

SUPREME COURT OF KENTUCKY

OCTOBER 28, 2021 RULINGS

RELEASED: 10:00 A.M.

149. KENTUCKY GUARDIANSHIP ADMINISTRATORS, LLC, AS CONSERVATOR FOR KALI CRUSENBERRY, ET AL. V. BAPTIST HEALTH SYSTEM, INC. D/B/A BAPTIST HEALTH CORBIN, ET AL.

[2019-SC-0295-DG](#)
TO BE PUBLISHED

WHITLEY

OPINION OF THE COURT BY JUSTICE KELLER - AFFIRMING

MINTON, C.J.; CONLEY, HUGHES, AND VANMETER, JJ., CONCUR. LAMBERT, J., CONCURS IN PART AND DISSENTS IN PART WITHOUT OPINION. NICKELL, J., NOT SITTING.

Questions Presented:

Torts. Medical Malpractice. Evidence. Incident Report. Jury Instructions. Issues include whether the hospital's incident report, stating the "clinically suspected" cause of the patient's cardiac arrest, was properly excluded due to counsel's failure to authenticate the document and whether the jury instructions properly limited the hospital's negligence to the nurses' actions.

150. KENTUCKY UNEMPLOYMENT INSURANCE COMMISSION V. MICHAEL NICHOLS, ET AL.

[2019-SC-0477-DG](#)
TO BE PUBLISHED

JEFFERSON

OPINION OF THE COURT BY CHIEF JUSTICE MINTON - REVERSING AND REMANDING

CONLEY, HUGHES, KELLER, VANMETER, JJ., AND SPECIAL JUSTICE JEFFREY EDWARDS, SITTING. ALL CONCUR. LAMBERT AND NICKELL, JJ., NOT SITTING.

Questions Presented:

Administrative Law. Unemployment Compensation. Ky. Const. § 116. Unauthorized Practice of Law. Issues involve standing to challenge the constitutionality of KRS 341.470(3), permitting non-lawyer representatives to appear on behalf of corporate or partnership employers before a referee or the Commission in unemployment compensation proceedings.

151. MICHAEL FIELDS V.
COMMONWEALTH OF KENTUCKY

[2019-SC-0663-DG](#)
TO BE PUBLISHED

SCOTT

**OPINION OF THE COURT BY JUSTICE
HUGHES - AFFIRMING**

ALL SITTING. ALL CONCUR.

Questions Presented:

Criminal Law. Possession of Material Portraying Sexual Performance by a Minor. Knowledge Element. Issues include whether the Commonwealth presented sufficient evidence that the defendant, who indiscriminately downloaded thousands of files from a peer-to-peer file-sharing program, knew that some of those files contained child pornography.

152. CITY OF FORT WRIGHT, KENTUCKY, ET AL. V.
BOARD OF TRUSTEES OF THE KENTUCKY RETIREMENT SYSTEMS

[2020-SC-0053-DG](#)
TO BE PUBLISHED

FRANKLIN

**OPINION OF THE COURT BY JUSTICE
VANMETER - AFFIRMING**

MINTON, C.J.; CONLEY, HUGHES, LAMBERT, AND KELLER, JJ., SITTING. MINTON, C.J.; HUGHES AND LAMBERT, JJ., CONCUR. KELLER, J., CONCURS BY SEPARATE OPINION IN WHICH CONLEY, J., JOINS. NICKELL, J., NOT SITTING.

Questions Presented:

Public Pensions. County Employees Retirement System. Statutory Interpretation. Issues include whether KRS 78.790(1), which requires CERS to invest in securities which are “permitted for the investment of funds by fiduciaries in this state[,]” prohibits CERS from investing in financial products that are not included in KRS 386.020, the list of authorized investments for trust funds.

153. DAVID JONES, INDIVIDUALLY, AND ON BEHALF OF ALL PERSONS SIMILARLY SITUATED. V.
CLARK COUNTY, KENTUCKY, ET AL.

[2020-SC-0107-DG](#)
TO BE PUBLISHED

CLARK

**OPINION OF THE COURT BY JUSTICE
CONLEY – REVERSING AND
REMANDING**

ALL SITTING. ALL CONCUR.

Questions Presented:

KRS 441.265. Constitutional Law. Issues involve whether a prisoner, later cleared of all pending charges, bears responsibility for a county jailer’s bill of over \$4000 for fees associated with his 14-month confinement.

154. MARTICE N. MCRAE V.
COMMONWEALTH OF KENTUCKY

[2020-SC-0114-MR](#)
TO BE PUBLISHED

JEFFERSON

**OPINION OF THE COURT BY JUSTICE
HUGHES - AFFIRMING**

ALL SITTING. ALL CONCUR.

Questions Presented:

Matter of Right. Criminal Law. Partial Fifth Amendment Privilege. In this direct appeal, the Court considers the application of partial Fifth Amendment privilege asserted by a witness; the prosecutor's statements during closing argument; whether it was palpable error to permit a witness with no personal knowledge of events to narrate the surveillance videos played for the jury; and whether the trial court abused its discretion by denying recross-examination of a witness.

155. CHARLES ADAMSON V.
JONATHAN ADAMSON ET. AL.

[2020-SC-0175-DG](#)
TO BE PUBLISHED

UNION

**OPINION OF THE COURT BY JUSTICE
CONLEY - REVERSING**

ALL SITTING. ALL CONCUR.

Questions Presented:

Statute of Frauds. Real Estate. Mediation Agreements. Enforceability. The issue in this case is whether a mediation agreement which involves ownership of real estate is binding upon the spouse who is the joint owner of the property, who does not sign the mediation agreement but whose spouse did sign the agreement, representing that he had authority to bind his spouse.

156. M.A.B. V.
COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND FAMILY
SERVICES, ET AL.

[2020-SC-0572-DGE](#)
TO BE PUBLISHED

BARREN

**OPINION OF THE COURT BY JUSTICE
LAMBERT - REVERSING AND
REMANDING**

ALL SITTING. MINTON, C.J.; CONLEY,
HUGHES, KELLER, AND VANMETER, JJ.,
CONCUR. NICKELL, J., DISSENTS WITH
SEPARATE OPINION.

Questions Presented:

Appellate Procedure. Children as Indispensable Parties in an Appeal from a Termination of Parental Rights. Notice to the Guardian Ad Litem. The issue is whether children are indispensable parties on appeal in a termination of parental rights case or whether notice to the guardian ad litem is sufficient to protect the children's interest on appeal.

157. TIME WARNER CABLE, INC. V.
RICKY SMITH, ET AL.

[2020-SC-0580-WC](#)
TO BE PUBLISHED

COURT OF
APPEALS

**OPINION OF THE COURT BY JUSTICE
CONLEY - AFFIRMING**

ALL SITTING. ALL CONCUR.

Questions Presented:

Workers' Compensation. Psychological Impairment. Supporting Testimony. Issues include whether testimony regarding psychological impairment is competent evidence and may be relied upon by an administrative law judge to determine disability and make an award.

158. SHILO THOMAS JOSEPH V.
COMMONWEALTH OF KENTUCKY

[2019-SC-0623-MR](#)
NOT TO BE PUBLISHED

JEFFERSON

**MEMORANDUM OPINION OF THE
COURT - AFFIRMING**

ALL SITTING. MINTON, C.J.; CONLEY,
HUGHES, LAMBERT, NICKELL, AND
VANMETER, JJ., CONCUR. KELLER, J.,
CONCURS IN RESULT ONLY.

159. MICHELE HAMPTON, AS
ADMINISTRATRIX OF THE ESTATE OF
GEOFFREY HAMPTON V.
INTECH CONTRACTING, LLC, ET AL.

[2020-SC-0111-WC](#)
NOT TO BE PUBLISHED

COURT OF
APPEALS

**MEMORANDUM OPINION OF THE
COURT - AFFIRMING**

ALL SITTING. ALL CONCUR.

160. ANTONIO WHARTON V.
COMMONWEALTH OF KENTUCKY

[2020-SC-0178-MR](#)
NOT TO BE PUBLISHED

TRIGG

**MEMORANDUM OPINION OF THE
COURT - AFFIRMING**

ALL SITTING. ALL CONCUR.

161. MARIAH BRADBERRY V.
HONORABLE A.C. MCKAY CHAUVIN, ET
AL. [2021-SC-0188-MR](#) JEFFERSON
NOT TO BE PUBLISHED
- MEMORANDUM OPINION OF THE
COURT - AFFIRMING**
- ALL SITTING. ALL CONCUR.
162. ROBERT WAYNE CLINE V.
COMMONWEALTH OF KENTUCKY [2020-SC-0251-MR](#) WARREN
NOT TO BE PUBLISHED
- MEMORANDUM OPINION OF THE
COURT - AFFIRMING**
- ALL SITTING. ALL CONCUR.
163. BRENDA HUTCHISON V.
BULLITT COUNTY BOARD OF
EDUCATION, ET AL. [2020-SC-0333-WC](#) COURT OF
NOT TO BE PUBLISHED APPEALS
- MEMORANDUM OPINION OF THE
COURT - AFFIRMING**
- ALL SITTING. ALL CONCUR.
164. LOGAN COONS, A MINOR, BY AND
THROUGH JENNIFER COONS, GUARDIAN
OF THE ESTATE OF LOGAN COONS, A
MINOR V. [2020-SC-0506-MR](#) JEFFERSON
HONORABLE JUDITH MCDONALD-
BURKMAN, ET AL. **NOT TO BE PUBLISHED**
- MEMORANDUM OPINION OF THE
COURT - AFFIRMING**
- ALL SITTING. MINTON, C.J.; HUGHES,
KELLER, NICKELL, AND VANMETER, JJ.,
CONCUR. LAMBERT, J., DISSENTS BY
SEPARATE OPINION IN WHICH CONLEY, J.,
JOINS.

OPINION AND ORDERS - October 28, 2021

JONATHAN RICHARD MCCARRICK V.
KENTUCKY BAR ASSOCIATION

[2021-SC-0330-KB](#)
TO BE PUBLISHED

IN SUPREME
COURT

**OPINION AND ORDER - PUBLIC
REPRIMAND**

ALL SITTING. ALL CONCUR.

MAUREEN ANN SULLIVAN V.
KENTUCKY BAR ASSOCIATION

[2021-SC-0388-KB](#)
TO BE PUBLISHED

IN SUPREME
COURT

OPINION AND ORDER - SUSPENDING

ALL SITTING. ALL CONCUR.

**EXPEDITED ORDER GRANTING DISCRETIONARY REVIEW (ORAL ARGUMENT) -
October 20, 2021**

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND FAMILY
SERVICES, EX REL. CHILD SUPPORT
ENFORCEMENT V.
B.N.T., ET AL.

[2021-SC-0287-DGE](#)

CLARK

ORDER GRANTING DISCRETIONARY REVIEW (ORAL ARGUMENT) - October 20, 2021

RIVER CITY FRATERNAL ORDER OF
POLICE LODGE NO. 614, INC. V.
LOUISVILLE/JEFFERSON COUNTY METRO
GOVERNMENT, ET AL.

[2021-SC-0159-DG](#)

JEFFERSON

COMMONWEALTH OF KENTUCKY V.
PERRY BELL

[2021-SC-0252-DG](#)

MARION

CURTIS GREEN, ET AL. V.
PHILLIP FRAZIER

[2021-SC-0293-DG](#)

POWELL

ORDER GRANTING DISCRETIONARY REVIEW (NO ORAL ARGUMENT) - October 20, 2021

VERSAILLES FARM, HOME AND GARDEN, LLC V.
HARVEY HAYNES, ET AL. [2021-SC-0161-DG](#) WOODFORD

JIM KING V.
BEVERAGE WAREHOUSE, LLC, ET AL. [2021-SC-0259-DG](#) JEFFERSON

ORDER DENYING DISCRETIONARY REVIEW - October 20, 2021

ALLYN D. MOORE, ET AL. V.
CITIMORTGAGE, INC. [2021-SC-0109-D](#) MCCRACKEN

KEVIN HENDERSON V.
BRAD ADAMS [2021-SC-0121-D](#) FRANKLIN

NABEEL G. ABUNASSAR V.
CABINET FOR HEALTH AND FAMILY SERVICES, COMMONWEALTH OF KENTUCKY, ET AL. [2021-SC-0122-D](#) JEFFERSON

REBECCA CARDWELL V.
COMMONWEALTH OF KENTUCKY [2021-SC-0137-D](#) HARDIN

STUART WAYNE WRIGHT V.
FRANK L. MILLER [2021-SC-0142-D](#) BULLITT

ARLENE RAMSEY V.
DONALD G. KEESEE, ET AL. [2021-SC-0170-D](#) BRECKINRIDGE

GEOFFREY M. YOUNG V.
ADAM EDELEN, ET AL. [2021-SC-0179-D](#) FAYETTE

ORDER DENYING DISCRETIONARY REVIEW - October 20, 2021

GEOFFREY M. YOUNG V. ADAM EDELEN, ET AL.	<u>2021-SC-0182-D</u>	FAYETTE
GEOFFREY M. YOUNG V. GARLAND ANDY BARR	<u>2021-SC-0186-D</u>	FAYETTE
COMMONWEALTH OF KENTUCKY V. DARRYL KEITH BAKER VANMETER, J., NOT SITTING.	<u>2021-SC-0191-D</u>	FAYETTE
RANDALL PRICE V. COMMONWEALTH OF KENTUCKY	<u>2021-SC-0206-D</u>	KENTON
BRANDON RUSSELL, ET AL. V. SALYERSVILLE NATIONAL BANK	<u>2021-SC-0209-D</u>	MAGOFFIN
MARIO DEVON FREDRICK V. COMMONWEALTH OF KENTUCKY	<u>2021-SC-0235-D</u>	CHRISTIAN
GEOFFREY M. YOUNG V. AMY MCGRATH	<u>2021-SC-0242-D</u>	SCOTT
GEOFFREY M. YOUNG V. ADAM EDELEN, ET AL.	<u>2021-SC-0249-D</u>	FAYETTE
OSCAR INGRAM V. COMMONWEALTH OF KENTUCKY	<u>2021-SC-0250-D</u>	FULTON
GEOFFREY M. YOUNG V. ADAM EDELEN, ET AL.	<u>2021-SC-0253-D</u>	FAYETTE

ORDER DENYING DISCRETIONARY REVIEW - October 20, 2021

BEVERLY RIDENOUR, ET AL. V. [2021-SC-0261-D](#) ROBERTSON
CAROLE HAYNES, EXECUTRIX OF THE
ESTATE OF URBAN A. LANSER, SR.

ROBERT M. BRANT, ET AL. V. [2021-SC-0266-D](#) MADISON
FLATWOODS CEMETERY ASSOCIATION,
INC., ET AL.

PARKING AUTHORITY OF RIVER CITY, [2021-SC-0274-DE](#) JEFFERSON
INC. V.
TODD K. BOLUS, ET AL.

WENCY SHAIDA V. [2021-SC-0292-DE](#) BOONE
PUNAM SHAIDA

DEPORRES R. THOMPSON V. [2021-SC-0294-D](#) MARION
COMMONWEALTH OF KENTUCKY

COMMONWEALTH OF KENTUCKY, [2021-SC-0301-DE](#) SPENCER
CABINET FOR HEALTH AND FAMILY
SERVICES V.
K.D.H., NATURAL MOTHER, ET AL.

JAMES HARRISON V. [2021-SC-0314-D](#) LYON
CATHERINE WEICHT, ET AL.

DMITRIY ZILBERMAN, ET AL. V. [2021-SC-0317-D](#) JEFFERSON
H.W. LOCHNER, INC., ET AL.

CRAIG PERKINS V. [2021-SC-0338-D](#) JEFFERSON
E.A.N. HOLDINGS, LLC

ORDER DENYING DISCRETIONARY REVIEW - October 20, 2021

COMMONWEALTH OF KENTUCKY V. [2021-SC-0412-D](#) LAWRENCE
DUSTIN FYFFE

**NICKELL, J., WOULD GRANT
DISCRETIONARY REVIEW.**

ORDER DISMISSING - October 05, 2021

CARY W. PEMBLETON V. [2021-SC-0272-D](#) TAYLOR
COMMONWEALTH OF KENTUCKY

**CONLEY, HUGHES, LAMBERT, NICKELL,
JJ., SITTING. ALL CONCUR.**

THOMAS J. EARLEY V. [2021-SC-0283-MR](#) LAUREL
MICHAEL ODELL CAPERTON ET. AL.

**CONLEY, HUGHES, LAMBERT, NICKELL,
JJ., SITTING. ALL CONCUR.**

COMMONWEALTH OF KENTUCKY V. [2021-SC-0316-D](#) WHITLEY
CHARLES R. CAVINS

**CONLEY, HUGHES, LAMBERT, NICKELL,
JJ., SITTING. ALL CONCUR.**

JUSTIN LAROY BEASLEY V. [2021-SC-0368-D](#) WARREN
COMMONWEALTH OF KENTUCKY

**CONLEY, HUGHES, LAMBERT, NICKELL,
JJ., SITTING. ALL CONCUR.**

KEVIN FOX V. COMMONWEALTH OF [2021-SC-0391-D](#) NELSON
KENTUCKY

**CONLEY, HUGHES, LAMBERT, NICKELL,
JJ., SITTING. ALL CONCUR.**

ORDER DISMISSING - October 20, 2021

COMMONWEALTH OF KENTUCKY V.
SHEILA WLLIAMS

[2021-SC-0118-D](#)

BOONE

ALL SITTING. ALL CONCUR.

ORDER DISMISSING - October 27, 2021

40 ACRES AND THE MULE, LLC, ET AL. V.
HONORABLE LINSDAY HUGHES
THURSTON, ET AL.

[2021-SC-0153-D](#)

FAYETTE

ALL SITTING. ALL CONCUR.

ORDER MODIFYING - October 01, 2021

ROGER EPPERSON V.
COMMONWEALTH OF KENTUCKY

[2019-SC-0724-MR](#)

WARREN

**THE OPINION ISSUED ON SEPTEMBER
30, 2021 IS HEREBY MODIFIED TO
INCLUDE A SEPARATE OPINION BY
CHIEF JUSTICE MINTON. THIS
MODIFICATION DOES NOT AFFECT THE
HOLDING OF THE OPINION.**

ORDER TRANSFERRING - October 27, 2021

ROBERT STIVERS, IN HIS OFFICIAL
CAPACITY AS PRESIDENT OF THE SENATE
OF THE COMMONWEALTH OF KENTUCKY,
ET AL. V.
HONORABLE PHILLIP J. SHEPHERD, ET AL.

[2021-SC-139-T](#)

FRANKLIN

ALL SITTING. ALL CONCUR.

DANIEL J. CAMERON, IN HIS OFFICIAL
CAPACITY AS KENTUCKY ATTORNEY
GENERAL V.
HONORABLE PHILLIP J. SHEPHERD, ET AL.

[2021-SC-139-T](#)

FRANKLIN

ALL SITTING. ALL CONCUR.

COMMONWEALTH OF KENTUCKY, ET AL.
V.
HONORABLE DANIEL BALLOU, ET AL.

[2021-SC-00216-T](#)

MCCREARY

ALL SITTING. ALL CONCUR.

ORDER WITHDRAWING FROM KENTUCKY BAR ASSOCIATION- October 05, 2021

JUSTUS WENDELL ANDERSON V. [2021-SC-0429-KB](#) IN SUPREME COURT
KENTUCKY BAR ASSOCIATION

DAVID RANDALL ALLEN V. [2021-SC-0437-KB](#) IN SUPREME COURT
KENTUCKY BAR ASSOCIATION

KIMBERLY B. OWEN V. [2021-SC-0438-KB](#) IN SUPREME COURT
KENTUCKY BAR ASSOCIATION

ORDER WITHDRAWING FROM KENTUCKY BAR ASSOCIATION - October 12, 2021

NANCY CONLIFFE MCCOY V. [2021-SC-0454-KB](#) IN SUPREME COURT
KENTUCKY BAR ASSOCIATION

ORDER WITHDRAWING FROM KENTUCKY BAR ASSOCIATION- October 15, 2021

ROCHELLE ELAINE BOLAND V. [2021-SC-0463-KB](#) IN SUPREME COURT
KENTUCKY BAR ASSOCIATION

CHRISTOPHER JOSEPH MANTICA V. [2021-SC-0464-KB](#) IN SUPREME COURT
KENTUCKY BAR ASSOCIATION

ORDER WITHDRAWING FROM KENTUCKY BAR ASSOCIATION - October 21, 2021

OLUWAFUNMITO PHILLIPS SETON V. [2021-SC-0470-KB](#) IN SUPREME COURT
KENTUCKY BAR ASSOCIATION