

SUPREME COURT OF KENTUCKY

MINUTES

AUGUST 27, 2009

RELEASED: 10:00 A.M.

174. KEITH A. OWENS V.
COMMONWEALTH OF KENTUCKY
**OPINION OF THE COURT BY
CHIEF JUSTICE MINTON –
AFFIRMING**
ALL SITTING. ALL CONCUR.

[2006-SC-000037-MR](#)
TO BE PUBLISHED

TAYLOR

Questions Presented: Automatic companion rule. Safety demands that police officer has discretion to frisk passenger, who exits vehicle to accommodate a search of the vehicle incident to the driver's arrest, even if the officer has no independent suspicion that the passenger is guilty of criminal conduct.

175. COMMONWEALTH OF KENTUCKY V.
MICHAEL STONE
**OPINION OF THE COURT
BY JUSTICE VENTERS -
AFFIRMING**
ALL SITTING. ALL CONCUR.

[2007-SC-000107-DG](#)
[2007-SC-000576-DG](#)
TO BE PUBLISHED

JEFFERSON

Questions Presented: Criminal Law. Evidence. Statement of Non-Testifying Co-Defendant. Issues include whether testimony revealing redacted portions of a nontestifying co-defendant's statement was properly admitted into evidence, where testimony did not identify or refer to defendant, but was factually inconsistent with defendant's claim of self-defense; whether redacting defendant's own statement to protect rights of co-defendants violated defendant's right to present a defense.

176. BARBARA LUCINDA SAWYER V.
MELBOURNE MILLS, JR.
**OPINION OF THE COURT
BY JUSTICE NOBLE -
AFFIRMING**
ALL SITTING. ALL CONCUR.

[2007-SC-000296-DG](#)
TO BE PUBLISHED

FAYETTE

Questions Presented: Statute of Frauds. Issues include whether an audio tape recording of an oral agreement is sufficient to satisfy the requirements of the Statute of Frauds, KRS 371.010.

SUPREME COURT OF KENTUCKY

MINUTES

AUGUST 27, 2009

RELEASED: 10:00 A.M.

177. COMMONWEALTH OF KENTUCKY V. [2007-SC-000796-DG](#) JEFFERSON
RICHARD WAYNE TERRY
TO BE PUBLISHED
OPINION OF THE COURT BY
CHIEF JUSTICE MINTON –
AFFIRMING
ALL SITTING. ALL CONCUR.

Questions Presented: Criminal Law. Waiver of Counsel. Issues include whether Faretta requirements were met after defendant refused to allow appointed counsel to represent him.

178. CHARLES LAMAR JOHNSON V. [2007-SC-000952-MR](#) JEFFERSON
COMMONWEALTH OF KENTUCKY
TO BE PUBLISHED
OPINION OF THE COURT BY
JUSTICE SCOTT –
AFFIRMING
ALL SITTING. ALL CONCUR.

Questions Presented: Jury selection. Requirements for prima facie violation of the fair cross-section requirement or prima facie case for purposeful discrimination. Motion for directed verdict-proof of age.

179. TIMOTHY SHEMWELL V. [2008-SC-000102-TG](#) OHIO
COMMONWEALTH OF KENTUCKY
TO BE PUBLISHED
OPINION OF THE COURT BY
JUSTICE VENTERS –
AFFIRMING
ALL SITTING. ALL CONCUR.

Questions Presented: Convictions for manufacturing methamphetamine and possession of a methamphetamine precursor or possession of anhydrous ammonia do not violate double jeopardy.

SUPREME COURT OF KENTUCKY

MINUTES

AUGUST 27, 2009

RELEASED: 10:00 A.M.

180. WILLIAM GOLDSTEIN,
EXECUTOR OF THE ESTATE
OF ROBERT JAMES LAYER,
DECEASED V.
HONORABLE TIMOTHY J.
FEELEY, JUDGE, OLDHAM
CIRCUIT COURT FAMILY
COURT DIVISION
AND
RUBY JOANN YOUNG-LAYER,
REAL PARTY IN INTEREST
**OPINION OF THE COURT BY
JUSTICE VENTERS –
AFFIRMING**
ALL SITTING. ALL CONCUR.

[2008-SC-000597-MR](#)
TO BE PUBLISHED

OLDHAM

Questions Presented: Petition for writ of mandamus and prohibition properly denied where there was an available remedy through an interlocutory appeal of an injunction via CR 65.07. Regardless of the question of in personam jurisdiction over the Executor, trial court retained subject matter jurisdiction over the marital property when one party died after the entry of the decree of marital dissolution but before resolution of the marital property issues.

181. RADCO ASBESTOS
SPECIALISTS, INC. V.
THOMAS B. LYONS; ET AL.
**OPINION OF THE COURT
AFFIRMING**
ALL SITTING. ALL CONCUR.

[2008-SC-000777-WC](#)
TO BE PUBLISHED

FROM COURT
OF APPEALS

Questions Presented: KRS 342.125(3). Whether "during the period of an award" limits the period for a reopening seeking TTD to the period of income benefits or to the period of both income and medical benefits.

SUPREME COURT OF KENTUCKY

MINUTES

AUGUST 27, 2009

RELEASED: 10:00 A.M.

182. JONATHAN MILLER, SECRETARY OF THE FINANCE AND ADMINISTRATION CABINET OF THE COMMONWEALTH OF KENTUCKY; COMMONWEALTH OF KENTUCKY, DEPARTMENT OF REVENUE V. JOHNSON CONTROLS, INC.; ET AL. [2006-SC-000416-DG](#) FRANKLIN
[2007-SC-000819-DG](#)
TO BE PUBLISHED

Questions Presented: Tax. At issue is the constitutionality of retroactive tax legislation prohibiting refunds to businesses filing unitary returns.

OPINION OF THE COURT BY JUSTICE NOBLE – REVERSING
SCHRODER, J., CONCURS IN RESULT ONLY BY SEPARATE OPINION. ABRAMSON, J., DISSENTS BY SEPARATE OPINION IN WHICH CUNNINGHAM, J., JOINS. MINTON, C.J., NOT SITTING.

183. MITCHELL METZINGER V. KENTUCKY RETIREMENT SYSTEMS, ET AL. [2007-SC-000363-DG](#) FRANKLIN
TO BE PUBLISHED

Questions Presented: Disability Retirement. Benefit Calculation. Issues include whether annuity payments, received by employee as result of global settlement involving employee's workers' compensation and civil claims, were erroneously considered in calculation of employee's disability-retirement benefit; and, if annuity payments were proper to consider, whether it was arbitrary to apply full amount of payments in calculation.

OPINION OF THE COURT BY JUSTICE SCOTT – REVERSING
ALL SITTING. ALL CONCUR.

184. COMMONWEALTH OF KENTUCKY V. LENNIE G. HOUSE [2008-SC-000114-DG](#) FAYETTE
TO BE PUBLISHED

Questions Presented: Criminal Law. DUI. Pre-trial Discovery. Trade Secret. Issue is the propriety of ordering disclosure of the computer "source code" of the Intoxylizer 5000 where the manufacturer claims that it is a trade secret and the defendant urges that failure to disclose it violates his confrontation rights.

OPINION OF THE COURT BY JUSTICE ABRAMSON – REVERSING
ALL SITTING. ALL CONCUR.

SUPREME COURT OF KENTUCKY

MINUTES

AUGUST 27, 2009

RELEASED: 10:00 A.M.

185. COMMONWEALTH OF KENTUCKY V. [2008-SC-000308-DG](#) HARDIN
TOMMY LOPEZ
TO BE PUBLISHED
OPINION OF THE COURT BY
CHIEF JUSTICE MINTON –
REVERSING
ALL SITTING. ALL CONCUR.
- Questions Presented:** Criminal Law. Probation Revocation. Uniform Code of Military Justice. The primary issue concerns the weight that courts should give to violations of the UCMJ which do not necessarily constitute an independent offense under Kentucky law.
186. GEORGE MAULDIN, ET AL. V. [2008-SC-000557-DGE](#) JEFFERSON
REBECCA BEARDEN
TO BE PUBLISHED
OPINION OF THE COURT BY
JUSTICE NOBLE –
REVERSING
MINTON, C.J., CONCURS IN
RESULT ONLY.
- Questions Presented:** Child Custody and Visitation. Issues include whether Kentucky retained jurisdiction over visitation under KRS 403.824, a UCCJEA provision adopted in 2004.
187. MARK LEE CROSSLAND V. [2007-SC-000689-MR](#) MCCracken
COMMONWEALTH OF KENTUCKY
TO BE PUBLISHED
OPINION OF THE COURT BY
CHIEF JUSTICE MINTON –
REVERSING AND REMANDING
ALL SITTING. ALL CONCUR.
- Questions Presented:** While trial court lacks authority to order post-submission substitution of juror, such action is subject to harmless error analysis. Substitution error was not harmless where trial court failed to ascertain on the record that the replacement juror had not been tainted by outside contacts since being discharged and failed to order the reconstituted jury to start their deliberations over after the replacement joined them.

SUPREME COURT OF KENTUCKY

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AUGUST 27, 2009

RELEASED: 10:00 A.M.

188. FRANKIE COVINGTON V. COMMONWEALTH OF KENTUCKY
OPINION OF THE COURT BY JUSTICE VENTERS – REVERSING AND REMANDING
ABRAMSON, J., CONCURS WITH THE MAJORITY’S OPINION BUT JOINS JUSTICE CUNNINGHAM’S OBSERVATION THAT THIS COURT SHOULD REQUIRE ALL FELONY PLEA AGREEMENTS TO BE IN WRITING AND SIGNED BY THE PROSECUTOR, DEFENDANT AND DEFENSE ATTORNEY. CUNNINGHAM, J., DISSENTS BY SEPARATE OPINION IN WHICH SCHRODER AND SCOTT, JJ., JOIN.
- [2007-SC-000773-MR](#) BOURBON
TO BE PUBLISHED
- Questions Presented:** Kidnapping, first-degree sexual abuse and first-degree persistent felony offender (PFO). After plea agreement was rejected, trial court erred in denying motion to withdraw guilty plea.
189. BREATHITT COUNTY BOARD OF EDUCATION V. DOT PRATER
OPINION OF THE COURT BY JUSTICE ABRAMSON – REVERSING AND REMANDING
VENTERS, J., DISSENTS BY SEPARATE OPINION.
- [2008-SC-000041-DG](#) BREATHITT
TO BE PUBLISHED
- Questions Presented:** Interlocutory Appeals. Sovereign Immunity. Issues include whether interlocutory order denying claim of immunity is immediately appealable and, if so, whether school's provision of a residence on school property to house night watchman is a governmental function.
190. JIMMY L. EPPS V. COMMONWEALTH OF KENTUCKY
OPINION OF THE COURT BY JUSTICE NOBLE – REVERSING, VACATING, AND REMANDING
ALL SITTING. ALL CONCUR.
- [2007-SC-000312-DG](#) MONTGOMERY
TO BE PUBLISHED
- Questions Presented:** Criminal Law. Search. At issue is whether the duration (approximately fifteen minutes) of a valid traffic stop was unreasonably prolonged to allow time for the arrival of a narcotics-detection dog.

SUPREME COURT OF KENTUCKY

MINUTES

AUGUST 27, 2009

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191. MELISSA HELTON V. COMMONWEALTH OF KENTUCKY
OPINION OF THE COURT BY JUSTICE NOBLE – VACATING AND REMANDING
SCOTT, J., DISSENTS BY SEPARATE OPINION.
- [2008-SC-000141-MR](#) JESSAMINE
TO BE PUBLISHED
- Questions Presented:** Warrantless blood testing of an unconscious suspect under the statutory implied consent provisions requires a finding of probable cause.
192. DONALD LEE ROSS, JR. V. COMMONWEALTH OF KENTUCKY
MEMORANDUM OPINION OF THE COURT – AFFIRMING
VENTERS AND SCOTT, JJ., CONCUR, BUT WOULD HOLD THAT THE JURY’S QUESTION SHOULD HAVE BEEN TREATED AS A REQUEST TO REVIEW A PORTION OF THE TESTIMONY, AND THE FAILURE TO ALLOW THAT REVIEW WAS ERROR, ALBEIT HARMLESS.
- [2007-SC-000172-MR](#) FAYETTE
NOT TO BE PUBLISHED
193. ANGELYNNA YOUNG (A/K/A ANGELYNNA YOUNG-HOWE) V. COMMONWEALTH OF KENTUCKY
MEMORANDUM OPINION OF THE COURT – AFFIRMING
ALL SITTING. ALL CONCUR.
- [2007-SC-000524-MR](#) GRANT
NOT TO BE PUBLISHED
194. ORRIS SALISBURY, ET AL. V. EARL HALL, JR.
MEMORANDUM OPINION OF THE COURT – AFFIRMING
ALL SITTING. ALL CONCUR.
- [2007-SC-000886-DG](#) FLOYD
NOT TO BE PUBLISHED

SUPREME COURT OF KENTUCKY

MINUTES

AUGUST 27, 2009

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| 195. | SHANNON BURGHER V.
COMMONWEALTH OF KENTUCKY
MEMORANDUM OPINION OF THE COURT –
<u>AFFIRMING</u>
ALL SITTING. ALL CONCUR. | 2007-SC-000910-MR
NOT TO BE PUBLISHED | POWELL |
| 196. | DAVID MOSS V.
COMMONWEALTH OF KENTUCKY
MEMORANDUM OPINION OF THE COURT –
<u>AFFIRMING</u>
ALL SITTING. ALL CONCUR. | 2008-SC-000068-MR
NOT TO BE PUBLISHED | MUHLENBERG |
| 197. | ROBERT FUQUA V.
COMMONWEALTH OF KENTUCKY
MEMORANDUM OPINION OF THE COURT –
<u>AFFIRMING</u>
ALL SITTING. ALL CONCUR. | 2008-SC-000081-MR
NOT TO BE PUBLISHED | FAYETTE |
| 198. | LEONEL MARTINEZ V.
COMMONWEALTH OF KENTUCKY
MEMORANDUM OPINION OF THE COURT –
<u>AFFIRMING</u>
ALL SITTING. ALL CONCUR. | 2008-SC-000082-MR
NOT TO BE PUBLISHED | DAVISS |
| 199. | KEITH STILTZ V.
COMMONWEALTH OF KENTUCKY
MEMORANDUM OPINION OF THE COURT –
<u>AFFIRMING</u>
ALL SITTING. ALL CONCUR. | 2008-SC-000259-MR
NOT TO BE PUBLISHED | CUMBERLAND |

SUPREME COURT OF KENTUCKY

MINUTES

AUGUST 27, 2009

RELEASED: 10:00 A.M.

200. CHRISTOPHER D. FAIRCHILD V. [2008-SC-000570-MR](#) JOHNSON
COMMONWEALTH OF KENTUCKY
MEMORANDUM OPINION OF THE
COURT –
AFFIRMING
ALL SITTING. ALL CONCUR.
NOT TO BE PUBLISHED
201. JOHN WESLEY BRETT V. [2008-SC-000712-MR](#) FAYETTE
HONORABLE SHEILA ISAAC,
JUDGE, FAYETTE CIRCUIT
COURT, SEVENTH DIVISION
AND
MEDIA GENERAL OPERATIONS,
INC. D/B/A WTVQ-TV; AND WILLIAM
STANLEY
MEMORANDUM OPINION OF THE
COURT –
AFFIRMING
SCOTT, J., DISSENTS BY SEPARATE
OPINION. ABRAMSON, J., NOT
SITTING.
NOT TO BE PUBLISHED
202. BROCK BOWLING V. [2008-SC-000892-MR](#) CLAY
HONORABLE OSCAR GAYLE
HOUSE, JUDGE 41ST JUDICIAL
DISTRICT, ET AL.
MEMORANDUM OPINION OF THE
COURT –
AFFIRMING
ALL SITTING. ALL CONCUR.
NOT TO BE PUBLISHED
203. CHRISTOPHER HILL V. [2008-SC-000100-MR](#) MASON
COMMONWEALTH OF KENTUCKY
MEMORANDUM OPINION OF THE
COURT –
AFFIRMING IN PART AND
REVERSING IN PART
ALL SITTING. ALL CONCUR.
NOT TO BE PUBLISHED

SUPREME COURT OF KENTUCKY

MINUTES

AUGUST 27, 2009

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| 204. | ROBERT TURNER V.
COMMONWEALTH OF KENTUCKY
MEMORANDUM OPINION OF THE
COURT –
<u>REVERSING</u>
ALL SITTING. ALL CONCUR. | 2007-SC-000633-DG
NOT TO BE PUBLISHED | DAVISS |
| 205. | CHARLOTTE HALL V.
COMMONWEALTH OF KENTUCKY
MEMORANDUM OPINION OF THE
COURT –
<u>REVERSING AND REMANDING</u>
SCOTT, J., DISSENTS. | 2007-SC-000194-MR
NOT TO BE PUBLISHED | WOLFE |
| 206. | MARCO BYRD V.
COMMONWEALTH OF KENTUCKY
MEMORANDUM OPINION OF THE
COURT –
<u>REVERSING AND REMANDING</u>
MINTON, C.J., NOT SITTING. | 2007-SC-000923-MR
NOT TO BE PUBLISHED | WARREN |
| 207. | MICHAEL D. JOHNSON V.
COMMONWEALTH OF KENTUCKY
MEMORANDUM OPINION OF THE
COURT –
<u>REVERSING AND REMANDING</u>
ALL SITTING. ALL CONCUR. | 2008-SC-000092-MR
NOT TO BE PUBLISHED | WOLFE |

OPINIONS AND ORDERS – AUGUST 27, 2009

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| JAMES WILEY CRAFT V.
KENTUCKY BAR ASSOCIATION
ORDER REINSTATED MOVANT TO
THE PRACTICE OF LAW.
ALL SITTING. ALL CONCUR. | 2002-SC-000273-KB
TO BE PUBLISHED | IN SUPREME
COURT |
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SUPREME COURT OF KENTUCKY

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OPINIONS AND ORDERS – AUGUST 27, 2009

GREGORY A. GABBARD V. KENTUCKY BAR ASSOCIATION ORDER REINSTATED MOVANT TO THE PRACTICE OF LAW. ALL SITTING. ALL CONCUR.	2007-SC-000459-KB TO BE PUBLISHED	IN SUPREME COURT
KENTUCKY BAR ASSOCIATION, CLE COMMISSION V. MICHAEL RAY MCDONNER ORDER SUSPENDED RESPONDENT FROM THE PRACTICE OF LAW. ALL SITTING. ALL CONCUR.	2008-SC-000963-KB TO BE PUBLISHED	IN SUPREME COURT
BINGO PALACE AND JAMIE DIZNEY V. HENRY G. LACKEY, COMMISSIONER, KENTUCKY DEPARTMENT OF CHARITABLE GAMING ORDER DENIED CR 65.09 RELIEF. ALL SITTING. ALL CONCUR.	2009-SC-000079-I	FRANKLIN
KENTUCKY BAR ASSOCIATION V. GEORGE MARTIN STRECKFUS ORDER SUSPENDED RESPONDENT FROM THE PRACTICE OF LAW. ALL SITTING. ALL CONCUR.	2009-SC-000184-KB TO BE PUBLISHED	IN SUPREME COURT
KENTUCKY BAR ASSOCIATION V. JAMES KEVIN MATHEWS ORDER SUSPENDED RESPONDENT FROM PRACTICE OF LAW FOR 181 DAYS. ALL SITTING. ALL CONCUR.	2009-SC-000266-KB TO BE PUBLISHED	IN SUPREME COURT

SUPREME COURT OF KENTUCKY

MINUTES

AUGUST 27, 2009

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OPINIONS AND ORDERS – AUGUST 27, 2009

KENTUCKY BAR ASSOCIATION V. LEO A. MARCUM ORDER SUSPENDED RESPONDENT FROM THE PRACTICE OF LAW FOR 181 DAYS. ALL SITTING. ALL CONCUR.	2009-SC-000267-KB TO BE PUBLISHED	IN SUPREME COURT
KIM ALLEN CLAY V. KENTUCKY BAR ASSOCIATION ORDER PERMANENTLY DISBARRED MOVANT FROM THE PRACTICE OF LAW. ALL SITTING. ALL CONCUR.	2009-SC-000272-KB TO BE PUBLISHED	IN SUPREME COURT
JUDY W. SIPES V. KENTUCKY BAR ASSOCIATION ORDER PUBLICLY REPRIMAND MOVANT. ALL SITTING. ALL CONCUR.	2009-SC-000304-KB TO BE PUBLISHED	IN SUPREME COURT
JAMES BLAKE HORNAL V. KENTUCKY BAR ASSOCIATION ORDER RESTORED MOVANT TO THE PRACTICE OF LAW. ALL SITTING. ALL CONCUR.	2009-SC-000320-KB TO BE PUBLISHED	IN SUPREME COURT
RICHARD ERPENBECK V. KENTUCKY BAR ASSOCIATION ORDER SUSPENDED MOVANT FROM THE PRACTICE OF LAW FOR TWO YEARS. ALL SITTING. ALL CONCUR.	2009-SC-000354-KB TO BE PUBLISHED	IN SUPREME COURT
PAMELA C. BRATCHER V. KENTUCKY BAR ASSOCIATION ORDER PUBLICLY REPRIMANDED MOVANT. MINTON, C.J., NOT SITTING.	2009-SC-000358-KB TO BE PUBLISHED	IN SUPREME COURT

SUPREME COURT OF KENTUCKY

MINUTES

AUGUST 27, 2009

RELEASED: 10:00 A.M.

OPINIONS AND ORDERS – AUGUST 27, 2009

**JAMES R. GREGORY, SR., V.
KENTUCKY BAR ASSOCIATION
ORDER SUSPENDED MOVANT
FROM THE PRACTICE OF LAW FOR
THREE YEARS, TO COMMENCE
RETROACTIVELY ON JANUARY
31, 2007.**

ALL SITTING. ALL CONCUR.

[2009-SC-000369-KB](#)
TO BE PUBLISHED

IN SUPREME

**COURT ORDERS GRANTING MOTION FOR DISCRETIONARY REVIEW –
AUGUST 19, 2009**

KENTUCKY FARM BUREAU
MUTUAL INSURANCE COMPANY V.
JAMES O. YOUNG, ET AL.

2008-SC-000333-DG

UNION

JERRY WOOLUM, M. D.,
INDIVIDUALLY, ET AL. V.
LISA ANN HILLMAN, AS
ADMINISTRATRIX OF THE ESTATE
CAITLYNN HILLMAN, DECEASED; ET AL.

2008-SC-000396-DG

BELL

DEPARTMENT OF REVENUE, ET AL. V.
MITZI D. WYRICK

2008-SC-000468-DG

FRANKLIN

SHERI LYNN REINSTEDLER V.
DANIEL THOMAS REINSTEDLER

2009-SC-000088-DG

JEFFERSON

SCOTT CROUCH V.
COMMONWEALTH OF KENTUCKY

2009-SC-000129-DG

JESSAMINE

KENTUCKY PUBLIC SERVICE
COMMISSION V.
COMMONWEALTH OF KENTUCKY, EX
REL. JACK CONWAY, ATTORNEY
GENERAL; ET AL.

2009-SC-000134-DG

FRANKLIN

SUPREME COURT OF KENTUCKY

MINUTES

AUGUST 27, 2009

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**COURT ORDERS GRANTING MOTION FOR DISCRETIONARY REVIEW –
AUGUST 19, 2009**

DUKE ENERGY KENTUCKY, INC., F/K/A THE UNION LIGHT, HEAT AND POWER COMPANY V. COMMONWEALTH OF KENTUCKY, EX REL. JACK CONWAY, ATTORNEY GENERAL; ET AL.	2009-SC-000150-DG	FRANKLIN
ROBERT B. TAYLOR, SR. V. COMMONWEALTH OF KENTUCKY	2009-SC-000180-DG	MONTGOMERY
UNIFIRST CORPORATION V. OLIVIA ANNE STEWART	2009-SC-000279-DG	DAVISS
INSIGHT COMMUNICATIONS COMPANY, L.P. ET AL. V. MICHAEL SCHNURLE, ET AL.	2009-SC-000390-DG	JEFFERSON
JOHN J. SCOTT, ET AL. V. TIM DAVIS, ET AL.	2009-SC-000391-DG	HARDIN

**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW –
AUGUST 19, 2009**

LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT V. COMMONWEALTH OF KENTUCKY, ALCOHOLIC BEVERAGE CONTROL BOARD, ET AL.	2007-SC-000316-D	FRANKLIN
CARLOS PATTON V. COMMONWEALTH OF KENTUCKY OPINION OF COURT OF APPEALS ORDERED NOT TO BE PUBLISHED	2007-SC-000872-D	JEFFERSON
MARIA A. FERNANDEZ, ET AL. V. MARIE HALE, ET AL.	2008-SC-000306-D	SHELBY

SUPREME COURT OF KENTUCKY

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**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW –
AUGUST 19, 2009**

JOSEPH TUCKER V. COMMONWEALTH OF KENTUCKY	2008-SC-000370-D	TRIMBLE
DAVID TIDWELL, IV V. COMMONWEALTH OF KENTUCKY	2008-SC-000450-D	PIKE
RAYMOND MARTIN, ET AL. V. COMMONWEALTH OF KENTUCKY	2008-SC-000504-D	GREENUP
BECKHAM B. BARNES V. COMMONWEALTH OF KENTUCKY	2008-SC-000512-D	WAYNE
DOUGLAS R. FULTZ V. COMMONWEALTH OF KENTUCKY	2008-SC-000519-D	MCLEAN
STANLEO PATTON; ET AL. V. JOHN AUBREY, SHERIFF OF JEFFERSON COUNTY, KENTUCKY	2008-SC-000535-D	JEFFERSON
STEVIE EARL WORLEY V. COMMONWEALTH OF KENTUCKY OPINION OF THE COURT OF APPEALS IS ORDERED NOT TO BE PUBLISHED	2008-SC-000555-D	WHITLEY
INVENSYS INC. V. HENRY VOGT MACHINE COMPANY, ET AL.	2008-SC-000581-D	JEFFERSON
COMMONWEALTH OF KENTUCKY, ET AL. V. YOLANDA DOUGLAS, AS GRANDMOTHER AND NEXT FRIEND OF DARAYMONE JOHNSON, ET AL. OPINION OF THE COURT OF APPEALS IS ORDERED NOT TO BE PUBLISHED	2008-SC-000592-D	FAYETTE

SUPREME COURT OF KENTUCKY

MINUTES

AUGUST 27, 2009

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**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW –
AUGUST 19, 2009**

LUKE KEITH, JR. V. POOJA VENTURES, LLC; ET AL.	2008-SC-000608-D	LAUREL
JIM MICK, ET AL. V. CARDINAL SANITATION OF MONTICELLO KENTUCKY INC., ET AL.	2008-SC-000631-D	WAYNE
JAMES BROOKS, ET AL. V. GRAM'S, INC., D/B/A GRAM'S GROCERY	2008-SC-000641-D	LINCOLN
RICHARD C. HOLMES V. TIMOTHY SCOTT COUCH, ET AL.	2008-SC-000681-D	FAYETTE
RUSSELL "RUSTY" TAYLOR, INDIVIDUALLY AND AS PARAMEDIC FOR ANDERSON COUNTY EMERGENCY MEDICAL SERVICES, ET AL. V. ROSE ANNETTE COOK, INDIVIDUALLY AND AS ADMINISTRATRIX OF THE ESTATE OF DAVID ALAN COOK, ET AL. OPINION OF THE COURT OF APPEALS IS ORDERED NOT TO BE PUBLISHED.	2008-SC-000682-D	ANDERSON
NOLLAIG PREVIS V. PETE DAILEY	2008-SC-000696-D	BOURBON
MAYSVILLE OBSTETRIC AND GYNECOLOGICAL ASSOCIATES, P.S.C. V. HARLAN LEE, INDIVIDUALLY, ET AL. OPINION OF THE COURT OF APPEALS IS ORDERED NOT TO BE PUBLISHED	2008-SC-000721-D	MASON
STEVE ALVEY V. RICHIE FARMER, DEPARTMENT OF AGRICULTURE, ET AL.	2008-SC-000745-D	FRANKLIN

SUPREME COURT OF KENTUCKY

MINUTES

AUGUST 27, 2009

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**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW –
AUGUST 19, 2009**

EVERETT LETTERLOUGH V. COMMONWEALTH OF KENTUCKY	2008-SC-000791-D	JEFFERSON
GREGORY ALLEN JONES V. COMMONWEALTH OF KENTUCKY	2008-SC-000821-D	JEFFERSON
JEFFREY ALAN SCHERRETZ V. COMMONWEALTH OF KENTUCKY	2008-SC-000835-D	HENDERSON
JERRY "PEANUTS" GAINES, ET AL. V. YOST ENERGY, LLC, A KENTUCKY LIMITED LIABILITY COMPANY	2008-SC-000846-D	WARREN
BILLIE R. YOUNG V. ROBERT CARRAN; ET AL.	2008-SC-000862-D	KENTON
BEREA COLLEGE V. CLAIRE SCHUSTER	2008-SC-000891-D	MADISON
DAVID LEE BLAIR V. COMMONWEALTH OF KENTUCKY	2008-SC-000912-D	MARSHALL
ELAINE D. BURBA, ET AL. V. CHARLES J. WILSON, ET AL.	2008-SC-000921-D	HART
DONALD LEE SHOBE V. SHEILA COLLINS, JUDGE, JEFFERSON DISTRICT COURT OPINION OF THE COURT OF APPEALS IS ORDERED NOT TO BE PUBLISHED	2008-SC-000924-D	JEFFERSON
COMMONWEALTH OF KENTUCKY V. DANIEL KISER	2008-SC-000927-D	JEFFERSON
JAMES BLAIR V. THOMAS SIMPSON, WARDEN	2008-SC-000940-D	LYON

SUPREME COURT OF KENTUCKY

MINUTES

AUGUST 27, 2009

RELEASED: 10:00 A.M.

**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW –
AUGUST 19, 2009**

VILLAGE CAMPGROUND, INC. V. LIBERTY BANK	2008-SC-000968-D	SPENCER
AMOS HALL V. A.A.A.H. INVESTMENTS, INC.; ET AL.	2009-SC-000013-D	HARDIN
ROBERT BRUNER, ET AL. V. DOUGLAS SIZEMORE, ET AL.	2009-SC-000028-D	LAUREL
HINTON HARDWOODS, INC. V. CUMBERLAND SCRAP PROCESSORS TRANSPORT, LLC, A/K/A CUMBERLAND SCRAP PROCESSORS, LLC, ET AL.	2009-SC-000051-D	LOGAN
BRYAN P. VINCENT V. COMMONWEALTH OF KENTUCKY	2009-SC-000056-D	MUHLENBERG
CITIZENS FOR PRESERVATION OF JESSAMINE COUNTY, LLC V. COOPER DEVELOPMENT, LLC, ET AL.	2009-SC-000063-D	JESSAMINE
AND COOPER DEVELOPMENT, LLC V. CITIZENS FOR PRESERVATION OF JESSAMINE COUNTY, ET AL. OPINION OF THE COURT OF APPEALS IS ORDERED NOT TO BE PUBLISHED	2009-SC-000064-D	JESSAMINE
COMMONWEALTH OF KENTUCKY V. DUSTIN STUMP	2009-SC-000075-D	FAYETTE
JENKINS FOUNDATION, INC. V. GLORIA PARK, ADMINISTRATRIX OF THE ESTATE OF DONALD S. PARK	2009-SC-000076-D	LETCHER
JANE P. THOMAS, ET AL. V. CYNTHIANA-HARRISON COUNTY-BERRY JOINT PLANNING COMMISSION, ET AL.	2009-SC-000077-D	HARRISON

SUPREME COURT OF KENTUCKY

MINUTES

AUGUST 27, 2009

RELEASED: 10:00 A.M.

**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW –
AUGUST 19, 2009**

CHARLES RICHARD NEWELL, SR. V. COMMONWEALTH OF KENTUCKY	2009-SC-000082-D	MCCRACKEN
JAMES B. COMBS V. COMMONWEALTH OF KENTUCKY	2009-SC-000083-D	FLOYD
BOBBY BLEVENS V. COMMONWEALTH OF KENTUCKY	2009-SC-000085-D	CLINTON
DANA LLOYD NAPIER V. COMMONWEALTH OF KENTUCKY	2009-SC-000086-D	FLOYD
CYNTHIA ANN SMITH V. COMMONWEALTH OF KENTUCKY	2009-SC-000110-D	HARDIN
CORBETT CHARLES SLAVEN V. COMMONWEALTH OF KENTUCKY	2009-SC-000117-D	PERRY
LINDA PEGRAM HELTON V. EPHRAIM WOODS HELTON	2009-SC-000122-D	BOYLE
GEORGE MALCOM, ET AL V. OHIO RIVER CONCRETE CORPORATION	2009-SC-000131-D	LIVINGSTON
WILLIAM WOLEJSZA V. GOVERNOR'S OFFICE FOR LOCAL DEVELOPMENT, ET AL.	2009-SC-000140-D	FRANKLIN
JEFFREY C. GRIFFITH V. COMMONWEALTH OF KENTUCKY	2009-SC-000146-D	HARDIN
SHAMEL WHITT V. BIZZACK, INC. ET AL.	2009-SC-000165-D	MARGAN
COMMONWEALTH OF KENTUCKY V. CHARLES FRANZ	2009-SC-000166-D	FULTON

SUPREME COURT OF KENTUCKY

MINUTES

AUGUST 27, 2009

RELEASED: 10:00 A.M.

**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW –
AUGUST 19, 2009**

KENT FRANK HILL V. COMMONWEALTH OF KENTUCKY	2009-SC-000172-D	OHIO
TODD CARL FILZEK V. COMMONWEALTH OF KENTUCKY OPINION OF THE COURT OF APPEALS IS ORDERED TO BE PUBLISHED	2009-SC-000175-D	FAYETTE
LARRY CRAIG ELLIS V. COMMONWEALTH OF KENTUCKY	2009-SC-000178-D	BARREN
DONNA YEAGER, EXECUTRIX OF THE ESTATE OF STACEY CLISE V. TALIAFERRO, SHIROONI, CARREN & KEYS, PLLC, ET AL.	2009-SC-000182-D	GRANT
BRENT WASSON V. KENNETH MORRIS OPINION OF THE COURT OF APPEALS IS ORDERED NOT TO BE PUBLISHED	2009-SC-000198-D	BUTLER
ABADIS, LLC, D/B/A ABADIS LIQUORS, ET AL. V. LOUISVILLE METRO BOARD OF ZONING ADJUSTMENT	2009-SC-000223-D	JEFFERSON
RONALD LOREN STOKER V. COMMONWEALTH OF KENTUCKY	2009-SC-000231-D	HARDIN
RONNIE NEELEY V. COMMONWEALTH OF KENTUCKY	2009-SC-000232-D	JACKSON
MICHAEL WAYNE LONG V. LARRY CHANDLER, WARDEN	2009-SC-000239-D	OLDHAM
MICHAEL L. BERNARD; ET AL. V. W. JASPER, LLC; ET AL.	2009-SC-000251-D	RUSSELL

SUPREME COURT OF KENTUCKY

MINUTES

AUGUST 27, 2009

RELEASED: 10:00 A.M.

**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW –
AUGUST 19, 2009**

TIFFANY MATTINGLY V. COMMONWEALTH OF KENTUCKY	2009-SC-000273-D	GRAYSON
BRUCE LENNOX V. COMMONWEALTH OF KENTUCKY	2009-SC-000374-D	CALLOWAY

**COURT ORDERS DENYING BELATED MOTION FOR ENLARGEMENT OF TIME TO FILE
MOTION FOR DISCRETIONARY REVIEW**

DANTE CRAIG V. TOM DAILEY, WARDEN, LUTHER LUCKETT CORRECTIONAL COMPLEX ENTERED: JULY 10, 2009	2009-SC-000285-D	OLDHAM
ROBERT A. CARTER V. COMMONWEALTH OF KENTUCKY ENTERED: AUGUST 24, 2009	2009-SC-000332-D	WHITLEY
JOHN J. GENTRY V. KENTUCKY RETIREMENT SYSTEMS, BOARD OF TRUSTEES ENTERED: AUGUST 24, 2009	2009-SC-000413-D	FRANKLIN

COURT ORDERS GRANTING MOTION TO TRANSFER – JULY 10, 2009

ROBERT CARL FOLEY V. COMMONWEALTH OF KENTUCKY	2009-SC-000428-TG	FRANKLIN
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COURT ORDERS DENYING MOTION TO TRANSFER – AUGUST 27, 2009

COMMONWEALTH OF KENTUCKY V. JOHN AUBREY, ET AL.	2009-SC-000235-T	FRANKLIN
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SUPREME COURT OF KENTUCKY

MINUTES

AUGUST 27, 2009

RELEASED: 10:00 A.M.

COURT ORDERS GRANTING PETITION FOR REHEARING – AUGUST 27, 2009

TOYOTA MOTOR MANUFACTURING, KENTUCKY, INC. V. HON. ROBERT G. JOHNSON (JUDGE, SCOTT CIRCUIT COURT) AND JEFF SERGENT (REAL PARTY IN INTEREST)	2007-SC-000647-MR	SCOTT
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COURT ORDERS DENYING PETITION FOR REHEARING – AUGUST 27, 2009

GREGORY B. NAZAR, M.D., ET AL. V. SHEILA BRANHAM, EXECUTRIX OF THE ESTATE OF ROE BRANHAM ORDER MODIFIED OPINION OF THE COURT RENDERED ON APRIL 23, 2009, SUBSTITUTION OF NEW OPINION.	2004-SC-001015-DG 2005-SC-000834-DG	JEFFERSON
KENNETH WAYNE PARKER V. COMMONWEALTH OF KENTUCKY	2006-SC-000102-MR	JEFFERSON
FLEGLES, INC. V. TRUSERV CORPORATION	2006-SC-000471-DG 2007-SC-000155-DG	CARLISLE
ONDRA LEON CLAY V. COMMONWEALTH OF KENTUCKY ORDER MODIFIED OPINION OF THE COURT RENDERED DECEMBER 18, 2008 BY SUBSTITUTION OF NEW OPINION.	2007-SC-000377-MR	FAYETTE
TRICO COUNTY DEVELOPMENT & PIPELINE V. SCOTTY SMITH; ET AL.	2007-SC-000556-WC	FROM COURT OF APPEALS

SUPREME COURT OF KENTUCKY

MINUTES

AUGUST 27, 2009

RELEASED: 10:00 A.M.

COURT ORDERS DENYING PETITION FOR REHEARING – AUGUST 27, 2009

BOARD OF TRUSTEES OF KENTUCKY RETIREMENT SYSTEMS V.
CAROLYN LEDFORD
**ORDER MODIFIED MEMORANDUM
OPINION OF THE COURT RENDERED
APRIL 23, 2009, BY SUBSTITUTION OF
NEW OPINION.**

[2007-SC-000604-DG](#) FRANKLIN

NELLIE MEECE, ET AL. V.
FELDMAN LUMBER COMPANY

2007-SC-000785-DG PULASKI

LARRY CAIN V.
LODESTAR ENERGY, INC.; ET AL.

2008-SC-000178-WC FROM COURT OF APPEALS

TOM DUFFY, SR., ET AL. V.
HON. KAREN L. WILSON, JUDGE
(HENDERSON CIRCUIT COURT), ET AL.

2008-SC-000507-MR HENDERSON

COURT ORDERS DISMISSING

FORD MOTOR COMPANY, ET AL. V.
HON. ELISE GIVHAN SPAINHOUR, JUDGE,
BULLITT CIRCUIT COURT, ET AL.
ENTERED: JULY 27, 2009

2008-SC-000180-MR BULLITT

JOSEPH H. COHEN V.
HON. ANN O'MALLEY SHAKE SPECIAL
JUDGE, JEFFERSON CIRCUIT COURT,
DIV. 10
AND
DIANNE HUTCHERSON ET AL.
ENTERED: AUGUST 27, 2009

2008-SC-000602-MR JEFFERSON

SUPREME COURT OF KENTUCKY

MINUTES

AUGUST 27, 2009

RELEASED: 10:00 A.M.

COURT ORDERS DISMISSING

DAWN OSBORNE V. DAVID ALLEN OSBORNE, INDIVIDUALLY, AND AS EXECUTOR OF THE ESTATE OF SHELLY M. OSBORNE, ET AL. ENTERED: AUGUST 24, 2009	2008-SC-000820-D	JESSAMINE
R. T. VANDERBILT COMPANY, INC. V. JOHNNY FRANKLIN, INDIVIDUALLY, AND AS ADMINISTRATOR OF THE ESTATE OF FLORA FRANKLIN ENTERED: AUGUST 24, 2009	2009-SC-000149-D	ANDERSON
NELSON COUNTY BOARD OF EDUCATION V. HON. JOHN DAVID SEAY, JUDGE, NELSON CIRCUIT COURT, ET AL. ENTERED: JULY 29, 2009	2009-SC-000195-MR	NELSON
INTERNATIONAL DOOR CLOSERS, INC. OF TENNESSEE V. JUANITA TURPIN, ET AL. AND JUANITA TURPIN V. STANLEY SCHULTZE & COMPANY, INC., ET AL. ENTERED: AUGUST 24, 2009	2009-SC-000265-D 2009-SC-000268-D	JEFFERSON JEFFERSON
RANDY COPLEY V. PIKE ELECTRIC, ET AL. ENTERED: AUGUST 17, 2009	2009-SC-000277-WC	FROM COURT OF APPEALS
JOE PAUL GAMBLE V. COMMONWEALTH OF KENTUCKY ENTERED: AUGUST 24, 2009	2009-SC-000415-D	GRAVES

SUPREME COURT OF KENTUCKY

MINUTES

AUGUST 27, 2009

RELEASED: 10:00 A.M.

COURT ORDERS

FRANK RODGERS V. [2007-SC-000040-MR](#) JEFFERSON
COMMONWEALTH OF KENTUCKY
**ORDER CORRECTED OPINION OF
THE COURT RENDERED JUNE 25,
2009, BY SUBSTITUTION OF PAGE 1.**
ENTERED: JULY 27, 2009

MPM FINANCIAL GROUP, INC. V. [2007-SC-000652-DG](#) FAYETTE
MICHAEL P. MORTON
**ORDER CORRECTED OPINION OF
THE COURT RENDERED JUNE 25,
2009, BY SUBSTITUTION OF PAGES
1 AND 10.**
ENTERED: JUNE 29, 2009

KENTUCKY BAR ASSOCIATION V. [2008-SC-000928-KB](#) IN SUPREME
CHRIS MINIARD COURT
**ORDER MODIFIED THE OPINION
AND ORDER ENTERED MARCH 10,
2009, BY SUBSTITUTION OF THE
ENTIRE OPINION AND ORDER.**
ENTERED: JUNE 25, 2009

CAROLYN SUE BRUMMETT V. 2009-SC-000189-D MARION
LONNIE MALONE, ET AL.
**ORDER GRANTED MOTION TO
WITHDRAW THE MOTION FOR
DISCRETIONARY REVIEW.**
ENTERED: JULY 10, 2009

TERRY BURTON V. 2009-SC-000264-DG FAYETTE
COMMONWEALTH OF KENTUCKY
**ORDER GRANTED DISCRETIONARY
REVIEW AND REMANDED TO THE
COURT OF APPEALS FOR
RECONSIDERATION.**
ENTERED: AUGUST 19, 2009

SUPREME COURT OF KENTUCKY

MINUTES

AUGUST 27, 2009

RELEASED: 10:00 A.M.

COURT ORDERS

KENTUCKY HIGH SCHOOL ATHLETIC
ASSOCIATION V.

2009-SC-000287-I

BALLARD

TYE PRINCE

**ORDER DENIED CR 65.09(1)
MOTION FOR INTERLOCUTORY
RELIEF.**

ENTERED: AUGUST 27, 2009

IN RE: MICHAEL JOHNSON,
DEBTOR, AND ROBIN BROWNING
BROCK, TRUSTEE V.

2009-SC-000319-CL

FROM U.S.
COURT OF
APPEALS

BRANCH BANKING AND
TRUST COMPANY

**ORDER ACCEPTED CERTIFICATION
OF LAW.**

ENTERED: AUGUST 27, 2009

**COURT ORDERS PERMITTING MOVANT TO WITHDRAW AS A MEMBER OF THE
KENTUCKY BAR ASSOCIATION –**

ROBERT MILLER BIGGS V.
KENTUCKY BAR ASSOCIATION
ENTERED: JUNE 25, 2009

2009-SC-000383-KB

IN SUPREME
COURT

CHARLES SHIVEL, JR. V.
KENTUCKY BAR ASSOCIATION
ENTERED: JULY 7, 2009

2009-SC-000397-KB

IN SUPREME
COURT

GORDON EUGENE GALLAGHER V.
KENTUCKY BAR ASSOCIATION
ENTERED: JULY 7, 2009

2009-SC-000398-KB

IN SUPREME
COURT

JAMES R. FEGLEY V.
KENTUCKY BAR ASSOCIATION
ENTERED: JULY 7, 2009

2009-SC-000419-KB

IN SUPREME
COURT

SUPREME COURT OF KENTUCKY

MINUTES

AUGUST 27, 2009

RELEASED: 10:00 A.M.

**COURT ORDERS PERMITTING MOVANT TO WITHDRAW AS A MEMBER OF THE
KENTUCKY BAR ASSOCIATION –**

**LAURENCE R. LETSON V.
KENTUCKY BAR ASSOCIATION
ENTERED: JULY 20, 2009**

2009-SC-000444-KB

**IN SUPREME
COURT**

**SHERRI MORGAN
DURRETT PATE V.
KENTUCKY BAR ASSOCIATION
ENTERED: JULY 29, 2009**

2009-SC-000474-KB

**IN SUPREME
COURT**

**JOSEPH ALAN JOHNSON V.
KENTUCKY BAR ASSOCIATION
ENTERED: AUGUST 18, 2009**

2009-SC-000503-KB

**IN SUPREME
COURT**