The Court made clear that under its Rules of Appellate Procedure, the Court of Appeals had sufficient authority to address and punish frivolous appeals. As to the underlying merits, Appellant had challenged a certificate of appropriateness to demolish a building located within the South Hill Historic District in Lexington. The Court's review was confined to whether that action was arbitrary under Ky. Const. §2. Appellant's specifically argued that several experts had testified the building in question did contribute to the historic character of South Hill and Lexington overall, and was, with some renovations, economically viable. The Court held substantial evidence supported the certificate of appropriateness because "the Commonwealth Building is not an historical landmark in the federal Register; it was not included in the original nominating form for the South Hill neighborhood as an Historic District; Ms. Yan's testimony that the Kentucky Heritage Council did not consider the structure a contributing building; and multiple near-contemporaneous documents – the Design Review Guidelines and Downtown Lexington Building Inventory – from Lexington that also did not list the Commonwealth Building."

C. *RAZ, Inc. v. Mercer County Fiscal Court*, 706 S.W.3d 17 (Ky. 2024)

Opinion of the Court by Justice Nickell. All sitting. VanMeter, C.J., concurs in part and dissents in part by separate opinion in which Bisig and Keller, JJ., join. Conley, J., concurs in part and dissents in part by separate opinion in which Lambert and Thompson, JJ., join. Landowners owned several parcels of land near Herrington Lake in Mercer County which were subject to deed restrictions prohibiting commercial use. Nevertheless, Landowners constructed self-storage buildings on two parcels and obtained rezoning for them. Several years later, Landowners sold an option to purchase an adjoining parcel to an entity wishing to construct a Dollar General store and subsequently obtained rezoning approval for that parcel. RAZ, Inc., a non-profit corporation formed to protect the scenic and recreational value of the Herrington Lake area, filed suit challenging the rezoning and seeking enforcement of the deed restrictions. Landowners moved to dismiss based on RAZ's failure to previously assert the right to enforce the restrictions which operated as a waiver. RAZ moved for summary judgment, contending no material factual disputes existed relative to whether the deed restriction was waived. The trial court dismissed, finding the commercial storage business was a clear violation of the deed restrictions and RAZ had waived enforcement of the restriction. RAZ appealed and the Court of Appeals concluded it lacked jurisdiction to hear the case because RAZ failed to file the statutorily required appeal bond. The Supreme Court granted discretionary review.

Initially, the Court noted in the contemporaneously rendered decision in *Bluegrass Trust v. Lexington-Fayette Urban County Government Planning Commission*, 701 S.W.3d 196 (Ky. 2024), the appeal bond provisions of KRS 100.3471 were held to impose an unconstitutional burden on the right to appeal and therefore concluded the Court of Appeals erred in determining it lacked jurisdiction to hear the matter. On the merits, the Court concluded RAZ was bound by its representation to the trial court that no genuine issues of fact existed regarding the waiver issue and thus the issue was purely one of law. The Court rejected RAZ's assertion that the commercial storage business did not violate the deed restriction, noting the restriction prohibited any use of the land for any purpose other than farming. Further, because no objection had been lodged to the storage business and no attempt had been made to enforce the deed restriction, the trial court did not err in holding the restriction had been waived. Finally, the Court concluded that the Mercer Fiscal Court's grant of rezoning was not arbitrary because of its finding that the physical and economic character of the area had significantly changed was supported by substantial evidence.

D. *Louisville Historical League, Inc. v. Louisville/Jefferson County Metro Government*, 709 S.W.3d 213 (Ky. 2025)

Opinion of the Court by Justice Conley. All sitting. Lambert, C.J.; Bisig and Goodwine, JJ., concur. Keller, J., concurs in part and dissents in part by separate opinion. Nickell, J., concurs in part and dissents in part by separate opinion in which Thompson, J., joins. In a 4-3 opinion authored by Justice Conley, the Supreme Court held a local ordinance requiring a party to allege injury and grievance in filing a complaint in circuit court from an appeal of a Metro Council landmark designation decision was an issue of particular-case jurisdiction and not subject matter jurisdiction. In this

case, Louisville Metro had entered into a contract in 2014 with a third party, agreeing to sell a portion of land and ensure that no legal impediments to developing that land, such as landmark designations, would be put in place. In 2019, the Historical Landmarks and Preservation Districts Commission was directed by Metro Council to evaluate the landmark status of Liberty Hall, the property sold in the 2014 contract. The Landmarks Commission voted in favor of designating Liberty Hall a landmark. Metro Council reversed. Louisville Historical League appealed that decision to the Jefferson Circuit Court. The circuit court agreed that Metro Council had acted with blatant favoritism by virtue of the 2014 contract. At the Court of Appeals, Louisville Metro raised the issue of jurisdiction for the first time based on a local ordinance. The Court of Appeals agreed that Louisville Historical League's failure to sufficiently plead injury or aggrievement deprived the circuit court of jurisdiction; therefore it reversed the lower court.

On appeal, the Supreme Court held pleading injury or aggrievement was an issue of particular-case jurisdiction, as the enabling ordinance unambiguously gave subject matter jurisdiction to hear landmark designation appeals from Metro Council to the Jefferson Circuit Court. Thus, because the issue had not been raised in the circuit court, Louisville Metro had waived the issue. The Court further held as a matter of constitutional law that there is an inherent right of appeal from administrative decisions and an inherent power of the courts to hear such appeals for arbitrariness. Thus, "[c]ompliance with particular statutory requirements on how to invoke that jurisdiction will always therefore be an issue of particular-case jurisdiction." Finally, the Court undertook review of the merits for arbitrariness. The Court held it is not arbitrary government under Ky. Const. §2 for a local government to consider a contract it has with a third party when that contract is germane to the issue under consideration. The Court held local governments would be put in a Hobson's Choice otherwise, as having to choose between potentially violating a contract or strictly adhering to local ordinances which would not be conducive to good government. The Court, however, cautioned there were clear lines a local government could not cross such as entering a contract with the intent of subverting local ordinances. The Court also concluded Metro Council had not acted arbitrarily in considering evidence not put before the Landmarks Commission as none of the alleged errors were prohibited by local ordinances. Thus, the Court of Appeals was reversed, and Louisville Metro's decision to not designate Liberty Hall as a landmark was affirmed.

II. ATTORNEY DISCIPLINE

A. *In re Oliver*, 701 S.W.3d 176 (Ky. 2024)

Opinion and Order. All sitting. All concur. Brittany Lawryn Oliver failed to respond to the charges of the Kentucky Bar Association Inquiry Commission and a default case pursuant to SCR 3.167 proceeded against her. In the representation giving rise to the charges against her, Oliver represented three couples who retained her to pursue filing bankruptcy actions. Oliver did not file the bankruptcy actions, failed to properly communicate with her clients, did not refund some of her clients' unearned fees, and failed to respond to the charges. Because she had failed to respond to the charges, the Supreme Court indefinitely suspended Oliver in *Kentucky Bar Ass'n v. Oliver*, 681

S.W.3d 77 (Ky. 2023). In the present case, the KBA Board of Governors found Oliver violated multiple counts of SCR 3.130(1.3), (1.4), (1.16)(d), and (8.1) and recommended that Oliver be suspended from the practice of law for 181 days, be required to attend and successfully complete the Ethics and Professionalism Enhancement Program (EPEP), participate in the Kentucky Lawyers Assistance Program, refund unearned fees, and pay the costs of the proceeding against her. Neither Oliver nor the KBA sought review of the Board's decision from the Supreme Court; therefore, the Court adopted the Board's recommendation pursuant to SCR 3.370(10).

B. *In re Taylor*, 701 S.W.3d 153 (Ky. 2024)

Opinion and Order. All sitting. All concur. The Kentucky Bar Association Inquiry Commission petitioned the Supreme Court to temporarily suspend Ronald Coleman Taylor, Jr., from the practice of law. Taylor had been fired from a job at a law firm for belligerent behavior toward clients and other employees. A few months later, he drove up to a group of the law firm's employees blaring loud music and pulled a baseball bat and an axe from the trunk of his car. He stood in the road and screamed for the partner of the firm to come face him. He was covered in what he referred to as "war paint" on the occasion. On the same day, Taylor's wife obtained an EPO against him, and he was ordered to surrender his firearms. Taylor then texted his former assistant threatening the partner at the firm in very graphic and disturbing terms. The Supreme Court found probable cause to believe Taylor's conduct poses a substantial threat of harm to his clients or the public and that he is mentally disabled or addicted to intoxicants or drugs. As such, the Court temporarily suspended him from the practice of law pursuant to SCR 3.165(1).

C. *In re Derossett*, 706 S.W.3d 14 (Ky. 2024)

Gerald Douglas DeRossett failed to file answers to two charges brought by the Inquiry Commission of the Kentucky Bar Association. Therefore, he was indefinitely suspended from the practice of law pursuant to SCR 3.167.

D. *In re Sullivan*, 701 S.W.3d 123 (Ky. 2024)

Opinion and Order. All sitting. All concur. Barry Nathaniel Sullivan filed a motion asking the Supreme Court to enter a negotiated sanction pursuant to SCR 3.480(2) to resolve a pending disciplinary proceeding against him. The Kentucky Bar Association did not object, and the Court agreed the proposed sanction was mostly adequate with the exception of the amount of a refund due to a former client. In the underlying case, the Kentucky Bar Association Inquiry Commission had charged Sullivan with violating SCR 3.130(1.5)(a) for charging an unreasonable fee; (1.15)(e) for withdrawing unearned fees from his IOLTA account; (1.16)(d) for failing to refund unearned fees when the representation terminated; (3.4)(c) for knowingly disobeying an obligation under the rules of a tribunal; (8.1)(a) for knowingly making a false statement of material fact in connection with a disciplinary proceeding; and (8.4)(c) for engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. The parties agreed to dismiss the count regarding Sullivan withdrawing unearned fees

from his IOLTA account. Otherwise, Sullivan admitted to the other counts pursuant to the terms of his negotiated sanction with the KBA. Under the terms of the sanction, Sullivan was suspended from the practice of law for 181 days, probated subject to conditions.

E. *In re Null*, 701 S.W.3d 224 (Ky. 2024)

Opinion and Order. VanMeter, C.J.; Bisig, Conley, Keller, Lambert, and Thompson, JJ., sitting. All concur. Nickell, J., not sitting. In two open files, Richard David Null began representing clients but then stopped showing up or answering their calls. He was charged with multiple counts of violating SCR 3.130(1.3), (1.4)(a)(3) and (4), (1.16)(d) and (8.4)(c). Null was eventually served through the Kentucky Bar Association's Executive Director. The KBA's Board of Governors determined Null was guilty of violating each of the counts of professional misconduct and recommended he be suspended for two years and pay restitution to his clients. Noting Null's long disciplinary history, the Supreme Court rejected the recommended sanction, opting instead to indefinitely suspend Null from the practice of law pursuant to SCR 3.167(1).

F. *In re Blair*, 701 S.W.3d 835 (Ky. 2024)

Opinion and Order. All sitting. All concur. Scott Blair, the former Commonwealth's Attorney of Perry County, filed a motion to resign from the Kentucky Bar Association under terms of permanent disbarment pursuant to SCR 3.480(3). Blair pleaded guilty to wire fraud in federal court and was automatically suspended from the practice of law in the Commonwealth. Related to the federal case against him, Blair admitted he took bribes for recommending probation and drug court and not recommending probation violations in exchange for drugs and sexual favors. The Supreme Court accepted Blair's motion and permanently disbarred him from the practice of law in the Commonwealth of Kentucky.

G. *In re Mills*, 701 S.W.3d 306 (Ky. 2024)

Opinion and Order. All sitting. VanMeter, C.J.; Bisig, Conley, Keller, and Nickell, JJ., concur. Thompson, J., concurs in result only. Lambert, J., dissents without opinion. Christopher James Mills moved the Supreme Court to impose a negotiated sanction pursuant to SCR 3.480(2). The Court agreed and imposed the negotiated sanction of a probated 30-day suspension from the practice of law with conditions and a refund of unearned fees. A client retained Mills to resolve the ownership of a piece of property that had belonged to the client's late father. While Mills did undertake some action, he did not properly communicate with his client or keep her apprised of the case. Mills also failed to perform all the tasks for which the client had paid him and failed to return the unearned portion of his fee. Mills admitted he violated SCR 3.130(1.3) by failing to act with diligence and promptness; (1.4)(a) by failing to keep his client reasonably informed and failing to comply with reasonable requests for information; (1.16)(d) by failing to return unearned fees when representation terminated; and (3.3)(a) by knowingly making a false statement of fact to a tribunal or offering evidence which he knew to be false.

H. *In re Stith*, 701 S.W.3d 310 (Ky. 2024)

Opinion and Order. All sitting. All concur. Ryan Richard Stith has been suspended from the practice of law in Kentucky since 2020 and applied for reinstatement pursuant to SCR 3.502. The Character and Fitness Committee recommended Stith's reinstatement with conditions, and the Supreme Court agreed and adopted the Committee's recommendation. Stith was initially suspended indefinitely for failing to respond to charges of professional misconduct and was then found guilty of multiple violations. The Court suspended him for an additional 61 days and ordered Stith to enter into and comply with a Kentucky Lawyer Assistance Program agreement. Stith has since complied with his KYLAP agreement.

I. *In re Dusing*, 701 S.W.3d 393 (Ky. 2024)

Opinion and Order. VanMeter, C.J.; Bisig, Conley, Keller, Lambert, and Thompson, JJ., sitting. VanMeter, C.J.; Keller, Lambert, and Thompson, JJ., concur. Bisig, J., concurs in part and dissents in part by separate opinion in which Conley, J., joins. Nickell, J., not sitting. Benjamin Gerald Dusing both represented himself and was represented by counsel in two separate matters before the Kenton Family Court. The Kentucky Bar Association brought three sets of charges against Dusing related to his family court cases. Regarding the first family court case, Dusing was charged with five counts of professional misconduct. Count I alleged Dusing violated SCR 3.130(3.5)(d) by filing repeated and frivolous motions and appeals, all with the intent to disrupt the tribunal. Counts II and III alleged Dusing violated SCR 3.130(3.4)(f) when he threatened or presented criminal or disciplinary charges against the judge and opposing counsel solely to obtain an advantage in the proceedings. Count IV alleged Dusing violated SCR 3.130(3.4)(b) and SCR 3.130(8.4)(a) when he assisted or induced his attorney to offer $5,000 to a consulting expert to change his custodial evaluation. Finally, Count V alleged Dusing violated SCR 3.130(8.2)(a) when he made numerous knowingly or recklessly false statements in pleadings concerning the qualifications or integrity of the family court judge. Regarding the second family court case, Dusing was charged with three counts of professional misconduct. Count I alleged Dusing violated SCR 3.130(3.1) by filing multiple motions and pleadings that lacked a basis in law or fact. Count II alleged Dusing violated SCR 3.130(3.5)(d) by filing numerous frivolous motions and appeals and by repeatedly emailing the guardian *ad litem*, all for the purpose of disrupting the tribunal. Count III alleged Dusing violated SCR 3.130(4.4)(a) because he also engaged in this same conduct for no substantial purpose other than to delay, embarrass, or burden a third person. The third case concerned a profanity-laced, threatening diatribe Dusing posted to Facebook naming both the family court judge's staff attorney and opposing counsel in one of the cases. The KBA alleges Dusing's posting of this video violated SCR 3.130(3.5)(d). The Supreme Court found Dusing guilty of all 10 charged rule violations and suspended him from the practice of law for three years with no credit given for the time he had already been suspended from the practice of law pursuant to a temporary suspension.

J. *In re Risner*, 701 S.W.3d 365 (Ky. 2024)

Opinion and Order. All sitting. All concur. Terry Risner was publicly censured by the Board of Professional Responsibility of the Supreme Court of Tennessee, and the Kentucky Bar Association filed a petition to the Supreme Court of Kentucky seeking reciprocal discipline pursuant to SCR 3.435. Risner was found guilty of violating Tennessee Rule of Professional Conduct 3.4 (fairness to opposing party), 1.3 (diligence), and 8.4(d) (prejudice to the administration of justice). A client had hired Risner to provide representation in a criminal appeal, but Risner failed to file an appellate brief. Risner failed to show cause why reciprocal discipline should not be imposed, and the Supreme Court of Kentucky publicly reprimanded him.

K. *In re Davis*, 701 S.W.3d 420 (Ky. 2024)

Opinion and Order. All sitting. Conley, Keller, Lambert, Nickell, and Thompson, JJ., concur. VanMeter, C.J., concurs in part and dissents in part by separate opinion in which Bisig, J., joins. James Edward Davis visited an inmate who was in custody at a county detention center on behalf of his client. Davis brought an affidavit containing numerous statements purportedly made by the inmate. The inmate ultimately refused to sign the affidavit. Unbeknownst to the inmate, Davis was secretly recording the conversation. Davis moved the Supreme Court to enter a negotiated sanction to resolve charges brought by the Kentucky Bar Association related to the above conduct, pursuant to SCR 3.480(2). The Court found Davis violated SCR 3.130(4.3) by having discussions with the inmate in which the inmate may have viewed him as providing her with legal advice during a time in which she was unrepresented and vulnerable. The Court found Davis did not violate SCR 3.130(4.4)(a) by recording his conversation with the inmate without her consent. Davis sought the imposition of a public reprimand, and the KBA had no objection. The Court agreed this sanction was appropriate and publicly reprimanded Davis for his misconduct.

L. *In re Jameson*, 701 S.W.3d 379 (Ky. 2024)

Opinion and Order. VanMeter, C.J.; Bisig, Conley, Keller, Lambert, and Thompson, JJ., sitting. All concur. Nickell, J., not sitting. James T. Jameson failed to pay his KBA dues and was suspended from the practice of law accordingly. The Character and Fitness Committee and Jameson came to an agreement regarding his reinstatement to the KBA. The joint stipulation requires Jameson to obtain treatment for his diagnosed attention deficit hyperactivity disorder (ADHD). The Court adopted the joint stipulations and reinstated Jameson to the practice of law in the Commonwealth.

M. *In re McLeod*, 701 S.W.3d 426 (Ky. 2024)

Opinion and Order. All sitting. All concur. Brendan Joseph McLeod spoke with a co-defendant in a criminal matter who was represented by other counsel. The co-defendant's counsel had specifically told McLeod not to speak with her client. McLeod admits to knowingly violating SCR 3.130(4.2) by communicating with a represented litigant without permission of the court or litigant's counsel and to

violating SCR 3.130(3.4)(c) by knowingly disobeying an obligation under the rules of a tribunal. In another case, McLeod represented a client at trial and then filed his notice of appeal. However, McLeod failed to timely file a brief and failed to show cause why the case should not be dismissed. McLeod claimed the client had failed to pay $15,000 in attorney's fees and had expressed that he no longer wished to pursue the appeal since he was out of jail. McLeod took no action to directly dismiss the appeal. McLeod admits to violating SCR 3.130(3.4)(c) by knowingly disobeying an obligation under the rules of a tribunal. The Supreme Court accepted the KBA's and McLeod's negotiated sanction pursuant to SCR 3.480(2) and imposed the agreed-upon 30-day suspension, probated for one year subject to conditions, including McLeod's completion of EPEP.

N. *In re Rye*, 701 S.W.3d 368 (Ky. 2024)

Opinion and Order. All sitting. All concur. William David Rye admitted: (1) his failure to file an appellant's brief on his client's behalf constituted a violation of SCR 3.130(1.3) concerning diligence; (2) when he lied to his client about having filed an appellant's brief, he violated SCR 3.130(8.4)(c) concerning conduct involving dishonesty, fraud, deceit, or misrepresentation; (3) in failing to inform his client that his appeal had been dismissed, he violated SCR 3.130(1.4)(a)(3) regarding keeping the client reasonably informed; (4) in failing to notify his client of his intention to terminate representation and failing to return his client's file to him, he violated SCR 3.130(1.16)(d) regarding protecting a client's interests upon the termination of representation; and (5) when he failed to reply to emails from the Office of Bar Counsel regarding information lacking in his response to his bar complaint, he violated SCR 3.130(8.1)(b) regarding failing to respond to a lawful demand for information from an admissions or disciplinary authority. Rye and the Kentucky Bar Association entered into a negotiated sanction pursuant to SCR 3.480(2). Rye moved the Supreme Court to impose a two-year suspension from the practice of law for his violations. The Court granted the motion and imposed the sanction. Rye has a prior disciplinary history including multiple suspensions from the practice of law, a private admonition, and two public reprimands.

O. *In re Rowland*, 701 S.W.3d 366 (Ky. 2024)

Opinion and Order. All sitting. All concur. Robert Andrew Rowland was suspended from the practice of law for 180 days in October 2020. He filed his first application for reinstatement in September 2021. Since his suspension had lasted 181 days or more, his reinstatement process proceeded pursuant to SCR 3.502. In accordance with that rule, the Character and Fitness Committee had to review Rowland's application for reinstatement. Rowland submitted a Character and Fitness questionnaire but did not further pursue his first application. Eventually, the Character and Fitness Committee deemed his first application withdrawn. In August 2023, Rowland filed a second application for reinstatement, and the Inquiry Commission deemed his application complete the next month. The Office of Bar Counsel investigated the application and then the Committee reviewed Rowland's application. The Office of Bar Counsel determined Rowland had satisfied the criteria and that it had no objection to Rowland's reinstatement to the practice of law. The Supreme Court

found no reason to review the case further and reinstated Rowland to the practice of law.

P. *In re Hammond*, 701 S.W.3d 522 (Ky. 2024)

Opinion and Order. All sitting. All concur. The Kentucky Bar Association Board of Governors found attorney Glenn Martin Hammond guilty of three ethical violations and recommended he receive a public reprimand, attend ethics school regarding supervision of employees and keeping clients informed, and bear the costs of the KBA proceedings against him. Neither the KBA nor Hammond requested further review, and the Kentucky Supreme Court adopted the Board's decision pursuant to SCR 3.378(10). Specifically, Hammond was found guilty of violating: (1) SCR 3.130(1.5)(b) and/or (c) regarding his failure to communicate his fee agreement to a client; (2) SCR 3.130(5.3) by failing to properly instruct or supervise his unlicensed law clerk; and (3) SCR 3.130(1.4) by failing to communicate and adequately respond to a client's reasonable requests for information. After considering Hammond's disciplinary history, which included a private reprimand for similar misconduct, the Supreme Court approved Hammond's sanction.

Q. *In re Logan*, 701 S.W.3d 527 (Ky. 2024)

Opinion and Order. All sitting. All concur. Brian Allen Logan moved the Supreme Court to resign under terms of permanent disbarment pursuant to SCR 3.480(3). The Kentucky Bar Association Inquiry Commission had filed a motion for Logan's temporary suspension pursuant to SCR 3.165(1)(a) and (b) related to his handling of an estate in which he admittedly misappropriated more than $400,000 over the course of five years. In his capacity as executor, Logan failed to file an estate inventory, periodic settlements, or tax returns, resulting in a loss to the estate of an additional $30,000. The Supreme Court had temporarily suspended Logan from the practice of law for related acts of misconduct. In consideration of the Inquiry Commission's investigation, Logan moved to resign under terms of permanent disbarment. He admitted his unethical conduct constituted violations of numerous rules of professional conduct. The Supreme Court granted Logan's motion to resign under terms of permanent disbarment.

R. *In re Ryan*, 709 S.W.3d 177 (Ky. 2024)

Opinion. All sitting. All concur. Perry Thomas Ryan and David Michael Williams represented the Commonwealth in a murder case. The defendants in the case were originally convicted of murder. After almost 20 years of post-conviction proceedings, the trial court ordered a new trial. This Court affirmed the trial court's order. Ryan and Williams obtained additional indictments against the murder defendants for kidnapping and perjury. The trial court dismissed the new indictments based on vindictive prosecution. The defense team filed a bar complaint against Ryan and Williams, and the Kentucky Bar Association's Inquiry Commission issued four-count charges against both prosecutors in 2019. Count I alleged Ryan and Williams violated SCR 3.130(3.1), which prohibits lawyers from knowingly bringing or defending a proceeding unless there is a non-frivolous basis in law or fact for doing so. Count II

alleged Ryan and Williams violated SCR 3.130(3.4)(f) which provides, "[a] lawyer shall not . . . present criminal or disciplinary charges solely to obtain an advantage in any civil or criminal matter" by threatening to indict and later indicting the murder defendants on new charges after the trial court vacated the murder convictions. Count III alleged Ryan and Williams violated SCR 3.130(3.8)(a), which states in pertinent part, "[t]he prosecutor in a criminal case shall . . . refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause . . . ." Finally, Count IV alleged Ryan and Williams violated 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. . . ." KBA trial commissioner found Ryan and Williams guilty on all four counts. The KBA Board of Governors disagreed. KBA Bar Counsel appealed to the Supreme Court. The Supreme Court agreed with the Board of Governors and concluded Ryan and Williams did not commit any misconduct and, therefore, no discipline was warranted.

S. *In re Tabler*, 706 S.W.3d 187 (Ky. 2024)

Opinion and Order. All sitting. All concur. As the administrator of an estate, Gary Alan Tabler took more than $200,000 without authorization. The Kentucky Bar Association Board of Governors recommended disbarment pursuant to SCR 3.210. During the 10 years Tabler served as administrator, he failed to file timely estate inventories and periodic settlements. He also failed to distribute estate assets to the heirs. The district court removed Tabler after his repeated failures and appointed a public administrator. Tabler refused to turn over any documentation related to the estate. It turned out Tabler had written 30 checks to himself from the estate's bank account, totaling more than $200,000. The KBA Inquiry Commission issued a charge against Tabler for violating SCR 3.130(1.3) (concerning diligence), (1.15)(a) (concerning holding client property separately), (1.16)(d) (concerning steps to be taken on termination of representation), and (8.4)(c) (concerning conduct involving dishonesty, fraud, deceit, or misrepresentation). After Tabler failed to respond to the charge, the Supreme Court suspended him indefinitely from the practice of law. The Board of Governors then unanimously found Tabler guilty on all counts and recommended he be permanently disbarred from the practice of law. The Supreme Court agreed and adopted the findings of the Board of Governors.

T. *In re Zaccheus-Miller*, 706 S.W.3d 221 (Ky. 2024)

Opinion and Order. All sitting. All concur. Jennifer Lee Zaccheus-Miller was appointed as executor of an estate and then later removed. When Zaccheus-Miller was removed as executor, she was ordered to hand over all estate files to the new executor and render an account of estate funds to the court. She failed to do so, resulting in the issuance of a bench warrant. An arrest warrant was also sought by a Kentucky State Police detective, alleging Zaccheus-Miller had committed the offense of theft by unlawful taking over $10,000, regarding her handling of the estate. Zaccheus-Miller had written checks totaling more than $26,000 to herself from the estate's checking account, some of them even after she had been removed as executor. A criminal case has since been filed against Zaccheus-Miller. The Kentucky Bar Association Inquiry Commission filed a motion with the Supreme Court seeking

Zaccheus-Miller's temporary suspension from the practice of law pursuant to SCR 3.165. The Supreme Court found that probable cause exists to believe Zaccheus-Miller has misappropriated funds and poses a substantial threat of harm to her clients. Therefore, the Supreme Court temporarily suspended Zaccheus-Miller from the practice of law.

U. *In re Schultz*, 706 S.W.3d 219 (Ky. 2024)

Opinion and Order. All sitting. All concur. Matthew Paul Schultz moved the Supreme Court for entry of an order permanently disbarring him from the practice of law pursuant to SCR 3.480(3). The Kentucky Bar Association did not object to Schultz's proposed sanction. Schultz failed to make restitution payments with money provided by one of his clients. After the court held two show cause hearings which Schultz failed to attend, he was arrested for contempt of court. Schultz brought a razor blade and handcuff key into the secure portion of the detention center. He pleaded guilty to theft by unlawful taking over $1,000 and first-degree promoting contraband. He was placed on felony pretrial diversion for five years. The Kentucky Bar Association Inquiry Commission charged him with violations of SCR 3.130(3.4)(c) (concerning disobeying obligations to a tribunal), (8.1)(b) (concerning failure to respond to a bar complaint), (8.4)(b) (concerning commission of a criminal act which reflects adversely on honesty, trustworthiness, or fitness as a lawyer), and (8.4)(c) (concerning conduct involving dishonesty, fraud, deceit, or misrepresentation). Schultz admitted to these violations. Another KBA disciplinary file open against Schultz involved his violation of an Emergency Protection Order his ex-wife had taken out against him. Despite the EPO's no contact provision, he texted his ex-wife more than 24 times in an eight hour span. Some of these messages were threatening, claiming he would find his ex-wife and harm law enforcement. Schultz pleaded guilty to violating the EPO. He was still subject to the terms of felony diversion agreements at the time, so he was charged with one count of probation violation in each of these cases and his two pretrial diversions were voided. He was sentenced to five years' imprisonment on each of the two charges to run concurrently. The Inquiry Commission charged Schultz with a violation of SCR 3.130(8.4)(b) for committing a criminal act which reflected adversely on his honesty, trustworthiness, or fitness as a lawyer. The Supreme Court agreed with Schultz that permanent disbarment was the appropriate sanction for his violations and permanently disbarred him from the practice of law.

V. *In re White*, 706 S.W.3d 70 (Ky. 2024)

Opinion and Order. Bisig, Conley, Keller, Lambert, Nickell, and Thompson, JJ., sitting. All concur. VanMeter, C.J., not sitting. Scott White asked the Supreme Court to enter a negotiated sanction suspending him from the practice of law for 30 days, probated for one year for the misconduct alleged in two disciplinary files. In the first Bar Counsel file, White was representing a client in post-divorce matters. White failed to file a response to a motion filed by opposing counsel, failed to schedule or attend court-ordered mediation, and failed to respond to many of opposing counsel's and his client's attempts at contact. White eventually asked for a continuance to file a response to opposing counsel's motion. The continuance was granted, but White

still failed to file a response. When the court ordered White to transfer a sum of money held in escrow, he failed to do so. He failed to file a CR 60.02 motion he told his client he was going to file. When White's client filed a bar complaint, White failed to respond. He admits his actions violated SCR 3.130(1.3) (concerning diligence), (1.4)(a)(3) (concerning keeping the client reasonably informed), (1.4)(a)(4) (concerning compliance with reasonable requests for information), (3.4)(c) (concerning disobeying an obligation to a tribunal), and (8.1)(b) (concerning failing to respond in a disciplinary matter). In the second disciplinary file, a client hired White to represent him in a sexual abuse case and paid him $5,000. The client asked that White file the complaint in Woodford County, but he filed it in Fayette. White did not provide the necessary work to pursue his client's case, and it was dismissed by agreement. White's client requested an accounting of the retainer, which White failed to provide. He also failed to provide the client with copies of the pleadings or his client file. White did not return any unearned portion of the prepaid fee. White's client filed a bar complaint, to which White failed to respond. White admits his actions violated SCR 3.130(1.3) (concerning diligence), (1.4)(a)(3) (concerning keeping the client reasonably informed), (1.4)(a)(4) (concerning compliance with reasonable requests for information), (1.15)(b) (concerning rendering an accounting), (1.16)(d) (concerning protecting a client's interests and returning unearned fees), and (8.1)(b) (concerning failing to respond in a disciplinary matter). The Supreme Court held the parties' negotiated sanction was appropriate for the misconduct White admitted to committing and suspended him from the practice of law for 30 days, probated for one year.

W. *In re Fritz*, 709 S.W.3d 206 (Ky. 2025)

Opinion and Order. All sitting. All concur. A client hired Jon Rhyan Fritz to represent her in a wrongful termination claim against her employer. The client paid Fritz's "flat fee," which Fritz deposited into his general business account without a written advance fee agreement. Fritz failed to provide any billing statements to his client explaining how he was earning his fee. Fritz's client emailed him asking for an explanation of the Equal Opportunity Commission's determination declining further investigation in her case. Fritz sent an email addressing the client's concerns but only replied to his secretary and forgot to include the client in the email. When the client sought a meeting, Fritz rescheduled numerous times. He did not end up filing the client's suit. Fritz's client requested an explanation of the services he provided and a refund of unearned fees, but Fritz did not respond. The client filed a bar complaint against Fritz. Fritz filed an initial response to the complaint but then stopped communicating with the Kentucky Bar Association's Office of Bar Counsel. The KBA Inquiry Commission charged Fritz with violating SCR 3.130(1.2)(a) regarding the scope of representation, (1.3) concerning diligence, (1.4)(a) regarding communication, (1.5)(f) concerning fees, (1.15)(e) regarding safekeeping property, (1.16)(d) concerning termination, and (8.1)(a) and (b) regarding disciplinary matters. Fritz failed to comply with SCR 3.035(1) and keep the KBA informed of an address at which he could be "communicated with by mail." As such, he had to be constructively served through the KBA Executive Director. The Office of Bar Counsel moved the Supreme Court for an order indefinitely suspending Fritz from the practice of law. Fritz was ordered to show cause why he should not be indefinitely suspended.

Fritz did not respond. SCR 3.167(1) provides the Supreme Court may indefinitely suspend an attorney who fails to answer a charge or participate in the disciplinary process. Because Fritz failed to participate in his disciplinary proceeding, the Court indefinitely suspended Fritz from the practice of law in the Commonwealth.

X. *In re Bedford*, 709 S.W.3d 210 (Ky. 2025)

Opinion and Order. All sitting. All concur. Walter Bedford Jr. moved the Supreme Court to enter a negotiated sanction pursuant to SCR 3.480(2) to resolve a pending disciplinary proceeding against him. The Kentucky Bar Association had no objection. Bedford was the executor of an estate and wrote himself checks on the estate's checking account for unearned fees. After he was removed as executor, he did not return the estate funds. The KBA Inquiry Commission issued a three-count charge against Bedford for violating SCR 3.130(1.3) (diligence), (1.15)(a) (safekeeping property), and (1.16)(d) (failure to return unearned fee). He admitted his actions violated the charged rules. Bedford filed a motion for a negotiated sanction proposing he be publicly reprimanded and ordered to repay the unearned fee to the estate. The Court agreed the negotiated sanction was appropriate and imposed it.

Y. *In re Worthington*, 709 S.W.3d 69 (Ky. 2025)

Opinion and Order. All sitting. All concur. The Supreme Court of Kentucky granted James Carol Worthington's motion to resign under terms of permanent disbarment pursuant to SCR 3.480(3). Worthington had entered a guilty plea in federal court to wire fraud admitting that he unlawfully took more than $600,000 from six clients. Given the gravity of his misconduct, the Court granted Worthington's motion and allowed him to resign from the practice of law in Kentucky under terms of permanent disbarment.

Z. *In re Hawkins*, 709 S.W.3d 270 (Ky. 2025)

Opinion and Order. All sitting. All concur. The Supreme Court of Kentucky granted Douglas Trent Hawkins's motion to resign under terms of permanent disbarment pursuant to SCR 3.480(3). Hawkins was convicted in federal court for investment advisor fraud, securities fraud, and two counts of mail fraud. He is currently in federal prison. After Hawkins' indictment but before his conviction, seven clients prepaid Hawkins for legal services which he did not perform. Hawkins acknowledged that his conduct leading to his convictions constituted unethical conduct in violation of the Rules of Professional Conduct. The Court agreed and allowed Hawkins to resign under terms of permanent disbarment.

AA. *In re Smith*, 709 S.W.3d 268 (Ky. 2025)

Opinion and Order. Bisig, Conley, Goodwine, Keller, Nickell, and Thompson, JJ., sitting. All concur. Lambert, C.J., not sitting. Ashlee Dehnae Smith applied to be reinstated to the practice of law. She was initially suspended for failing to comply with CLE requirements; however, the Court eventually suspended her for three years after finding she had made false statements to the KBA and the Court concerning her

attendance at a CLE program. On Smith's application, the Character and Fitness Committee recommended her reinstatement. The Supreme Court reviewed the record and the Committee's recommendation. The Court agreed with the Committee and reinstated Smith to the practice of law.

AB. *In re Sammons*, 2024-SC-0564-KB, 2025 WL 1197644 (Ky. Apr. 24, 2025)

Opinion and Order. Lambert, C.J.; Bisig, Conley, Goodwine, Nickell, and Thompson, JJ. sitting. All concur. Keller, J., not sitting. The Supreme Court indefinitely suspended Darrell Edward Sammons from the practice of law pursuant to SCR 3.167. Sammons violated SCR 3.164 by failing to answer a KBA charge. In the underlying KBA matter, Sammons was accused of a lack of legal work on his client's behalf, a general failure to respond to communications, and failure to return any portion of his retainer or fees after his termination. For this alleged misconduct, Sammons was charged with violating SCR 3.130(1.1) (competence), (1.3) (diligence), (1.5)(a) (fees), (1.16)(d) (termination), and (8.1)(b) (disciplinary matters). Sammons failed to respond to the charge, leading to his indefinite suspension.

AC. *In re Dade*, 2024-SC-0574-KB, 2024 WL 5668340 (Apr. 24, 2025)

Opinion and Order. All sitting. All concur. The Supreme Court indefinitely suspended Jay Michael Dade from the practice of law pursuant to SCR 3.167. Dade violated SCR 3.164 by failing to answer a KBA charge. In the underlying KBA matter, Dade failed to produce discovery in conformity with a trial court's order. As a result of the failure to produce the discovery (even after being given an additional 30 days), Dade's client had to pay the opposing party's attorneys' fees. Dade did not communicate any of this to his client. Dade was charged with violating SCR 3.130(1.3) for failing to diligently represent his client in civil litigation, (1.4)(a) and (b) for failing to adequately communicate with his client and failing to discuss matters that affected the representation, (3.3)(a)(1) for making false statements to the circuit court in the ongoing civil litigation, (3.4)(c) for disobeying the trial court's pretrial orders regarding discovery and other matters, (8.4)(c) for misrepresenting the extent of his activity in the ongoing litigation, and (8.1)(b) for failing to respond to a lawful request for information in a disciplinary action. He failed to respond to the charge, leading to his indefinite suspension.

AD. *In re Beattie*, 2025-SC-0057-KB, 2025 WL 1197380 (Ky. Apr. 24, 2025)

Opinion and Order. All sitting. Bisig, Conley, Goodwine, Keller, and Nickell, JJ., concur. Lambert, C.J., dissents by separate opinion in which Thompson, J., joins. Michael Joseph Beattie moved the Supreme Court to enter a negotiated sanction against him pursuant to SCR 3.480(2) to resolve a pending disciplinary proceeding. The KBA had no objection. The Court concluded the proposed sanction was inadequate and rejected it. Beattie was representing a client in a criminal matter involving the client physically harming the client's girlfriend. Beattie asked his client if the client had a girlfriend and if that girlfriend was pregnant. The client responded that he did have a girlfriend, but she was not pregnant. Beattie told the client if his girlfriend was pregnant, it would help with his bond. The client then said, "maybe she

is pregnant." Beattie falsely represented to the trial court that Beattie's girlfriend was pregnant and needed his help at home and with her medical appointments. The KBA Inquiry Commission charged Beattie with violating SCR 3.130(3.3)(a)(1), which provides that a lawyer shall not knowingly "make a false statement of fact or law to a tribunal" and SCR 3.130(8.4)(c), which provides that it is professional misconduct for a lawyer to "engage in conduct involving dishonesty, fraud, deceit or misrepresentation." Beattie admitted he violated both rules as charged and proposed the Court publicly reprimand him for his misconduct. The majority, however, found the proposed sanction inadequate and remanded the case for further disciplinary proceedings pursuant to SCR 3.480(2). The majority distinguished the cases the parties' cited in support of the negotiated sanction, stating "[h]ere, Beattie's blatant lie to the trial court was used to secure the release of an allegedly dangerous individual, which posed a serious risk to the public." The majority also noted the cited cases involved misrepresentation by omission which it contrasted with Beattie's conduct of devising a lie to present to the court.

AE. *In re Thornton*, 2025-SC-0069-KB, 2025 WL 1197851 (Ky. Apr. 24, 2025)

Opinion and Order. Lambert, C.J.; Bisig, Conley, Goodwine, Keller, and Nickell, JJ., sitting. All concur. Thompson, J., not sitting. Clients hired Steven O. Thornton and paid him $5,000 that he was to charge against them at an hourly rate. Thornton contacted opposing counsel in the case but failed to either enter an appearance in the case or file responsive pleadings. Thornton's inaction led to a default judgment against his clients. Thornton's clients requested a refund of fees from Thornton, which he did not provide until the clients filed a bar complaint against him. A KBA trial commissioner found Thornton violated SCR 3.130(1.3) (diligence), (1.4)(a)(2) and (4) (consult with client on means to achieve client's objectives and promptly comply with requests for information), (1.16)(d) (take reasonable steps to protect client's interests upon termination of representation), and (8.1)(b) (failure to disclose necessary fact or respond to request for information in connection with disciplinary matter). The trial commissioner recommended Thornton be suspended from the practice of law for one year. Neither Thornton nor the KBA filed a notice of appeal to the Supreme Court. The Court found the trial commissioner's recommendation was supported by the record and applicable law and adopted it.

AF. *In re Curlin*, 2025-SC-0082-KB, 2025 WL 1202469 (Ky. Apr. 24, 2025)

Opinion and Order. All sitting. Lambert, C.J.; Conley, Bisig, Goodwine, Nickell, and Thompson, JJ., concur. Keller, J., concurs in result only. Henderson Family Court Judge David Curlin filed a motion for consensual discipline, seeking to resolve four open KBA files addressing his misconduct. The sanction the KBA and Judge Curlin negotiated called for a one-year suspension from the practice of law with 90 days to serve, retroactive to September 29, 2023 (when Curlin had been indefinitely suspended from the practice of law for failing to respond to multiple KBA complaints and charges along with orders of the Court). The Court approved and imposed the negotiated sanction. In all the cases underlying the sanction, Judge Curlin was acting as a private attorney. In representing four clients, Judge Curlin committed various acts of misconduct. The Court found Judge Curlin guilty of four violations of SCR

3.130(8.1)(b) (failing to respond in a disciplinary matter), three violations of (1.4)(a)(3) (keeping the client reasonably informed), three violations of (1.4(a)(4) (prompt compliance with reasonable requests for information), and one violation each of SCR 3.130(1.3) (diligence) and (1.16)(d) (protection of client's interests following termination).

AG. *In re Nolan*, 2025-SC-0103-KB, 2024 WL 5668435 (Ky. Apr. 24, 2025)

Opinion and Order. All sitting. All concur. Timothy Lee Nolan filed a motion with the Supreme Court to resign under terms of permanent disbarment pursuant to SCR 3.480(3). The Court granted Nolan's motion and permanently disbarred him from the practice of law. In 2019, Nolan pleaded guilty to multiple felony counts, most of which were of a sexual nature and some of which involved minors. After his indictment in 2017, the KBA opened disciplinary proceedings against Nolan. He was temporarily suspended from the practice of law in 2018 pursuant to SCR 3.166(1). The Court agreed with Nolan that the conduct to which he pleaded guilty was sufficient to warrant permanent disbarment.

AH. *In re Brinker*, 2025-SC-0105-KB, 2025 WL 1197858 (Ky. Apr. 24, 2025)

Opinion and Order. All sitting. All concur. Dale Anthony Brinker has been temporarily suspended from the practice of law since 2013. The KBA's Board of Governors recommended that he be permanently disbarred from the practice of law. Neither Brinker nor the Office of Bar Counsel filed a notice of review. The Court adopted the Board's recommendation and permanently disbarred Brinker from the practice of law. In 2022, Brinker pleaded guilty to three counts of felony theft by unlawful taking. The criminal charges arose when Brinker took money or property from two different estates for which he was serving as executor and trustee. In a separate matter, Brinker pleaded guilty to two more counts of felony theft by unlawful taking and one misdemeanor count. Again, Brinker had taken money from an estate. When the Inquiry Commission issued a complaint to Brinker requesting additional information regarding his actions and the criminal charges, Brinker did not respond. The Inquiry Commission issued a two-count charge against Brinker asserting he violated SCR 3.130(8.4)(b) (committing a criminal act reflecting adversely on the lawyer's honesty, trustworthiness, or fitness) and (8.1)(b) (failure to respond in a disciplinary matter). Brinker did not respond to the charge. The Court permanently disbarred Brinker from the practice of law.

AI. *In re Lovell*, 2025-SC-0023-KB, 2025 WL 1717793 (Ky. June 20, 2025).

Opinion and Order. All sitting. All concur. The Kentucky Bar Association filed a motion asking the Supreme Court to indefinitely suspend Rebekah Jean Lovell from the practice of law pursuant to SCR 3.167 for her failure to file an answer to a charge. The Supreme Court issued a show cause order directing Lovell to show why she should not be indefinitely suspended from the practice of law. Lovell responded, and the Court found she had shown cause as to why the Court should not indefinitely suspend her from the practice of law. In her response to the show cause order, Lovell stated she had taken on new employment as a staff attorney for the Cabinet of Health

and Family Services and described her former employment as an associate attorney in private practice as "professionally and emotionally destabilizing." Lovell had been diagnosed with anxiety, depression, and ADHD. She has also been working with KYLAP to determine its appropriate involvement with her, if any. Lovell acknowledged she was not as attentive to her mail or the disciplinary matter as she should have been. Lovell was represented by counsel before the Court and said she was fully committed to addressing the disciplinary matter. The Court denied the KBA's motion to indefinitely suspend Lovell and ordered she respond to the KBA charge against her if she had yet to do so.

AJ. *In re Bergeron*, 2025-SC-0185-KB, 2025 WL 1717878 (Ky. June 20, 2025).

Opinion and Order. All sitting. All concur. Pierre Henri Bergeron filed a motion to withdraw from membership in the KBA in 2018, at which time he was a member in good standing with no disciplinary history. The Supreme Court granted his motion to withdraw in 2019. Bergeron served as an Ohio Court of Appeals judge from February 8, 2019, until February 8, 2025. In October 2024, he filed an application for restoration to the practice of law in Kentucky pursuant to SCR 3.504. The Character and Fitness Committee of the Kentucky Office of Bar Admissions reviewed Bergeron's application and found Bergeron fulfilled the requirements of SCR 2.110 and recommended the Supreme Court admit him to the Bar of the Commonwealth of Kentucky. The Supreme Court agreed with the Committee's recommendation and ordered Bergeron admitted to the Bar of the Commonwealth of Kentucky without examination.

AK. *In re Edison*, 2025-SC-0193-KB, 2025 WL 1717855 (Ky. June 20, 2025).

Opinion and Order. All sitting. Lambert, C.J.; Bisig, Conley, Goodwine, Keller, and Nickell, JJ., concur. Thompson, J., dissents without separate opinion. Brittanie Steele went to Mark Edward Edison's office seeking legal advice and representation concerning a dispute over a road which adjoined her property. Steele believed the road was private and claimed another local resident was damaging the road by driving a dump truck on it. After Edison reviewed documents provided by Steele and did some record research at the Bullitt County Courthouse, he wrote Steele a letter on June 25, 2020, detailing his conclusion that the road was public. Edison advised Steele to take the "wait and see" approach regarding any potential litigation. In May 2022, Donald Coleman and John Fackler contacted Edison. Coleman owned property adjoining the same road for which Steele had sought Edison's advice, and Fackler was a prospective purchaser. Coleman and Fackler were concerned about another landowner placing a gate on the road. Edison filed suit on behalf of Coleman and Fackler claiming the road was public and requesting removal of the gate. The suit named all adjoining landowners including Steele. Steele went back to Edison's office seeking representation in the matter. Edison informed her he could not represent her as he was already representing Coleman and Fackler. Steele hired another attorney and filed a motion to disqualify Edison from the case, which the trial court granted. Steele also filed a bar complaint, and the Inquiry Commission charged Edison with violating SCR 3.130(1.9)(a) (conflicts of interest). The trial commissioner found an attorney-client relationship existed between Steele and Edison. The trial

commissioner also found Edison had a conflict of interest in representing Coleman and Fackler after he had represented Steele, as both disputes involved the same legal question as to whether the road was public or private. The trial commissioner found Edison violated SCR 3.130(1.9)(a) and recommended he be publicly reprimanded for his violation. The Supreme Court agreed and found Edison guilty of the charge and publicly reprimanded him for his misconduct.

III. CIRCUIT COURT CLERK REMOVAL

In re Hopkins, 701 S.W.3d 371 (Ky. 2024)

Opinion and Order. All sitting. All concur. Original action to determine whether Dwight Hopkins, Lincoln Circuit Court Clerk, should be removed from office or otherwise disciplined pursuant to §114(3) of the Kentucky Constitution. Approximately four months following his election as circuit clerk, the Administrative Office of the Courts (AOC) received complaints against Hopkins from seven of the eight employees of his office alleging acts of unprofessionalism, impropriety, and workplace harassment which created a hostile work environment. Hopkins was placed on administrative leave pending the outcome of an investigation by AOC. At the conclusion of the investigation, the Director of AOC concluded Hopkins's conduct constituted discrimination and unlawful workplace harassment, resulting in a hostile work environment. Upon review of the Director's conclusions, supporting documentation, and a response from Hopkins, the Circuit Court Clerk Conduct Commission concluded Hopkins violated multiple sections of the Code of Conduct, recommended a public reprimand and remedial measures, and referred the allegations to the Supreme Court for further proceedings. Hopkins elected a public hearing before the full Supreme Court. Removal proceedings were instituted, and a Special Commissioner was appointed to hold an evidentiary hearing, develop a factual record, and make findings of fact and recommendations. The Attorney General served as Special Advocate and bore the burden of proving good cause for removal.

Following a two-day hearing, the Special Commissioner issued findings of fact, conclusions of law, and recommendations. The Special Commissioner determined the Special Advocate had established by clear and convincing evidence that Hopkins had engaged in unlawful harassment, created a hostile working environment on the basis of sex, his actions served no legitimate work purpose, and he routinely failed to perform his duties with courtesy and respect toward his employees. On a *de novo* review of the entirety of the record, the Supreme Court concluded clear and convincing evidence was presented showing Hopkins created a hostile work environment which constituted a legal cause affecting his ability and fitness to perform the duties of his office, thereby establishing good cause for his removal. Further, Hopkins's repeated inappropriate statements and actions directed at his employees were unquestionably a violation of his obligation to perform his duties with courtesy and respect. His blatant and repeated violations of the Workplace Policies and Circuit Court Clerk Code were inconsistent with the high standards of integrity, impartiality, and independence required of an elected clerk. Hopkins was removed as Lincoln Circuit Court Clerk and the office was declared vacant.

IV. CONTRACTS

Board of Education of Paris, Kentucky v. Earlywine, 2023-SC-0142-DG, 2023-SC-0383-DG, 2025 WL 890747 (Ky. Mar. 20, 2025)

Opinion of the Court by Justice Conley. All sitting. Goodwine, Nickell, and Thompson, JJ., concur. Bisig, J., concurs in part and dissents in part by separate opinion in which Lambert, C.J., and Keller, J., join. In a 4-3 opinion authored by Justice Conley, the Supreme Court held the Board of Education of Paris is covered by the statutory waiver of governmental immunity for all written contracts with the Commonwealth under KRS 45A.245(1). Jason Earlywine was a teacher employed by the Board. In 2011, a student made an accusation of misconduct against him. One charge of sexual abuse in the first degree was brought against Earlywine. Earlywine was initially put on paid administrative leave in 2011, but in June 2012, he was unilaterally put on unpaid administrative leave. The criminal case against Earlywine did not go to trial until January 2015. Earlywine was cleared of the charge by directed verdict. He was reinstated in February 2015 and subsequently terminated in 2019 for unknown reasons. Earlywine filed suit in 2020 against the Board to recover the lost wages for the time he was on unpaid administrative leave. The Board argued it was entitled to governmental immunity and KRS 45A.245(1) did not apply to it. The Board also argued that Earlywine had failed to exhaust his administrative remedies pursuant to KRS 161.790. The trial court concluded KRS 45A.245(1)'s waiver did apply and did not rule on the exhaustion of administrative remedies argument. An appeal was filed, and the Court of Appeals ordered the parties to brief only the immunity question. The Court of Appeals affirmed the trial court on the question of KRS 45A.245(1)'s application but then ruled that because Earlywine had failed to exhaust his administrative remedies, the trial court and it were without subject matter jurisdiction to consider the case. Both parties sought discretionary review and both motions were granted.

The Supreme Court first held the exhaustion argument challenged "the subject matter jurisdiction of the trial court over Earlywine's claim in and of itself by virtue of non-exhaustion of administrative remedies." Based upon *Hensley v. Haynes Trucking, LLC*, 549 S.W.3d 430, 438-39 (Ky. 2018) and *Baker v. Fields*, 543 S.W.3d 575, 578 (Ky. 2018), the Court held this was an improper question to consider on an interlocutory appeal. Subject matter jurisdiction over the claim itself is not an immediately appealable issue. Secondly, the Court noted the exhaustion of administrative remedies rule is subject to several exceptions. Thus, "Earlywine is entitled to argue either a recognized exception applies, or that a heretofore unrecognized exception in Kentucky should be adopted and applied to his case." The Court of Appeals denied him this opportunity by *sua sponte* considering the exhaustion argument. The second issue was whether KRS 45A.245(1) applies. The Court affirmed the Court of Appeals. The Court considered the waiver's place within the Kentucky Model Procurement Code (KMPC). Although several surrounding provisions suggest the waiver only applies to written contracts with contractors overseen by the Finance and Administration Cabinet, the Court disagreed. Instead, the Court held the KMPC broadly applies to all expenditures of public funds and to all types of state agreements. "Therefore, a teacher's employment contract is an agreement with the State from which he or she is paid by an expenditure of public funds." This is consistent with the interpretation that statute and its predecessor have received since the 1970s. Secondly, relying upon the general/specific canon of statutory construction, the Court held KRS 161.790 was the specific and controlling statute as to how teachers were to bring their claims under their employment contract, obviating the provisions of the KMPC

governing how a contractor would bring their contract dispute before the Finance and Administration Cabinet.

V. CRIMINAL LAW

A. *Sims v. Commonwealth*, 701 S.W.3d 313 (Ky. 2024)

Opinion of the Court by Justice Keller. All sitting. VanMeter, C.J.; Bisig, Nickell, and Thompson, JJ., concur. Lambert, J., concurs in result only by separate opinion in which Conley, J., joins. Dennis Keith Sims was charged with two counts of sexual abuse in the first degree stemming from his alleged inappropriate touching of his two minor granddaughters. Sims was ultimately convicted of both crimes and later challenged the validity of his convictions on appeal to the Supreme Court of Kentucky. Sims alleged that (1) the trial court erred in failing to administer an oath of truthfulness to the venire panel of prospective jurors before the jury was seated; (2) the trial court had violated his Sixth Amendment right to confrontation when it allowed the minor victims to testify in chambers, outside of Sims' presence; (3) the trial court erred in failing to make arrangements so that Sims and his attorney could remain in "constant audio contact" during the cross-examination of those minor witnesses; (4) the Commonwealth had committed a discovery violation by failing to timely offer evidence of Sims' own text messages he had sent to family while incarcerated; (5) the trial court improperly excluded testimony from a Kentucky State Police trooper regarding a Child Protective Services investigation into Sims's alleged abuse; and (6) the trial court erred in failing to grant his motion for directed verdict as to one count of sexual abuse. The Kentucky Supreme Court affirmed the trial court's judgment. First, the Supreme Court held that no provision of Kentucky law required an oath of truthfulness to be administered to prospective jurors. Second, the Court held the trial court did not abuse its discretion in permitting the child victim witnesses to testify outside of Sims' presence, and Sims' limited separation from his counsel during this time did not result in a complete denial of his right to the effective assistance of counsel. Third, the Court held that even if the Commonwealth had violated the discovery rules, the trial court did not abuse its discretion in admitting the evidence that was untimely shared with Sims. Fourth, the Court held Sims had failed to properly preserve his arguments regarding the exclusion of the Kentucky State Police trooper's testimony. Fifth, and finally, the Court held the Commonwealth had offered more than the mere scintilla of evidence of Sims's sexual abuse necessary to overcome his motion for directed verdict.

B. *Rushin v. Commonwealth*, 701 S.W.3d 293 (Ky. 2024)

Opinion of the Court by Justice Thompson. All sitting. VanMeter, C.J.; Conley and Keller, JJ., concur. Nickell, J., dissents by separate opinion in which Bisig and Lambert, JJ., join. In addition to a sentence of incarceration, Darrie Rushin was sentenced to a five-year period of post-incarceration supervision. Rushin absconded during his supervision period and, during his reincarceration, was denied sentence credits pursuant to KRS 197.045 to reduce the length of his reincarceration. The Kentucky Department of Corrections and the trial court denied his petition and the Court of Appeals affirmed. After granting discretionary review, the Supreme Court

concluded that inmates who have been reincarcerated for violating the terms of their post-incarceration supervision are entitled to earn statutory sentence credits under KRS 197.045 during the period of their reincarceration for application toward the remainder of their in-custody sentence.

C. *Bitter v. Commonwealth*, 701 S.W.3d 447 (Ky. 2024)

Opinion of the Court by Justice Thompson. All sitting. VanMeter, C.J.; Bisig, Keller, and Nickell, JJ., concur. Lambert, J., dissents by separate opinion in which Conley, J., joins. Scott Bitter alleged the trial court erred in denying his motion to suppress because a responding officer, who had not yet obtained a warrant, violated his constitutional rights to be free from unreasonable searches and seizures when the officer came to his apartment and testified to seeing drug paraphernalia in plain view immediately after the door was opened. After granting oral argument, the Supreme Court concluded there was no violation of Bitter's constitutional rights under U.S. Const. amend. IV and Ky. Const. §10, and it was not clearly erroneous for the trial court to have determined, based on both the officer's testimony and his body camera footage, that the officer did not unlawfully enter Bitter's apartment prior to seeing drug paraphernalia in plain view from outside the door.

D. *Sloss v. Commonwealth*, 709 S.W.3d 102 (Ky. 2024)

Opinion of the Court by Justice Lambert. All sitting. Bisig, Conley, and Thompson, JJ., concur. Nickell, J., dissents by separate opinion in which VanMeter, C.J., and Keller, J., join. William Sloss was convicted of murder, abuse of a corpse, and of being a first-degree persistent felony offender in relation to the death of his girlfriend Amanda Berry. He was sentenced to 50 years' imprisonment. After review, the Supreme Court held: (1) Sloss' Sixth Amendment right to be present during the guilt phase of his trial, the penalty phase of his trial, and his sentencing was not violated as he voluntarily, knowingly, and intelligently waived his right to be present; (2) RCr 8.28(1) does not require a trial court to hold a formal evidentiary hearing to rule that a defendant has waived his or her Sixth Amendment right to be present; (3) the trial court held a sufficient hearing under RCr 8.28(1) and properly concluded that Sloss intentionally failed to appear, short of force, at his trial and sentencing; (4) the trial court did not err by denying Sloss' motion for a mistrial; (5) the trial court did not err by denying Sloss' motion for directed verdict for the charges of murder and abuse of a corpse; (6) the trial court did not err by allowing KRE 404(b) evidence of Sloss' physical abuse of Amanda prior to her death; (7) the trial court properly admitted Amanda's statement prior to her death that she intended to leave Sloss under the KRE 803(3) state-of-mind exception to hearsay; and (8) no cumulative error occurred.

E. *Manning v. Commonwealth*, 701 S.W.3d 478 (Ky. 2024)

Opinion of the Court by Justice Lambert. All sitting. Bisig, Keller, Nickell, and Thompson, JJ., concur. Conley, J., concurs in result only by separate opinion in which VanMeter, C.J., joins. Larayna Manning was convicted of complicity to murder and complicity to first-degree robbery in relation to the death of Calvin Taylor and was sentenced to life imprisonment. After review, the Supreme Court held: (1) the two

year and two-month delay between Manning's arrest and trial did not violate her constitutional right to a speedy trial; (2) the Commonwealth provided adequate KRE 404(c) notice of its intent to introduce prior bad act evidence and the introduction of that evidence did not constitute palpable error; (3) the Commonwealth improperly impeached Manning's former co-defendant pursuant to KRE 609, but the error was not palpable; (4) the Commonwealth improperly used evidence of Manning's former co-defendant's guilty plea as substantive evidence of her guilt pursuant to *Parido v. Commonwealth*, 547 S.W.2d 125 (Ky. 1977) and *Tipton v. Commonwealth*, 640 S.W.2d 818 (Ky. 1982), but the error was not palpable; and (5) the Commonwealth did not improperly comment on Manning's invocation of her right to remain silent.

F. *Crite v. Commonwealth*, 706 S.W.3d 74 (Ky. 2024)

Opinion of the Court by Justice Thompson. All sitting. All concur. James Javonte Crite, a felon, appealed the denial of his motion to suppress a firearm found in plain view in his apartment after the police entered to ensure it was safe for his landlord and her agent, an electrician, to enter and make emergency electrical repairs. The Court of Appeals affirmed. The Supreme Court affirmed also, explaining no suppression was required because the police legally entered at the landlord's request, and her entry was lawful and justified under the emergency entry clause in the lease as the extensive electrical damage needed to be immediately addressed for the safety of Crite and the other neighboring tenants. It was reasonable for the landlord to request police assistance where the landlord had information that Crite was schizophrenic, was not taking his medication, had not been admitted to the hospital for psychiatric care, she did not know where Crite was located but believed he had a firearm in the apartment, and he had recently acted in a very irrational manner in tearing apart the electrical wiring in the apartment. Considering the totality of the circumstances, a limited search by the police for the sole purpose of making sure no one was inside the apartment was objectively reasonable and did not violate Crite's rights because the search was minimally invasive, stayed within the confines of what was necessary to protect the landlord and her agent, and was not undertaken to search for evidence of a crime.

G. *Jeffreys v. Commonwealth*, 706 S.W.3d 51 (Ky. 2024)

Opinion of the Court by Justice Conley. All sitting. VanMeter, C.J.; Bisig, Lambert, Keller, and Nickell, JJ., concur. Thompson, J., dissents by separate opinion. In a 6-1 opinion, authored by Justice Conley and only Justice Thompson dissenting, the Supreme Court rejected the argument that the $10,000 human trafficking fee/fine imposed by KRS 529.100 is subject to waiver due to a person's status as indigent or a poor person. Jeffreys had asked the trial court to waive the payment at sentencing as it was a fine, and he had been adjudged indigent, pursuant to KRS 534.030(4). The Court rejected that statute's application based on *Commonwealth v. Moore*, 545 S.W.3d 848, 853 (Ky. 2018). *Moore* held the counterpart to KRS 534.030, KRS 534.040, was only applicable to fines imposed for misdemeanors by the statute itself. Jeffreys' fine, assuming for the sake of argument it is a fine, was imposed by KRS 529.100. The Court also determined Jeffreys' claimed status as a poor person did not allow waiver. The Court noted the trial court never made a finding that he is a poor person, and KRS

453.190(1)'s waiver of fees for poor persons applies only to those costs necessary to access the courts or to maintain an action or defense to an action. The payment under KRS 529.100 is neither. The Court, however, did affirm that Jeffreys could petition the trial court for a show cause hearing after sentencing to reevaluate his financial ability to make the payment. The Court affirmed the payment is subject to waiver, reduction, or amendment of the payment plan based on proper findings of facts supported by substantial evidence.

H. *Commonwealth v. Master*, 706 S.W.3d 140 (Ky. 2024)

Opinion of the Court by Justice Conley. All sitting. Lambert, Nickell, and Thompson, JJ., concur. Lambert, J., also concurs by separate opinion in which Thompson, J., joins. VanMeter, C.J., concurs in part and dissents in part by separate opinion in which Bisig and Keller, JJ., join. On October 1, 2019, the United States Customs and Border Patrol intercepted a package originating from China. It was addressed to Kevin Master at his home in Erlanger. The package was stopped because of Customs and Border Patrol's belief that there was a discrepancy between the listed contents on the shipping manifest and the size of the package. Upon being opened, "an anatomically correct child size doll manufactured for purposes of sexual gratification" was discovered. Detective Gatson of the Kentucky State Police was contacted. Det. Gatson attested his investigation confirmed Kevin Master lived at the listed address on the package but that was the extent of his investigation. In an order dated October 22, 2020, the trial court detailed that Master argued insufficient probable cause for the warrant based on the lack of a nexus to criminal activity. In other words, the affidavit listed electronic devices to search for criminal activity related to child pornography, based solely on the alleged purchase by Master of a child-like sex doll, the possession of which was not criminalized by any Kentucky or federal statute at the time. The trial court denied the motion to suppress.

On appeal, the Court of Appeals reversed. It held Master was never in possession of the sex doll; "law enforcement intercepted the doll and did not forward it to the residence of" Master. It also held Det. Gatson's "affidavit provides no proof the doll was purchased through a web site or that [Master] ordered the doll. The affidavit does not point to empirical data, cite to previous cases, or in *any way* support the presumption that web sites selling these dolls also sell child pornography." Finally, it held the affidavit contained "no data, no research, and no evidence supporting the presumption that ordering such a doll was part and parcel to downloading, viewing, sharing, and manufacturing child pornography. There was no information in the affidavit supporting the contention that using a child sex doll for sexual gratification escalates this abhorrent attraction or leads to downloading, viewing, sharing, and manufacturing child pornography."

On review, a split Court affirmed the Court of Appeals. Conley, Nickell, Thompson, and Lambert, JJ., voted to affirm with Justice Conley writing for the Court. Lambert, J., also filed a concurring opinion, joined by Justice Thompson. VanMeter, C.J., and Bisig and Keller, JJ., dissented. The Court held "[t]here must be something 'more than conclusory allegations' in the affidavit to pass constitutional muster. *Hensley v. Commonwealth*, 248 S.W.3d 572, 576 (Ky. App. 2007). 'Mere affirmance of belief or

suspicion is not enough.' *Nathanson v. United States*, 290 U.S. 41, 47 (1933)." That is essentially all that the affidavit contained based on Det. Gatson's own experience and training. The Court noted that at the time of purchase, it was not illegal to possess a child sex doll in Kentucky. Therefore, the Commonwealth's assertion that it was common sense that someone who purchased a child sex doll also possessed child pornography was premised on the belief that "a person who purchases a child sex doll (not illegal at the time) to further his sexual attraction to children (not illegal in and of itself) is, by dent of common sense, also furthering that attraction through some other illegal means. . . [that] is a presumption we are not willing to indulge without specific, underlying facts regarding the individual in question." The Court cited several federal circuit cases in support, including *U.S. v. Hodson*, 543 F.3d 286 (6th Cir. 2008); *U.S. v. Edwards*, 813 F.3d 953 (10th Cir. 2015); and *U.S. v. Falso*, 544 F.3d 110 (2nd Cir. 2008). While the Court affirmed a lack of probable cause, it nonetheless remanded to the trial court for an evidentiary hearing to determine whether the good faith exception applied.

I. *Story v. Commonwealth*, 706 S.W.3d 263 (Ky. 2024)

Opinion of the Court by Justice Bisig. All sitting. Conley, Lambert, and Thompson, JJ., concur. Keller, J., concurs by separate opinion in which Conley and Thompson, JJ., join. VanMeter, C.J., concurs in part and dissents in part by separate opinion in which Nickell, J., joins. Appellant Tyler Story was arrested on suspicion of driving a motor vehicle under the influence of alcohol (DUI). The officer conducted a breathalyzer test with Story's consent, obtaining a result of 0.178. The officer did not request Story's consent for any further testing. Story then invoked his statutory right to an independent blood test under KRS 189A.103. Law enforcement transported Story to a local hospital where his blood was drawn. However, the hospital did not test the blood but rather handed it over to law enforcement, who then stored it in a law enforcement evidence room without testing it. Story was charged with DUI. The Campbell District Court suppressed the results of the breathalyzer test due to an error in the way the test was administered. Story then filed a motion to test his independent blood sample, which the Campbell District Court denied. The Commonwealth, however, was able to obtain a warrant to test the independent sample. The district court held the results of that test admissible, after which Story conditionally pled guilty to DUI. The Campbell Circuit Court and the Court of Appeals affirmed. The Supreme Court granted discretionary review and reversed. The Supreme Court first held the district court erred in denying Story's request to test his independent blood sample. Such error was harmless however because the suppression of law enforcement's breathalyzer test meant Story had no need for an independent blood test to rebut testing evidence offered by the Commonwealth. Second, the Supreme Court concluded the Commonwealth was not entitled to a warrant to test Story's independent blood sample because the statute in effect at the relevant time allowed such warrants only in DUI cases involving death or serious physical injury. Thus, because Story's DUI charge did not involve such facts, the Commonwealth was not entitled to a warrant to test Story's independent blood sample. The Supreme Court remanded with instructions to allow Story to withdraw his guilty plea, to suppress the Commonwealth's testing of his independent blood sample, and for further proceedings consistent with the opinion.

J. *Vincent v. Commonwealth*, 706 S.W.3d 94 (Ky. 2024)

Opinion of the Court by Justice Thompson. All sitting. Conley, Lambert, and Nickell, JJ., concur. Bisig, J., concurs in part and dissents in part by separate opinion in which VanMeter, C.J., and Keller, J., join in part. Keller, J., dissents by separate opinion in which VanMeter, C.J., joins. David Vincent appealed the denial of his motion to suppress evidence resulting from a traffic stop. The Court of Appeals affirmed. The majority of the Kentucky Supreme Court reversed and remanded because the articulated reasons for the traffic stop did not justify it and, thus, the fruits of the illegal stop had to be suppressed. The officer lacked reasonable suspicion to make a stop based on a known informant's tip that a driver and passenger were possibly intoxicated where the information justifying this inference was subject to innocent explanations and, thus, did not rise to the level of reasonable and articulable suspicion. The officer failed to corroborate that any criminal activity had taken place through personal observations. An officer cannot in good faith rely upon a law which is not yet in effect to make a traffic stop. Justice Bisig dissented, reasoning there was reasonable suspicion for the stop based on the observed behavior of the driver and passenger under the totality of the circumstances and would have deferred to the officer's judgment, but agreed it was unreasonable to stop the vehicle under a mistake of law and an informant's mere status of being "known" is not sufficient to create reliability. Justice Keller dissented, concluding the officer's good faith belief that a law had taken effect was objectively reasonable and did not require suppression of the fruits of the stop; she agreed with Justice Bisig that the stop was justified based on the informant's tip.

K. *Anderson v. Commonwealth*, 706 S.W.3d 26 (Ky. 2024)

Opinion of the Court by Justice Conley. All sitting. All concur. On August 17, 2020, John Anderson was convicted of failing to make a required disposition of property in the Hickman District Court. He failed to appear for sentencing. He was sentenced to 180 days in jail, with 60 days to serve, two years' probation, and a $208 fine. Anderson was ordered to report to jail on September 14, 2020, with a warrant to be effective the following day if he failed to report. Anderson failed to report to jail. Anderson's lawyer timely filed an appeal to the Hickman Circuit Court. Despite Anderson's fugitive status, and no attempt by the Commonwealth to invoke the fugitive disentitlement doctrine (FDD), the circuit court undertook the appeal and affirmed his conviction on May 18, 2021. Anderson's counsel sought a motion for discretionary review before the Court of Appeals. Anderson remained a fugitive at that time. On September 13, 2021, the Commonwealth filed a response to the motion and urged the Court of Appeals to apply the FDD and deny discretionary review. Anderson then surrendered himself to the Commonwealth's custody. On November 30, 2021, the motion panel granted discretionary review, ruling the Supreme Court's decision in *Commonwealth v. Hess*, 628 S.W.3d 56 (Ky. 2021), did not apply. Before the merits panel, the Commonwealth once again urged application of the FDD. The merits panel was persuaded. The Court of Appeals reasoned the "interlocutory order [granting discretionary review] disregarded the fact that Anderson sought the benefit of discretionary review while a fugitive from the legal system. Consequently, the FDD applies and dismissal is within our discretion."

The Supreme Court, in a unanimous opinion authored by Justice Conley, reversed. The Court first determined that review of a lower court's decision to apply the FDD was reviewed *de novo* as a question of law. The Court then noted that at the inception of the FDD in federal courts, allowance had been made for fugitives to return to the jurisdiction of the court prior to their appeals' dismissal being finalized. *Smith v. U.S.*, 94 U.S. 97 (1876). The Court then noted this rule was endorsed in Kentucky. *Crum v. Commonwealth*, 23 S.W.2d 550, 550 (Ky. 1930). The Court found *Hess* to be inapplicable because Anderson's case presents fundamentally different facts from those in *Hess*. Application of the FDD in *Hess* concerned an appellant who had absconded after the Court of Appeals had asserted jurisdiction in her case and refused to resubmit herself to custody. The Court of Appeals' refusal to apply the doctrine in *Hess* concerned a mistaken legal judgment that *Hess* had a constitutional right to appeal. None of those facts are present here. On the other hand, the Court noted that Anderson's resubmission to custody prior to the Court of Appeals taking jurisdiction would not always be the dispositive factor. Other cases could present circumstances, prejudicial to the Commonwealth, that would justify applying the FDD even in the event of resubmission to custody by the fugitive. That said, the Commonwealth had failed to show how it would be prejudiced, such as by loss of evidence or missing witnesses, should the Court of Appeals reverse Anderson's convictions. Thus, the Court remanded the case to the Court of Appeals to consider the merits of Anderson's appeal.

L. *Commonwealth v. Raider*, 706 S.W.3d 62 (Ky. 2024)

Opinion of the Court by Justice Thompson. All sitting. All concur. The Supreme Court determined that trial courts, upon discovering that a defendant has absconded from drug court and been terminated from the program, are empowered by RCr 8.04 to *sua sponte* notice and conduct such hearings as they deem necessary to consider revocation of defendants' pretrial diversions on the court's own initiative and without the need for the Commonwealth to initiate such proceedings by motion.

M. *Woodside v. Commonwealth*, 706 S.W.3d 166 (Ky. 2024)

Opinion of the Court by Justice Lambert. All sitting. All concur. Brandon Woodside was convicted of first-degree burglary and being a first-degree persistent felony offender. His sole contention on appeal was that the trial court improperly limited his cross-examination of the victim, an undocumented immigrant, regarding his knowledge of or efforts to obtain "U visa" status. U visa status provides a noncitizen victim of a violent crime with temporary immigration status, including work authorization, provided certain federal statutory criteria are met. The Kentucky Court of Appeals held in *Romero-Perez v. Commonwealth*, 492 S.W.3d 902 (Ky. App. 2016), that a witness's potential receipt of U visa status was relevant to the issue of witness bias, as a witness's motivation to be granted that status had the potential to affect the veracity of the witness's trial testimony. However, the Kentucky Supreme Court held the trial court did not err by ruling that the defense could inquire as to whether the victim was receiving any benefit for his testimony and could only inquire into U visa status if the victim responded "yes." Unlike the victim in *Romeo-Perez*, there was no evidence whatsoever that the victim had sought or even inquired about U visa

status, and the defense was not permitted to go on a "fishing expedition" for that information.

N. *Poore v. Commonwealth*, 709 S.W.3d 166 (Ky. 2024)

Opinion of the Court by Justice Keller. All sitting. VanMeter, C.J.; Bisig and Nickell, JJ., concur. Lambert, J., dissents by separate opinion in which Conley and Thompson, JJ., join. Apren Poore pled guilty to, and was convicted of, one count of receiving a stolen firearm, one count of possession of a handgun by a convicted felon, and one count of being a persistent felony offender in the first degree. Poore was sentenced to 20 years' imprisonment based upon his failure to appear at his sentencing hearing and the trial judge's consideration of a hammer clause contained in Poore's plea agreement. Poore challenged the validity of his convictions on appeal to the Supreme Court. He alleged that (1) the trial judge abused his discretion in considering the hammer clause in Poore's plea agreement when imposing the 20-year sentence; and (2) his court costs should be vacated. The Supreme Court affirmed and vacated in part the judgment of the trial court. First, the Court affirmed the trial judge's exercise of independent discretion in sentencing and held the judge did not improperly rely on the hammer clause contained in Poore's plea agreement. The Court looked to precedent in *McClanahan v. Commonwealth*, 308 S.W.3d 694, 702 (Ky. 2010), and recognized the trial judge's remarks must be assessed in their entirety and within the context of the sentencing hearing. Here, the Court held the trial judge's statements that Poore did not constitute an improper forfeiture of the judge's independence in sentencing. Second, the Court vacated Poore's court costs and fees because the trial judge put Poore on an installment payment plan which would not be complete within one year of his sentencing, thereby violating the plain language of KRS 534.020(2)(b).

O. *Williams v. Commonwealth*, 706 S.W.3d 177 (Ky. 2024)

Opinion of the Court by Justice Bisig. All sitting. VanMeter, C.J.; Conley, Keller, Lambert, and Nickell, JJ., concur. Thompson, J., concurs in result only. In a prior proceeding, Appellant John Ray Williams was convicted of first-degree sexual abuse for acts perpetrated against his granddaughter L.W. L.W.'s guardian Leslie testified against Williams at that trial. Four days after his conviction, Williams sent Leslie a letter (1) referencing his intention to appeal and the resulting possibility of having to do the trial again; (2) informing Leslie that he had her birthdate and social security number and stating that others also wanted it; and (3) stating "in the end we all get what we deserve." At the conclusion of the letter, he also told Leslie to "[g]ive the kids a big kiss and hug for me." As a result of this letter, Williams was convicted by a jury in Graves Circuit Court of retaliating against a participant in the legal process and being a first-degree persistent felony offender. Williams received a 20-year sentence and appealed to the Supreme Court as a matter of right. The Supreme Court affirmed. First, the Court found Williams' prior conviction for sexually abusing L.W. was admissible under KRE 404(b) as relevant to demonstrate the menacing nature of Williams' request for Leslie to give "the kids a big kiss and hug" for him. Second, the Supreme Court found no error in the trial court's jury instructions on the retaliation charge as the language of those instructions adequately set forth each of the required

elements for that crime under KRS 524.055. Finally, the Supreme Court held that release of Leslie's birthdate and social security number threatened damage to "tangible property" as that term is used in KRS 524.055. The Supreme Court reasoned both that such release could result in damage to actual physical property such as Leslie's home, and also that the evident intent of the term "tangible property" as used in the statute in any event was simply property the damage of which might constitute retribution or dissuade a reasonable person from participating in the legal process.

P. *Commonwealth v. Moore*, 709 S.W.3d 241 (Ky. 2025)

Opinion of the Court by Justice Thompson. Lambert, C.J.; Bisig, Conley, Keller, Nickell, and Thompson, JJ., sitting. Lambert, C.J.; and Keller, J., concur. Conley, J., concurs by separate opinion. Nickell, J., concurs in result only. Bisig, J., concurs in part and dissents in part by separate opinion. Goodwine, J., not sitting. Melzena Moore pled guilty to first-degree manslaughter under extreme emotional disturbance (EED) in the death of her boyfriend, with whom she lived. She argued she was a victim of protracted and extreme domestic violence, which prompted her actions and sought to receive the domestic violence exemption to the mandatory minimum sentence that violent offenders must serve before becoming parole eligible pursuant to KRS 439.3401(6). Following a hearing, the trial court applied the two-step test for KRS 439.3401(6) and found Moore was "a victim of domestic violence or abuse pursuant to KRS 533.060" but rejected that such status was "with regard to the offenses involving the death of the victim[.]" The Court of Appeals reversed and ordered the trial court to find that Moore qualified for the exemption. The Commonwealth appealed and the Kentucky Supreme Court accepted discretionary review.

The Supreme Court affirmed the portion of the Court of Appeals' decision concluding the trial court erred in determining that Moore was not entitled to this exemption, explaining that "with regard to" meant there was "some connection" between the domestic violence and the crime committed, and this was a low bar to satisfy. The Supreme Court explained the trial court was not required to believe Moore's testimony regarding the most recent domestic violence or abuse she suffered, or to determine that domestic violence or abuse was the only motivation for the killing. Instead, the trial court needed to consider the entire course of the relationship between Moore and the man she killed in determining whether there was "some connection" between the domestic violence and the killing. Additionally, the trial court could not reject the entirety of the expert's testimony as the expert testified to more than simply Moore's account and explained the behavior of domestic violence survivors. The Supreme Court also concluded it was relevant that Moore was permitted to plead to manslaughter EED and without the inciting incident of domestic violence, there was no other explanation for such a plea. The Supreme Court reversed in part, concluding the trial court was required to make appropriate factual findings which had been missing before and make its ruling based on those findings. The Court of Appeals could not make its own factual findings and require that the trial court grant Moore the exemption. Therefore, the Supreme Court vacated and remanded. Justice Conley concurred and wrote separately to emphasize the low bar of the "some connection" test and to express that men may also suffer domestic

violence at the hands of women or other men. Justice Bisig concurred in part and dissented in part; she would have affirmed the entire Court of Appeals' opinion.

Q. *Commonwealth v. McKinney*, 709 S.W.3d 191 (Ky. 2025)

Opinion of the Court by Justice Bisig. Lambert, C.J.; Bisig, Conley, Goodwine, Keller, and Nickell, JJ., sitting. All concur. Thompson, J., not sitting. In death penalty-eligible proceedings, Appellant Calvin Andrew McKinney pled guilty to murder, robbery, burglary, and theft by unlawful taking. McKinney was sentenced to a term of life on the murder charge and a term of 35 years on the remaining charges, all to run consecutively. At the time, the Supreme Court had interpreted KRS 532.110(1)(c) as permitting a sentence of life plus a number of years in capital cases. In 1993, however, the Supreme Court decided in *Bedell v. Commonwealth*, 870 S.W.2d 779 (Ky. 1993), that the statute forbids such a sentence, even in a capital case. McKinney filed a CR 60.02 motion asking the trial court to apply *Bedell* retroactively to his case. The trial court concluded *Bedell* does not apply retroactively. The Court of Appeals reversed, concluding that *Bedell* does apply retroactively. The Supreme Court granted discretionary review, reversed the Court of Appeals, and reinstated the judgment and sentence of the trial court. The Supreme Court reasoned that because the result in *Bedell* was not dictated by, but rather was directly contrary to, then-existing precedent, *Bedell* announced a new rule rather than a mere clarification of the law. As such, the Supreme Court concluded *Bedell* does not apply retroactively on collateral attack in other cases, and McKinney therefore is not entitled to retroactive application of *Bedell*.

R. *Ford v. Commonwealth*, 709 S.W.3d 203 (Ky. 2025)

Opinion of the Court by Justice Conley. All sitting. All concur. In a unanimous opinion authored by Justice Conley, the Supreme Court held the stipulation by the defendant, Ford, that Carlisle and McCracken Counties had an agreement whereby the former would pay the latter $26 per day for housing prisoners was not a jail reimbursement fee pursuant to KRS 441.252(2). In this case, Ford was sentenced to pay $10,972 in jail fees based on the stipulation. Ford objected, arguing the agreement between the two counties was not the jail reimbursement policy, promulgated by the jailer and approved by the local county governing body, as contemplated by KRS 441.265(2). In *Capstraw v. Commonwealth*, 641 S.W.3d 148, 161-62 (Ky. 2022), the Court held evidence of such a policy was a prerequisite to imposing jail fees. Thus, the Supreme Court reaffirmed *Capstraw*, and held there was no evidence as required by *Capstraw* in the record. It vacated Ford's sentence as to the jail fees.

S. *Dunkleberger v. Commonwealth*, 2023-SC-0385-MR, 2025 WL 890870 (Ky. Mar. 20, 2025)

Opinion of the Court by Justice Conley. All sitting. Lambert, C.J.; Goodwine, Nickell, and Thompson, JJ., concur. Keller, J., dissents by separate opinion in which Bisig, J., joins. In a 5-2 opinion authored by Justice Conley, the Supreme Court held the trial court abused its discretion when it gave an initial aggressor instruction at Troy Dunkleberger's trial under KRS 503.060(3)(a) and KRS 503.010(1) and (4). The only

conduct identified by the Commonwealth at trial to justify this instruction was that Dunkleberger had yelled the victim's name three times several minutes before the shooting, and that during the confrontation immediately prior to the shooting, Dunkleberger had lifted his shirt to reveal his gun in his waistband. Dunkleberger lawfully possessed the weapon, and he did not draw the gun at that time. The Court held that yelling a name is not physical force under the statute. Words "may have an emotional impact which the hearer, subjectively, understands to be emotionally or mentally harmful but KRS 503.060 is concerned only with conduct resulting in or intending unlawful physical contact." Therefore, words can never predicate an initial aggressor instruction. The Court then considered whether the display of a lawfully possessed and holstered firearm constitutes unlawful physical force or deadly physical force under the statute. The Court made clear this was necessary because that fact alone could still justify the initial aggressor instruction, but also because the display was a separate incident from the one where Dunkleberger yelled Slayback's name. The Court held under the Second Amendment and §1 of Kentucky's Constitution, there is a protected right to carry and openly display firearms in public for purposes of self-defense. The Court then relied on several cases from the past to demonstrate that lawful possession of a firearm in an altercation or confrontation, in and of itself, had never been deemed enough to warrant an aggressor instruction. This is important as KRS 503.060 was not meant to alter the law as it previously existed. Therefore, displaying a holstered and lawfully possessed firearm is not an unlawful act of physical force. Finally, the Court held such a display is not an act of deadly physical force because the act cannot cause death or serious physical injury. Neither does it create a substantial risk of death or serious physical injury. Relying upon case law interpreting the first-degree wanton endangerment statute, which also requires creating a substantial risk of death or serious physical injury, the Court noted that it had never affirmed a first-degree wanton endangerment instruction where there was no evidence the defendant had drawn or pointed the gun at a specific person. Therefore, the Court held the trial court abused its discretion in giving the initial aggressor instruction, reversed the conviction, and remanded for further proceedings.

T. *Commonwealth v. Ellery*, 2023-SC-0228-DG, 2025 WL 1197837 (Ky. Apr. 24, 2025)

Opinion of the Court by Justice Goodwine. All sitting. Bisig, Keller, and Nickell, JJ., concur. Conley, J., dissents by separate opinion in which Lambert, C.J., and Thompson, J., join. In a 4-3 opinion authored by Justice Goodwine, the Supreme Court held the circuit court erred in revoking Ellery's probation because it lost jurisdiction to do so. In June 2016, Ellery was sentenced to five years of probation. On January 23, 2017, the circuit court issued an arrest warrant for Ellery for a probation violation. The warrant was served on October 28, 2021. On November 15, 2021, Ellery appeared for a revocation hearing, but the circuit court granted a continuance without entering an order extending Ellery's probation. On November 22, 2021, the parties reappeared for a revocation hearing. Ellery argued the circuit court could not revoke his probation because the circuit court lost jurisdiction when his original probationary period expired in June 2021, and the court did not enter an order extending his probation at his first court appearance on November 15, 2021. The Commonwealth agreed. The circuit court disagreed and found that because the

warrant was issued during the five-year probationary period, jurisdiction continued without any further action by the court. The circuit court revoked Ellery's probation and remanded him to custody to serve his five-year sentence. The Court of Appeals reversed the revocation order and held the circuit court lost jurisdiction when it failed to enter an order extending his probation at his first court appearance after execution of the arrest warrant. The Commonwealth sought discretionary review. The Supreme Court granted discretionary review and heard oral arguments. The Court held that although Ellery served out his sentence, the Commonwealth's appeal was not moot under the public interest exception to the mootness doctrine because there is no Supreme Court opinion addressing application of the fugitive tolling doctrine. The Court declined to adopt the fugitive tolling doctrine because doing so would contravene the express language of KRS 533.020(4) and violate the separation of powers doctrine. As held in *Commonwealth v. Tapp*, 497 S.W.3d 239 (Ky. 2016), KRS 533.020(4) clearly states that a probationary period that would otherwise automatically expire is extended by a pending arrest warrant until a defendant's first court appearance for a revocation hearing. To extend probation beyond the first court appearance without revoking probation, KRE 533.020(4) requires a "duly entered court order." Because the circuit court failed to enter an order extending Ellery's probation at his first court appearance after the arrest warrant was served, the circuit court lost jurisdiction to revoke Ellery's probation.

U. *Wynn v. Commonwealth*, 2023-SC-0573-MR, 2025 WL 1197849 (Ky. Apr. 24, 2025)

Opinion of the Court by Justice Keller. All sitting. All concur. Elvis Wynn was convicted of one count of first-degree bail jumping and one count of being a first-degree persistent felony offender after he failed to appear for an October 2022 hearing where he was to be sentenced for the crime of possession of a firearm by a convicted felon. Wynn received a 20-year sentence of imprisonment for first-degree bail jumping because of his PFO status. Pursuant to KRS 520.070(1), proof that the defendant had been ordered to "appear at a specified time and place in connection with a charge of having committed a felony" is an essential element of first-degree bail jumping. On appeal to the Supreme Court, Wynn challenged his convictions and argued the trial court had erred by not allowing him to "stipulate" to the fact that he had previously been charged with committing a felony. Instead, the trial court permitted the Commonwealth to introduce a video recording of a prior court appearance wherein Wynn can be seen pleading guilty to the specific charges of possession of a firearm by a convicted felon, operating a motor vehicle under the influence, and being a second-degree persistent felony offender. Wynn also argued the trial court erred in sentencing him to a 20-year term of imprisonment that was to run consecutively to an earlier seven-year sentence because his aggregate 27-year sentence exceeded the 20-year statutory "sentencing cap" set forth in KRS 532.110(1)(c).

Relying upon its own precedent in *Anderson v. Commonwealth*, 281 S.W.3d 761 (Ky. 2009), the Supreme Court held the trial court had indeed erred when it admitted the video recording of Wynn's prior court appearance that informed the jury of the specific nature of his prior felony charges. More specifically, the Supreme Court held the trial court had erred in balancing the recording's probative value against its potential to inspire undue prejudice. KRE 403. Noting the trial court's continuing duty

to consider alternative evidence when conducting the KRE 403 balancing test, the Supreme Court reasoned that the trial court was presented with competing evidence (*i.e.,* Wynn's admission that he had been charged with a felony) that was equally probative of the fact at issue and lacked the potential to inspire undue prejudice. Although the trial court erred in admitting the Commonwealth's preferred evidence over Wynn's competing admission, the Supreme Court held that error was nonetheless harmless. Finally, the Supreme Court held the statutory sentencing cap codified at KRS 532.110(1)(c) did not necessitate that the trial court impose a lesser sentence for Wynn's first-degree bail jumping conviction. Rather, the Court held that even though Wynn had previously been sentenced to a seven-year term of imprisonment on account of a prior felony conviction, KRS 532.110(1)(c)'s sentencing cap does not apply to sentences resulting from prior cases (*i.e.,* those sentences resulting from a "previous indictment and trial"). *Johnson v. Commonwealth*, 553 S.W.3d 213, 220 (Ky. 2018). Because Wynn had already been charged, convicted, and sentenced in his prior case before being convicted and sentenced for first-degree bail jumping, KRS 532.110(1)(c) did not require that his two sentences be "capped" at 20 total years. Further, Wynn's resulting 20-year sentence for first-degree bail jumping was required to run consecutively to his earlier seven-year sentence in accordance with KRS 533.060(3).

V. *Johnson v. Commonwealth*, 2023-SC-0124-MR, 2025 WL 1717619 (Ky. June 20, 2025).

Opinion of the Court by Justice Thompson. All sitting. All concur. On direct appeal, the Court reversed Earl K. Johnson's trafficking convictions for a new trial. Johnson was denied his constitutional right to confront the prosecution's key witness on these charges when the trial court permitted her to testify remotely due to mere inconvenience and her testimony was not harmless beyond a reasonable doubt. The Court affirmed Johnson's other convictions and sentences.

W. *Blair v. Commonwealth*, 2023-SC-0296-DG, 2025 WL 1717875 (Ky. June 20, 2025).

Opinion of the Court by Justice Bisig. All sitting. Lambert, C.J.; Conley, and Goodwine, JJ., concur. Nickell, J., dissents by separate opinion in which Keller and Thompson, JJ., join. Brandon Blair was separately indicted in Johnson Circuit Court for five felony counts of trafficking in methamphetamine. As part of his conditional release on bond, Blair agreed to appear at ensuing proceedings, which were administratively scheduled on the same date. Blair failed to appear at his scheduled court date. Subsequently, Blair was charged in five separate indictments of first-degree bail jumping, one for each underlying trafficking indictment scheduled to be heard that day, pursuant to KRS 520.070(1). Blair filed a motion to dismiss four of the bail jumping charges based on double jeopardy, arguing he committed only one act of bail jumping by missing one single court appearance. The Commonwealth alternatively posited that Blair committed five acts of nonappearance by missing a court date in each case, and the Circuit Court agreed, denying Blair's motion to dismiss. Blair entered a plea agreement but specifically reserved his right to appeal the double jeopardy issue. The Court of Appeals unanimously affirmed the trial court.

The Supreme Court concluded the denial of the motion to dismiss was proper because the unit of prosecution intended by the legislature in KRS 520.070(1) is the number of charges, not the number of scheduled court appearances. Blair's interpretation based on administrative convenience is misplaced and plainly prioritizes court administration over the legislative purpose of the bail jumping statute, which is to hold defendants accountable for avoiding court processes. The Court also determined that because Blair was released on five separate bond orders, that constituted five separate promises to appear to answer that charge. As such, each failure to appear is connected to the underlying felony, making consideration of the number of charges and how those charges are presented to the court a relevant consideration. As explained in *Paulley v. Commonwealth*, 323 S.W.3d 715 (Ky. 2010), a single act may result in multiple charges. Because Blair was given five separate orders to appear, and he violated all five of those orders by missing his scheduled court date, the prosecutor properly exercised his discretion in bringing five bail jumping charges for one failure to appear. The Court affirmed the judgment and sentence of the Johnson Circuit Court.

X. *Boggs v. Commonwealth*, 2023-SC-0467-MR, 2025 WL 1717814 (Ky. June 20, 2025).

Opinion of the Court by Justice Conley. All sitting. Lambert, C.J., and Thompson, J., concur. Nickell, J., concurs in part and dissents in part by separate opinion in which Goodwine, J., joins. Keller, J., concurs in result only by separate opinion in which Bisig, J., joins. In a plurality opinion authored by Justice Conley, the Court affirmed the convictions of Jamie Boggs. Boggs was accused of various forms of sex crimes, including sodomy, rape, and sexual abuse, by his girlfriend's two daughters. Both girls were under 12 years of age during the abuse. The principal issue for the Court was the testimony of Kayla Byrd, the forensic interviewer for the Child Advocacy Center. At trial, Byrd was asked if she, as a forensic interviewer, was trained to identify any indicators of coaching. She replied, "Yes, and I found none of those factors to be present in the interview of either girl." The Court held this was improper bolstering and the trial court abused its discretion. In making this ruling the Court offered several significant clarifications of law.

First, the trial court had overruled Boggs' objection on improper bolstering by stating the victims had not yet testified and it was unknown to what they would testify. The Court held this was incorrect as "it is common sense the Commonwealth intended to put the victims on the stand to testify to their abuse." The Court then clarified that "bolstering is not dependent on the chronological order of the witnesses. A witness can be bolstered before he or she testifies just as much as he or she can be bolstered after testifying." Second, the Court noted Boggs had made the delayed reporting of the victims a part of his defense. The Commonwealth had a legitimate interest in rebutting that allegation. Its bolstering of the victims, however, was still improper. "[I]mproper bolstering does not cease to be improper merely because the Commonwealth's heart was in the right place." That the Commonwealth had a legitimate motivation to rebut an allegation of fabrication does not justify improper bolstering. Finally, the Court "put bench and bar on notice that the use of CAC forensic interviewers at trial, which we believe to be a common practice, should be more rigorously scrutinized." Byrd's testimony "did nothing to substantially

contribute to the facts of the case" and did nothing tending "to make a fact of consequence to the elements of the case more or less probable[.]" The Court encouraged trial courts to refuse to sit CAC forensic interviewers under similar circumstances.

The Court found admission of Byrd's testimony to be harmless error. Contrasting four prior cases in which similar improper bolstering was held to be not harmless, the Court wrote, "the fleeting declaration that the girls were not coached combined with the lengthy, detailed, and consistent testimony of Betty and Susan, which was partially corroborated by Retta, was harmless." As to the other issues in the case, the Court held Boggs' arguments pertaining to violations of jury unanimity and double jeopardy were waived as invited error. The argument regarding improper prior bad acts testimony was not error as Boggs made delayed reporting a focal point of his defense. The Commonwealth was entitled to put on evidence of violence and threats of violence to explain the delayed reporting. Finally, the Court held two instances of hearsay testimony were not error. One statement was a response to defense counsel's questions. The second piece of testimony was a statement regarding the fear of the victims by their mother which, again, was not palpable error as Boggs had put the delayed reporting at issue.

Y. *Young v. Commonwealth*, 2024-SC-0070-MR, 2025 WL 1717916 (Ky. June 20, 2025).

Opinion of the Court by Justice Nickell. All sitting. Bisig, Conley, Goodwine, Keller, and Thompson, JJ., concur. Lambert, C.J., concurs in part and dissents in part without separate opinion. Young was operating a vehicle in Lewis County which collided head-on with another vehicle. The other driver died, and two minor passengers in her vehicle were injured. The coroner was called to examine the decedent and, upon completing his investigation, determined no autopsy was necessary and listed the cause of death as multiple blunt force trauma to the head and chest resulting from the automobile collision. Responding officers suspected Young was under the influence of alcohol. A blood draw taken approximately two hours and 50 minutes following the collision revealed Young's blood alcohol content (BAC) was 0.156. Young was convicted following a jury trial of wanton murder, two counts of assault in the first degree, and operating a motor vehicle under the influence (DUI) with aggravating circumstances. He received a sentence of 25 years' imprisonment and appealed as a matter of right, raising five allegations of error.

Young first asserted he was entitled to a directed verdict on the murder count. Specifically, he contended the Commonwealth failed to prove the cause of death of the other driver and that he acted wantonly. In support, Young argued medical testimony is required in all cases to prove the cause of death and no such testimony was presented. The Supreme Court agreed that the cause of death is typically proven by competent medical testimony, but the rule is subject to the "layman's exception" as described in *White v. Commonwealth*, 360 S.W.2d 198, 201 (Ky. 1962). Based on the evidence presented, the exception applied, and the proof was sufficient for the jury to determine the car collision caused the victim's death. The Supreme Court also rejected Young's argument that the jury was left to speculate as to the cause of death based on the coroner's failure to conduct an autopsy. The Court noted the legal

distinction between a post-mortem examination, which coroners are mandated to perform in every statutorily-required investigation, and autopsies which are discretionary. Because the coroner fulfilled his statutory obligations and scientific certainty is not required to establish causation, there was no error in permitting the jury to hear and consider his testimony.

The Supreme Court also reviewed the evidence presented by the Commonwealth relative to Young's allegedly wanton behavior and concluded it was sufficient to put the question to the jury. Concluding it was not clearly unreasonable for the jury to find guilt under the totality of the evidence, the Court held Young was not entitled to a directed verdict. Young next argued the trial court's exclusion of a Lewis County 911 operator as a witness was improper. He intended to call the operator to testify regarding weather and road conditions on the day of the collision to show others were impacted by heavy rains. Young claimed the exclusion of this witness deprived him of a complete defense. Contrary to Young's assertions, the Court held the proposed testimony would not have tended to prove or disprove any element of the charged offenses and was therefore irrelevant and properly excluded.

Third, Young argued the trial court improperly excluded any mention of the *per se* DUI law and its requirement for obtaining blood testing within a two-hour period following cessation of operating a vehicle. Here, Young was not charged with *per se* DUI so the trial court's decision to prohibit him from discussing and questioning witnesses about a portion of a statute under which he was not charged was proper. The failure of police to obtain a blood sample within the two-hour window was of no consequence to his conviction for impairment DUI.

Fourth, Young asserted he was entitled to a directed verdict on one count of assault in the first degree based on a failure of proof of serious physical injury to the victim. The Supreme Court reviewed the evidence of the victim's injuries and concluded the Commonwealth offered sufficient proof that she did, in fact, suffer a serious physical injury. In addition to medical testimony regarding her initial injuries, the victim testified regarding her continued pain and physical limitations which persisted at the time of trial which was nearly three years after the collision. Thus, no directed verdict was warranted. Finally, the Supreme Court agreed with Young that the instructions for murder and DUI created a double jeopardy violation. All of the findings required for the jury to convict him of DUI were also required to convict him of wanton murder. Once the Commonwealth proved the specific conduct required under the murder instruction, it had necessarily proved the conduct needed to convict him of DUI. Because the DUI required proof of no fact beyond those for the wanton murder, a double jeopardy violation occurred which required vacating the lesser offense.

Z. *Mills v. Commonwealth*, 2024-SC-0112-MR, 2025 WL 1717565 (Ky. June 20, 2025).

Opinion of the Court by Justice Conley. All sitting. All concur. In a unanimous opinion authored by Justice Conley, the Court held a *Brady v. Maryland* violation can occur when there is a tardy disclosure of material evidence mid-trial, and the defendant is not provided an opportunity to cross-examine the witness on said evidence. In this case, Jeremy Mills was accused of numerous crimes related to A.C., a 13-year-old

victim. A.C. had communicated with Mills prior to any sexual relations and informed him she was 18. Mills maintained his defense at trial that he never knew A.C. was a minor. At trial, A.C. testified she informed Mills of her true age prior to sexual relations. This was corroborated by Edward Troutt, who shared a jail cell with Mills for a week. Troutt testified Mills admitted to him he knew A.C.'s true age. Mills sought to undermine Troutt's testimony by suggesting Troutt looked through Mills' case file, saw the charges against him, then fabricated the confession. After Troutt testified midway through trial, the Commonwealth informed the trial court and Mills that a video existed recording an interview between Troutt and investigators. This video had not been disclosed prior to trial. On the video, Troutt alleges A.C. told Mills she was a juvenile and that Mills admitted to having anal sex with A.C. But A.C. never accused Mills of anal sex either before or during trial. No medical evidence existed that A.C. had anal sex. The sodomy charges against Mills pertained to allegations of oral sex. Mills, therefore, argued to the trial court the video evidence could be viewed as direct evidence supporting his theory that Troutt fabricated the confession. The Supreme Court held a reasonable juror could agree with Mills' argument regarding the video evidence; therefore, the video was material, impeachment evidence. Based on the trial record, the Court further concluded A.C.'s credibility had been undermined as the jury acquitted Mills of all rape, strangulation, and kidnapping charges which the jury would not have done had they believed A.C. was a perfectly credible witness. Finally, the record disclosed the jury had sought clarification from the trial court upon the meaning of the word "knew" in the jury instructions. Therefore, it was clear the jury was debating Mills' lack of knowledge defense. Because of A.C.'s questioned credibility, a retrospective analysis under *Brady* shows Troutt was a crucial corroborating witness for the Commonwealth. It was equally crucial for Mills to undermine Troutt's credibility. The inability to cross-examine Troutt on the video interview led the Court to conclude there was lack of confidence in the verdict below. The verdict was reversed and the case remanded for further proceedings consistent with the opinion.

AA. *Osborne v. Commonwealth*, 2024-SC-0166-DG, 2025 WL 1717628 (Ky. June 20, 2025).

Opinion of the Court by Justice Nickell. All sitting. Lambert, C.J.; Bisig, Conley, Goodwine, and Keller, JJ., concur. Thompson, J., dissents by separate opinion. Police went to Appellant's residence to investigate a tip regarding a stolen trailer. As the police arrived, Appellant was exiting a vehicle parked in his driveway. Appellant consented to an inspection of his trailers and a search of his property. During the discussion, police noticed Appellant kept placing his hands in the front pockets of his pants which contained two large bulges. The officers asked Appellant to empty his pockets and observed a large wad of cash and a plastic baggie containing a brown substance. After Appellant tried to hide the baggie behind his back, the police restrained him and retrieved the suspected contraband. Appellant was arrested and subsequently indicted on charges of first-degree trafficking in a controlled substance and possession of drug paraphernalia. Appellant filed a motion to suppress the evidence seized from his person, which the trial court denied. Subsequently, he entered a conditional guilty plea to both charges and received a total sentence of five years' imprisonment. The Court of Appeals affirmed. On discretionary review, the

Supreme Court held the trial court properly denied the motion to suppress. First, the Court rejected Appellant's argument that he did not consent to the removal of the items from his pockets. Moreover, the Court concluded the encounter between Appellant and police was not inherently coercive. Second, the Court determined the police were not required to establish the inherently incriminating nature of the items before requesting Appellant's consent to search. Third and finally, the Court held additional findings of fact were not required.

AB. *Lynch v. Commonwealth*, 2024-SC-0432-DGE, 2025 WL 1719330 (Ky. June 20, 2025).

Opinion of the Court by Justice Conley. All sitting. Lambert, C.J.; Goodwine, Keller, Nickell, and Thompson, JJ., concur. Bisig, J., dissents by separate opinion. This interlocutory appeal sought a writ of prohibition against the Gallatin District Court after the court excluded a failed horizontal gaze nystagmus ("HGN") test for failure to qualify an expert. The Supreme Court determined the Commonwealth failed to show great and irreparable harm and denied the writ, reversing the Court of Appeals. James Lynch was arrested after failing a battery of standardized field sobriety tests ("SFSTs") which included the HGN test. That test generally assesses an individual's ability to follow an object moving across his field of vision using only his eyes. Prior to trial, Lynch moved to exclude the HGN test because the Commonwealth had not provided an expert qualified to testify as to the test. The district court excluded the test, finding it was a scientific test that required expert testimony. The Commonwealth sought a writ of prohibition in the Circuit Court which was denied for failure to show great injustice or irreparable harm. The Commonwealth appealed to the Court of Appeals, which reversed the lower courts, finding sufficient harm and finding the exclusion of the test to be at odds with precedent. The Supreme Court reversed, holding the Commonwealth failed to demonstrate great injustice or irreparable harm, one of the prerequisites for a writ of prohibition. The Supreme Court observed the exclusion of the HGN test deprived the Commonwealth of only one of five failed SFSTs and those remaining tests, along with the arresting officer's other observations of Lynch, were sufficient to allow the Commonwealth to effectively prosecute the case. Accordingly, the Commonwealth could not show great injustice or irreparable harm and a writ was not appropriate.

VI. DEATH PENALTY

Department of Corrections v. Baze, 701 S.W.3d 549 (Ky. 2024)

Opinion and Order of the Court by Justice Thompson. All sitting. All concur. After the lethal injection protocols were changed, the Department of Corrections (DOC) requested that the Franklin Circuit Court dissolve a 2010 temporary injunction which precluded an inmate's execution under Kentucky's then-current lethal-injection protocols. The circuit court "reserved ruling" on this motion. The DOC sought interlocutory relief from the Court of Appeals pursuant to RAP 20(B), which empowered the Court of Appeals to grant an adversely affected party relief from a circuit court's interlocutory order which "has granted, denied, modified, or dissolved a temporary injunction[.]" The DOC argued the circuit court's order instituted a new injunction or modified its earlier injunction. The Court of Appeals recommended transfer of the matter to the Supreme Court under RAP 17 and it agreed to

accept transfer. The Supreme Court dismissed the action without prejudice as RAP 20(B) does not provide for interlocutory relief from an order maintaining an injunction.

VII. DECLARATORY JUDGMENT

A. *Coleman v. Jefferson County Board of Education*, 2023-SC-0498-DG, 2024 WL 5180457 (Ky. Dec. 19, 2024)

Opinion of the Court by Justice Nickell. All sitting. VanMeter, C.J.; Conley and Lambert, JJ., concur. VanMeter, C.J., concurs by separate opinion in which Conley and Lambert, JJ., join. Bisig, J., dissents by separate opinion in which Keller and Thompson, JJ., join. The General Assembly enacted Senate Bill (SB) 1 in 2022 which instituted various changes to the duties and responsibilities of a school board relative to those of its superintendent "in a county school district in a county with a consolidated local government adopted under KRS Chapter 67C." It is undisputed that Jefferson County is the only county in Kentucky to which SB 1 currently applies. The Jefferson County Board of Education filed suit seeking a declaration that SB 1 violated the prohibition on special legislation contained in §§59 and 60 of the Kentucky Constitution. The trial court concluded SB 1 constituted impermissible special legislation and further held, *sua sponte*, that the provision violated equal protection. The Court of Appeals affirmed but did not address the equal protection issue. On discretionary review, the Supreme Court reversed. Applying the test set forth in *Calloway Cnty. Sheriff's Department v. Woodall*, 607 S.W.3d 557, 573 (Ky. 2020), the Supreme Court held SB 1 did not run afoul of the prohibition on special legislation because it did not apply "to a particular individual, object or locale." Although SB 1 only applies to Jefferson County at present, the Supreme Court explained its text neither mentions Louisville or Jefferson County in particular nor did the plain language indirectly limit any and all future applications of the statute to that particular locale. Thus, the Supreme Court concluded a classification does not apply to a particular individual, object, or locale unless the scope of the class is permanently closed. In such cases, a challenge to the constitutionality of a classification must proceed under an equal protection analysis. However, the Supreme Court refused to review for an equal protection violation because the issue was not properly preserved.

B. *Erie Insurance Exchange v. Johnson*, 2024-SC-0018-DG, 2025 WL 1197886 (Ky. Apr. 24, 2025)

Opinion of the Court by Justice Thompson. Lambert, C.J.; Bisig, Conley, Keller, Nickell, and Thompson, JJ., sitting. Lambert, C.J., and Conley, J., concur. Bisig, J., concurs in result only. Nickell, J., concurs in part and dissents in part by separate opinion in which Keller, J., joins. Goodwine, J., not sitting. The Court interpreted KRS 304.39-241, which empowers covered persons to "direct the payment of [personal injury protection (PIP)] benefits among the different elements of loss" as covering the categories of loss set out in KRS 304.39-020(5)(a)-(e), and the specific items of loss within those categories as both constituting "elements of loss." Accordingly, insureds who, pursuant to KRS 304.39-241, exercise their rights to direct their insurance company to withhold tendering payment to their initial healthcare

providers, can then direct their insurance company to follow their directions in distributing their PIP benefits to individual healthcare providers in the order they prefer. This empowers them to negotiate pursuant to KRS 304.39-245. Because the Court ruled that Erie should have followed the insureds' directives regarding the order in which the providers should be paid, and these payments were overdue pursuant to KRS 304.39-210(1), it affirmed the grant of summary judgment on this issue. The Court also affirmed the award of statutory interest pursuant to KRS 304.39-210(2) for the delayed payment of benefits. However, the Court reversed the award of excess interest pursuant to KRS 304.39-210(2) and the award of attorney fees pursuant to KRS 304.39-220(2), concluding that the legal issue as to how to interpret "elements of loss" was not previously resolved and these awards were not justified because Erie acted appropriately in filing a declaration of rights action and requesting interpleader on this novel issue. Justice Nickell concurred as to the portion of the opinion reversing the award of excess interest and attorney fees; he dissented from the majority interpretation given to the "different elements of loss."

VIII. ELECTION LAW

Kulkarni v. Horlander, 701 S.W.3d 181 (Ky. 2024)

Opinion of the Court by Justice Nickell. All sitting. VanMeter, C.J.; Conley, Keller, Lambert, and Nickell, JJ., concur. Thompson, J., concurs in part and dissents in part by separate opinion in which Bisig, J., joins. Bisig, J., dissents by separate opinion in which Thompson, J., joins. An incumbent state Representative ("Candidate'') filed her nominating papers to appear on the ballot for the 2024 Democratic Party primary. After the filing deadline had passed, it was discovered that one of the signatories to the Candidate's nomination was a registered Republican. A former state Representation ("Challenger") sought to disqualify the Candidate because her nominating papers failed to include the signatures of "not less than two (2) registered voters of the same party from the district or jurisdiction from which the candidate seeks nomination" as required by KRS 118.125(2). Concluding the Candidate had substantially complied with the statutory requirements, the trial court denied the Challenger's petition. The Court of Appeals reversed. On discretionary review, the Supreme Court affirmed the Court of Appeals. As a preliminary matter, the Supreme Court concluded the right to appeal exists where a trial court denies a challenge to a candidate's bona fides under KRS 118.176. Turning to the merits, the Supreme Court further held the requirement that nominating papers contain at least two signatures of registered voters from the same party as the candidate was mandatory and subject to strict compliance. Thus, neither good faith nor substantial compliance can operate to cure this material defect after the expiration of the filing deadline. Because the signatory was not a member of the same party as the candidate at the time the nomination papers were signed, the Candidate did not comply with the requirements of KRS 118.125(2), and the failure to do so was fatal to her candidacy.

IX. EMINENT DOMAIN

Transportation Cabinet, Department of Highways v. Atkinson, 706 S.W.3d 110 (Ky. 2024)

Opinion of the Court by Justice Keller. All sitting. All concur. The Commonwealth of Kentucky, Transportation Cabinet, Department of Highways ("Cabinet") condemned a 30.366-acre

tract of land in Floyd County containing subsurface coal. A group of mineral parcel owners ("Owners") who held property interests in the condemned property thereafter challenged their award of "just compensation" at trial. Prior to trial, however, the Cabinet sought to prohibit the Owners from introducing any evidence tending to prove the condemned mineral parcel's fair market value using a "royalty rate." Specifically, the Cabinet argued the condemned property's subsurface coal should be valued as it existed at the time of condemnation: in the ground, unmined. The Floyd Circuit Court denied the Cabinet's motion and the jury ultimately awarded the Owners $550,000 as just compensation. The Court of Appeals affirmed. The Supreme Court granted discretionary review to consider whether the trial court abused its discretion in admitting appraisal evidence that considered the condemned property's capacity to produce royalty income as affecting its fair market value. The Supreme Court held the testimony of the Owners' expert appraisal witness was admissible because he properly employed the "income capitalization approach" to real property valuation as sanctioned in *Com. v. R.J. Corman Railroad Co./Memphis Line*, 116 S.W.3d 488, 495-96 (Ky. 2003). More specifically, the expert's valuation testimony did not simply estimate the quantity of subsurface coal in the ground and multiply that amount by a fixed market price as disavowed in *Gulf Interstate Gas Co. v. Garvin*, 303 S.W.2d 260, 263 (Ky. 1957). Accordingly, the Supreme Court held the Floyd Circuit Court had not abused its discretion.

X. EMPLOYMENT LAW

A. *Louisville/Jefferson County Metropolitan Government v. Moore*, 701 S.W.3d 335 (Ky. 2024)

Opinion of the Court by Justice Keller. VanMeter, C.J.; Bisig, Conley, Keller, Lambert, and Nickell, JJ., sitting. VanMeter, C.J.; Bisig and Lambert, JJ., concur. Conley, J., concurs in result only by separate opinion. Nickell, J., dissents by separate opinion. Thompson, J., not sitting. Dezmon Moore was terminated from his employment with the Louisville Metro Police Department (LMPD) after the Chief of Police determined that Moore had committed multiple violations of police department Standard Operating Procedures (SOPs). Moore thereafter appealed his termination to the Louisville Metro Police Merit Board (Merit Board) which affirmed his termination. Moore sought judicial review of the agency's decision, and the Court granted discretionary review of his subsequent appeal. On appeal, Moore argued the Merit Board had improperly relied on evidence from Moore's internal employee file which contained expunged materials referencing his prior criminal charges. Moore also argued the Merit Board violated his due process rights by improperly considering transcribed copies of witness statements without first requiring those witnesses to give live testimony. The Supreme Court held any materials inside Moore's internal employee file maintained by LMPD were not subject to the statutes regarding expungement of criminal records. Although Moore's employee records referencing his prior criminal charges were in the possession of an agency subject to an expungement order, that employee file was not a "criminal record" or "law enforcement record" of the type contemplated by the expungement statutes. The Supreme Court also held the statutes delineating the procedures of Merit Board proceedings did not guarantee Moore the right to confront witnesses against him. The Court further held the Merit Board did not violate Moore's constitutional due process

rights by considering transcribed statements from witnesses without requiring those witnesses to testify at Moore's in-person hearing. Given the existing procedural due process afforded to Moore by the relevant statutes, there was little probable value in requiring live testimony by witnesses with cross-examination prior to the admission of the witness' prior statements. The Supreme Court affirmed the decision of the Court of Appeals.

B. *Hardin v. Louisville/Jefferson County Metropolitan Government*, 701 S.W.3d 155 (Ky. 2024)

Opinion of the Court by Justice Keller. VanMeter, C.J.; Conley, Keller, Lambert, Nickell, and Thompson, JJ., sitting. VanMeter, C.J.; Lambert and Nickell, JJ., concur. Conley and Thompson, JJ., concur in result only by separate opinion. Bisig, J., not sitting. Jonathan Hardin was terminated from his employment with LMPD after the Chief of Police determined Hardin had committed multiple violations of police department SOPs. Hardin thereafter appealed his termination to the Merit Board which affirmed his termination. Hardin sought judicial review of the agency's decision, and the Court granted discretionary review of his subsequent appeal. On appeal, Hardin argued the Merit Board had improperly relied on evidence from Hardin's internal employee file which contained expunged materials referencing his prior criminal charges. Hardin also argued the Merit Board violated his due process rights by improperly considering transcribed copies of witness statements without first requiring those witnesses to give live testimony. The Supreme Court held any materials inside Hardin's internal employee file maintained by LMPD were not subject to the statutes regarding expungement of criminal records. Although Hardin's employee records referencing his prior criminal charges were in the possession of an agency subject to an expungement order, that employee file was not a "criminal record" or "law enforcement record" of the type contemplated by the expungement statutes. The Supreme Court also held the statutes delineating the procedures of Merit Board proceedings did not guarantee Hardin the right to confront witnesses against him. The Court further held the Merit Board did not violate Hardin's constitutional due process rights by considering transcribed statements from witnesses without requiring those witnesses to testify at Hardin's in-person hearing. Given the existing procedural due process afforded to Hardin by the relevant statutes, there was little probable value in requiring live testimony by witnesses with cross-examination prior to the admission of the witness's prior statements. The Supreme Court affirmed the decision of the Court of Appeals.

XI. EQUINE SALES COMMISSION

Normandy Farm, LLC v. Kenneth McPeek Racing Stable, Inc., 701 S.W.3d 129 (Ky. 2024)

Opinion of the Court by Justice Conley. Bisig, Conley, Keller, Lambert, Nickell, and Thompson, JJ., sitting. Lambert, Nickell, and Thompson, JJ., concur. Bisig, J., dissents by separate opinion in which Keller, J., joins. VanMeter, C.J., not sitting. This case concerned whether Kenneth McPeek was owed 5 percent of the sales price of a horse, Daddy's Lil' Darling, sold at auction in November 2018. McPeek had brought a claim of breach of contract, breach of contract implied in fact, and *quantum meruit*. McPeek conceded that his

contract to receive 5 percent commission from the horse sale was oral and not evidenced by any signed writing chargeable to Nancy Polk, the now-deceased owner of Normandy Farm, with whom the oral contract was allegedly made. KRS 230.357(11)(a), however, provides that "[n]o contract or agreement for payment of a commission, fee, gratuity, or any other form of compensation in connection with any sale, purchase, or transfer of an equine shall be enforceable by way of an action or defense unless: (a) The contract or agreement is in writing and is signed by the party against whom enforcement is sought[.]" The Court concluded the 5 percent commission was in connection with the sale of Daddy's Lil' Darling because it was causally related to the sale. If the horse was never sold, then McPeek would never be entitled to the 5 percent commission. Thus, the sale was a condition precedent to the oral contract. Because there was no signed writing chargeable to Normandy Farm, KRS 230.357(11) barred enforcement of the oral contract and negated McPeek's breach of contract and breach of contract implied in fact claims.

XII. ESTATE LAW

Combs v. Napier, 706 S.W.3d 161 (Ky. 2024)

Opinion of the Court by Chief Justice VanMeter. All sitting. All concur. The primary issue was the proper interpretation of the phrase "in the event we die in a common disaster or so close in time as to make separate estates impractical" in a joint will. In 2013, Buford and Sharon Combs executed a joint will naming their children from prior marriages, the Combs siblings and Napier brothers, beneficiaries. The joint will contained an introductory clause directing equal distribution of personalty upon occurrence of the above-quoted language. Buford died in October 2020 and Sharon died approximately three months later. The Jackson District Court admitted the joint will to probate. The Napier brothers filed a declaratory judgment action as to the proper interpretation of the will. They argued that because Buford and Sharon did not die close in time, the joint will did not take effect and Sharon died intestate. The Combs siblings contended the clear intent of the will was to equally divide the estate among all the children and the introductory clause was nonsensical because separate estates are always practical. The circuit court granted judgment for the Combs siblings. The Court of Appeals reversed, finding the language of the will was unambiguous and only applied if the couple had died close in time, which they did not. The Supreme Court accepted review and reversed the Court of Appeals. Looking to the unambiguous language of the joint will, the Supreme Court held the specific situation of Buford and Sharon rendered the opening of separate estates impractical and therefore the joint will took effect. Upon Buford's death, his estate contained only a few assets worth less than $30,000, thus Sharon filed a petition to dispense with administration, which the court approved. While Sharon could have proceeded to open Buford's estate for administration, doing so would have been impractical, thereby activating the introductory clause of the joint will. Accordingly, the estate of Sharon was subject to the joint will and was to be distributed to all the couple's children.

XIII. FAMILY LAW

A. *Picard v. Knight*, 701 S.W.3d 467 (Ky. 2024)

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

which Keller, J., joins. Jay Picard sought an award of attorney fees and costs in a child support modification matter pursuant to CR 68, the offer of judgment rule. The trial court denied this motion, and the Court of Appeals affirmed. After granting discretionary review and oral argument, the Supreme Court concluded that KRS Chapter 403 generally, and KRS 403.220 specifically, preempt the offer of judgment rule from having any application to family law matters.

B. *Appleman v. Gebell*, 706 S.W.3d 223 (Ky. 2024)

Opinion of the Court by Justice Nickell. All sitting. VanMeter, C.J.; Conley and Lambert, JJ., concur. Keller, J., dissents by separate opinion in which Bisig and Thompson, JJ., join. Concerned for the safety and well-being of a minor child, the Cabinet for Health and Family Services filed a dependency, neglect, and abuse ("DNA") petition against Father and Mother. The allegations centered on Mother's mental health problems and pending criminal charges as well as Father's substance abuse issues. The district court temporarily removed the child and granted temporary custody to Father's relatives, Nick and Debbie Appleman. Mother began to receive inpatient treatment for her mental health issues. While Mother remained in treatment, Father regained custody of the child. Shortly thereafter, however, the Cabinet filed a second DNA petition against Father and temporary custody was again awarded to the Applemans. Father subsequently regained custody but could not control his abuse of alcohol. The Cabinet filed a third DNA petition against Father. During this proceeding, the district court granted permanent custody to the Applemans. However, the district court did not make any findings relative to Mother's parental fitness or waiver of her superior rights. After Mother was released from in-patient treatment, she petitioned for sole custody in circuit court. The circuit court held that a modification of custody was not in the child's best interest and further concluded Mother had waived her superior right to custody. The Court of Appeals reversed and directed the circuit court to award custody to Mother. On discretionary review, the Supreme Court affirmed in part, reversed in part, and remanded for additional proceedings on the issue of fitness and waiver. The Supreme Court concluded the district court order granting permanent custody to the Applemans did not qualify as custody decree under KRS Chapter 403 or otherwise confer equal standing such that the best interest of the child standard would govern the dispute. However, the Supreme Court also held the deficiency of the prior custody order did not necessarily entitle Mother to immediate custody and reversed the Court of Appeals on this issue. The Supreme Court remanded to the circuit court with directions to apply the appropriate legal standard in determining entitlement to custody.

C. *Cabinet for Health and Family Services v. K.O.*, 2024-SC-0188-DGE, 2025 WL 555461 (Ky. Feb. 20, 2025)

Opinion of the Court by Justice Keller. Lambert, C.J.; Bisig, Conley, Keller, Nickell, and Thompson, JJ., sitting. Lambert, C.J.; Bisig, Conley, and Nickell, JJ., concur. Thompson, J., concurs in result only without opinion. Goodwine, J., not sitting. The Calloway Circuit Court found K.O. ("Father") to have neglected his child, R.O. ("Child"), pursuant to the Kentucky Unified Juvenile Code. School resource officer,

Deputy Tim Fortner, testified that while Father was dropping off Child at school, he smelled marijuana emanating from Father's vehicle, observed visible smoke on the driver's side, and noted that Father appeared to be hiding something from him between the driver's seat and the driver's side door. The Cabinet for Health and Family Services ("Cabinet") initiated an investigation, and Father and Child submitted to drug tests. Father tested positive for the metabolite of the illicit form of marijuana, Carboxy-Delta9-THC. Child tested positive for Native THC and carboxy-THC, which indicated that Child had been exposed to marijuana. Father appealed the finding of neglect, and the Court of Appeals reversed. The Supreme Court granted the Cabinet's petition for discretionary review to consider whether the circuit court's finding of neglect was clearly erroneous. Under KRS 600.020(1)(a)(2), a court may find neglect where there has been only a risk of physical or emotional injury. Here, the Supreme Court held the circuit court's finding of neglect was not clearly erroneous, as it was reasonable for the circuit court to have deduced that: (1) Father smoked marijuana while caring for Child; (2) Father smoked marijuana in an enclosed vehicle with Child present; and (3) Father drove Child to school while under the influence of marijuana. The Supreme Court held the risk of physical injury to Child arose in the combination of Child's exposure to the illicit substance and Father's operation of a motor vehicle with Child while under the influence of that substance. As a result, it reversed the decision of the Court of Appeals and reinstated the order of the Calloway Circuit Court.

D. *G. G. v. Cabinet for Health and Family Services*, 2024-SC-0143-DGE, 2025 WL 1718060 (Ky. June 20, 2025).

Opinion of the Court by Justice Goodwine. All sitting. Lambert, C.J.; Bisig, Conley, Keller, and Thompson, JJ., concur. Nickell, J., dissents by separate opinion. In a 6-1 opinion authored by Justice Goodwine, the Supreme Court held KRS Chapter 199 does not prohibit an unmarried couple from petitioning to adopt a child. G.G. and T.S., an unmarried couple, petitioned the Jackson Circuit Court, Family Division to adopt T.S.'s biological granddaughter for whom they were jointly granted permanent custody at birth. Thereafter, the Cabinet issued a report stating it was unable to process the petition because two unmarried individuals were not allowed to adopt a child together under Kentucky's adoption statutes. The petitioners attempted to compel the Cabinet to process their petition but, ultimately, the family court agreed with the Cabinet and dismissed the petition. The Court of Appeals affirmed the family court's decision, holding the petitioners' petition did not strictly comply with the requirements of KRS 199.470 because they were unmarried. The Supreme Court reversed the Court of Appeals' decision and remanded the case for reinstatement of the petition because KRS 199.470 does not prevent unmarried couples from petitioning to adopt a child. In reaching this decision, the Court looked to *Krieger v. Garvin*, 584 S.W.3d 727 (Ky. 2019), wherein the Court held trial courts were not precluded from naming two individuals as a child's *de facto* custodians solely because they were unmarried. The Court held, under KRS 446.020(1), "any person" as used in KRS 199.470(1) should be read to include the plural, meaning the statute does not bar two unmarried people from petitioning for adoption. The Court further held KRS 199.470(2) does not bar unmarried couples from petitioning for adoption but instead includes additional requirements for married petitioners. The Court held

nothing in its decision impedes the trial court from exercising its discretion in determining whether adoption is in a child's best interest under KRS 199.520(1). Additionally, the Cabinet continues to have the obligation to investigate the circumstances surrounding all adoptions, including those by unmarried couples, and report to the court whether it believes adoption would be in the child's best interest under KRS 199.510(1).

XIV. GOVERNMENT

A. *T-Mobile South LLC v. Kentucky Commercial Mobile Radio Service Emergency Telecommunications Board*, 2023-SC-0245-DG, 2025 WL 1717840 (Ky. June 20, 2025).

Opinion of the Court by Justice Bisig. All sitting. Lambert, C.J.; Conley, Goodwine, Keller, and Nickell, JJ., concur. Thompson, J., dissents by separate opinion. The Commercial Mobile Radio Service Emergency Telecommunications Board was created by the Kentucky General Assembly to collect service fees from cellphone providers to cover the costs of extending 911 emergency services to mobile telephone users. In 2014, the Supreme Court conclusively held that an earlier version of the Commercial Mobile Radio Services statute did not require prepaid cell providers to collect service charges from prepaid customers. *Virgin Mobile U.S.A., L.P. v. Com. ex rel. Commercial Mobile Radio Service Telecommunications Bd.,* 448 S.W.3d 241 (Ky. 2014). After years of paying these statutory service fees for its prepaid cell phone customers, T-Mobile sought a refund. When the Board denied its request, T-Mobile filed an action in Franklin Circuit Court. The trial court concluded that T-Mobile was not entitled to a refund, having failed to meet the common law refund requirement effectuated in *Inland Container Corp. v. Mason County*, 6 S.W.3d 374, 377 (Ky. 1999). The Court of Appeals affirmed. The Supreme Court held that T-Mobile is not entitled to a common law refund because T-Mobile could not satisfy the common law refund test. A common law refund is available when (1) the statute or regulation is invalid and the payments were submitted involuntarily, which is defined as being collectible by summary process of fine or imprisonment; or (2) the relevant government authority has engaged in misrepresentation. *Inland Container*, 6 S.W.3d at 377. The service charges paid by T-Mobile were not paid involuntarily because T-Mobile did not face any specific fine, imprisonment, or burdensome penalty if they did not pay the service charges, and the Board did not make any actual misrepresentations to T-Mobile. The Court upheld the trial court's grant of summary judgment in favor of the Board.

B. *Fraternal Order of Police, Lodge #4 v. Lexington-Fayette Urban County Government,* 2023-SC-0322-DG, 2025 WL 1717715 (Ky. June 20, 2025).

Opinion of the Court by Chief Justice Lambert. All sitting. Conley, Keller, Nickell, and Thompson, JJ., concur. Goodwine, J., dissents by separate opinion in which Bisig, J., joins. LFUCG and the Lodge entered into a collective bargaining agreement (CBA) containing a grievance procedure, an arbitration clause, and a clause that required LFUCG to provide for the defense of a member in any tortious claims arising from an act occurring within the scope of employment. Morrow was a member of the Lodge

and subject to the CBA. Pursuant to that agreement, when a civil complaint was filed against Morrow for sexual assault, LFUCG provided him legal representation under a reservation of its rights. Morrow filed a grievance against LFUCG after he heard a rumor that it intended to abandon his defense in the civil suit. At the time, LFUCG was still providing Morrow with a defense and had taken no legal action to withdraw that defense. LFUCG denied the grievance, and Morrow and the Lodge thereafter filed a complaint in circuit court to compel arbitration. LFUCG filed a compulsory counterclaim seeking a declaration of its rights that it had no obligation to defend and indemnify Morrow because the alleged sexual assault occurred when he was not on duty. The circuit court granted summary judgment in favor of LFUCG. It ruled the issue of whether LFUCG's initial refusal to arbitrate was moot, as LFUCG had provided Morrow a defense until the litigation settled and thereafter paid a settlement on his behalf, but nevertheless concluded that the grievance failed to assert a viable claim. The circuit court also found LFUCG did not have a duty to defend or indemnify Morrow because his actions occurred outside the scope of his employment. The Kentucky Supreme Court held that LFUCG did not breach the parties' CBA when it denied the grievance filed by Morrow and the Lodge because the grievance sought to compel LFUCG to do something it was already doing. Further, under the United States Supreme Court's "Steelworkers Trilogy" and *United Brick and Clay Workers of America, Local No. 486 v. Lee Clay Products Co., Inc.*, 488 S.W.2d 331, 334 (Ky. 1972), the Court vacated the portion of the circuit court's decision that ruled on the merits of LFUCG's counterclaim and remanded with instructions to order the parties to submit to arbitration the question of whether Morrow was entitled to a defense and indemnification by LFUCG pursuant to the CBA. The Court reasoned the CBA required the parties to submit "any controversy" about "the meaning and application of" the agreement, and LFUCG's counterclaim raised a controversy about the application of the CBA's provision obligating LFUCG to provide a defense under certain circumstances.

XV. IMMUNITY

Louisville & Jefferson County Metropolitan Sewer District v. Albright, 2023-SC-0079-DG, 2025 WL 890812 (Ky. Mar. 20, 2025)

Opinion of the Court by Chief Justice Lambert. All sitting. Goodwine, J., concurs. Keller, J., concurs in result only by separate opinion in which Thompson, J., joins. Thompson, J., concurs in result only by separate opinion. Conley, J., concurs in part and dissents in part by separate opinion in which Bisig and Nickell, JJ., join. Louisville and Jefferson County Metropolitan Sewer District (MSD) owned an easement for a water drainage system that ran through the backyards of several homes, including Jennifer Albright's. The system was comprised of a grass-covered drainage swale that emptied into an uncovered drainage pipe housed within a concrete head wall. The drainage pipe ran for 430 feet entirely underground before emptying into a detention pond. Albright filed suit against MSD after her 15-year-old son was swept into the drainage pipe and drowned. She alleged, *inter alia*, that by failing to place a grate over the drainage pipe and/or by failing to place warning signage, MSD failed to fulfill its ministerial duty to non-negligently maintain and repair the drainage system at issue. The circuit court granted summary judgment in MSD's favor upon finding it was a "local government" entitled to municipal immunity under CALGA. The Court of Appeals upheld the

lower court's finding that MSD met the definition of a local government under CALGA but reversed its application of municipal immunity. The Supreme Court affirmed. While the Court agreed that MSD met the definition of local government under CALGA, it disagreed that it was entitled to municipal immunity against Albright's claims. It reasoned that, both prior to and following the adoption of CALGA, a sanitation district's responsibility to non-negligently maintain and repair its systems was considered a ministerial duty for which it is not entitled to immunity. Accordingly, because Albright alleged that MSD failed to fulfill its ministerial duty in relation to the drainage system that killed her son, MSD was not entitled to immunity against her claim. The Court further held that MSD's decision to not place a grate over the drainage pipe at issue did not constitute an exercise of legislative or quasi-legislative authority, for which there is immunity under CALGA, because providing sewer and water services is not a regulatory function different from any performed by a private person or industry and if MSD were held liable for failing to perform that function, it would not be a new kind of tort liability.

XVI. INSURANCE

A. *State Auto Property & Casualty Company v. Greenville Cumberland Presbyterian Church*, 706 S.W.3d 35 (Ky. 2024)

Opinion of the Court by Justice Lambert. All sitting. Bisig, Conley, Keller, and Thompson, JJ., concur. VanMeter, C.J., dissents by separate opinion in which Nickell, J., joins. Greenville Cumberland Presbyterian Church was insured by a policy issued by State Auto. The policy provided coverage for loss or damage caused by "collapse" of "any part of" the church caused by hidden decay or hidden insect or vermin damage. The policy did not define the term collapse apart from providing that it did not include "settling, cracking, shrinkage, bulging, or expansion." The policy further provided, in the event of any damage to the property, the insureds had a duty to mitigate any further damage. While replacing the roof, the church's elders discovered a partial collapse: two of the roof's four triangle shaped trusses had experienced significant decay at the point at which they sat atop the church's walls. This decay caused the trusses to slide down the walls and push them outward such that the only things still holding the roof up were the ceiling and the friction between the ends of the trusses and the walls. Upon discovering this, the church had bracing placed on the outside and inside of the church to keep the entire building from collapsing and sought indemnity from State Auto. State Auto denied the claim on the basis that the entire building had not fallen to the ground, and the Muhlenberg Circuit Court later entered summary judgment in State Auto's favor based on its conclusion that the church had not collapsed pursuant to *Niagara Fire Ins. Co. v. Curtsinger*, 361 S.W.2d 762 (Ky. 1962) and *Thiele v. Kentucky Growers Insurance Company*, 522 S.W.3d 198 (Ky. 2017). The Supreme Court reversed the entry of summary judgment and remanded for further proceedings. It held the roof had collapsed under the standard articulated in *Curtsinger* and *Thiele*: "to break down or go to pieces suddenly, especially by falling in of sides; to cave in." The Court rejected State Auto's contention that the entire building had to fall to the ground before coverage was available because the policy specifically provided coverage in the event that "part of" the building collapsed. Adopting State Auto's argument would render that provision of the policy meaningless. Moreover, State Auto's interpretation would render

coverage under the policy illusory. The insured had mitigated the damage to the church in accordance with its duty under the policy, and State Auto denied coverage on the basis that the insured did not allow the entire building to fall to the ground. Yet, if the insured would have allowed the entire building to fall to the ground, State Auto would have undoubtedly denied coverage based on the insured's failure to fulfill its duty to mitigate damage.

B. *Motorists Mutual Insurance Company v. First Specialty Ins. Corp.*, 706 S.W.3d 120 (Ky. 2024)

Opinion of the Court by Chief Justice VanMeter. All sitting. Bisig, Lambert, and Nickell, JJ., concur. Conley, J., concurs in part and dissents in part by separate opinion in which Keller and Thompson, JJ., join. On review from the Court of Appeals reversing the Jefferson Circuit Court's order finding Motorists Mutual and First Specialty's "other insurance" provisions were mutually repugnant excess clauses. The Court of Appeals held First Specialty's "other insurance" provision was a nonstandard escape clause based in part on an earlier decision, *Empire Fire & Marine Ins. Co. v. Haddix*, 927 S.W.2d 843 (Ky. App. 1996). The Supreme Court reversed the Court of Appeals, overruled *Haddix*, and held the "other insurance" provisions were mutually repugnant excess clauses. The central issue in this case was whether the conflicting "other insurance" provisions are excess clauses or escape clauses. The Jefferson Circuit Court held the "other insurance" provisions were mutually repugnant excess clauses, and the parties share primary liability for the loss. The circuit court rejected Motorists Mutual's argument that an indemnification provision in a service agreement resulted in primary coverage for First Specialty and excess coverage for Motorists Mutual. The Court of Appeals disagreed and held that First Specialty's "other insurance" provision was a nonstandard escape clause because the language was virtually identical to the nonstandard escape clause in *Haddix*. Finding that First Specialty had a nonstandard escape clause, the Court of Appeals held Motorists Mutual was responsible for primary coverage and First Specialty responsible for excess coverage. The Supreme Court held the two "other insurance" provisions were mutually repugnant excess clauses because both provisions are indistinguishable in intent and meaning. Both provisions accomplish the goal of limiting liability with the defined risk as excess over valid and collectible insurance. As mutually repugnant excess clauses, the two insurers must apportion loss, and the appropriate apportionment here is for Motorists Mutual and First Specialty to contribute equal shares. This holding overruled *Haddix* because First Specialty's near identical "other insurance" provision to the one in *Haddix* is in fact an excess clause and not a nonstandard escape clause. The Supreme Court also held that Motorists Mutual failed to preserve its indemnification argument by not filing a cross-appeal and waiving the argument before the Court of Appeals. Accordingly, the Supreme Court reversed the Court of Appeals and remanded to the Jefferson Circuit Court for further proceedings.

C. *Hill v. State Farm Mutual Automobile Insurance Company*, 709 S.W.3d 232 (Ky. 2025)

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

interpretation of an insurance contract and determination of whether a minor child in the sole legal custody of one parent qualifies as a "resident relative" under the custodial parent's insurance policy if the child is staying elsewhere at the time of an automobile accident. Seventeen-year-old Tyler Delonjay struck another vehicle and Jessica Hill suffered injuries and lost a pregnancy. While Tyler's father, Jason, had sole physical custody of Tyler, Tyler was staying with his Aunt Suzanne or various friends at the time of the incident. Jason maintained an insurance policy with State Farm, which provided coverage if Tyler was a "resident relative." However, the policy did not define residency. Hill filed a suit in Jefferson Circuit Court, and the trial court granted summary judgment in favor of State Farm denying coverage. The Court of Appeals affirmed, reasoning that Tyler not physically living at his father's residence at the time of the accident was the controlling factor in denying coverage. The Court of Appeals neglected to mention Tyler's status as a minor or the family court custody orders. On appeal, the Supreme Court determined that the term "resident relative" was ambiguous, and Kentucky law requires the language to be construed in favor of coverage. The Court found Tyler's status as a minor pertinent to its decision. A minor child cannot be "in the wind" with no home or residence, and therefore Tyler's legal domicile was with his father. In the nine years prior to the accident, Tyler resided with his father 97 percent of the time, Tyler was Jason's biological son, and the rights and responsibilities Jason had over Tyler remained in place at the time of the accident. Because ambiguous terms are construed against the drafter of the policy, coverage existed under the State Farm policy. Further, actual physical residence on the date of the accident, while relevant, is not the controlling factor in determining coverage.

XVII. JUDICIAL CONDUCT COMMISSION

Jameson v. Judicial Conduct Commission, 701 S.W.3d 236 (Ky. 2024)

Opinion of the Court by Justice Lambert. VanMeter, C.J.; Bisig, Conley, Keller, Lambert, and Thompson, JJ., sitting. Conley and Keller, JJ., concur. Thompson, J., concurs by separate opinion. VanMeter, C.J., concurs in part and dissents in part by separate opinion in which Bisig, J., joins. Bisig, J., concurs in part and dissents in part by separate opinion. Nickell, J., not sitting. James Jameson appealed the Judicial Conduct Commission's order and supplemental order finding that he committed seven counts of misconduct and ordering his permanent removal from office. The Supreme Court affirmed in part and reversed in part. The Court held SCR 4.020(2) precluded the Commission from bringing misconduct charges against a judge from an alleged abuse of his or her contempt powers absent an appellate court holding the judge had abused those powers or an allegation that the abuse was gross and persistent. The Court held the inclusion of laypersons on the Commission did not violate the Due Process Clauses of the Kentucky and U.S. Constitutions. Finally, while the Court held the Commission did not prove all of its allegations, it proved misconduct sufficient to warrant Jameson's removal from office. However, it held the Commission lacked the power to permanently remove a judge from office, as §109 of the Kentucky Constitution grants the power of impeachment solely to the General Assembly.

XVIII. OPEN RECORDS ACT

Shively Police Department v. Courier Journal, Inc., 701 S.W.3d 430 (Ky. 2024)

Opinion of the Court by Justice Keller. VanMeter, C.J.; Conley, Lambert, and Nickell, JJ.; and Key and Harned, S.J., sitting. VanMeter, C.J.; Conley, Lambert, and Nickell, JJ.; and Harned, S.J., concur. Key, S.J., concurs in part and dissents in part by separate opinion. Bisig and Thompson, JJ., not sitting. The Shively Police Department (SPD) appealed from an adverse decision of the Court of Appeals, partially vacating the Jefferson Circuit Court's order granting summary judgment in favor of SPD. Issues included whether SPD properly complied with the Open Records Act when it denied the *Courier Journal*'s request for public records on the sole basis that those records pertained to an ongoing law enforcement investigation. Pursuant to the Open Records Act, the *Courier Journal* requested several public records from SPD related to a July 2020 police pursuit that ended in fatality. SPD denied the *Courier Journal*'s request in full, relying on multiple exceptions to the Open Records Act's mandatory disclosure provisions. Specifically, SPD contended that the requested records were exempt pursuant to KRS 61.878(1)(h), the Open Records Act's "law enforcement exemption." SPD also argued that a separate statute, KRS 17.150(2), allowed it to withhold the requested records because those records pertained to an ongoing criminal prosecution. Last, SPD argued that certain video records were exempt from disclosure pursuant to KRS 61.878(1)(a), the "personal privacy exemption" to the Open Records Act. The Supreme Court held that SPD had failed to meet its burden of proof under the law enforcement exemption because it did not adequately prove that the release of the requested records would pose "a concrete risk of harm to the agency in the prospective action." *City of Fort Thomas v. Cincinnati Enquirer*, 406 S.W.3d 842, 851 (Ky. 2013). The Supreme Court further held SPD had prematurely relied on KRS 17.150(2) to withhold its public records because that statute governs only the mandatory disclosure of "intelligence and investigative reports" *after* the related criminal prosecution has been completed or a determination not to prosecute has been made. Finally, the Supreme Court held SPD had failed to prove that certain portions of the requested video records were exempt pursuant to the personal privacy exemption. The Supreme Court remanded to the Jefferson Circuit Court for further proceedings regarding the release of the requested records.

XIX. PERSONAL JURISDICTION

Baum v. Aldava, 2024-SC-0182-DGE, 2025 WL 1197433 (Ky. Apr. 24, 2025)

Opinion of the Court by Justice Thompson. All sitting. Lambert, C.J.; Bisig, Conley, Goodwine, and Keller, JJ., concur. Nickell, J., concurs in result only by separate opinion. Alyssa Baum fled to her family in Kentucky to escape abuse at the hands of Justin Aldava. Baum brought with her the couple's child and filed an application for an Emergency Protective Order (EPO) to protect her and the child, which was granted by the Jefferson Family Court. Aldava was not a resident of Kentucky, had not committed any acts of domestic violence in Kentucky, and Kentucky did not possess personal jurisdiction over him. Following a hearing in which Aldava appeared and was represented, the family court entered a Domestic Violence Order (DVO) in favor of Baum and the couple's child which also granted temporary custody of the child to Baum and prohibited Aldava from owning or possessing firearms. In a prior opinion, this Court determined that the physical location of the couple's child in Kentucky gave courts of

the Commonwealth jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) (KRS 403.800 to 403.880), to resolve custody issues presented by a separate custody action also filed by Baum in Kentucky. *Aldava v. Johnson*, 686 S.W.3d 205 (Ky. 2024). Following the family court's entry of the DVO in favor of Baum, the Court of Appeals reversed determining the family court did not have personal jurisdiction over Aldava, he had not waived his defense of lack of personal jurisdiction, and therefore the family court erred by entering a DVO that did more than prohibit Aldava from breaking the law by approaching Baum and, thus, the family court's temporary custody determination and its firearms restrictions violated Aldava's due process rights. The Supreme Court affirmed the Court of Appeals determination that the family court could enter a DVO prohibiting Aldava from contacting Baum but reversed the Court of Appeals' decision to the extent the Supreme Court determined that Aldava had waived the defense of a lack of personal jurisdiction and was therefore subject to the full extent of DVO protections available in the Commonwealth under KRS Chapter 403. Furthermore, DVOs which grant temporary custody of children may be entered against non-resident respondents in accord with KRS 403.828(1) and may be entered in favor of minors themselves against non-resident parents pursuant to KRS 403.725(1)(b) and KRS 403.727. Regarding firearms possession, the Court also determined that Kentucky courts may prohibit a non-resident, who was not otherwise subject to the jurisdiction of our courts, from obtaining or possessing firearms within the borders of our Commonwealth but that such orders cannot disturb the rights of those non-residents while they remain outside the confines of our state. Finally, the Court determined that entry of the DVOs in the Law Information Network of Kentucky (LINK) pursuant to KRS 403.751(2) does not violate non-residents' due process rights. Justice Nickell concurred in result only; he would have ended the Court's analysis once it was determined that Aldava waived the defense of lack of personal jurisdiction.

XX. PROBATE LAW

A. *Davenport v. Kindred Hospitals Limited Partnership*, 709 S.W.3d 137 (Ky. 2024)

Opinion of the Court by Chief Justice VanMeter. VanMeter, C.J.; Bisig, Conley, Keller, Lambert, and Nickell, JJ., sitting. Bisig, Conley, Keller, and Nickell, JJ., concur. Lambert, J., dissents by separate opinion. Thompson, J., not sitting. This appeal asked the Court to resolve when during probate proceedings an order of appointment becomes effective, at its signing by the judge or upon its notation into the civil docket by the clerk. The Supreme Court determined the order becomes effective at the time it is signed by the judge, affirming the Court of Appeals. Dianna Davenport was appointed the personal representative of the Estate of Penny Ann Simmons. The order of appointment was signed by the trial judge on September 11, 2018, but was not entered into the record by the clerk until September 21, 2018. On September 20, 2019, Davenport filed a medical malpractice/wrongful death suit against Kindred Hospitals on behalf of the Estate. The trial court granted Kindred's motion to dismiss, ruling Davenport had one year from the signing of the order to bring her action. The Court of Appeals affirmed. The Supreme Court held although orders generally become effective upon their entry into the record pursuant to CR 58(1), an exception exists for special statutory proceedings wherein statutory directives can trump our rules pursuant to CR 1(2). Finding probate proceedings to be one such special statutory proceeding, the Court held the provisions of KRS 395.105 controlled, and

Davenport's appointment became effective with the judge's signature. Accordingly, Davenport had one year from September 11, 2018, to bring the action on behalf of the Estate, which she failed to do. The action was therefore time-barred.

B. *Corner v. Popplewell*, 701 S.W.3d 519 (Ky. 2024)

Opinion of the Court by Justice Conley. All sitting. VanMeter, C.J.; Bisig, Lambert, Nickell, and Thompson, JJ., concur. Keller, J., concurs in result only. In this case "Sam" Dunbar died without issue and left a will leaving the entirety of his estate to Connie Corner. Tyler Popplewell was Dunbar's grandson and challenged the validity of the will alleging undue influence and fraud. Once the statute of limitations had lapsed, Corner filed a motion to dismiss based on Tyler's lack of statutory standing. The trial court granted the motion. Tyler appealed and the Court of Appeals reversed the trial court based on *Harrison v. Leach*, 323 S.W.3d 702 (Ky. 2010). In *Harrison*, the Supreme Court held the defense of statutory standing must be raised "at the outset of litigation." *Id.* at 708-09. Corner filed a motion for discretionary review which the Supreme Court granted. The Supreme Court affirmed the Court of Appeals and held the defense of statutory standing must be raised in the response to the complaint or it is deemed waived.

XXI. QUALIFIED OFFICIAL IMMUNITY

A. *Morales v. City of Georgetown, Kentucky*, 709 S.W.3d 146 (Ky. 2024)

Opinion of the Court by Justice Keller. All sitting. VanMeter, C.J.; Conley, Lambert, and Nickell, JJ., concur. Thompson, J., concurs in result only. Bisig, J., concurs in part and dissents in part by separate opinion. Former Scott County Sheriff's Deputy Jaime Morales was tragically shot in the line of duty and paralyzed during a September 2018 law enforcement operation to apprehend an alleged bank robber. Morales thereafter brought a negligence suit against multiple employees of the City of Georgetown ("City") and the Georgetown Police Department ("GPD"). The Scott Circuit Court entered summary judgment in favor of the defendants after concluding that they were each immune from Morales' claims. The Court of Appeals affirmed in part and reversed in part. The Supreme Court thereafter granted review to consider whether the individual defendants were entitled to qualified official immunity and whether the City and the GPD were entitled to immunity under the Claims Against Local Government Act. The Supreme Court held the police officer alleged to have inadvertently shot Morales was entitled to qualified official immunity from claims arising from his discretionary action of firing his service weapon. The Court also held the lieutenant who supervised the law enforcement operation leading up to Morales' injury was entitled to qualified official immunity from Morales' claims that he failed to adequately supervise his subordinates and failed to require them to don protective tactical vests during the operation. The Court also held genuine issues of material fact precluded summary judgment on Morales' claims that the lieutenant had breached his ministerial duties to create a plan or remove team members from the Special Response Team who had unexcused absences from trainings and missions. The Court further held the City and the GPD could be held vicariously liable for their employees' negligence in carrying out their ministerial duties. Finally, the Court held

the Claims Against Local Governments Act immunized the City and GPD from Morales' claims that they were directly negligent in causing his injuries. Accordingly, the Court remanded to the Scott Circuit Court for further proceedings.

B. *Sheehy v. Volentine*, 706 S.W.3d 229 (Ky. 2024)

Opinion of the Court by Justice Conley. All sitting. VanMeter, C.J.; Bisig, Keller, Lambert, and Nickell, JJ., concur. Thompson, J., concurs by separate opinion. Officer Henry Volentine, a deputy of the Hardin County Office of Sheriff, initiated a traffic stop of Maurice Green on October 14, 2014. Green pulled over into a Speedway parking lot. As Officer Volentine approached Green's vehicle, Green took off through the parking lot. Volentine testified he thought Green had struck a woman with his car and almost struck a male who had to jump to avoid being hit. Therefore, Volentine pursued Green. The pursuit occurred on two-lane road, during the middle of the day, reaching speeds up to 80 miles per hour. At one point, Green swerved into the oncoming traffic lane to avoid a red light. Volentine testified that Green posed an extreme safety hazard to the public at this time onward, but he did not cease pursuit. Green eventually struck Susan Sheehy head-on, and litigation ensued. Sheehy argued Volentine had violated three policies of the Hardin Office of Sheriff: the policy limiting pursuits to persons who had or were believed to have had committed a violent felony capable of causing death or serious physical injury; failure to get approval for the pursuit from a higher authority; and failure to terminate pursuit when the pursuit posed an extreme safety hazard to the public. Volentine argued he was covered by qualified official immunity.

Based on video footage from Speedway, the trial court concluded Volentine did not have a good faith belief that Green had struck a female or almost struck a male with his car. The trial court concluded there was no female in the video, and the video did not show the male near to, in danger of, or even reacting to Green's vehicle. In brief, Volentine lacked a reasonable basis in fact to believe Green had committed a violent felony that could have caused death or serious physical injury. Volentine never challenged these factual findings as clearly erroneous on appeal. The trial court also concluded Volentine had a ministerial duty to get approval to continue pursuit or to cease pursuit absent approval and to cease pursuit when it posed an extreme safety hazard, which he failed to do. Therefore, qualified immunity did not apply. The Court of Appeals reversed. It held the trial court had improperly relied upon video evidence and should have only considered Volentine's testimony to determine if he had a good faith basis to initiate pursuit. It held Volentine's failure to get approval from a higher authority to continue pursuit was mistaken but reasonable under the circumstances, since Volentine could not contact any higher authority via two-way radio. Finally, it held Volentine had discretion to determine for himself whether the pursuit posed an extreme safety hazard; therefore, the ministerial duty did not apply.

The Supreme Court, in a 6-1 opinion authored by Justice Conley with Justice Thompson concurring by separate opinion, reversed. The Court held the trial court was allowed to admit the Speedway video footage into evidence as it was clearly relevant, and there was no authority cited by the Court of Appeals to conclude that a trial court may not rely upon video evidence in qualified immunity determinations.

The Court noted that where video evidence and the testimony of the officer are irreconcilable, that presents a question of credibility and weight of evidence within the trial court's authority to resolve, subject to clear error review. Because Volentine never appealed the trial court's factual conclusions about what the video footage showed, he had not preserved a claim of clear error, and the Court of Appeals erred. Therefore, the trial court was affirmed.

As to the other policies, the Court affirmed they were ministerial. Thus, any question of Volentine's compliance with them was a question for the jury to determine through the lens of negligence. While a jury may agree Volentine did not act negligently when he failed to get approval to continue pursuit because he could not contact any superior officers via two-way radio, the policy was emphatic and without caveat that an officer must have approval to continue pursuit from a superior officer and in absence of approval, the pursuit must be terminated. Likewise, the policy was emphatic that a pursuit must be terminated when it posed an extreme safety hazard to the public, which Volentine admitted it did for several minutes prior to Green's collision with Sheehy. The Court rejected the proposition that Volentine's discretion to determine whether an extreme safety hazard was present transformed the ministerial duty into a discretionary authority. The Court reiterated "[r]ecasting an otherwise ministerial duty as discretionary simply because it required some modicum of discretion of judgment 'would undermine the rule that an act can be ministerial even though it has a component of discretion.'" *Patton v. Bickford*, 529 S.W.3d 717, 728 (Ky. 2016) (*quoting Marson v. Thomason*, 438 S.W.3d 292, 302 (Ky. 2014)). The Court determined Volentine was not entitled to qualified official immunity; therefore, Hardin County Office of Sheriff was not entitled to governmental immunity pursuant to the General Assembly's waiver in KRS 70.040. The Court remanded to the trial court for further proceedings.

XXII. SANCTIONS

Bruenger v. Miller, 706 S.W.3d 247 (Ky. 2024)

Opinion of the Court by Justice Nickell. All sitting. VanMeter, C.J.; Conley, Keller, Lambert, and Thompson, JJ., concur. Bisig, J., concurs in part and dissents in part by separate opinion. In a divorce proceeding, Donna Miller Bruenger was awarded the proceeds of her ex-husband's Federal Employee's Group Life Insurance ("FEGLI") policy. Upon the ex-husband's death, however, the insurance carrier distributed the proceeds to Courtenay Ann Miller, the ex-husband's daughter from a different relationship, because the divorce judgment had not been provided to the ex-husband's employer in accordance with federal law. Bruenger filed a declaratory judgment action seeking entitlement to recover the proceeds from Miller. On December 9, 2020, the trial court entered summary judgment in favor of Miller, concluding "there is no remedy available to Ms. Bruenger as a matter of law or equity against Ms. Miller." On December 14, 2020, the trial court conducted a status conference by telephone to clarify whether any additional claims remained pending. At the time of the conference, the trial court did not have the record before it and Miller had not yet received a copy of the judgment. From the bench, the trial court indicated it believed that additional issues remained pending but ultimately instructed the parties to review the judgment for themselves and seek additional relief if necessary. Approximately two and a

half months later, Bruenger requested the trial court to designate the judgment as final and appealable. The trial court granted Bruenger's request over Miller's objection. The Court of Appeals dismissed the appeal as untimely upon a conclusion that the judgment was final upon entry because it disposed of all the pending claims. Subsequently, Bruenger filed a motion for relief under CR 60.02 requesting the trial court to vacate and re-enter the judgment. The trial court granted CR 60.02 relief on the basis of mistake, and Bruenger filed a second appeal. On its own motion, the Court of Appeals dismissed the appeal and awarded attorney's fees as a sanction for the filing of a frivolous appeal. On discretionary review, the Supreme Court affirmed in part and reversed in part. The Supreme Court held that due process requires a party or attorney to receive notice and an opportunity to be heard before sanctions may be imposed for the filing of a frivolous appeal. However, the Supreme Court concluded that remand was unnecessary because Bruenger's appeal was properly dismissed as untimely because CR 60.02 cannot be used for the sole purpose of extending the time for filing an appeal. While Bruenger and the trial court may have misinterpreted the scope of the judgment, this error constituted a mistake of law which CR 60.02 relief will not lie to correct.

XXIII. STATUTE OF LIMITATIONS

Ramsey v. Dapple Stud, LLC, 701 S.W.3d 529 (Ky. 2024)

Opinion of the Court by Chief Justice VanMeter. All sitting. Bisig, Conley, Lambert, Nickell, and Thompson, JJ., concur. Keller, J., concurs in result only. On review from the Court of Appeals affirming the Fayette Circuit Court's summary judgment rulings in favor of Dapple Stud and Dapple Sales; order requiring Hickstead Farm and Ramsey pay restitution to Dapple Stud; and the dismissal of Hickstead Farm and Ramsey's third-party complaints against Mike Akers. The Supreme Court reversed the Court of Appeals' opinion affirming summary judgment in favor of Dapple Stud and Dapple Sales and orders for Hickstead Farm and Ramsey to pay restitution. The Supreme Court affirmed the Court of Appeals' opinion upholding the Fayette Circuit Court's dismissal of Hickstead and Ramsey's third-party complaints against certain causes of action against Dapple Sales and all causes of action against Mike Akers. The central issue in this case was whether the Court of Appeals erred in granting summary judgment for Dapple Stud and Dapple Sales when Akers entered into consignment contracts with Hickstead Farm and Ramsey. The Fayette Circuit Court held Hickstead Farm and Ramsey did not enter into valid contracts with Dapple Stud, and Dapple Stud did not receive the horse sales proceeds. The Court of Appeals affirmed the trial court's order rulings. The Supreme Court held that Mike Akers, acting as Dapple Stud's manager, entered into valid consignment contracts with Hickstead and Ramsey. The terms of the consignment contracts were for the consigning agent to sell the horses at auction in exchange for a flat fee of $1,500 per horse and a commission of 3 percent for any amount over $20,000. Hickstead and Ramsey had prior dealings with Akers and knew he was Dapple Stud's manager. Dapple Stud and Dapple Sales were both structured as manager-managed LLCs. Under KRS 275.135(2)(b), Akers had authority as manager of Dapple Stud to carry on the usual way of business or affairs of the LLC. The fact that Akers subsequently mis-appropriated funds from Dapple Sales after it received checks for the horse sales proceeds is immaterial. Dapple Stud was the consigning agent for Ramsey and Hickstead Farm. The Supreme Court affirmed the lower courts' dismissal of third-party complaints against Dapple Sales and Akers because the causes of actions are barred by their applicable statute of

limitations. Hickstead Farm and Ramsey filed the third-party complaints too late, and the relation-back doctrine does not save these complaints because Hickstead Farm and Ramsey cannot satisfy the mistake element of CR 15.03. Accordingly, the Supreme Court reversed the Court of Appeals' summary judgment rulings and orders to pay restitution but affirmed the dismissal of the third-party complaints of certain causes of action against Dapple Sales and all causes of action against Akers.

XXIV. TORTS

A. *T & J Land Co., LLC v. Miller*, 701 S.W.3d 380 (Ky. 2024)

Opinion of the Court by Justice Bisig. All sitting. VanMeter, C.J.; Nickell and Thompson, JJ., concur. Keller, J., concurs in result only. Conley, J., dissents by separate opinion in which Lambert, J., joins. Appellee Miller was patronizing a business in a building owned by Appellant T & J Land Co. when a vehicle left the parking lot and entered the building, causing injury to Miller. After receiving basic reparations benefits from the driver's insurer, Miller brought suit against T & J Land Co. for negligence. The Knox Circuit Court dismissed the suit as untimely under KRS 413.140's one-year statute of limitations for personal injury claims. The Court of Appeals reversed, finding Miller was entitled to the two-year statute of limitations period set forth in the Motor Vehicle Reparations Act (MVRA). The Supreme Court granted discretionary review, reversed the Court of Appeals, and reinstated the ruling of the Knox Circuit Court. The Supreme Court held that although Miller was injured by an automobile, his claim was not within the scope of the MVRA because neither he nor the building owner he sued were involved in the ownership or operation of a motor vehicle at the time of the accident. Rather, Miller's claim was in the nature of a premises liability action, and thus subject to the one-year statute of limitations for personal injury claims.

B. *Wooster Motor Ways, Inc. v. Gonterman*, 701 S.W.3d 511 (Ky. 2024)

Opinion of the Court by Chief Justice VanMeter. All sitting. All concur. This appeal asked the Court to determine the boundaries of the Firefighter's Rule when an independent event causes injury to a first responder during the execution of his duties. Finding the Rule to not apply to independent acts of negligence, the Court affirmed the Court of Appeals. State Trooper Michael Gonterman was called to a scene on Interstate 71 involving loose dogs in the road along an overpass. Gonterman pulled his car onto the shoulder prior to the overpass and met with John Crawford who was attempting the corral the dogs. As the two were walking along the narrow overpass shoulder with the dogs, a car, box truck, and tractor trailer – following each other in that order at close distance – approached the scene. As the car approached, the driver pulled into the left lane and braked to match her speed with traffic. The drivers of the box truck and tractor trailer moved into the left lane as well. As the car slowed, the box truck was unable to match its deceleration and swerved into the right lane, braking hard. The tractor trailer was similarly unable to brake sufficiently and swerved into the right lane behind the slowed box truck. The tractor trailer impacted the box truck, pushing it onto its side and into Gonterman and Crawford. Crawford was killed by the impact and Gonterman was knocked off the overpass, causing

serious injuries. Gonterman brought an action against the drivers of the trucks and their employers. The trial court granted the drivers summary judgment, ruling the Firefighter's Rule barred the claim. The Court of Appeals reversed, holding the drivers could not satisfy the test laid out in *Sallee v. GTE South, Inc.*, 839 S.W.2d 277 (Ky. 1992). The Supreme Court affirmed the Court of Appeals, holding the drivers of the trucks could not satisfy the first and third prongs of *Sallee*. As to the first prong, the Court determined the drivers were not part of the class of persons whom the Rule was meant to protect as they did not own or occupy the highway, nor did they have a direct connection to the dogs or request assistance with the dogs. Regarding the third prong, the Court held the Rule does not extend to injuries caused by independent or intervening acts of negligence such as that of the truck drivers. Accordingly, the Rule did not apply the bar suit against the drivers and, by extension, their employers.

C. *Deramos v. Anderson Communities, Inc.*, 709 S.W.3d 197 (Ky. 2025)

Opinion of the Court by Justice Bisig. Lambert, C.J.; Bisig, Conley, Keller, Nickell, and Thompson, JJ., sitting. All concur. Goodwine, J., not sitting. Kimberly Deramos, a resident of Anderson Communities, Inc., was walking her dog and was attacked by a dog she alleged was owned by a neighboring tenant. Deramos suffered injuries and her dog died as a result of the attack. Deramos filed a negligence suit against Anderson Communities in Jefferson Circuit Court. The circuit court dismissed her claim, relying on the strict liability dog-bite rule found in KRS 258.235(4). The trial court held that Anderson Communities did not qualify as a dog owner under the statute and therefore could not be held strictly liable. The Court of Appeals affirmed and adopted the same reasoning. Importantly, Deramos did not rely on this statute in her complaint. On appeal, the Supreme Court reversed and held the strict liability dog-bite statute is inapplicable to Deramos' claim. The Court noted the dog-bite statutes have undergone changes in recent years that reflect legislative intent to narrow the circumstances where a landlord could be considered a statutory owner of another person's dog. The Court emphasized the differences between a negligence claim and a strict liability claim. Deramos' claim alleged negligence on behalf of Anderson Communities. Because Deramos did not invoke the statutory dog-bite strict liability scheme, the circuit court erred in dismissing her claim by applying strict liability precedent and principles. The case was remanded to the Jefferson Circuit Court for further proceedings.

XXV. WORKERS' COMPENSATION

A. *Laboratory Corp. of America v. Smith*, 701 S.W.3d 228 (Ky. 2024)

Opinion of the Court by Justice Nickell. All sitting. All concur. Smith sustained acute lower back injuries when a shelving unit collapsed, striking him on the head and knocking him to the floor. Subsequent surgical intervention did not alleviate his symptoms. Examining physicians utilized different methods of assessing permanent impairment for the physical injury. The surgeon and treating physician assessed 24 percent impairment ratings with 5 percent attributable to pre-existing conditions, while the physician for the employer assessed a 10 percent impairment rating and attributed the entirety to pre-existing, active conditions. Smith also claimed

psychological injuries. Labcorp's examining professional concluded no work-related psychological impairment existed and assessed a 0 percent impairment rating. Smith's examining psychologist diagnosed a Class II impairment but refrained from assessing a percentage of impairment as he was unconvinced claimant had reached maximum medical improvement (MMI) because Smith had not received treatment for his mental health issues. Several weeks later, upon learning Labcorp would not pay for mental health treatment and Smith could not afford same, the psychologist provided an addendum to his report concluding Smith was at MMI and assessing a 20 percent impairment rating. The ALJ concluded Smith sustained a work-related injury but accepted the employer's physician's 10 percent overall impairment rating and Smith's physician's apportionment of 5 percent to pre-existing conditions as most appropriate. The ALJ also awarded benefits for a work-related psychological injury, accepting Smith's psychologist's 20 percent rating. Labcorp appealed and Smith cross-appealed. The Board affirmed. Both parties appealed, reasserting the same arguments presented to the Board, and the Court of Appeals affirmed. The Supreme Court affirmed the Court of Appeals, noting the arguments presented were identical to those raised and rejected at all levels below. Both parties were merely asserting the ALJ chose the wrong expert in reaching its decision on an impairment rating. The Court concluded the reports issued by the physicians were grounded in and conformed to the AMA *Guides*. Although conflicting evidence was presented and each party advocated for a different result based on their own assessment of the proof, the ALJ properly weighed the evidence and assessed what it believed was an appropriate impairment rating. As the parties presented no new or novel questions of law, challenged no existing precedents, raised no constitutional issues, and all questions had previously been thoroughly analyzed by the lower tribunals, the case merited no further appellate oversight.

B. *Thompson Catering & Special Events v. Costello*, 701 S.W.3d 541 (Ky. 2024)

Opinion of the Court by Justice Nickell. All sitting. All concur. Appellant was sent by her employer to a work-related conference in Las Vegas. After the conference had concluded, but before her return flight to Kentucky, Appellant checked her baggage with hotel staff and left the hotel "for a few minutes" to buy souvenirs for family members. While exiting the hotel, Appellant suffered a serious ankle injury when she tripped and fell on stairs. The ALJ dismissed Appellant's claim for workers' compensation benefits. The ALJ determined the travelling employee exception to the going and coming rule was inapplicable because Appellant's personal shopping errand constituted a substantial deviation from the work-related purpose of the trip. Relying on foreign authority, the Board reversed the ALJ, and the Court of Appeals affirmed the Board. However, based solely on longstanding Kentucky precedent, the Supreme Court held the ALJ had misapplied the travelling employee exception, reinstated Appellant's claim, and remanded for further proceedings. The Court explained determination of a *significant* deviation from a traveling employee's course of employment must be based upon the totality of circumstances, with no single factor being wholly determinative. Although the Appellant's intervening shopping errand was admittedly purely personal, the Court held other preeminent, undisputed, and relevant factors compelled a finding in Appellant's favor when weighed together. These amalgamated dispositive factors included the momentary

duration of the personal errand, the occurrence of the errand during a period of enforced hiatus from work-related activities, and the employee's compelled presence at a distant location to accomplish work-related activities for the employer's sole benefit.

C. *Hall v. BPM Lumber, LLC*, 706 S.W.3d 191 (Ky. 2024)

Opinion of the Court by Justice Keller. All sitting. VanMeter, C.J.; Bisig, Lambert, and Nickell, JJ., concur. Thompson, J., dissents by separate opinion in which Conley, J., joins. An ALJ dismissed Terry Hall's claim for permanent occupational disability benefits. The Workers' Compensation Board (Board) issued an order affirming in part, vacating in part, and remanding. Hall did not appeal the order to the Kentucky Court of Appeals. The ALJ then rendered a second amended opinion and order in accordance with the Board's remand. The Board again affirmed the ALJ, and Hall appealed to the Court of Appeals. The Court of Appeals held the Board's initial order was final and appealable. As a result, it held that Hall had failed to timely appeal the claims addressed in the Board's initial order and was precluded from raising them in a subsequent appeal. Hall thereafter sought review before the Supreme Court. The Supreme Court affirmed the Court of Appeals and held the Board's initial order was final and appealable. This Court looked to its precedent in *Whittaker v. Morgan*, 52 S.W.3d 567 (Ky. 2001), and held that a Board order containing multiple distinct directives should be analyzed for finality under the law of the case doctrine. Because Hall had failed to immediately appeal the initial order of the Board, he forfeited his ability to raise the affirmed issues again in a subsequent appeal. In reaching this decision, the Court also held that in workers' compensation cases, a party need not exhaust all administrative remedies prior to seeking judicial review. While KRS Chapter 13B requires exhaustion of remedies for administrative agencies generally, no parallel requirement exists in KRS Chapter 342 for workers' compensation cases.

D. *W.G. Yates & Sons Construction Co. v. Harvey*, 706 S.W.3d 132 (Ky. 2024)

Opinion of the Court by Justice Thompson. All sitting. All concur. The Supreme Court determined that the injuries sustained by an employee, who maintained a residence out of state but had accepted a position in Kentucky before later being injured while off-duty and riding his motorcycle, were not compensable work-related injuries under either the "traveling employee" or "service to employer" exceptions to Kentucky's going-and-coming rule.

XXVI. WRIT OF MANDAMUS

A. *Williams v. Thompson*, 2024-SC-0498-OA, 2025 WL 1197857 (Ky. Apr. 24, 2025)

Opinion of the Court by Justice Conley. All sitting. All concur. In a unanimous opinion written by Justice Conley, the Supreme Court denied Williams' petition for writ of mandamus because it determined Williams had an available albeit extraordinary remedy in the Court of Appeals to file a motion for reinstatement of his dismissed RCr 11.42 action. After the trial court denied his RCr 11.42 motion, Williams timely filed a notice of appeal pursuant to the Prison Mailbox Rule, RCr 12.04(5), according to the

prison mail logs. A delay, however, apparently caused by prison officials and their handling of his mail caused the notice not to be received by the clerk for some time. A further delay occurred before it was filed by the clerk. Thus, the notice of appeal appeared to be untimely to the Court of Appeals, which then issued a show cause order to Williams to explain why his appeal should not be dismissed as untimely. Once again, prison mail logs support Williams' contention that he timely filed a response to this order and, once more, a delay apparently attributable to prison officials caused this response to be untimely received by the Court of Appeals. The Court of Appeals dismissed Williams' appeal and all other attempts by Williams either through filing a motion for reconsideration or CR 60.02 were denied. Williams then sought a writ of mandamus in the Supreme Court to compel the Court of Appeals to file his last CR 60.02 motion. The Supreme Court denied the writ of mandamus because CR 60.02 is not an available remedy in the Court of Appeals. Moreover, relying on precedent regarding the reinstatement of appeals when dismissed through the misconduct of appellate counsel, the Court held, "if an appeal can be restored where ineffective assistance of counsel has lost it, then it seems manifest an appeal may be restored when lost through the conduct of prison officials who are not even the legal representative of the party before the Court." The Court then noted that Williams has a right of open access to the courts under both the Kentucky and the federal Constitutions, and a right to send and receive mail as well. Thus, the Court held, "[i]t is unpalatable in the extreme to countenance one constitutional right to be lost through the seemingly effective denial by prison officials of one or more other constitutional rights." Therefore, the Court reasoned this scenario justified an extraordinary remedy allowing Williams to file a motion for reinstatement in the Court of Appeals, further precluding a writ of mandamus. "Because Williams has a constitutional right to prosecute an appeal from the underlying RCr 11.42 action, a constitutional right to send and receive mail, and a right to send and receive legal mail subsidiary to the constitutional right to access the courts, we hold a motion for reinstatement of the appeal is an appropriate but extraordinary remedy to determine whether Williams did in fact comply with the Prison Mailbox Rule when he filed his Notice of Appeal."

B. *Peeler v. Simcoe*, 2023-SC-0481-MR, 2025 WL 1717575 (Ky. June 20, 2025).

Opinion of the Court by Justice Keller. All sitting. Lambert, C.J.; Bisig, Conley, Goodwine, and Nickell, JJ., concur. Thompson, J., concurs in result only. In April 2012, Glenn A. Peeler, Jr. ("Peeler") was convicted of two counts of complicity to commit robbery and of being a persistent felony offender. He was subsequently sentenced to 22 years' imprisonment. His sentence was affirmed on direct appeal to the Kentucky Supreme Court. In August 2013, Peeler filed a *pro se* motion to vacate, set aside, or correct sentence pursuant to RCr 11.42 due to alleged ineffective assistance of counsel at trial. The motion did not contain the proper verification pursuant to RCr 11.42(2). The trial court denied the motion on the merits and did not address the lack of proper verification. Peeler failed to timely appeal this denial. Following various attempts to set aside and obtain relief from his sentence, Peeler filed a petition for a writ of mandamus in the Court of Appeals. In his petition, Peeler sought a *nunc pro tunc* order that summarily dismissed his 2013 RCr 11.42 motion, noticed him that it was deficient, allowed him an opportunity to correct the

deficiency, and appointed him counsel. The Court of Appeals denied the petition. On appeal to the Kentucky Supreme Court, Peeler alleged the Court of Appeals abused its discretion in denying his petition for a writ of mandamus. Peeler averred that because his 2013 RCr 11.42 motion lacked proper verification pursuant to RCr 11.42(2), the trial court lacked jurisdiction to enter a ruling denying the motion on the merits. The Kentucky Supreme Court disagreed, holding Peeler had waived any issues related to jurisdiction and had an adequate remedy by appeal. Specifically, the Court held Peeler's allegation regarding his unverified motion involved a procedural mechanism in RCr 11.42 and thus related to whether the trial court had jurisdiction over the particular case. Because Peeler did not promptly raise this issue of particular case jurisdiction before the trial court, he waived it. Furthermore, the Court observed Peeler had an adequate remedy by appeal, but he simply failed to invoke it in a timely fashion. As a result, the Kentucky Supreme Court affirmed the Court of Appeals and denied Peeler's request for a writ of mandamus.

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About the Written Materials and Presentations

The KLU written materials are the result of the combined efforts of numerous dedicated professionals from around Kentucky and elsewhere. The KBA gratefully acknowledges the following individuals who graciously contributed to this publication:

Jared Burke
Robbie O. Clements
Rebekah Cotton
Stephen Embry
Jennifer Gaytan
Tressa Hamilton
Eric Harris
Robert A. Jenkins
Nima Kulkarni
Lori J. Reed
Jeffery L. Sallee
Sarah-James Sendor
Nichole Shelton
Misty Clark Vantrease
B. Scott West

Special Acknowledgments

Special thanks to the following KBA Sections, Committees, and other organizations whose participation and assistance with the 2025 Kentucky Law Update programs have been invaluable:

AppalReD Legal Aid
Casey Bailey & Maines PLLC
FNF Family of Companies
KBA Criminal Law Section
KBA Elder Law Section
KBA Law Practice Committee
KBA Office of Bar Counsel
Kentucky Access to Justice Commission
Kentucky Court of Appeals
Kentucky Legal Aid
Lawyers Mutual of Kentucky
Legislative Research Commission
Legal Aid of the Bluegrass
Legal Aid Society
New Americans Initiative
Supreme Court of Kentucky

Presentations are also made on a voluntary basis. To those who volunteer in this capacity, special gratitude is owed. Individuals who contribute to this program support the professional development of all members of the Kentucky Bar Association. We wish to express our sincere appreciation in advance to these individuals.

A special acknowledgment to the organizations, authors, presenters, moderators, and other 2025 Kentucky Law Update program volunteers will appear in the January 2026 issue of the *Bench & Bar*.

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The one-day, in-person 2025 Kentucky Law Update program is accredited for 6 CLE credits, including 2 ethics credits. The 2025 On-Demand Kentucky Law Update is accredited for 9.25 CLE credits, including 3 ethics credits. One credit is awarded for each 60 minutes of actual instruction, as noted on the agendas provided on the KBA website.

The Kentucky Bar Association's 2025 Kentucky Law Update programs are accredited CLE activities in numerous other jurisdictions. Credit categories and credit calculations vary from state to state. CLE reporting information for other states will be provided at the registration desk at the in-person programs. The out-of-state information for the on-demand sessions will be available on the program website.

Kentucky judges: don't forget you can claim CJE credit for attending this program.

REMEMBER: Reporting attendance credits is now done online. Visit the Kentucky Bar Association website for reporting information. The activity numbers for the in-person and on-demand programs are listed on the corresponding agendas and must be used to report credits through the Member CLE Portal.

Evaluations

The 2025 Kentucky Law Update is *your* program, and your input *is* valued and needed. Links to the program evaluations for the live, in-person programs will be provided to all registrants via email. A link for the on-demand evaluation will be located on the program webpage. Please take a few minutes to complete the evaluation. We appreciate your assistance in improving this program.

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