

**SUPREME COURT OF KENTUCKY**

**SEPTEMBER 22, 2011 MINUTES**

**RELEASED: 10:00 A.M.**

140. SCOTT RICHARD STANTON V.  
COMMONWEALTH OF KENTUCKY  
**OPINION OF THE COURT BY  
JUSTICE ABRAMSON –  
AFFIRMING**  
ALL SITTING.  
MINTON, C.J.; CUNNINGHAM, NOBLE,  
SCOTT, AND VENTERS, JJ., CONCUR.  
SCHRODER, J., CONCURS IN RESULT  
ONLY.

[2010-SC-000102-MR](#)  
**TO BE PUBLISHED**

TODD

**Questions Presented:**

Guilty Plea. First degree rape and first degree sodomy-20 years. Trial court correctly found from the totality of the circumstances that investigators did not coerce defendant's confession by representing that his children could be removed from the home if he failed to cooperate with the investigation.

141. THOMAS YORK, SR. V.  
COMMONWEALTH OF KENTUCKY  
**OPINION OF THE COURT BY  
JUSTICE CUNNINGHAM -  
AFFIRMING**  
ALL SITTING. ALL CONCUR.

[2010-SC-000240-MR](#)  
**TO BE PUBLISHED**

KENTON

**Questions Presented:**

First degree burglary, first degree robbery and second degree PFO-30 years. Voice Identification. Defendant's fifth amendment rights were not violated by being required to recite a neutral phrase before the jury so that the victim could make an in-court identification of his voice. Where proper admonitions were given, the defendant was not entitled to a mistrial because of a reference to DNA testing or misstatements about his prior criminal record.

142. RONNY D. WALKER V.  
COMMONWEALTH OF KENTUCKY  
**OPINION OF THE COURT BY  
JUSTICE ABRAMSON -  
AFFIRMING**  
ALL SITTING. ALL CONCUR.

[2010-SC-000409-MR](#)  
**TO BE PUBLISHED**

JEFFERSON

**Questions Presented:**

Murder, first degree burglary, tampering with physical evidence, intimidating a participant in the legal process, tampering with a witness and PFO II-Life without parole for 25 years. Trial court did not err in admitting interrogation tape containing detective's personal remarks. Trial court's opening remarks concerning the assessment of witness credibility were not palpably erroneous. Burglary instruction did not allow for a non-unanimous verdict.

SUPREME COURT OF KENTUCKY

SEPTEMBER 22, 2011 MINUTES

RELEASED: 10:00 A.M.

143. LINVIL CURTIS TURPIN V.  
COMMONWEALTH OF KENTUCKY  
**OPINION OF THE COURT BY  
JUSTICE ABRAMSON -  
AFFIRMING**  
ALL SITTING. ALL CONCUR.

[2010-SC-000550-MR](#)  
**TO BE PUBLISHED**

CASEY

**Questions Presented:**

Possession of a firearm by a convicted felon and first degree PFO-20 years. Twenty year recidivist sentence cannot be characterized as grossly disproportionate and therefore did not violate the Eighth Amendment's prohibition against cruel and unusual punishment.

144. MARCUS S. MINIX, SR. V.  
LARRY ROBERTS, FAYETTE  
COUNTY ATTORNEY, SHERRY  
COLLIER, MEDIATOR,  
AND MARCUS S. MINIX, JR.  
**OPINION OF THE COURT BY  
JUSTICE VENTERS -  
AFFIRMING**  
MINTON, C.J.; ABRAMSON,  
CUNNINGHAM, AND SCHRODER,  
JJ., CONCUR. SCOTT, J., CONCURS  
IN RESULT ONLY BY SEPARATE  
OPINION. NOBLE, J., NOT SITTING.

[2010-SC-000583-MR](#)  
**TO BE PUBLISHED**

FROM COURT  
OF APPEALS

**Questions Presented:**

Action to contest county attorney's mandatory mediation program dismissed because it was improperly filed in the Court of Appeals. Relief may be properly sought in the circuit court.

145. SAEID SHAFIZADEH V.  
HON. JERRY J. BOWLES, JUDGE,  
JEFFERSON CIRCUIT FAMILY  
COURT AND DENISE SHAFIZADEH  
(NOW DUGAS); AND A.B.S. AND  
D.J.S., MINOR CHILDREN  
**OPINION OF THE COURT BY  
JUSTICE CUNNINGHAM -  
AFFIRMING**  
ALL SITTING. ALL CONCUR.

[2010-SC-000747-MR](#)  
**TO BE PUBLISHED**

FROM COURT  
OF APPEALS

**Questions Presented:**

Family law. Overruling *Brockman v. Craig*, 205 S.W.3d 244 (Ky.App.2006). A parent seeking to become a primary residential parent in a joint custody arrangement is seeking a change in timesharing, not custody. Modification of custody is only necessary when the parties are seeking a change of custody from sole to joint or vice versa.

SUPREME COURT OF KENTUCKY

SEPTEMBER 22, 2011 MINUTES

RELEASED: 10:00 A.M.

146. LARRY ORDWAY V. COMMONWEALTH OF KENTUCKY  
**OPINION OF THE COURT AFFIRMING IN PART AND REVERSING IN PART**  
ALL SITTING.  
MINTON, C.J.; NOBLE, SCHRODER AND VENTERS, JJ., CONCUR. ABRAMSON, J., CONCURS IN RESULT ONLY. CUNNINGHAM, J., CONCURS IN PART AND DISSENTS IN PART BY SEPARATE OPINION IN WHICH SCOTT, J., JOINS.
- [2009-SC-000479-MR](#) CHRISTIAN  
**TO BE PUBLISHED**
- Questions Presented:**  
Three counts of first degree robbery, ten counts of third degree burglary, six counts of TBUT over \$300, receiving stolen property and PFO I-70 years. Collateral estoppel did not bar prosecution for robbery. No standing was established to contest search. Identical jury instructions on nine counts of third degree burglary were improper, requiring reversal of those
147. REGINALD LAMONT WHITTLE V. COMMONWEALTH OF KENTUCKY  
**OPINION OF THE COURT BY JUSTICE NOBLE – AFFIRMING IN PART, REVERSING IN PART, AND REMANDING**  
MINTON, C.J.; ABRAMSON, CUNNINGHAM, SCOTT AND VENTERS, JJ., CONCUR. SCHRODER, J., CONCURS IN RESULT ONLY.
- [2009-SC-000787-MR](#) JEFFERSON  
**TO BE PUBLISHED**
- Questions Presented:**  
Possession of marijuana, trafficking in cocaine, tampering with physical evidence and PFO I-30 years. Finding a Confrontation Clause violation, his trafficking and tampering convictions are reversed; his conviction for possession of marijuana is affirmed.
148. JAMES DEMETRIUS MULLINS V. COMMONWEALTH OF KENTUCKY  
**OPINION OF THE COURT BY JUSTICE NOBLE - AFFIRMING IN PART, REVERSING IN PART, AND REMANDING**  
ALL SITTING. ALL CONCUR.
- [2010-SC-000263-MR](#) FAYETTE  
**TO BE PUBLISHED**
- Questions Presented:**  
Murder, tampering with physical evidence and PFOI-35 years. Defendant waived his right to claim entitlement to an EED instruction on appeal. Prosecutor’s statements in closing argument, while concerning, were not flagrant and did not require reversal where the evidence of guilt was overwhelming. Handgun testimony was properly admitted where it met the relevancy test of KRE 401 and had a sufficient nexus to the offense. Because there was insufficient evidence of defendant’s intent to conceal the gun, the conviction for tampering with physical evidence is reversed.

SUPREME COURT OF KENTUCKY

SEPTEMBER 22, 2011 MINUTES

RELEASED: 10:00 A.M.

149. PATRICIA GREENE, THELMA CORNELIUS, SANDY WOOD JOHNSON, ANNA PERKINS, DEAN WOOD, DOROTHY WOOD, LORELLA WOOD AND JOHN C. WOOD V. COMMONWEALTH OF KENTUCKY, ADMINISTRATIVE OFFICE OF THE COURTS; HONORABLE JERRY WINCHESTER, JUDGE OF MCCREARY CIRCUIT COURT; CHARLES E. KING; AND KENTUCKY BOARD OF CLAIMS **AND** COMMONWEALTH OF KENTUCKY, ADMINISTRATIVE OFFICE OF THE COURTS V. PATRICIA GREENE, THELMA, CORNELIUS, SANDY WOOD JOHNSON, ANNA PERKINS, DEAN WOOD, DOROTHY WOOD, LORELLA WOOD, JOHN C. WOOD, HONORABLE JERRY WINCHESTER, JUDGE OF MCCREARY CIRCUIT COURT; CHARLES E. KING; AND KENTUCKY BOARD OF CLAIMS **OPINION OF THE COURT BY SPECIAL JUSTICE RHOADS – REVERSING** SCHRODER, SCOTT, AND VENTERS, JJ., CONCUR. NOBLE, J., DISSENTS BY SEPARATE OPINION IN WHICH CUNNINGHAM, J., AND CONNOLLY, SPECIAL JUSTICE, JOIN. MINTON, C.J., AND ABRAMSON, J., NOT SITTING.
- [2007-SC-000511-DG](#) FRANKLIN  
**TO BE PUBLISHED**
- [2008-SC-000783-DG](#) FRANKLIN  
**TO BE PUBLISHED**
- Questions Presented:**  
Jurisdiction of the Board of Claims. Board of Claims established to consider negligent acts by the Commonwealth or its employees, not intentional torts. AOC improper party to Board action. Judge's actions herein are grounds for a claim in the Board of Claims based upon alleged negligence in the performance of a ministerial duty by an officer of the state.

SUPREME COURT OF KENTUCKY

SEPTEMBER 22, 2011 MINUTES

RELEASED: 10:00 A.M.

150. COMMONWEALTH OF KENTUCKY V. [2010-SC-000074-DG](#) SHELBY  
ANGELA PETERS  
**TO BE PUBLISHED**  
**OPINION OF THE COURT BY**  
**JUSTICE SCHRODER –**  
**REVERSING**  
ALL SITTING. ALL CONCUR.
- Questions Presented:**  
Criminal Law. Discovery. Judicial Discretion. Issues include whether trial court has authority to compel the attendance of a witness at a pretrial
151. THE DREAMERS, LLC; WILLIE M. [2010-SC-000227-DG](#) HARDIN  
NEAL, JR.; AND GLENDA HOFFMAN V. **TO BE PUBLISHED**  
DON'S LUMBER & HARDWARE, INC.  
**OPINION OF THE COURT BY**  
**JUSTICE NOBLE -**  
**REVERSING**  
ALL SITTING. ALL CONCUR.
- Questions Presented:**  
Materialman's Lien. Appellate Procedure. The issue is whether an appeal is properly dismissed when the defendant pays in full the amount owed under the final judgment instead of getting a supersedeas bond.
152. KENNETH JONES V. [2009-SC-000221-MR](#) CARLISLE  
COMMONWEALTH OF KENTUCKY  
**TO BE PUBLISHED**  
**OPINION OF THE COURT BY**  
**JUSTICE SCHRODER –**  
**REVERSING AND REMANDING**  
ALL SITTING. ALL CONCUR.
- Questions Presented:**  
Murder-Guilty but Mentally Ill. KRS 503.055 (3) -"No Duty to Retreat" Instruction. KRS 503.055 (3) was not intended to apply to a victim's conduct, but only to a defendant's conduct relative to his or her claim of self- defense.
153. SUZANNE ANDERSON V. [2010-SC-000646-DGE](#) FRANKLIN  
JOSEPH JOHNSON  
**TO BE PUBLISHED**  
**OPINION OF THE COURT BY**  
**JUSTICE NOBLE -**  
**REVERSING AND REMANDING**  
MINTON, C.J.; CUNNINGHAM,  
SCHRODER, AND SCOTT, JJ.,  
CONCUR. ABRAMSON AND  
VENTERS, JJ., CONCUR IN RESULT  
ONLY.
- Questions Presented:**  
Child Custody. Modification. Issues include whether factual findings are required in ruling upon post-dissolution motions to modify parental timesharing to accommodate relocation of one joint custodian.

SUPREME COURT OF KENTUCKY

SEPTEMBER 22, 2011 MINUTES

RELEASED: 10:00 A.M.

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| 154. | DAVID BENNETT V.<br>COMMONWEALTH OF KENTUCKY<br><b>MEMORANDUM OPINION OF<br/>THE COURT – <u>AFFIRMING</u></b><br>ALL SITTING. ALL CONCUR.  | <a href="#">2010-SC-000255-MR</a><br><b>NOT TO BE PUBLISHED</b>  | TODD                 |
| 155. | ROBERT EUGENE DENNIS V.<br>COMMONWEALTH OF KENTUCKY<br><b>MEMORANDUM OPINION OF<br/>THE COURT – <u>AFFIRMING</u></b><br>ALL SITTING. ALL CONCUR.   | <a href="#">2010-SC-000425-MR</a><br><b>NOT TO BE PUBLISHED</b>  | DAVISS               |
| 156. | ROGER SAPP V.<br>COMMONWEALTH OF KENTUCKY<br><b>AND</b><br>TONJA SAPP V.<br>COMMONWEALTH OF KENTUCKY<br><b>MEMORANDUM OPINION OF<br/>THE COURT – <u>AFFIRMING</u></b><br>ALL SITTING.<br>MINTON, C.J.; ABRAMSON,<br>CUNNINGHAM, SCHRODER, SCOTT,<br>AND VENTERS, JJ., CONCUR. NOBLE<br>J., CONCURS IN RESULT ONLY. | <a href="#">2010-SC-000444-MR</a><br><b>NOT TO BE PUBLISHED</b><br><br><a href="#">2010-SC-000445-MR</a><br><b>NOT TO BE PUBLISHED</b> | MCLEAN<br><br>MCLEAN |
| 157. | EARL CHANLEY V.<br>COMMONWEALTH OF KENTUCKY<br><b>MEMORANDUM OPINION OF<br/>THE COURT – <u>AFFIRMING</u></b><br>ALL SITTING. ALL CONCUR.   | <a href="#">2010-SC-000473-MR</a><br><b>NOT TO BE PUBLISHED</b>  | KENTON               |
| 158. | DANIEL SAYRE V.<br>COMMONWEALTH OF KENTUCKY<br><b>MEMORANDUM OPINION OF<br/>THE COURT – <u>AFFIRMING</u></b><br>ALL SITTING. ALL CONCUR.   | <a href="#">2010-SC-000482-MR</a><br><b>NOT TO BE PUBLISHED</b>  | JESSAMINE            |

SUPREME COURT OF KENTUCKY

SEPTEMBER 22, 2011 MINUTES

RELEASED: 10:00 A.M.

159. TIMOTHY L. MILLS V. [2010-SC-000650-MR](#) KENTON  
COMMONWEALTH OF KENTUCKY **NOT TO BE PUBLISHED**  
**MEMORANDUM OPINION OF**  
**THE COURT – AFFIRMING**  
ALL SITTING.  
MINTON, C.J.; ABRAMSON, SCHRODER,  
AND VENTERS, JJ., CONCUR. SCOTT,  
J., CONCURS IN RESULT ONLY BY  
SEPARATE OPINION IN WHICH  
CUNNINGHAM, J., JOINS.
160. JOHN CARLISLE SHEESLEY V. [2010-SC-000668-MR](#) JEFFERSON  
COMMONWEALTH OF KENTUCKY **NOT TO BE PUBLISHED**  
**MEMORANDUM OPINION OF**  
**THE COURT – AFFIRMING**  
ALL SITTING. ALL CONCUR.
161. JOHN WAYNE SKAGGS V. [2010-SC-000723-MR](#) JEFFERSON  
COMMONWEALTH OF KENTUCKY **NOT TO BE PUBLISHED**  
**MEMORANDUM OPINION OF**  
**THE COURT – AFFIRMING**  
ALL SITTING. ALL CONCUR.
162. WESTERN IRVING DIE CAST V. [2010-SC-000799-WC](#) FROM COURT  
LOREN RICE; HONORABLE R. SCOTT **NOT TO BE PUBLISHED** OF APPEALS  
BORDERS, ADMINISTRATIVE  
LAW JUDGE; AND WORKERS'  
COMPENSATION BOARD  
**MEMORANDUM OPINION OF THE**  
**COURT - AFFIRMING**  
ALL SITTING. ALL CONCUR.
163. JESSIKA MOORE V. [2010-SC-000829-WC](#) FROM COURT  
PIZZA HUT, INC.; HONORABLE **NOT TO BE PUBLISHED** OF APPEALS  
HOWARD E. FRASIER, JR.,  
ADMINISTRATIVE LAW JUDGE; AND  
WORKERS' COMPENSATION BOARD  
**MEMORANDUM OPINION OF THE**  
**COURT - AFFIRMING**  
ALL SITTING. ALL CONCUR.

**SUPREME COURT OF KENTUCKY**

**SEPTEMBER 22, 2011 MINUTES**

**RELEASED: 10:00 A.M.**

164. ROBERT D. WHEAT V. [2011-SC-000017-WC](#) FROM COURT  
KEVIN SWEENEY, D/B/A KBS HOME **NOT TO BE PUBLISHED** OF APPEALS  
IMPROVEMENTS; MIKE RIGGS  
CONSTRUCTION; UNINSURED  
EMPLOYERS' FUND; HONORABLE  
RICHARD JOINER, ADMINISTRATIVE  
LAW JUDGE; AND WORKERS'  
COMPENSATION BOARD  
**MEMORANDUM OPINION OF THE  
COURT - AFFIRMING**  
ALL SITTING. ALL CONCUR.
165. MICKEY BOONE V. [2011-SC-000018-WC](#) FROM COURT  
DAWAHARES; HONORABLE IRENE **NOT TO BE PUBLISHED** OF APPEALS  
STEEN, ADMINISTRATIVE LAW JUDGE;  
AND WORKERS' COMPENSATION  
BOARD  
**MEMORANDUM OPINION OF THE  
COURT - AFFIRMING**  
ALL SITTING. ALL CONCUR.
166. ELMER BLANKENSHIP V. [2011-SC-000131-WC](#) FROM COURT  
WAL-MART STORES, INC.; **NOT TO BE PUBLISHED** OF APPEALS  
HONORABLE EDWARD D. HAYS,  
ADMINISTRATIVE LAW JUDGE; AND  
WORKERS' COMPENSATION BOARD  
**MEMORANDUM OPINION OF THE  
COURT - AFFIRMING**  
ALL SITTING. ALL CONCUR.



SUPREME COURT OF KENTUCKY

SEPTEMBER 22, 2011 MINUTES

RELEASED: 10:00 A.M.

167. CURTIS D. PAYNE V. [2010-SC-000199-MR](#) SIMPSON  
COMMONWEALTH OF KENTUCKY **NOT TO BE PUBLISHED**  
**MEMORANDUM OPINION OF**  
**THE COURT – AFFIRMING IN PART**  
**AND REVERSING IN PART**  
MINTON, C.J.; ABRAMSON,  
CUNNINGHAM, SCHRODER, AND  
VENTERS, JJ., CONCUR. SCOTT, J.,  
CONCURS IN RESULT ONLY BY  
SEPARATE OPINION. NOBLE, J.,  
CONCURS EXCEPT AS TO  
SENTENCING, AND WOULD REVERSE  
THE SENTENCE AND REMAND FOR  
A NEW PENALTY PHASE DUE TO THE  
IMPROPER ADMISSION OF THE POST-  
ARREST TAZERING.
168. JAMES C. POTTER, II V. [2010-SC-000410-MR](#) MCCRACKEN  
COMMONWEALTH OF KENTUCKY **NOT TO BE PUBLISHED**  
**MEMORANDUM OPINION OF**  
**THE COURT – AFFIRMING IN PART**  
**AND REVERSING AND REMANDING**  
**IN PART**  
ALL SITTING.  
MINTON, C.J., ABRAMSON, NOBLE,  
SCHRODER, AND VENTERS, JJ.,  
CONCUR. CUNNINGHAM, J. CONCURS  
IN PART AND DISSENTS IN PART WITH  
THE MAJORITY IN WHICH SCOTT, J.,  
JOINS, IN ALL BUT THE ISSUE OF THE  
JURY INSTRUCTIONS AND DISSENTS AS  
TO THAT ISSUE. HE DOES NOT AGREE  
THAT THE INSTRUCTIONS WERE ERROR,  
CONSISTENT WITH HIS DISSENT IN  
BANKS V. COMMONWEALTH, 313 S.W.  
3D 567, 576 (KY. 2010).

**SUPREME COURT OF KENTUCKY**

**SEPTEMBER 22, 2011 MINUTES**

**RELEASED: 10:00 A.M.**

**OPINIONS AND ORDERS – SEPTEMBER 14, 2011**

DARRYL JONES V. 2010-SC-000249-D JEFFERSON  
COMMONWEALTH OF KENTUCKY **NOT TO BE PUBLISHED**  
**ORDER GRANTED DISCRETIONARY REVIEW,  
VACATED THE COURT OF APPEALS' OPINION  
AND REMANDED TO THE COURT OF APPEALS  
FOR FURTHER PROCEEDINGS.**  
ALL SITTING. ALL CONCUR.

JASON WILSON V. 2010-SC-000315-D LAUREL  
COMMONWEALTH OF KENTUCKY **NOT TO BE PUBLISHED**  
**ORDER GRANTED DISCRETIONARY REVIEW,  
VACATED THE COURT OF APPEALS' OPINION  
AND REMANDED TO THE COURT OF APPEALS  
FOR FURTHER PROCEEDINGS.**  
ALL SITTING. ALL CONCUR.

**OPINIONS AND ORDERS – SEPTEMBER 22, 2011**

KENTUCKY BAR ASSOCIATION V. [2011-SC-000106-KB](#) IN SUPREME  
DAVID L. HELMERS **TO BE PUBLISHED** COURT  
**ORDER PERMANENTLY DISBARRED  
RESPONDENT FROM THE PRACTICE OF  
LAW.**  
ALL SITTING. ALL CONCUR.

KENTUCKY BAR ASSOCIATION V. [2011-SC-000213-KB](#) IN SUPREME  
FIELDING E. BALLARD, III **TO BE PUBLISHED** COURT  
**ORDER SUSPENDED RESPONDENT FROM  
THE PRACTICE OF LAW FOR 120 DAYS.**  
ALL SITTING. ALL CONCUR.

KENTUCKY BAR ASSOCIATION V. [2011-SC-000229-KB](#) IN SUPREME  
TERENCE K. MULLIKEN **TO BE PUBLISHED** COURT  
**ORDER SUSPENDED RESPONDENT FROM  
THE PRACTICE OF LAW FOR 5 YEARS WITH  
CONDITIONS.**  
ALL SITTING. ALL CONCUR.

SUPREME COURT OF KENTUCKY

SEPTEMBER 22, 2011 MINUTES

RELEASED: 10:00 A.M.

OPINIONS AND ORDERS – SEPTEMBER 22, 2011

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| KENTUCKY BAR ASSOCIATION V.<br>DAVID R. SCHOTT<br><b>ORDER PERMANENTLY DISBARRED<br/>RESPONDENT FROM THE PRACTICE OF<br/>LAW.</b><br>ALL SITTING. ALL CONCUR.   | <a href="#">2011-SC-000261-KB</a><br><b>TO BE PUBLISHED</b> | IN SUPREME<br>COURT |
| KENTUCKY BAR ASSOCIATION V.<br>RUTH ANN SEBASTIAN<br><b>ORDER SUSPENDED RESPONDENT FROM<br/>THE PRACTICE OF LAW FOR 270 DAYS.</b><br>ALL SITTING. ALL CONCUR.   | <a href="#">2011-SC-000311-KB</a><br><b>TO BE PUBLISHED</b> | IN SUPREME<br>COURT |
| SABINE M. KUDMANI V.<br>KENTUCKY BAR ASSOCIATION<br><b>ORDER RESTORED MOVANT TO THE<br/>PRACTICE OF LAW.</b><br>MINTON, C.J.; ABRAMSON, CUNNINGHAM,<br>NOBLE, SCHRODER AND VENTERS, JJ.,<br>CONCUR. SCOTT, J., CONCURS IN PART AND<br>DISSENTS IN PART BY SEPARATE OPINION. | 2011-SC-000327-KB<br><b>NOT TO BE PUBLISHED</b>             | IN SUPREME<br>COURT |
| KENTUCKY BAR ASSOCIATION V.<br>MICHAEL RAY MCDONNER<br><b>ORDER SUSPENDED RESPONDENT FROM<br/>THE PRACTICE OF LAW FOR 60 DAYS.</b><br>ALL SITTING. ALL CONCUR.  | <a href="#">2011-SC-000350-KB</a><br><b>TO BE PUBLISHED</b> | IN SUPREME<br>COURT |
| KENTUCKY BAR ASSOCIATION V.<br>DONALD L. RICHARDSON<br><b>ORDER SUSPENDED RESPONDENT FROM<br/>THE PRACTICE OF LAW FOR 5 YEARS.</b><br>MINTON, C.J.; ABRAMSON, CUNNINGHAM,<br>NOBLE, SCOTT AND VENTERS, JJ., CONCUR.<br>SCHRODER, J., NOT SITTING.                           | <a href="#">2011-SC-000353-KB</a><br><b>TO BE PUBLISHED</b> | IN SUPREME<br>COURT |

**SUPREME COURT OF KENTUCKY**

**SEPTEMBER 22, 2011 MINUTES**

**RELEASED: 10:00 A.M.**

**OPINIONS AND ORDERS – SEPTEMBER 22, 2011**

|   |   |                     |
|---|---|---------------------|
| LARRY A. TEMIN V.<br>KENTUCKY BAR ASSOCIATION<br><b>ORDER RESTORED MOVANT TO THE<br/>PRACTICE OF LAW.</b><br>ALL SITTING. ALL CONCUR. | 2011-SC-000407-KB<br><b>NOT TO BE PUBLISHED</b> | IN SUPREME<br>COURT |
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| ERIC THOMAS EBERWINE V.<br>KENTUCKY BAR ASSOCIATION<br><b>ORDER RESTORED MOVANT TO<br/>THE PRACTICE OF LAW WITH CONDITIONS.</b><br>ALL SITTING. ALL CONCUR. | 2011-SC-000408-KB<br><b>NOT TO BE PUBLISHED</b> | IN SUPREME<br>COURT |
|---|---|---------------------|

**COURT ORDERS GRANTING MOTION FOR DISCRETIONARY REVIEW –  
SEPTEMBER 14, 2011**

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|---|-------------------|-----------|
| PATRICIA W. BALLARD V.<br>1400 WILLOW COUNCIL OF CO-OWNERS,<br>INC. | 2010-SC-000533-DG | JEFFERSON |
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| ELISA M. HARLOW, EXECUTRIX FOR<br>THE ESTATE OF EUGENE SALESMAN V.<br>BEVERLY HEALTH AND REHABILITATION<br>SERVICES, INC., D/B/A CAMELOT<br>HEALTHCARE SPECILATY CENTER | 2010-SC-000808-DG | JEFFERSON |
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| NATIONAL UNION FIRE INSURANCE<br>COMPANY, ET AL. V.<br>PIKE BOARD OF EDUCATION, ET AL. | 2010-SC-000827-DG | PIKE |
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| SAMANTHA MONAHAN ACOSTA V.<br>COMMONWEALTH OF KENTUCKY | 2011-SC-000097-DG | FAYETTE |
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| COMMONWEALTH OF KENTUCKY V.<br>WILLIAM JOSEPH REED | 2011-SC-000111-DG | JEFFERSON |
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| THREE RIVERS MEDICAL CENTER V.<br>SOPHIA SAVAGE, ET AL. | 2011-SC-000348-DG | LAWRENCE |
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**SUPREME COURT OF KENTUCKY**

**SEPTEMBER 22, 2011 MINUTES**

**RELEASED: 10:00 A.M.**

**COURT ORDERS GRANTING MOTION FOR DISCRETIONARY REVIEW –  
SEPTEMBER 15, 2011**

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| BENJAMIN WRIGHT, JR. V.<br>HOUSE OF IMPORTS, INC., D/B/A IN STYLE<br>MINTON, C.J., AND VENTERS, J., WOULD<br>DENY. | 2011-SC-000264-DG | JEFFERSON |
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**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW –  
SEPTEMBER 14, 2011**

|   |                  |            |
|---|------------------|------------|
| HARRIS G. WHITE, ET AL. V.<br>CITY OF HILLVIEW  | 2010-SC-000579-D | BULLITT    |
| ANTHONY CURRY, D/B/A INTERSTATE<br>NEWS AND TOBACCO V.<br>CITY OF RICHMOND, KENTUCKY  | 2010-SC-000633-D | MADISON    |
| THERESE GARRETT, ET AL. V.<br>DIANA LOVE, ET AL.  | 2010-SC-000674-D | MARION     |
| TONY SMITH, INDIVIDUALLY AND IN HIS<br>OFFICIAL CAPACITY AS COUNTY JUDGE<br>EXECUTIVE, ET AL. V.<br>DIANE MOBLEY, INDIVIDUALLY AND AS<br>PERSONAL REPRESENTATIVE OF THE<br>ESTATE OF MEGAN MORRIS | 2010-SC-000760-D | GRAVES     |
| LORENZO LEE V.<br>COMMONWEALTH OF KENTUCKY  | 2010-SC-000766-D | CHRISTIAN  |
| NATHAN MARKSBERRY V.<br>RANDY WHITE, WARDEN, GREEN RIVER<br>CORRECTIONAL COMPLEX AND JUSTICE<br>AND PUBLIC SAFETY CABINET   | 2010-SC-000802-D | MUHLENBERG |
| TROY GARDNER V.<br>COMMONWEALTH OF KENTUCKY   | 2011-SC-000051-D | FAYETTE    |
| RONNIE GRAY V.<br>FARMERS CROP INSURANCE ALLIANCE,<br>INC.  | 2011-SC-000077-D | CLINTON    |

**SUPREME COURT OF KENTUCKY**

**SEPTEMBER 22, 2011 MINUTES**

**RELEASED: 10:00 A.M.**

**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW –  
SEPTEMBER 14, 2011**

PATRICIA A. RAGLAND MCGEHEE,  
AND RICHARD MCGEHEE **V.**  
COMMONWEALTH OF KENTUCKY,  
KENTUCKY TRANSPORTATION CABINET

2011-SC-000098-D

FRANKLIN

LEE T. SPARKS **V.**  
WAL-MART STORES, INC.

2011-SC-000116-D

SIMPSON

DOROTHY BASHAM AND BOBBY JOE  
BASHAM **V.**  
THE CITY OF BOWLING GREEN, KENTUCKY

2011-SC-000127-D

WARREN

CABINET FOR FAMILIES AND CHILDREN,  
EX REL, TANYA FORTNER BY AND  
THROUGH THE JOHNSON COUNTY CHILD  
SUPPORT OFFICE **V.**  
TROY W. FOSTER

2011-SC-000240-DE

JOHNSON

JERRY WOODS, ET AL. **V.**  
M.L. TAYLOR

2011-SC-000313-D

WAYNE

PARKER W. EADS **V.**  
MAUREEN FOLAN EADS

2011-SC-000323-D

JEFFERSON

MICHAEL COX **V.**  
SHANNON GOINS CLAY, F/K/A COX

2011-SC-000394-DE

FAYETTE

ROBERT LAWRENCE BENNETT **V.**  
THERESA RENEE BENNETT

2011-SC-000402-DE

SCOTT

**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW –  
SEPTEMBER 15, 2011**

OHIO COUNTY SCHOOLS **V.**  
BRUCE RALEY

2010-SC-000643-D

OHIO

**SUPREME COURT OF KENTUCKY**

**SEPTEMBER 22, 2011 MINUTES**

**RELEASED: 10:00 A.M.**

**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW –  
SEPTEMBER 15, 2011**

|   |                  |           |
|---|------------------|-----------|
| DONNIE BAKER V.<br>FIRST NATIONAL BANK OF MANCHESTER<br>(A SUBSIDIARY OF FIRST NATIONAL<br>FINANCIAL CORPORATION) | 2011-SC-000027-D | CLAY      |
| ALONZO ALLEN, ET AL. V.<br>EVA COFFEY, ET AL.   | 2011-SC-000069-D | WAYNE     |
| ROBERT GILL V.<br>COMMONWEALTH OF KENTUCKY  | 2011-SC-000138-D | JESSAMINE |
| HECTUS & STRAUSE, PLLC, ET AL. V.<br>JOSEPH STEVEN CLARK  | 2011-SC-000173-D | MARION    |
| DAVID P. SANGSTER, M.D. V.<br>KENTUCKY BOARD OF MEDICAL LICENSURE   | 2011-SC-000182-D | JEFFERSON |
| PEGGY PETRILLI V.<br>STU SILBERMAN, ETC., ET AL.  | 2011-SC-000189-D | FAYETTE   |
| SHIELD'S MINI MARKET, INC. V.<br>GRAFTON AND WERNER ENTERPRISES, INC.   | 2011-SC-000238-D | NELSON    |

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

|   |                  |           |
|---|------------------|-----------|
| RALPH GENTRY, JR. V.<br>COMMONWEALTH OF KENTUCKY<br><b>ENTERED: AUGUST 31, 2011</b> | 2011-SC-000385-D | JEFFERSON |
|---|------------------|-----------|

**SUPREME COURT OF KENTUCKY**

**SEPTEMBER 22, 2011 MINUTES**

**RELEASED: 10:00 A.M.**

**COURT ORDERS GRANTING PETITION FOR REHEARING – SEPTEMBER 22, 2011**

MARY BETH CALOR, M.D. V. 2007-SC-000573-DG BOYD  
ASHLAND HOSPITAL CORPORATION,  
(D/B/A KING'S DAUGHTER MEDICAL  
CENTER), ET AL.

**AND**

ASHLAND HOSPITAL CORPORATION, 2008-SC-000317-DG BOYD  
D/B/A KING'S DAUGHTER MEDICAL  
CENTER), ET AL. V.  
MARY BETH CALOR, M.D.

**ORDER GRANTED PETITION FOR  
REHEARING AND WITHDREW THE OPINION  
OF THE COURT BY JUSTICE NOBLE  
RENDERED AUGUST 26, 2011 AND REISSUED  
THE MEMORANDUM OPINION OF THE  
COURT IN LIEU THEREOF.**

JOSHUA MACHNIAK V. 2008-SC-000352-DG LETCHER  
COMMONWEALTH OF KENTUCKY 2009-SC-000317-TG  
**ORDER GRANTED PETITION FOR 2009-SC-000342-TG  
REHEARING AND WITHDREW THE  
OPINION OF THE COURT RENDERED  
DECEMBER 16, 2010 AND REISSUED  
THE MEMORANDUM OPINION OF THE  
COURT IN LIEU THEREOF.**

**COURT ORDERS DENYING PETITION FOR REHEARING – SEPTEMBER 22, 2011**

PATRICK ALLEN WATKINS V. 2008-SC-000798-MR CLARK  
COMMONWEALTH OF KENTUCKY

JOY RENEE WATKINS V. 2008-SC-000823-MR CLARK  
COMMONWEALTH OF KENTUCKY

RONALD BIRDSONG V. 2009-SC-000084-DG FAYETTE  
COMMONWEALTH OF KENTUCKY

MICHAEL C. DUMAS V. 2010-SC-000378-MR MARSHALL  
COMMONWEALTH OF KENTUCKY



SUPREME COURT OF KENTUCKY

SEPTEMBER 22, 2011 MINUTES

RELEASED: 10:00 A.M.

**COURT ORDERS DISMISSING**

|   |                  |           |
|---|------------------|-----------|
| SKYLINE MOTEL II CORP.<br>V.<br>TIM TAYLOR, AS ADMINISTRATOR OF THE<br>ESTATE OF CHRISTINA VERTZ, DECEASED,<br>ET AL.<br>ENTERED: AUGUST 25, 2011 | 2010-SC-000706-D | CHRISTIAN |
|---|------------------|-----------|

**COURT ORDERS**

|   |  |           |
|---|--|-----------|
| JOSEPH FISCHER, ET AL. V.<br>JOHN R. FISCHER, SUCCESSOR<br>EXECUTOR OF THE ESTATE<br>OF JOHN FISCHER<br>ORDER CORRECTED OPINION<br>ENTERED MARCH 24, 2011 WITH<br>CORRECTED PAGES 1 AND 22 IN LIEU OF<br>THE ORIGINAL PAGES 1 AND 22. | <a href="#">2009-SC-000245-DG</a><br>TO BE PUBLISHED | JEFFERSON |
|---|--|-----------|

|  |  |                          |
|--|--|--------------------------|
| ABEL VERDON CONSTRUCTION,<br>AND ACUITY INSURANCE V.<br>MIGUEL A. RIVERA, HONORABLE<br>OTTO DANIEL WOLFF, ADMINISTRATIVE<br>LAW JUDGE; WORKERS' COMPENSATION<br>BOARD; AND CABINET FOR HEALTH AND<br>FAMILY SERVICES<br>ORDER CORRECTED OPINION<br>ENTERED AUGUST 25, 2011 WITH<br>CORRECTED PAGES 1 AND 12 IN LIEU OF<br>THE ORIGINAL PAGES 1 AND 12. | <a href="#">2010-SC-000744-WC</a><br>TO BE PUBLISHED | FROM COURT<br>OF APPEALS |
|--|--|--------------------------|

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

|   |                   |                     |
|---|-------------------|---------------------|
| TIMOTHY EDWARD ROGUS V.<br>KENTUCKY BAR ASSOCIATION<br>ENTERED: AUGUST 29, 2011 | 2011-SC-000494-KB | IN SUPREME<br>COURT |
| RICHARD A. DENNIS V.<br>KENTUCKY BAR ASSOCIATION<br>ENTERED: AUGUST 29, 2011    | 2011-SC-000495-KB | IN SUPREME<br>COURT |

**SUPREME COURT OF KENTUCKY**

**SEPTEMBER 22, 2011 MINUTES**

**RELEASED: 10:00 A.M.**

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

|   |                   |                     |
|---|-------------------|---------------------|
| TERRENCE PATRICK MCHUGH V.<br>KENTUCKY BAR ASSOCIATION<br><b>ENTERED: AUGUST 29, 2011</b>     | 2011-SC-000496-KB | IN SUPREME<br>COURT |
| CYNTHIA ANNE CASBY V.<br>KENTUCKY BAR ASSOCIATION<br><b>ENTERED: AUGUST 29, 2011</b>          | 2011-SC-000497-KB | IN SUPREME<br>COURT |
| JEAN ELIZABETH SEWELL V.<br>KENTUCKY BAR ASSOCIATION<br><b>ENTERED: AUGUST 29, 2011</b>       | 2011-SC-000498-KB | IN SUPREME<br>COURT |
| CHERYL ANN EIFERT V.<br>KENTUCKY BAR ASSOCIATION<br><b>ENTERED: AUGUST 29, 2011</b>           | 2011-SC-000499-KB | IN SUPREME<br>COURT |
| SUSAN JUDY DLOTT V.<br>KENTUCKY BAR ASSOCIATION<br><b>ENTERED: AUGUST 29, 2011</b>            | 2011-SC-000500-KB | IN SUPREME<br>COURT |
| VICKI HERNDON BROOKS V.<br>KENTUCKY BAR ASSOCIATION<br><b>ENTERED: AUGUST 29, 2011</b>        | 2011-SC-000501-KB | IN SUPREME<br>COURT |
| MARIA A. TRIPODES V.<br>KENTUCKY BAR ASSOCIATION<br><b>ENTERED: AUGUST 29, 2011</b>           | 2011-SC-000502-KB | IN SUPREME<br>COURT |
| ANDREA KRISTEN REYNOLDS V.<br>KENTUCKY BAR ASSOCIATION<br><b>ENTERED: AUGUST 30, 2011</b>     | 2011-SC-000505-KB | IN SUPREME<br>COURT |
| AUBREY WILLIAMS TURNER, JR. V.<br>KENTUCKY BAR ASSOCIATION<br><b>ENTERED: AUGUST 30, 2011</b> | 2011-SC-000506-KB | IN SUPREME<br>COURT |

**SUPREME COURT OF KENTUCKY**

**SEPTEMBER 22, 2011 MINUTES**

**RELEASED: 10:00 A.M.**

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

|   |                   |                     |
|---|-------------------|---------------------|
| DENNIS ADAIR BERKEY V.<br>KENTUCKY BAR ASSOCIATION<br><b>ENTERED: SEPTEMBER 19, 2011</b>            | 2011-SC-000542-KB | IN SUPREME<br>COURT |
| SUSAN CANTER REISNER V.<br>KENTUCKY BAR ASSOCIATION<br><b>ENTERED: SEPTEMBER 19, 2011</b>           | 2011-SC-000543-KB | IN SUPREME<br>COURT |
| GARY CARL PETTY V.<br>KENTUCKY BAR ASSOCIATION<br><b>ENTERED: SEPTEMBER 19, 2011</b>                | 2011-SC-000545-KB | IN SUPREME<br>COURT |
| RICHARD HUDSON BURR II V.<br>KENTUCKY BAR ASSOCIATION<br><b>ENTERED: SEPTEMBER 19, 2011</b>         | 2011-SC-000546-KB | IN SUPREME<br>COURT |
| RICK DEVON SIDERS V.<br>KENTUCKY BAR ASSOCIATION<br><b>ENTERED: SEPTEMBER 19, 2011</b>              | 2011-SC-000547-KB | IN SUPREME<br>COURT |
| BRANDON SCOTT WADDLE V.<br>KENTUCKY BAR ASSOCIATION<br><b>ENTERED: SEPTEMBER 19, 2011</b>           | 2011-SC-000548-KB | IN SUPREME<br>COURT |
| JOSHUA JAMES NOLAN V.<br>KENTUCKY BAR ASSOCIATION<br><b>ENTERED: SEPTEMBER 19, 2011</b>             | 2011-SC-000549-KB | IN SUPREME<br>COURT |
| JASON MATTHEW CARD V.<br>KENTUCKY BAR ASSOCIATION<br><b>ENTERED: SEPTEMBER 19, 2011</b>             | 2011-SC-000551-KB | IN SUPREME<br>COURT |
| DONALD RALPH WOOD V.<br>KENTUCKY BAR ASSOCIATION<br><b>ENTERED: SEPTEMBER 19, 2011</b>              | 2011-SC-000552-KB | IN SUPREME<br>COURT |
| MICHAEL ARTHUR ERNST LOESEVITZ V.<br>KENTUCKY BAR ASSOCIATION<br><b>ENTERED: SEPTEMBER 19, 2011</b> | 2011-SC-000553-KB | IN SUPREME<br>COURT |