

SUPREME COURT OF KENTUCKY

FEBRUARY 21, 2013 MINUTES

RELEASED: 10:00 A.M.

1. DENNIS STILGER V. EDWARD H. FLINT
OPINION OF THE COURT BY JUSTICE SCOTT - AFFIRMING
CUNNINGHAM, NOBLE, SCOTT AND VENTERS, JJ., BRAD RHOADS AND JOHN S. REED, SPECIAL JUSTICES, SITTING. ALL CONCUR. MINTON, C.J., AND ABRAMSON, J., NOT SITTING.
- [2010-SC-000120-DG](#) JEFFERSON
TO BE PUBLISHED

Questions Presented:
Immunity. Defamation. The issue is whether statements made in response to a request the Attorney General investigate a case are subject to an absolute or qualified privilege where a party alleges defamation.

2. ANTHONY EDWARDS V. MELISSA HARROD, ADMINISTRATOR, OFFENDER INFORMATION SERVICES, AND LADONNA THOMPSON, COMMISSIONER, DEPARTMENT OF CORRECTIONS
OPINION OF THE COURT BY CHIEF JUSTICE MINTON - AFFIRMING
MINTON, C.J.; ABRAMSON, CUNNINGHAM, NOBLE, SCOTT AND VENTERS, JJ., SITTING. ALL CONCUR.
- [2010-SC-000770-DG](#) FRANKLIN
TO BE PUBLISHED

Questions Presented:
Juvenile. Youthful Offenders. Violent Offender Statute. The question presented is whether Violent Offender Statute KRS 439.3401 applies to a “youthful offender” upon probation revocation so as to bar the requirement of serving 85% of a sentence prior to parole consideration.

SUPREME COURT OF KENTUCKY

FEBRUARY 21, 2013 MINUTES

RELEASED: 10:00 A.M.

3. JOSHUA PEACHER V. COMMONWEALTH OF KENTUCKY AND NEREIDA ALLEN V. COMMONWEALTH OF KENTUCKY
OPINION OF THE COURT BY JUSTICE ABRAMSON - AFFIRMING
MINTON, C.J.; ABRAMSON, CUNNINGHAM, NOBLE, SCOTT AND VENTERS, JJ., SITTING. ALL CONCUR.
- [2011-SC-000248-MR](#) TO BE PUBLISHED JEFFERSON
- [2011-SC-000254-MR](#) TO BE PUBLISHED JEFFERSON

Questions Presented:
Joint trial in which both defendants were convicted of murder, first-degree assault and criminal abuse. No error arose from the joint trial or the introduction of defendant Allen's redacted statement. There was sufficient evidence of complicity and to the extent the complicity definition instruction was in error, that error was harmless given the substantive offense instructions correctly identified the required mental states. Jury instructions adequately distinguished the alleged assault and abuse of the victim from the alleged murder. Trial court properly denied motion to suppress defendant's statement.

4. DARBY ASHLEY BARNES V. COMMONWEALTH OF KENTUCKY
OPINION OF THE COURT BY JUSTICE CUNNINGHAM - AFFIRMING
MINTON, C.J.; ABRAMSON, CUNNINGHAM, NOBLE, SCOTT AND VENTERS, JJ., SITTING. ALL CONCUR.
- [2011-SC-000325-DG](#) TO BE PUBLISHED FAYETTE

Questions Presented:
Criminal Law. Evidence. Issues include whether the admission of an eye-witness identification and evidence concerning a partial fingerprint denied the defendant due process.

5. SAID ALI BIYAD V. COMMONWEALTH OF KENTUCKY
OPINION OF THE COURT BY JUSTICE NOBLE - AFFIRMING
MINTON, C.J.; ABRAMSON, CUNNINGHAM, NOBLE, SCOTT AND VENTERS, JJ., SITTING. ALL CONCUR.
- [2011-SC-000409-MR](#) TO BE PUBLISHED JEFFERSON

Questions Presented:
Four counts of murder and attempted murder. Insanity defense. Defendant's presentation of evidence supporting an insanity defense does not shift the burden to the Commonwealth to disprove it.

SUPREME COURT OF KENTUCKY

FEBRUARY 21, 2013 MINUTES

RELEASED: 10:00 A.M.

6. BEN BROWNING V. JEFFERSON PREECE
OPINION OF THE COURT BY JUSTICE VENTERS - AFFIRMING
MINTON, C.J.; ABRAMSON, CUNNINGHAM, NOBLE, SCOTT AND VENTERS, JJ., SITTING. ALL CONCUR.
- [2011-SC-000459-DG](#) TO BE PUBLISHED LAWRENCE
- Questions Presented:**
Appellate Procedure. Indispensable Parties. In this dispute over the width and measurement of an easement across the property of neighboring landowners, the question is whether defendant landowners were indispensable parties on an appeal by the neighboring defendant landowner.
7. MALCOLM BLOUNT V. COMMONWEALTH OF KENTUCKY
OPINION OF THE COURT BY JUSTICE VENTERS - AFFIRMING
MINTON, C.J.; ABRAMSON, CUNNINGHAM, NOBLE, SCOTT AND VENTERS, JJ., SITTING. ALL CONCUR.
- [2012-SC-000002-MR](#) TO BE PUBLISHED GRAVES
- Questions Presented:**
Two counts of first degree sodomy and two counts of first degree sexual abuse-20 years. Lay witnesses may not testify about a putative child victim's behavior to imply that behavioral changes signify child sexual abuse.
8. CONNIE ROBERTSON (ADMINISTRATRIX OF THE ESTATE OF INA FAYE WILSON HARRIS) V. HONORABLE JEFFREY T. BURDETTE, JUDGE, PULASKI CIRCUIT COURT, DIVISION II, ET AL.
OPINION OF THE COURT BY JUSTICE NOBLE – AFFIRMING
MINTON, C.J.; ABRAMSON, CUNNINGHAM, NOBLE, SCOTT AND VENTERS, JJ., SITTING. ALL CONCUR.
- [2012-SC-000387-MR](#) TO BE PUBLISHED FROM COURT OF APPEALS
- Questions Presented:**
Denial of a writ of prohibition. Writ not available where trial court properly disqualified appellant's chosen counsel and law firm, who had previously represented the appellee real party in interest in several cases.

SUPREME COURT OF KENTUCKY

FEBRUARY 21, 2013 MINUTES

RELEASED: 10:00 A.M.

9. ELMER DAVID MILLER V.
COMMONWEALTH OF KENTUCKY
**OPINION OF THE COURT BY
JUSTICE NOBLE -
AFFIRMING IN PART, REVERSING
IN PART, AND REMANDING**
MINTON, C.J.; ABRAMSON,
CUNNINGHAM, NOBLE, SCOTT AND
VENTERS, JJ., SITTING. ALL CONCUR,
EXCEPT ABRAMSON, J., CONCURS IN
RESULT ONLY.

[2011-SC-000030-DG](#)
TO BE PUBLISHED

LINCOLN

Questions Presented:

Criminal law. Probation Revocation. Sex Offender Treatment Program. Impossibility. The issue is the appropriate remedy where the trial court ordered the defendant to two years probation and probation and parole ordered the defendant to complete the Sex Offender Treatment Program; however, due to the length of the program, the defendant cannot complete the program prior to the expiration of his probation.

10. JOSEPH GONCALVES V.
COMMONWEALTH OF KENTUCKY
**OPINION OF THE COURT BY
JUSTICE ABRAMSON -
AFFIRMING IN PART, REVERSING
AND REMANDING IN PART**
MINTON, C.J.; CUNNINGHAM,
ABRAMSON, NOBLE, SCOTT AND
VENTERS, JJ., SITTING.
ALL CONCUR.

[2010-SC-000142-MR](#)
TO BE PUBLISHED

NELSON

Questions Presented:

First degree robbery and PFO I -35 years. Trial court did not err in denying the motion to suppress where a valid arrest warrant existed at time of defendant's arrest and evidence was seized pursuant to a valid search warrant. Complicity instruction. Prosecutor's argument did not improperly shift burden of proof. "Missing evidence" instruction cured any prejudice caused by failure to preserve computer hard drive. Speedy trial. Reverse and remand portion of judgment imposing the public defender fees and court costs.

SUPREME COURT OF KENTUCKY

FEBRUARY 21, 2013 MINUTES

RELEASED: 10:00 A.M.

11. JOHN MILLER V.
COMMONWEALTH OF KENTUCKY
**OPINION OF THE COURT BY
JUSTICE NOBLE -
AFFIRMING IN PART, REVERSING
AND REMANDING, IN PART, AND
VACATING IN PART**
MINTON, C.J.; ABRAMSON,
CUNNINGHAM, NOBLE, SCOTT AND
VENTERS, JJ., SITTING. ALL CONCUR.
- [2011-SC-000340-MR](#) HART
TO BE PUBLISHED
- Questions Presented:**
Multiple counts of incest, rape and sodomy- 70 years. Commonwealth's questioning did not constitute prosecutorial misconduct. Application of the amended statute, KRS 530.020, to pre-amendment behavior violates ex post facto principles, impacts due process and requires resentencing for the incest conviction as to one of the victims. Trial court erred in levying costs and partial public defender fees on defendant who was indigent.
12. SAMANTHA MONAHAN ACOSTA V.
COMMONWEALTH OF KENTUCKY
**OPINION OF THE COURT BY
JUSTICE NOBLE -
REVERSING**
MINTON, C.J.; ABRAMSON,
CUNNINGHAM, NOBLE, SCOTT AND
VENTERS, JJ., SITTING. ALL CONCUR,
EXCEPT SCOTT, J., CONCURS IN
RESULT ONLY.
- [2011-SC-000097-DG](#) FAYETTE
TO BE PUBLISHED
- Questions Presented:**
Criminal law. Criminal abuse. Burden of proof. KRS 508.100. Issues include sufficiency of the evidence to support a guilty verdict under KRS 508.100.
13. MHC KENWORTH-KNOXVILLE/
NASHVILLE V.
M & H TRUCKING, LLC; AND MIKE
HALL
**OPINION OF THE COURT BY
JUSTICE NOBLE -
REVERSING**
MINTON, C.J.; ABRAMSON,
CUNNINGHAM, NOBLE, SCOTT AND
VENTERS, JJ., SITTING. ALL CONCUR.
- [2011-SC-000441-DG](#) KNOTT
TO BE PUBLISHED
- Questions Presented:**
Contracts. Arbitration. Issues involve the enforceability of an arbitration provision in a truck sales contract governed by the Federal Arbitration Act.

SUPREME COURT OF KENTUCKY

FEBRUARY 21, 2013 MINUTES

RELEASED: 10:00 A.M.

14. CARLOS LAMONT ORDWAY V. COMMONWEALTH OF KENTUCKY
OPINION OF THE COURT BY JUSTICE VENTERS - REVERSING AND REMANDING
MINTON, C.J.; ABRAMSON, CUNNINGHAM, NOBLE, SCOTT AND VENTERS, JJ., SITTING. MINTON, C.J.; ABRAMSON AND NOBLE, JJ., CONCUR. CUNNINGHAM, J., CONCURS ON ALL SECTIONS BUT, CONCURS IN RESULT ONLY AS TO SECTION X. SCOTT, J., CONCURS ON ALL SECTIONS BUT, CONCURS IN RESULT ONLY AS TO SECTION IV AND X.
- [2010-SC-000783-MR](#) FAYETTE
TO BE PUBLISHED
- Questions Presented:**

Death penalty. Reversible error occurred: in the admission of police officer's testimony that defendant's behavior after the shooting was inconsistent with someone who had acted in self-defense, thereby implying that from his experienced observations that defendant had fabricated his self-defense claim; in the admission of evidence of defendant's post-arrest invocation of his right to remain silent; in the trial court's failure to strike for cause a potential juror who was the sibling of the victim's advocate directly connected with the case; and in the exclusion of evidence of the victim's statement immediately before the shooting.
15. RAMESH PATEL V. TUTTLE PROPERTIES, LLC., ET AL.
OPINION OF THE COURT BY JUSTICE SCOTT - REVERSING AND REMANDING
MINTON, C.J.; ABRAMSON, CUNNINGHAM, NOBLE, SCOTT AND VENTERS, JJ., SITTING. ALL CONCUR.
- [2011-SC-000415-DG](#) MONTGOMERY
TO BE PUBLISHED
- Questions Presented:**

Contracts. Damages. Issues involve the reasonableness of the forfeiture of the \$125,000 earnest money deposit for the buyer's breach of a \$450,000 contract for sale of a convenience store.
16. ROBERT ANTHONY CARTER V. COMMONWEALTH OF KENTUCKY
MEMORANDUM OPINION OF THE COURT - AFFIRMING
MINTON, C.J.; ABRAMSON, CUNNINGHAM, NOBLE, SCOTT AND VENTERS, JJ., SITTING. ALL CONCUR.
- [2011-SC-000060-MR](#) JEFFERSON
NOT TO BE PUBLISHED

SUPREME COURT OF KENTUCKY

FEBRUARY 21, 2013 MINUTES

RELEASED: 10:00 A.M.

17. MATTHEW SHELTON V. [2011-SC-000354-MR](#) CLINTON
COMMONWEALTH OF KENTUCKY **NOT TO BE PUBLISHED**
MEMORANDUM OPINION OF
THE COURT – AFFIRMING
MINTON, C.J.; ABRAMSON,
CUNNINGHAM, NOBLE, SCOTT AND
VENTERS, JJ., SITTING. ALL CONCUR.
18. STEPHEN TANNER V. [2011-SC-000364-MR](#) JEFFERSON
COMMONWEALTH OF KENTUCKY **NOT TO BE PUBLISHED**
MEMORANDUM OPINION OF
THE COURT – AFFIRMING
MINTON, C.J.; ABRAMSON,
CUNNINGHAM, NOBLE, SCOTT AND
VENTERS, JJ., SITTING. ALL CONCUR.
19. GARY ROBINSON V. [2011-SC-000440-MR](#) LEWIS
COMMONWEALTH OF KENTUCKY **NOT TO BE PUBLISHED**
MEMORANDUM OPINION OF
THE COURT – AFFIRMING
MINTON, C.J.; ABRAMSON,
CUNNINGHAM, NOBLE, SCOTT AND
VENTERS, JJ., SITTING. ALL CONCUR.
20. JIMMY CORNETTE, JR. V. [2011-SC-000479-MR](#) MARTIN
COMMONWEALTH OF KENTUCKY **NOT TO BE PUBLISHED**
MEMORANDUM OPINION OF
THE COURT – AFFIRMING
MINTON, C.J.; ABRAMSON,
CUNNINGHAM, NOBLE, SCOTT AND
VENTERS, JJ., SITTING. ALL CONCUR
EXCEPT VENTERS, J., DISSENTS BY
SEPARATE OPINION.
21. ALASTAIR MARTEL COUCH V. [2011-SC-000603-MR](#) FRANKLIN
COMMONWEALTH OF KENTUCKY **NOT TO BE PUBLISHED**
MEMORANDUM OPINION OF
THE COURT – AFFIRMING
MINTON, C.J.; ABRAMSON,
CUNNINGHAM, NOBLE, SCOTT AND
VENTERS, JJ., SITTING. ALL CONCUR.

SUPREME COURT OF KENTUCKY

FEBRUARY 21, 2013 MINUTES

RELEASED: 10:00 A.M.

22. RONALD SIMPSON V. [2011-SC-000707-MR](#) KENTON
COMMONWEALTH OF KENTUCKY **NOT TO BE PUBLISHED**
MEMORANDUM OPINION OF
THE COURT – AFFIRMING
MINTON, C.J.; ABRAMSON,
CUNNINGHAM, NOBLE, SCOTT AND
VENTERS, JJ., SITTING. ALL CONCUR.
23. RODERICK DENNIS BLINCOE V. [2011-SC-000708-MR](#) FAYETTE
COMMONWEALTH OF KENTUCKY **NOT TO BE PUBLISHED**
MEMORANDUM OPINION OF
THE COURT – AFFIRMING
MINTON, C.J.; ABRAMSON,
CUNNINGHAM, NOBLE, SCOTT AND
VENTERS, JJ., SITTING. ALL CONCUR.
24. WARDELL COLEMAN V. [2011-SC-000767-MR](#) JEFFERSON
COMMONWEALTH OF KENTUCKY **NOT TO BE PUBLISHED**
MEMORANDUM OPINION OF
THE COURT – AFFIRMING
MINTON, C.J.; ABRAMSON,
CUNNINGHAM, NOBLE, SCOTT AND
VENTERS, JJ., SITTING. MINTON, C.J.;
ABRAMSON, CUNNINGHAM, AND
VENTERS, JJ., CONCUR. NOBLE, J.,
CONCURS IN PART AND DISSENTS
IN PART BY SEPARATE OPINION, IN
WHICH SCOTT, J., JOINS.
25. DON GOGEL V. [2012-SC-000014-WC](#) FROM COURT
JOHN HANCOCK, KENTUCKY **NOT TO BE PUBLISHED** OF APPEALS
UNINSURED EMPLOYERS' FUND;
HONORABLE J. LANDON OVERFIELD,
ADMINISTRATIVE LAW JUDGE; AND
WORKERS' COMPENSATION BOARD
MEMORANDUM OPINION OF
THE COURT – AFFIRMING
MINTON, C.J.; ABRAMSON,
CUNNINGHAM, NOBLE, SCOTT AND
VENTERS, JJ., SITTING. ALL CONCUR.

SUPREME COURT OF KENTUCKY

FEBRUARY 21, 2013 MINUTES

RELEASED: 10:00 A.M.

26. JAMES SIMMONS V. [2012-SC-000064-MR](#) MCCRACKEN
COMMONWEALTH OF KENTUCKY **NOT TO BE PUBLISHED**
MEMORANDUM OPINION OF
THE COURT – AFFIRMING
MINTON, C.J.; ABRAMSON,
CUNNINGHAM, NOBLE, SCOTT AND
VENTERS, JJ., SITTING. ALL CONCUR.
27. CHRISTOPHER A. LASLEY V. [2012-SC-000455-MR](#) FROM COURT
HONORABLE JAMES M. SHAKE **NOT TO BE PUBLISHED** OF APPEALS
(JEFFERSON CIRCUIT CIRCUIT
COURT JUDGE), ET AL.
MEMORANDUM OPINION OF
THE COURT – AFFIRMING
MINTON, C.J.; ABRAMSON,
CUNNINGHAM, NOBLE, SCOTT AND
VENTERS, JJ., SITTING. ALL CONCUR.
28. ICG HAZARD, LLC V. [2012-SC-000036-WC](#) FROM COURT
DEREK FARMER; HONORABLE **NOT TO BE PUBLISHED** OF APPEALS
JOSEPH W. JUSTICE, ADMINISTRATIVE
LAW JUDGE; AND WORKERS'
COMPENSATION BOARD
MEMORANDUM OPINION OF
THE COURT – REVERSING
MINTON, C.J.; ABRAMSON,
CUNNINGHAM, NOBLE, SCOTT AND
VENTERS, JJ., SITTING. ALL CONCUR.

OPINIONS AND ORDERS – FEBRUARY 13, 2013

COMMONWEALTH OF KENTUCKY V. 2012-SC-000306-DG LEWIS
MICHAEL MORAN
**ORDER GRANTED DISCRETIONARY REVIEW,
VACATED THE COURT OF APPEALS' OPINION
AND REMANDED TO THE COURT OF APPEALS
FOR FURTHER PROCEEDINGS.**

SUPREME COURT OF KENTUCKY

FEBRUARY 21, 2013 MINUTES

RELEASED: 10:00 A.M.

OPINIONS AND ORDERS – FEBRUARY 21, 2013

KENTUCKY BAR ASSOCIATION V. BRIAN PATRICK CURTIS ORDER SUSPENDED RESPONDENT FROM THE PRACTICE OF LAW FOR 60 DAYS. MINTON, C.J.; ABRAMSON, CUNNINGHAM, NOBLE, SCOTT AND VENTERS, JJ., SITTING. ALL CONCUR.	<u>2012-SC-000672-KB</u> TO BE PUBLISHED	IN SUPREME COURT
KENTUCKY BAR ASSOCIATION V. GAIL SMITH SLONE ORDER SUSPENDED RESPONDENT FROM THE PRACTICE OF LAW FOR 61 DAYS. MINTON, C.J.; ABRAMSON, CUNNINGHAM, NOBLE, SCOTT AND VENTERS, JJ., SITTING. ALL CONCUR.	<u>2012-SC-000673-KB</u> TO BE PUBLISHED	IN SUPREME COURT
KENTUCKY BAR ASSOCIATION V. ANDREW L. HOLTON ORDER SUSPENDED RESPONDENT FROM THE PRACTICE OF LAW FOR 30 DAYS. MINTON, C.J.; ABRAMSON, CUNNINGHAM, NOBLE, SCOTT AND VENTERS, JJ., SITTING. ALL CONCUR.	<u>2012-SC-000710-KB</u> TO BE PUBLISHED	IN SUPREME COURT
TIMOTHY A. PARKER V. KENTUCKY BAR ASSOCIATION ORDER PUBLICLY REPRIMANDED MOVANT. MINTON, C.J.; ABRAMSON, CUNNINGHAM, NOBLE, SCOTT AND VENTERS, JJ., SITTING. ALL CONCUR.	<u>2012-SC-000778-KB</u> TO BE PUBLISHED	IN SUPREME COURT

SUPREME COURT OF KENTUCKY

FEBRUARY 21, 2013 MINUTES

RELEASED: 10:00 A.M.

OPINIONS AND ORDERS – FEBRUARY 21, 2013

BRANDON J. LAWRENCE V.
KENTUCKY BAR ASSOCIATION
**ORDER SUSPENDED MOVANT FROM
THE PRACTICE OF LAW FOR 30 DAYS
PROBATED FOR ONE YEAR WITH
CONDITIONS.**

MINTON, C.J.; ABRAMSON,
CUNNINGHAM, NOBLE, SCOTT AND
VENTERS, JJ., SITTING. ALL CONCUR.

[2012-SC-000779-KB](#)
TO BE PUBLISHED

IN SUPREME
COURT

KENTUCKY BAR ASSOCIATION V.
WILLIAM R. PALMER, JR.
**ORDER SUSPENDED RESPONDENT FROM
THE PRACTICE OF LAW FOR 5 YEARS.**

MINTON, C.J.; ABRAMSON,
CUNNINGHAM, NOBLE, SCOTT AND
VENTERS, JJ., SITTING. ALL CONCUR.

[2012-SC-000787-KB](#)
TO BE PUBLISHED

IN SUPREME
COURT

ROBERT F. WRIGHT V.
KENTUCKY BAR ASSOCIATION
**ORDER SUSPENDED MOVANT FROM
THE PRACTICE OF LAW FOR 30 DAYS
PROBATED FOR THREE YEARS WITH
CONDITIONS.**

MINTON, C.J.; ABRAMSON,
CUNNINGHAM, NOBLE, SCOTT AND
VENTERS, JJ., SITTING. ALL CONCUR.

[2012-SC-000813-KB](#)
TO BE PUBLISHED

IN SUPREME
COURT

KENTUCKY BAR ASSOCIATION V.
JACK F. DURIE, JR.
**ORDER PERMANENTLY DISBARRED
RESPONDENT FROM THE PRACTICE OF
LAW.**

MINTON, C.J.; ABRAMSON,
CUNNINGHAM, NOBLE, SCOTT AND
VENTERS, JJ., SITTING. ALL CONCUR.

[2012-SC-000824-KB](#)
TO BE PUBLISHED

IN SUPREME
COURT

SUPREME COURT OF KENTUCKY

FEBRUARY 21, 2013 MINUTES

RELEASED: 10:00 A.M.

OPINIONS AND ORDERS – FEBRUARY 21, 2013

CLIFFORD ALAN BRANHAM V.
KENTUCKY BAR ASSOCIATION
**ORDER DENIED MOVANT RESTORATION TO
THE PRACTICE OF LAW.**
MINTON, C.J.; ABRAMSON,
CUNNINGHAM, NOBLE, SCOTT AND
VENTERS, JJ., SITTING. ALL CONCUR.

[2013-SC-000027-KB](#)
TO BE PUBLISHED

IN SUPREME
COURT

TRAVIS OLEN MYLES, JR. V.
KENTUCKY BAR ASSOCIATION
ORDER PUBLICLY REPRIMANDED MOVANT.
ALL SITTING. ALL CONCUR.
MINTON, C.J.; ABRAMSON,
CUNNINGHAM, NOBLE, SCOTT AND
VENTERS, JJ., SITTING. ALL CONCUR.

[2013-SC-000045-KB](#)
TO BE PUBLISHED

IN SUPREME
COURT

**THE FOLLOWING SUPREME COURT OPINION
AND ORDER WAS PREPARED PRIOR TO
JUSTICE WIL SCHRODER'S RESIGNATION
EFFECTIVE JANUARY 17, 2013.**

KENTUCKY BAR ASSOCIATION V.
STEVEN O. THORNTON
**ORDER SUSPENDED RESPONDENT FROM
THE PRACTICE OF LAW FOR 181 DAYS.**
ABRAMSON, CUNNINGHAM, NOBLE,
SCHRODER, SCOTT AND VENTERS, JJ.,
SITTING. ALL CONCUR. MINTON, C.J., NOT
SITTING.

[2012-SC-000024-KB](#)
TO BE PUBLISHED

IN SUPREME
COURT

**COURT ORDERS GRANTING MOTION FOR DISCRETIONARY REVIEW –
JANUARY 11, 2013**

APPALACHIAN RACING, LLC. ET AL. V.
FAMILY TRUST FOUNDATION OF KENTUCKY,
INC. D/B/A THE FAMILY FOUNDATION
(THE "FOUNDATION")
SCHRODER, J., NOT SITTING.

2012-SC-000414-DG

FRANKLIN

SUPREME COURT OF KENTUCKY

FEBRUARY 21, 2013 MINUTES

RELEASED: 10:00 A.M.

**COURT ORDERS GRANTING MOTION FOR DISCRETIONARY REVIEW –
JANUARY 11, 2013**

THE KENTUCKY DEPARTMENT OF REVENUE 2012-SC-000415-DG FRANKLIN
V.
THE FAMILY TRUST FOUNDATION OF
KENTUCKY, INC. D/B/A THE FAMILY
FOUNDATION, ET AL.
SCHRODER, J., NOT SITTING.

THE KENTUCKY HORSE RACING 2012-SC-000416-DG FRANKLIN
COMMISSION **V.**
THE FAMILY TRUST FOUNDATION OF
KENTUCKY, INC. D/B/A THE FAMILY
FOUNDATION, ET AL.
SCHRODER, J., NOT SITTING.

**COURT ORDERS GRANTING MOTION FOR DISCRETIONARY REVIEW –
FEBRUARY 21, 2013**

DELPHI AUTOMOTIVE SYSTEMS, LLC **V.** 2012-SC-000249-DG FRANKLIN
CAPITAL COMMUNITY ECONOMIC/INDUSTRIAL
DEVELOPMENT CORPORATION, INC.

JOE MARSON; CAROLYN MARTIN;
AND EDDIE HAMILTON **V.** 2012-SC-000314-DG FLOYD
SHERRY THOMASON (INDIVIDUALLY), ET AL.

COMMONWEALTH OF KENTUCKY **V.** 2012-SC-000368-DG JEFFERSON
LEE ANDREW WRIGHT

TARA LYNN WHITCOMB **V.** 2012-SC-000376-DG FAYETTE
COMMONWEALTH OF KENTUCKY

COMMONWEALTH OF KENTUCKY **V.** 2012-SC-000402-DG POWELL
FLOYD GROVER JOHNSON

COMMONWEALTH OF KENTUCKY **V.** 2012-SC-000431-DG CAMPBELL
BRIAN LEMONS

SUPREME COURT OF KENTUCKY

FEBRUARY 21, 2013 MINUTES

RELEASED: 10:00 A.M.

**COURT ORDERS GRANTING MOTION FOR DISCRETIONARY REVIEW –
FEBRUARY 21, 2013**

DR. LAURENCE H. KANT V. LEXINGTON THEOLOGICAL SEMINARY	2012-SC-000502-DG	FAYETTE
JIMMY KIRBY V. LEXINGTON THEOLOGICAL SEMINARY	2012-SC-000519-DG	FAYETTE
PHILLIP SITAR V. COMMONWEALTH OF KENTUCKY AND LORETTA GLOVER	2012-SC-000737-DGE	CRITTENDEN
JUSTICE & PUBLIC SAFETY CABINET, COMMONWEALTH OF KENTUCKY, ET AL. V. VIRGINIA GAITHER, ADMINISTRATRIX AND PERSONAL REPRESENTATIVE OF THE ESTATE OF LEBRON GAITHER, DECEASED, ET AL.	2012-SC-000835-DG	FRANKLIN

**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW –
FEBRUARY 13, 2013**

EDWARD H. FLINT V. COACH HOUSE INC., ET AL. CUNNINGHAM, SCOTT AND VENTERS, JJ., AND BRADLEY P. RHOADS, JOHN S. REED AND WILLIAM L. GRAHAM, SPECIAL JUSTICES, SITTING.	2011-SC-000714-D	JEFFERSON
BARRY WEBB V. SAMANTHA YATES	2012-SC-000074-D	CARTER
STEPHEN ABELS V. COMMONWEALTH OF KENTUCKY	2012-SC-000141-D	BOONE
MELISSA ROSE V. THE CITY OF OLIVE HILL	2012-SC-000173-D	CARTER

SUPREME COURT OF KENTUCKY

FEBRUARY 21, 2013 MINUTES

RELEASED: 10:00 A.M.

**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW –
FEBRUARY 13, 2013**

JAMES FAIRROW, JR. V. COMMONWEALTH OF KENTUCKY	2012-SC-000193-D	HOPKINS
ROGER HOLSEY, JR. V. COMMONWEALTH OF KENTUCKY	2012-SC-000256-D	FAYETTE
ALDEAN HENDERSON, JR. V. COMMONWEALTH OF KENTUCKY THE OPINION OF THE COURT OF APPEALS IS ORDERED NOT TO BE PUBLISHED.	2012-SC-000260-D	JEFFERSON
WILHELMINA MARY MCEWAN V. EIA PROPERTIES, LLC.	2012-SC-000262-D	FAYETTE
JASON GOLDEN V. PAINTSVILLE UTILITIES THE OPINION OF THE COURT OF APPEALS IS ORDERED NOT TO BE PUBLISHED.	2012-SC-000273-D	JOHNSON
WALTER RAY GEORGE V. COMMONWEALTH OF KENTUCKY	2012-SC-000278-D	MCCRACKEN
DAVON S. TOOLEY V. COMMONWEALTH OF KENTUCKY	2012-SC-000280-D	JEFFERSON
ERIC PAUL JOHNSON V. COMMONWEALTH OF KENTUCKY	2012-SC-000292-D	DAVISS
JESSE J. BOWENS AND ANNA M. BOWENS V. DONALD MCCOY AND KATHY MCCOY	2012-SC-000293-D	PIKE
RONALD JOHNSON V. RANDY WHITE	2012-SC-000305-D	MUHLENBERG
CASS MARTIN V. COMMONWEALTH OF KENTUCKY	2012-SC-000313-D	HART

SUPREME COURT OF KENTUCKY

FEBRUARY 21, 2013 MINUTES

RELEASED: 10:00 A.M.

**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW –
FEBRUARY 13, 2013**

STUDOR, INC. V. OFFICE OF HOUSING, BUILDINGS AND CONSTRUCTION, ET AL. SCOTT, J., WOULD GRANT.	2012-SC-000329-D	FRANKLIN
DEBBIE C. BURKE V. SHELBY ENERGY COOPERATIVE, INC.	2012-SC-000335-D	SHELBY
MONROE CASSADY AND NELSON T. SPARKS V. WOLF CREEK COLLIERIES EMPLOYEE BURIAL FUND, INC. SCOTT, J., WOULD GRANT.	2012-SC-000336-D	MARTIN
DOUGLAS PATTERSON V. COMMONWEALTH OF KENTUCKY SCOTT, J., WOULD GRANT.	2012-SC-000340-D	BULLITT
COMMONWEALTH OF KENTUCKY V. ERIC GRIDER	2012-SC-000341-D	FRANKLIN
KENTUCKY UNEMPLOYMENT INSURANCE COMMISSION, ET AL. V. PARTS CLEANING TECHNOLOGIES, LLC	2012-SC-000350-D	FRANKLIN
BRIAN WILLIAMS V. CHASE BANK USA, N.A.	2012-SC-000353-D	JEFFERSON
LAKE CUMBERLAND RESORT COMMUNITY ASSOCIATION, INC., ETC., ET AL. V. AUTO OWNERS INSURANCE COMPANY	2012-SC-000355-D	PULASKI
BOBBY BLEVENS V. COMMONWEALTH OF KENTUCKY	2012-SC-000367-D	CLINTON
CARL E. KNOCHELMANN, JR. V. MARY E. BJELLAND	2012-SC-000369-D	CAMPBELL

SUPREME COURT OF KENTUCKY

FEBRUARY 21, 2013 MINUTES

RELEASED: 10:00 A.M.

**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW –
FEBRUARY 13, 2013**

FRANK CAMPBELL V. COMMONWEALTH OF KENTUCKY	2012-SC-000375-D	LETCHER
PAUL A. JOHNSON V. COMMONWEALTH OF KENTUCKY	2012-SC-000381-D	BATH
DIANET PLUCINSKI V. COMMUNITY ACTION COUNCIL THE OPINION OF THE COURT OF APPEALS IS ORDERED NOT TO BE PUBLISHED. VENTERS, J., WOULD GRANT.	2012-SC-000385-D	FAYETTE
COMMONWEALTH OF KENTUCKY V. BENJAMIN SENSEMAN THE OPINION OF THE COURT OF APPEALS IS ORDERED NOT TO BE PUBLISHED.	2012-SC-000399-D	BOONE
HERBERT EUGENE LEE, III V. COMMONWEALTH OF KENTUCKY	2012-SC-000403-D	JEFFERSON
COMMONWEALTH OF KENTUCKY V. DANIEL LAMAR KING CUNNINGHAM AND SCOTT, JJ., WOULD GRANT.	2012-SC-000405-D	CHRISTIAN
NU-WAY DRYWALL COMPANY, INC. V. FIRST PLACE BANK, ET AL. SCOTT AND VENTERS, JJ., WOULD GRANT.	2012-SC-000412-D	BOONE
WILLIAM RAY PAYNE V. COMMONWEALTH OF KENTUCKY	2012-SC-000419-D	TAYLOR
JOHN STEPHEN TELEK V. SAMANTHA DAUGHTERTY, NOW TAYLOR	2012-SC-000442-DE	KENTON

SUPREME COURT OF KENTUCKY

FEBRUARY 21, 2013 MINUTES

RELEASED: 10:00 A.M.

**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW –
FEBRUARY 13, 2013**

SARAH LAWRENCE, AS ADMINISTRATOR, ETC., ET AL. V. ALLEN GEORGE THE OPINION OF THE COURT OF APPEALS IS ORDERED NOT TO BE PUBLISHED.	2012-SC-000445-D	JEFFERSON
RUBY H. PORTER V. HELEN CATHEY	2012-SC-000448-D	SIMPSON
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY V. TANDY HILL	2012-SC-000449-D	BOONE
CAROLYN HOWARD V. KENTUCKY RETIREMENT SYSTEMS	2012-SC-000458-D	FRANKLIN
THOMAS J. CANEDY V. JENNETH M. CANEDY	2012-SC-000461-D	HARDIN
JASON ST. CLAIR WILSON V. COMMONWEALTH OF KENTUCKY	2012-SC-000466-D	SCOTT
PEOPLES BANK OF NORTHERN KENTUCKY, INC., ET AL. V. CROWE HORWATH, F/K/A CROWE CHIZEK AND COMPANY, LLC, ET AL.	2012-SC-000477-D	BOONE
LARRY DANIEL JOHNSON V. COMMONWEALTH OF KENTUCKY	2012-SC-000484-D	JACKSON
DONALD E. JAMES V. THOMAS L. JAMES	2012-SC-000493-D	TAYLOR
DONNA K. HICKS V. CARLA GIBSON VENTERS, J., WOULD GRANT.	2012-SC-000516-D	PERRY

SUPREME COURT OF KENTUCKY

FEBRUARY 21, 2013 MINUTES

RELEASED: 10:00 A.M.

**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW –
FEBRUARY 13, 2013**

JOHN COLEMAN V. COMMONWEALTH OF KENTUCKY	2012-SC-000520-D	KENTON
BOBBY PRIVETTE V. KENTON COUNTY KENTUCKY, ET AL.	2012-SC-000523-D	KENTON
WILLIAM B. BOYCE V. CITY OF TOMPKINSVILLE VENTERS, J., WOULD GRANT.	2012-SC-000555-D	MONROE
COMMONWEALTH OF KENTUCKY EX REL. JOHN DAVID BOGGS V. MARTHA J. BOGGS THE OPINION OF THE COURT OF APPEALS IS ORDERED NOT TO BE PUBLISHED.	2012-SC-000560-D	KENTON
DAVID HARVEY BREWSTER V. RANDY WHITE, WARDEN, GREEN RIVER CORRECTIONAL	2012-SC-000619-D	MUHLENBERG
ASHLEY R. DUNCAN, MOTHER V. JEFFERY A. MONTS, FATHER THE OPINION OF THE COURT OF APPEALS IS ORDERED NOT TO BE PUBLISHED.	2012-SC-000685-DE	JEFFERSON
CHARLOTTE ANN LUNSFORD V. STATE OF KENTUCKY AND THERESA LUNSFORD	2012-SC-000719-DE	KENTON
CABINET FOR HEALTH AND FAMILY SERVICES, COMMONWEALTH OF KENTUCKY V. T.J., W. J., M.J., INFANT, AND W.L.J., INFANT	2012-SC-000762-DE	KENTON
STEWART TITLE GUARANTY COMPANY V. TIMOTHY F. FINNEY, INDIVIDUALLY, ET AL.	2012-SC-000772-DE	JEFFERSON

SUPREME COURT OF KENTUCKY

FEBRUARY 21, 2013 MINUTES

RELEASED: 10:00 A.M.

**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW –
FEBRUARY 13, 2013**

TODD SCHULKERS V.
MARY CARLA SCHULKERS

2012-SC-000795-DE

KENTON

**COURT ORDERS DENYING BELATED MOTION FOR ENLARGEMENT OF TIME TO FILE
MOTION FOR DISCRETIONARY REVIEW – FEBRUARY 18, 2013**

HERBERT H. SMITH V.
TIMOTHY W. FINN, II
ENTERED: FEBRUARY 18, 2013

2012-SC-000814-D

RUSSELL

EUGNE SISCO V.
COMMONWEALTH OF KENTUCKY, JUSTICE
AND PUBLIC SAFETY CABINET, ET AL.
ENTERED: FEBRUARY 18, 2013

2013-SC-000063-D

PIKE

COURT ORDERS GRANTING PETITION FOR REHEARING – FEBRUARY 21, 2013

U.B. THOMAS, III V.
COMMONWEALTH OF KENTUCKY
**ORDER GRANTED APPELLEE'S PETITION
FOR MODIFICATION OF THE MEMORANDUM
OPINION OF THE COURT RENDERED
OCTOBER 25, 2012. THE OPINION IS MODIFIED
BY SUBSTITUTION OF THE ATTACHED
OPINION IN LIEU OF THE ORIGINAL OPINION.**
MINTON, C.J.; ABRAMSON, CUNNINGHAM,
NOBLE, SCOTT AND VENTERS, JJ., SITTING.
ALL CONCUR.

[2011-SC-000042-MR](#)
NOT TO BE PUBLISHED

JEFFERSON

SUPREME COURT OF KENTUCKY

FEBRUARY 21, 2013 MINUTES

RELEASED: 10:00 A.M.

COURT ORDERS DENYING PETITION FOR REHEARING – FEBRUARY 21, 2013

BOBBY PERRY V. 2010-SC-000833-MR KENTON
COMMONWEALTH OF KENTUCKY
**MINTON, C.J.; ABRAMSON, CUNNINGHAM,
NOBLE, SCOTT AND VENTERS, JJ., SITTING.
ALL CONCUR.**

JAMES WRIGHT V. [2011-SC-000191-MR](#) CAMPBELL
COMMONWEALTH OF KENTUCKY **TO BE PUBLISHED**
**ORDER DENIED APPELLEE’S PETITION FOR
REHEARING. ORDER MODIFIED THE
OPINION OF THE COURT RENDERED
OCTOBER 25, 2012, BY ADDING A FOOTNOTE
ON PAGE 4.**
MINTON, C.J.; ABRAMSON, CUNNINGHAM,
NOBLE, SCOTT AND VENTERS, JJ., SITTING.
ALL CONCUR. ABRAMSON, J., CONCURS IN
THE MODIFICATION, BUT WOULD GRANT
REHEARING.

TOBY RAY LASURE V. 2011-SC-000220-MR FAYETTE
COMMONWEALTH OF KENTUCKY
**MINTON, C.J.; ABRAMSON, CUNNINGHAM,
NOBLE, SCOTT AND VENTERS, JJ., SITTING.
ALL CONCUR.**

SHELLEY NETHERWOOD V. 2012-SC-000040-MR FROM COURT
JAMES M. SHAKE, JUDGE, JEFFERSON OF APPEALS
CIRCUIT COURT, ET AL.
**MINTON, C.J.; ABRAMSON, CUNNINGHAM,
NOBLE, SCOTT AND VENTERS, JJ., SITTING.
ALL CONCUR.**

COURT ORDERS DISMISSING

NATIONAL UNION FIRE INSURANCE 2010-SC-000827-DG PIKE
COMPANY, ET AL. V.
PIKE COUNTY BOARD OF EDUCATION,
ET AL.
ENTERED: FEBRUARY 18, 2013

SUPREME COURT OF KENTUCKY

FEBRUARY 21, 2013 MINUTES

RELEASED: 10:00 A.M.

COURT ORDERS DISMISSING

YAZAKI NORTH AMERICA, INC. V.
REBECCA PILE, ET AL.
ENTERED: FEBRUARY 18, 2013

2012-SC-000110-WC

FROM COURT
OF APPEALS

GILBERTO DIAZ V.
BECON CONSTRUCTION COMPANY, ET AL.
ENTERED: DECEMBER 21, 2012

2012-SC-000321-WC

FROM COURT
OF APPEALS

BRADLEY FOSTER V.
COMMONWEALTH OF KENTUCKY
ENTERED: FEBRUARY 18, 2013

2012-SC-000451-MR

HOPKINS

PNC BANK, N.A. SUCCESSOR-IN-INTEREST
TO NATIONAL CITY BANK OF KENTUCKY V.
HON. BRIAN C. EDWARDS, JUDGE ,
JEFFERSON CIRCUIT COURT, ET AL.
ENTERED: FEBRUARY 18, 2013

2012-SC-000810-MR

FROM COURT
OF APPEAL

OHIO FARMERS INSURANCE/WESTFIELD
INSURANCE V.
ALGER BREEDING, ET AL.
ENTERED: FEBRUARY 18, 2013

2012-SC-000812-WC

FROM COURT
OF APPEALS

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

STEPHEN MARTIN KENNEY V.
KENTUCKY BAR ASSOCIATION
ENTERED: DECEMBER 19, 2012

2012-SC-000827-KB

IN SUPREME
COURT

SUSAN ELIZABETH ESTES V.
KENTUCKY BAR ASSOCIATION
ENTERED: DECEMBER 26, 2012

2012-SC-000837-KB

IN SUPREME
COURT

THOMAS FRANCIS DAVIS V.
KENTUCKY BAR ASSOCIATION
ENTERED: DECEMBER 26, 2012

2012-SC-000838-KB

IN SUPREME
COURT

SUPREME COURT OF KENTUCKY

FEBRUARY 21, 2013 MINUTES

RELEASED: 10:00 A.M.

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

LARRY W. PERRY V.
KENTUCKY BAR ASSOCIATION
ENTERED: FEBRUARY 6, 2013

2013-SC-000087-KB

IN SUPREME
COURT

KIRBY RYAN WARMS V.
KENTUCKY BAR ASSOCIATION
ENTERED: FEBRUARY 6, 2013

2013-SC-000088-KB

IN SUPREME
COURT

MICHAEL ALLEN STIDHAM V.
KENTUCKY BAR ASSOCIATION
ENTERED: FEBRUARY 6, 2013

2013-SC-000089-KB

IN SUPREME
COURT