

KENTUCKY BAR ASSOCIATION

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Office of Bar Counsel

Jane H. Herrick
Chief Bar Counsel



MEMORANDUM

TO: KBA Board of Governors

FROM: Jane H. Herrick
Chief Bar Counsel

CC: John D. Meyers, Executive Director

RE: Bar Counsel's Report to the Board of Governors

DATE: January 12, 2018

The following information is presented for review by the Board of Governors at its meeting on January 19, 2018.

I. KENTUCKY SUPREME COURT

Orders

The Court issued three (7) final orders in discipline cases and one (1) final order in a reinstatement case since the last Office of Bar Counsel (OBC) report to the Board in November 2018. There were three (3) on the regular rendition day of November 2, 2017 and five (5) on the regular rendition day of December 14, 2017. The new orders are listed in chronological order of all Kentucky Supreme Court discipline and reinstatement Orders rendered to date in the 2017-2018 fiscal year. (Attachment A)

II. INQUIRY COMMISSION

Recent Complaint Disposition Activity

Matters presented by Bar Counsel:

	<i>Nov. 2017</i>	<i>Dec. 2017</i>	<i>Jan. 2018</i>
Complaints presented for disposition	18	22	22
Pre-Charge and Post-Charge Motions (and other administrative items)	26	15	13
TOTALS	44	37	35

Significant dispositions during these meetings:

	<i>Nov. 2018</i>	<i>Dec. 2017</i>	<i>Jan. 2018</i>
Charges Authorized	5	6	2
Private Admonitions Authorized	1	1	1
Private Admonitions with Conditions	1	2	1
Complaints Dismissed	8	11	14
Conditional Dismissals	2	0	1
Warning Letters/Dismissals Issued	1	1	0
Files Closed	2	1	0
Inquiry Commission Complaints Authorized	3	2	1
Investigations Authorized	6	6	8

In addition to motions presented at regular meetings of the Inquiry Commission, there were two (2) presented directly to the Panel Chairs in the month of November and two (2) motions presented in December.

The attached table presents the disciplinary system statistics to date for the 2017-2018 fiscal year. (Attachment B)

Two Inquiry Commission members had their terms to expire in November. The Court appointed attorneys Emily H. Cowles of Lexington and Mark B. Maier of Winchester to fill those vacancies. Lay member, Howard Bailey’s, term also expired and he has been reappointed for a second, two-year term.

Since the departure of Inquiry Commission Chair Greg Parson, Ret. Judge David H. Jernigan was appointed Chair. A chart is attached showing the new structure.

III. OFFICE OF BAR COUNSEL

Attorneys’ Advertising Commission

Volume/Revenue

The Commission received 24 Advisory Opinion requests during November and December 2017, which is a 43% decrease from the 42 Advisory Opinion requests taken in during

this same two month time period in 2016. For the six month period ending December 31, 2017, a total of 53 Advisory Opinion requests were received whereas the AAC took in 100 Advisory Opinion requests for the same six month period ending December 31, 2016. This is a 47% decrease in submissions in one year.

Below is a comparison of the revenue collected for the current fiscal year and during the same time period in 2016 for Advisory Opinion requests, evidencing a revenue decrease of approximately 48%:

<u>FY 2017-18</u> (07/01/17 – 12/31/17)	<u>FY 2016-17</u> (07/01/16 – 12/31/16)
\$4,075.00**	\$7,900.00

**Please note the revenue has been reduced by \$900.00 for monies to be refunded for the overpayment of filing fees.

As noted in the November Board report, lawyers and law firms do not appear to be advertising any less in print, radio, television, or online. Consequently, the decline in requests and revenue may partly be a result of advertisers not seeing the value in seeking an Advisory Opinion for every advertisement when many of their advertisements are similar to ones they have used in the past, but the main reason for the decline is most likely attributable to the elimination of the mandatory submission requirement to file. As a reminder, not submitting an advertisement to the Commission for review does not mean it is compliant with the advertising rules and regulations.

Education Outreach

On November 21, 2017 Deputy Bar Counsel Steven Pulliam gave a presentation at the Northern Kentucky Bar Ethics Seminar in Florence, Kentucky entitled “Advertising and Online Presence in the 21st Century” which emphasized internet and social media advertising.

A. Unauthorized Practice of Law

The UPL Committee last met on April 6, 2017 at the Bar Center. The Committee continues to respond to formal and informal advisory opinion requests, and the next Committee meeting is tentatively scheduled for Spring 2018.

B. Ethics and Professionalism Enhancement Program (EPEP)

Announcements to known participants about the upcoming Program on April 13, 2018 at the AOC will be sent around the end of the month. There are currently 11 participants.

C. Clients’ Security Fund (CSF)

The next Trustees’ meeting is scheduled for May 1, 2018.

**Supreme Court of Kentucky / Kentucky Bar Association
Disciplinary System Statistics
Fiscal Year 2017-2018**

2017-2018

Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	TOTAL
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I. Complaints received by KBA and reviewed by Bar Counsel, pursuant to SCR 3.160(1) and (3) *

95	82	56	100	87	69							489
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II. Initial review of Complaints by Bar Counsel and Chair of Inquiry Commission, pursuant to SCR 3.160

A.	Complaints returned as insufficient, pursuant to SCR 3.160.	27	17	14	16	12	18						104
B.	Complaint files opened; complaints forwarded to attorneys for response, pursuant to SCR 3.160(1).	12	15	19	20	6	11						83
C.	Complaints reviewed pursuant to SCR 3.160(3) (C) (Alternative Disposition).	23	21	12	11	11	11						89

III. Post Review Alternative Disposition of Complaints by Bar Counsel, pursuant to SCR 3.160

A.	Complaints reviewed pursuant to SCR 3.160(3) (E) and closed after preliminary investigation.	58	26	42	40	42	28						236
B.	Complaints resolved by warning letter, remedial ethics, KYLAP, or other diversion pursuant to SCR 3.160(3)(C).	1	0	0	0	2	0						3
C.	Complaints closed by informal resolution pursuant to SCR 3.160(3)(C).	27	14	14	12	10	5						82

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2017-2018

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IV. Other Bar Counsel files

A. Reinstatement files opened	3	1	2	1	1	0							8
B. Unauthorized practice files opened	0	4	1	1	2	1							9
C. Clients' Security Fund Claims	9	6	14	7	4	5							45

V. Inquiry Commission activity

A. Disposition of complaints following investigation by Bar Counsel, pursuant to SCR 3.170, 3.185 and 3.190

1. <i>Charges authorized pursuant to SCR 3.190</i>	2	4	7	3	5	6	2						29
2. <i>Private admonitions authorized pursuant to SCR 3.185</i>	1	3	4	2	1	1	1						13
3. <i>Private admonitions authorized with Conditions pursuant to SCR 3.185 (as of March 1, 2012)</i>	2	1	3	0	1	2	1						10
4. <i>Complaints dismissed pursuant to SCR 3.170</i>	9	6	5	7	8	11	14						60
5. <i>Conditional Dismissals pursuant to SCR 3.185</i>	0	0	0	0	2	0	1						3
6. <i>Warning letters /Dismissals approved pursuant to SCR 3.185</i>	2	0	0	1	1	1	0						5
7. <i>Closed Investigations and Complaints (includes files involving disbarred and deceased lawyers)</i>	6	2	4	2	2	1	0						17

**Supreme Court of Kentucky / Kentucky Bar Association
Disciplinary System Statistics
Fiscal Year 2017-2018**

2017-2018

Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	TOTAL
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B. Disciplinary cases initiated by Inquiry Commission, based on information presented by Bar Counsel, pursuant to SCR 3.160(2)

1. *Complaints authorized*

2	2	8	2	3	2	1						20
8	3	3	0	6	6	8						34

2. *Investigations authorized*

C. Motions heard pursuant to SCR 3.180, 3.285, and 3.290

0	4	2	14	15	6	0						41
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D. Other Motions heard by Panel Chairs

7	4	1	4	2	2							20
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**Supreme Court of Kentucky / Kentucky Bar Association
Disciplinary System Statistics
Fiscal Year 2017-2018**

2017-2018

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**VI. Supreme Court dispositions
(see separate chart for case names)**

A. Disbarment orders	*	0	7	*	0	1							8
B. Disciplinary suspension orders	*	1	11	*	1	2							15
C. Temporary suspension orders	*	0	0	*	0	0							0
D. Public reprimands	*	1	0	*	0	0							1
E. Private reprimands	*	0	0	*	0	2							2
F. Reinstatement & restoration orders	*	0	0	*	1	0							1
G. Disciplinary charges dismissed	*	0	0	*	0	0							0
H. Miscellaneous Orders	*	0	2	*	1	0							3

* No rendition date in July and October 2017.

Supreme Court Discipline, Reinstatement, and Restoration Orders
7/01/17 -- 6/30/18
(Chronological by Entry Date)

	Respondent or Applicant	Order Date	Case No.	SW Citation	Decision	Rule Violation	OBC Atty	OBC File No.
1	Bennett, Bryan E.	8/24/2017	2017-SC-000241-KB	2017 WL 3671014	Public Reprimand	1.3, 1.4(a)(4), 1.4(b), 1.15(a), 1.16(d) and 8.1(b)	SVC	16-DIS-0113
2	Gibson, Carl Wayne	8/24/2017	2017-SC-000247-KB	2017 WL 3634483	30 Day Suspension and refund \$250.00 to client	1.3, 1.4(a)(3), 1.4(a)(4) and 8.4(c)	STP	23109
3	Bader, Joseph K.	9/28/2017	2017-SC-000204-KB	2017 WL 4310500	30 Day Suspension	3.4(c) and 8.1(b)	ANB	23761
4	Grayson, Christy S.	9/28/2017	2017-SC-000240-KB	2017 WL 4310501	Indefinite Suspension	1.3, 1.4(a)(3) and (4), 1.16(d), 8.1(b), 8.4(c)	SVC	17-DIS-0026, 17-DIS-0027
5	Hoskins, Robert H.	9/28/2017	2017-SC-000266-KB	2017 WL 4321036	Permanent Disbarment		STP	17-RD-003
6	King, James G.	9/28/2017	2017-SC-000142-KB	2017 WL 4310897	Permanent Disbarment	1.3, 1.15(a), 8.4(b), 8.4(c)	ANB	16-DIS-0012, 16-DIS-0393, 17-DIS-0067, 17-DIS-0051,
7	Pruitt, Delbert K.	9/28/2017	2017-SC-000141-KB	527 S.W.3d 808	181 Day Suspension and KYLAP	1.4(a)(3) and (4), 3.4(c) and 8.1(b)	JHH	22631, 16-DIS-24372
8	Stewart, Alan R.	9/28/2017	2017-SC-000297-KB	527 S.W.3d 811	9 Month Suspension		ANB	17-RD-004
9	Thompson, Lauren	9/28/2017	2017-SC-000255-KB	2017 WL 4310503	3 Month Suspension		ALC	17-RD-002
10	Ulrich, Jerry L.	9/28/2017	2017-SC-000365-KB	527 S.W.3d 813	6 Month Suspension, probated 2 years	1.3, 1.4(a)(3), 1.15(a)and (b)	ANB	17-RD-005
11	Wibbels, Joseph D.	9/28/2017	2017-SC-000387-KB	527 S.W.3d 815	181 Day Suspension with 30 to serve, remainder probated for 5 years, KYLAP, EPEP, No new charges, Restitution	1.2, 1.3, 1.4, 1.5, 1.7, 1.16, 8.1, and 8.4(c)	ROC	18808, 18813, 19052, 19061, 19680
12	Bader, Joseph K.	11/2/2017	2017-SC-000312-KB	2017 WL 5061475	Indefinite Suspension	3.820(2)	ANB	16-DIS-0304
13	Morgan, Justin R.	11/2/2017	2017-SC-000396-KB	2017 WL 5056419	1 Year Suspension to run consecutively to any current suspension; Restitution	1.3, 1.4(a)(4), 1.5(a), 1.16(d), 8.1(b)	ALC	16-DIS-0105
14	Roberts, Nancy O.	11/2/2017	2017-SC-000388-KB	2017 WL 5037119	Reinstatement		ROC	23158R
15	Butler, Danny Perkins	12/14/2017	2017-SC-000530-KB	2017-WL-6379447	Permanent Disbarment	8.4(b) and (c)	ROC	19 Files

Supreme Court Discipline, Reinstatement, and Restoration Orders
7/01/17 -- 6/30/18
(Chronological by Entry Date)

	Respondent or Applicant	Order Date	Case No.	SW Citation	Decision	Rule Violation	OBC Atty	OBC File No.
16		12/14/2017	2017-SC-000470-KB	Confidential	Private Reprimand	1.3, 1.4(a)(3), 1.4(a)(4), 1.16(d), 8.4(c) and 8.1(b)	ALC	24007
17	Lawrence, Meredith Lynn	12/14/2017	2017-SC-000519-KB	2017-WL-6379212	5 Year Suspension	8.4(b)	ROC	16392
18	Stewart, Alan R.	12/14/2017	2017-SC-000556-KB	2017-WL-6379193	5 Year Suspension		ANB	17-RD-007
19		12/14/2017	2017-SC-000561-KB	Confidential	Private Reprimand with Conditions	1.1, 3.5(d) and 3.4(c)	AMB	23248