

SUPREME COURT OF KENTUCKY

NOVEMBER 21, 2013 MINUTES

RELEASED: 10:00 A.M.

167. DICK'S SPORTING GOODS, INC. V. BETTY C. WEBB
OPINION OF THE COURT BY CHIEF JUSTICE MINTON – AFFIRMING
MINTON, C.J., ABRAMSON, CUNNINGHAM, NOBLE, SCOTT, AND VENTERS, JJ., SITTING. MINTON, C.J., ABRAMSON, NOBLE, AND VENTERS, JJ., CONCUR. SCOTT, J., CONCURS IN RESULT ONLY BY SEPARATE OPINION IN WHICH CUNNINGHAM, J., JOINS. KELLER, J., NOT SITTING.
- [2011-SC-000518-DG](#) FAYETTE
TO BE PUBLISHED
- Questions Presented:**
Torts. Open and Obvious Doctrine. At issue is whether summary judgment for the defendant was granted properly under *Kentucky River Medical Center v. McIntosh*, 319 S.W.3d 385 (Ky. 2010).
168. MICKIEL PETE, ET AL. V. MICHAEL ANDERSON, JR., ET AL.
OPINION OF THE COURT BY JUSTICE ABRAMSON - AFFIRMING
MINTON, C.J.; KELLER, AND VENTERS JJ., CONCUR. NOBLE, J., CONCURS IN PART AND DISSENTS IN PART BY SEPARATE OPINION. SCOTT, J., CONCURS IN PART AND DISSENTS IN PART BY SEPARATE OPINION IN WHICH CUNNINGHAM, J., JOINS.
- [2011-SC-000692-DG](#) JEFFERSON
TO BE PUBLISHED
- Questions Presented:**
Tort Law. Standing. Attorney Malpractice. Issues include whether the beneficiaries of an estate have standing to sue an attorney for negligently prosecuting a wrongful death claim brought by the executrix of the estate.
169. DEJUAN ANTHONY GLENN V. COMMONWEALTH OF KENTUCKY
OPINION OF THE COURT BY JUSTICE CUNNINGHAM – AFFIRMING
ALL SITTING. ALL CONCUR.
- [2012-SC-000499-MR](#) JEFFERSON
TO BE PUBLISHED
- Questions Presented:**
First-degree wanton endangerment, first-degree fleeing or evading the police, second-degree criminal mischief, PFO1 - 20 years. Validity of RCr 9.40. "No adverse inference" instruction required only when requested. Mischaracterization of PFO status during closing argument was not palpable error.

SUPREME COURT OF KENTUCKY

NOVEMBER 21, 2013 MINUTES

RELEASED: 10:00 A.M.

170. SOUTHERN FINANCIAL LIFE
INSURANCE COMPANY V.
HONORABLE STEVEN D. COMBS,
JUDGE, PIKE CIRCUIT COURT, AND
ROGER MULLINS, ADMINISTRATOR
OF THE ESTATE OF VALERIE
MULLINS, ON BEHALF OF HIMSELF
AND ALL OTHERS SIMILARLY
SITUATED
**OPINION OF THE COURT BY CHIEF
JUSTICE MINTON -
AFFIRMING**
ALL SITTING. ALL CONCUR.

[2012-SC-000642-MR](#)
TO BE PUBLISHED

FROM COURT
OF APPEALS

Questions Presented:
Agency law. Writ of prohibition to prevent the trial court's enforcement of its discovery order pertaining to loans made by agent-lenders of an insurance company.

171. PATRICIA W. BALLARD V.
1400 WILLOW COUNCIL OF CO-
OWNERS, INC.
AND
1400 WILLOW COUNCIL OF CO-
OWNERS, INC. V.
PATRICIA W. BALLARD
**OPINION OF THE COURT BY
JUSTICE KELLER –
AFFIRMING IN PART, REVERSING
IN PART AND REMANDING**
MINTON, C.J.; CUNNINGHAM, AND
VENTERS, JJ., CONCUR. NOBLE, J.,
CONCURS IN PART, DISSENTS IN
PART BY SEPARATE OPINION IN
WHICH SCOTT, J., JOINS. ABRAMSON,
J., NOT SITTING.

[2010-SC-000533-DG](#)
TO BE PUBLISHED

JEFFERSON

[2011-SC-000584-DG](#)
TO BE PUBLISHED

JEFFERSON

Questions Presented:
Torts. Slander of Title and Negligence. Issues involve the timeliness of the slander of title claim and the extent of duty owed by a condominium council with regard to an owner's alleged responsibility to replace a multi-story bay window structure.

SUPREME COURT OF KENTUCKY

NOVEMBER 21, 2013 MINUTES

RELEASED: 10:00 A.M.

172. STEVEN L. BESHEAR, IN HIS OFFICIAL CAPACITY AS THE GOVERNOR OF THE COMMONWEALTH OF KENTUCKY; AND MARY LASSITER, IN HER OFFICIAL CAPACITY AS STATE BUDGET DIRECTOR **V.** HAYDON BRIDGE COMPANY, INC., ET AL.

OPINION OF THE COURT BY JUSTICE ABRAMSON –

REVERSING

MINTON, C.J.; KELLER, NOBLE, AND VENTERS JJ., CONCUR. SCOTT, J., CONCURS IN RESULT ONLY BY SEPARATE OPINION IN WHICH CUNNINGHAM, J., JOINS.

[2011-SC-000563-TG](#)
TO BE PUBLISHED

FRANKLIN

Questions Presented:

"Permanent Injunction. Sovereign Immunity. Separation of Powers. Attorney Fees."

173. COMMONWEALTH OF KENTUCKY **V.** WILLIAM AYERS

OPINION OF THE COURT BY JUSTICE CUNNINGHAM -

REVERSING

ALL SITTING. ALL CONCUR.

[2012-SC-000261-DG](#)
TO BE PUBLISHED

JEFFERSON

Questions Presented:

Criminal Law. Self-Representation. Issues involve whether the trial court was required to conduct a "formal Faretta hearing" prior to permitting trial self-representation by a defendant who was an experienced criminal defense attorney.

SUPREME COURT OF KENTUCKY

NOVEMBER 21, 2013 MINUTES

RELEASED: 10:00 A.M.

174. WILMA JEAN SHELTON V. [2011-SC-000554-DG](#) FAYETTE
KENTUCKY EASTER SEALS SOCIETY, INC. **TO BE PUBLISHED**

OPINION OF THE COURT BY CHIEF JUSTICE MINTON – REVERSING AND REMANDING
ALL SITTING. MINTON, C.J.; ABRAMSON, KELLER, AND NOBLE, JJ., CONCUR. CUNNINGHAM, J., DISSENTS BY SEPARATE OPINION IN WHICH SCOTT, J., JOINS; AND SCOTT, J., DISSENTS BY SEPARATE OPINION IN WHICH CUNNINGHAM AND VENTERS, JJ., JOIN.

Questions Presented:
Torts. Open and Obvious Doctrine. At issue is whether summary judgment for the defendant was granted properly under *Kentucky River Medical Center v. McIntosh*, 319 S.W.3d 385 (Ky. 2010).

175. RANDY BRUMLEY V. [2012-SC-000189-DG](#) CLINTON
COMMONWEALTH OF KENTUCKY **TO BE PUBLISHED**

OPINION OF THE COURT BY JUSTICE CUNNINGHAM – REVERSING AND REMANDING
NOBLE, SCOTT AND VENTERS, JJ., CONCUR. ABRAMSON, J., DISSENTS BY SEPARATE OPINION IN WHICH MINTON, C.J., JOINS. KELLER, J., NOT SITTING.

Questions Presented:
Criminal Law. Constitutional Law. Search and Seizure. Issues include the circumstances which would justify police officers in conducting a warrantless "protective sweep" after the suspect has been removed from the premises.

176. COY TURNER, JR. AND M & W [2011-SC-000614-DG](#) ADAIR
MILLING CO., INC. V. **TO BE PUBLISHED**
BILLY ANDREW, JR.

OPINION OF THE COURT BY JUSTICE ABRAMSON - REVERSING IN PART, VACATING IN PART AND REMANDING
ALL SITTING. ALL CONCUR.

Questions Presented:
Civil Procedure. CR 17.01. Issues include whether an individual or a limited liability company is the real party in interest.

SUPREME COURT OF KENTUCKY

NOVEMBER 21, 2013 MINUTES

RELEASED: 10:00 A.M.

177. RICHARD H. TOWNSEND, II V. [2011-SC-000721-MR](#) BOYD
COMMONWEALTH OF KENTUCKY
**MEMORANDUM OPINION OF
THE COURT – AFFIRMING**
ALL SITTING. ALL CONCUR.
NOT TO BE PUBLISHED
178. WILLIAM DECKER V. [2012-SC-000783-WC](#) FROM COURT
CONTROL SYSTEMS, INC.; HONORABLE CHRIS DAVIS, ADMINISTRATIVE LAW JUDGE; AND WORKERS' COMPENSATION BOARD
**MEMORANDUM OPINION OF
THE COURT – AFFIRMING** OF APPEALS
MINTON, C.J.; ABRAMSON, CUNNINGHAM, NOBLE, SCOTT, AND VENTERS, JJ., SITTING. ALL CONCUR. KELLER, J., NOT SITTING.
NOT TO BE PUBLISHED

OPINIONS AND ORDERS – NOVEMBER 13, 2013

DEBORAH L. AGEE V. 2011-SC-000745-DG MADISON
COMMONWEALTH OF KENTUCKY
**ORDER GRANTED DISCRETIONARY REVIEW,
VACATED THE COURT OF APPEALS' OPINION
AND REMANDED BACK TO THE COURT OF
APPEALS.**
ALL SITTING. MINTON, C.J., ABRAMSON, CUNNINGHAM, KELLER, NOBLE, AND VENTERS, JJ., CONCUR. SCOTT, J., DISSENTS.

OPINIONS AND ORDERS – NOVEMBER 21, 2013

CHARLES L. HUFFMAN, III V. [2013-SC-000282-KB](#) IN SUPREME
KENTUCKY BAR ASSOCIATION **TO BE PUBLISHED** COURT
**ORDER DENIED MOTION FOR
REINSTATEMENT.**
ALL SITTING. MINTON, C.J.; ABRAMSON, NOBLE, AND VENTERS, JJ., CONCUR. SCOTT, J., DISSENTS BY SEPARATE OPINION IN WHICH CUNNINGHAM AND KELLER, JJ., CONCUR.

SUPREME COURT OF KENTUCKY

NOVEMBER 21, 2013 MINUTES

RELEASED: 10:00 A.M.

OPINIONS AND ORDERS – NOVEMBER 21, 2013

KENTUCKY BAR ASSOCIATION V. RICHARD LEE WALLS ORDER SUSPENDED RESPONDENT FROM THE PRACTICE OF LAW FOR 181 DAYS WITH CONDITIONS. ALL SITTING. ALL CONCUR.	2013-SC-000621-KB TO BE PUBLISHED	IN SUPREME COURT
WILLIAM DAVID RYE V. KENTUCKY BAR ASSOCIATION ORDER PUBLICLY REPRIMANDED MOVANT. ALL SITTING. ALL CONCUR.	2013-SC-000646-KB TO BE PUBLISHED	IN SUPREME COURT
KENTUCKY BAR ASSOCIATION V. JOSHUA MICHAEL ROBINSON ORDER SUSPENDED RESPONDENT FROM THE PRACTICE OF LAW FOR 5 YEARS. ALL SITTING. ALL CONCUR.	2013-SC-000668-KB TO BE PUBLISHED	IN SUPREME COURT
KENTUCKY BAR ASSOCIATION V. RUSSELL W. BURGIN ORDER SUSPENDED RESPONDENT FROM THE PRACTICE OF LAW FOR 60 DAYS WITH CONDITIONS. ALL SITTING. ALL CONCUR.	2013-SC-000689-KB TO BE PUBLISHED	IN SUPREME COURT
RANDAL KENT PERKINS V. KENTUCKY BAR ASSOCIATION ORDER SUSPENDED MOVANT FROM THE PRACTICE OF LAW FOR 5 YEARS. MINTON, C.J.; ABRAMSON, KELLER, NOBLE, VENTERS AND SCOTT, JJ., CONCUR. CUNNINGHAM, J., CONCURS, BUT WOULD ALSO ORDER MOVANT TO PAY RESTITUTION TO DAVID MEGRONIGLE IN THE AMOUNT OF \$1,090 WITHIN ONE YEAR FROM THE DATE OF THIS ORDER.	2013-SC-000702-KB TO BE PUBLISHED	IN SUPREME COURT

SUPREME COURT OF KENTUCKY

NOVEMBER 21, 2013 MINUTES

RELEASED: 10:00 A.M.

OPINIONS AND ORDERS – NOVEMBER 21, 2013

ASTRIDA L. LEMKINS V. KENTUCKY BAR ASSOCIATION ORDER PUBLICLY REPRIMANDED MOVANT. ALL SITTING. ALL CONCUR.	<u>2013-SC-000703-KB</u> TO BE PUBLISHED	IN SUPREME COURT
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KENTUCKY BAR ASSOCIATION V. RONALD E. THORNSBERRY ORDER SUSPENDED RESPONDENT FROM THE PRACTICE OF LAW FOR 181 DAYS WITH CONDITIONS. ALL SITTING. ALL CONCUR.	<u>2013-SC-000718-KB</u> TO BE PUBLISHED	IN SUPREME COURT
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DAVID L. DRAKE V. KENTUCKY BAR ASSOCIATION ORDER PUBLICLY REPRIMANDED MOVANT. ALL SITTING. ALL CONCUR.	<u>2013-SC-000721-KB</u> TO BE PUBLISHED	IN SUPREME COURT
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**COURT ORDERS GRANTING MOTION FOR DISCRETIONARY REVIEW –
NOVEMBER 13, 2013**

ROBERT MASON PARKER V. COMMONWEALTH OF KENTUCKY	2011-SC-000662-DG	JEFFERSON
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RICHARD C. OLIPHANT, M.D., ET AL. V. BILLY JO RIES, INDIVIDUALLY AND AS FRIEND OF INFANT CHILD, LAUREN ELIZABETH RIES, ET AL.	2013-SC-000059-DG	JEFFERSON
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LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT V. O'SHEA'S-BAXTER, LLC, D/B/A FLANAGAN'S ALE HOUSE, ET AL.	2013-SC-000085-DG	FRANKLIN
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MARY BANKER AND BRYAN CASSIS V. UNIVERSITY OF LOUISVILLE ATHLETIC ASSOCIATION, INC.	2013-SC-000108-DG	JEFFERSON
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SUPREME COURT OF KENTUCKY

NOVEMBER 21, 2013 MINUTES

RELEASED: 10:00 A.M.

**COURT ORDERS GRANTING MOTION FOR DISCRETIONARY REVIEW –
NOVEMBER 13, 2013**

ETHAN THOMAS HUGHES V. COMMONWEALTH OF KENTUCKY	2013-SC-000291-DG	CRITTENDEN
COUNCIL ON DEVELOPMENTAL DISABILITIES, INC. V. CABINET FOR HEALTH AND FAMILY SERVICES	2013-SC-000357-DG	FRANKLIN
OLIVIA JOHNSON V. COMMONWEALTH OF KENTUCKY	2013-SC-000383-DG	JEFFERSON
TIM DAVIS AND TIM DAVIS & ASSOCIATES, INC. V. JOHN J. SCOTT AND WHITLOW & SCOTT	2013-SC-000682-DG	HARDIN

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

COMMONWEALTH OF KENTUCKY V. RAY LEWIS TURNER THE OPINION OF THE COURT OF APPEALS IS ORDERED NOT TO BE PUBLISHED.	2012-SC-000047-D	MUHLENBERG
THOMAS O. GOINS V. COMMONWEALTH OF KENTUCKY THE OPINION OF THE COURT OF APPEALS IS ORDERED NOT TO BE PUBLISHED.	2012-SC-000761-D	MUHLENBERG
WANDA JONES, ET AL. V. CYNTHIA DOUGHERTY AND CHRISITAN COUNTY BOARD OF EDUCATION KELLER, J., NOT SITTING.	2013-SC-000036-D	CHRISTIAN
JOHNNY PHILLIPS V. COMMONWEALTH OF KENTUCKY	2013-SC-000042-D	LAUREL
PHILLIP SEATON, ET AL. V. DR. JOHN M. PATTERSON, ET AL. SCOTT, J., NOT SITTING.	2013-SC-000048-D	SHELBY

SUPREME COURT OF KENTUCKY

NOVEMBER 21, 2013 MINUTES

RELEASED: 10:00 A.M.

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

JAVONNA BUFORD V. COMMONWEALTH OF KENTUCKY KELLER, J., NOT SITTING.	2013-SC-000053-D	WARREN
MATTHEW A. FRANKLIN V. COMMONWEALTH OF KENTUCKY	2013-SC-000055-D	HARDIN
WILLIAM THOMPSON V. COMMONWEALTH OF KENTUCKY	2013-SC-000062-D	KENTON
BILLY JONES V. COMMONWEALTH OF KENTUCKY	2013-SC-000065-D	GRAVES
COMMONWEALTH OF KENTUCKY V. THOMAS KEVIN SULLIVAN	2013-SC-000081-D	JEFFERSON
KEVIN M. RAIFORD V. COMMONWEALTH OF KENTUCKY	2013-SC-000093-D	FAYETTE
HAL SNOWDEN, JR. V. CITY OF WILMORE, KENTUCKY, ET AL.	2013-SC-000095-D	JESSAMINE
ALLTECH, INC. V. READY MIX CONCRETE OF SOMERSET, INC., ET AL.	2013-SC-000099-D	JESSAMINE
AND JESSAMINE COUNTY- CITY OF WILMORE JOINT BOARD OF ADJUSTMENT, ET AL. V. READY MIX CONCRETE OF SOMERSET, INC., ET AL. KELLER, J., NOT SITTING.	2013-SC-000100-D	JESSAMINE
BILLY MASH V. COMMONWEALTH OF KENTUCKY	2013-SC-000112-D	MCCRACKEN
ONE BEACON INSURANCE COMPANY V. MONTICELLO INSURANCE COMPANY	2013-SC-000121-D	ROWAN

SUPREME COURT OF KENTUCKY

NOVEMBER 21, 2013 MINUTES

RELEASED: 10:00 A.M.

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

KENTUCKY POWER COMPANY V. CHARLES R. MDOWELL, ET AL. KELLER, J., WOULD GRANT. SCOTT, J., NOT SITTING.	2013-SC-000139-D	BOYD
RONALD LEE HOUSE, JR. V. COMMONWEALTH OF KENTUCKY	2013-SC-000166-D	JEFFERSON
JERRY MONROE HARRISTON V. COMMONWEALTH OF KENTUCKY	2013-SC-000214-D	BELL
PUNKAJ RISHI V. DEBORAH LYNN HUDDLESTON	2013-SC-000245-D	JEFFERSON
ADRIAN HUGHES V. CLARK COUNTY SHERIFF'S DEPARTMENT AND KENNETH HAAS	2013-SC-000347-D	JEFFERSON
TONY HUGHES V. COMMONWEALTH OF KENTUCKY	2013-SC-000365-D	CHRISTIAN
V.D.W. V. CABINET FOR HEALTH AND FAMILY SERVICES, ET AL.	2013-SC-000564-DE	FAYETTE
CHARLES REILLY V. COMMONWEALTH OF KENTUCKY THE OPINION OF THE COURT OF APPEALS IS ORDERED NOT TO BE PUBLISHED.	2013-SC-000597-D	GRAVES
N.S. V. CABINET FOR HEALTH AND FAMILY SERVICES, COMMONWEALTH OF KENTUCKY	2013-SC-000670-DE	JEFFERSON

SUPREME COURT OF KENTUCKY

NOVEMBER 21, 2013 MINUTES

RELEASED: 10:00 A.M.

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

DANTE CORVETTE STONE V. 2013-SC-000490-D JEFFERSON
COMMONWEALTH OF KENTUCKY
**ABRAMSON, CUNNINGHAM, KELLER, AND
VENTERS, JJ., SITTING. ALL CONCUR.**

JA-RON S. TEAGUE V. 2013-SC-000679-D JEFFERSON
JOHN CLARK, ET AL.
**ABRAMSON, CUNNINGHAM, KELLER, AND
VENTERS, JJ., SITTING. ALL CONCUR.**

COURT ORDERS DENYING MOTION TO TRANSFER – NOVEMBER 21, 2013

CITY OF LOUISVILLE, ET AL. V. 2013-SC-000596-T JEFFERSON
DAVID BRUCE ABNER, ET AL.
**MINTON, C.J.; CUNNINGHAM, KELLER, NOBLE,
SCOTT AND VENTERS, JJ., CONCUR.
ABRAMSON, J., NOT SITTING.**

COURT ORDERS DENYING PETITION FOR REHEARING – NOVEMBER 21, 2013

DONALD JOHNSON V. 2011-SC-000137-MR FLOYD
COMMONWEALTH OF KENTUCKY
ALL SITTING. ALL CONCUR.

JACKSON PURCHASE MEDICAL 2012-SC-000436-WC FROM COURT
ASSOCIATES V. OF APPEALS
SARAH CROSSETT; HONORABLE RICHARD
M. JOINER, ADMINISTRATIVE LAW JUDGE;
AND WORKER'S COMPENSATION BOARD
ALL SITTING. ALL CONCUR.

COURT ORDERS DISMISSING

OLGA MANRRIQUEZ-HERNANDEZ, ETC., 2012-SC-000747-MR JEFFERSON
ET AL. V.
HONORABLE OLU A. STEVENS, JUDGE,
JEFFERSON CIRCUIT COURT, DIVISION SIX,
ET AL.
ENTERED: OCTOBER 22, 2013

SUPREME COURT OF KENTUCKY

NOVEMBER 21, 2013 MINUTES

RELEASED: 10:00 A.M.

COURT ORDERS

KENTUCKY BAR ASSOCIATION V.
THOMAS E. ROBERTS
**ORDER CORRECTED PAGE 3, LINE 4 OF
THE OPINION AND ORDER ENTERED
OCTOBER 24, 2013, BY SUBSTITUTION OF
NEW OPINION AND ORDER IN LIEU OF THE
ORIGINAL.**
ENTERED: NOVEMBER 15, 2013

[2013-SC-000615-KB](#)
TO BE PUBLISHED

IN SUPREME
COURT

COMMONWEALTH OF KENTUCKY V.
SHANNANDOAH CARMAN; AND KENNETH
WESTBAY
**ORDER DENIED MOTION TO CERTIFY
THE LAW.**
ALL SITTING. ALL CONCUR.
ENTERED: NOVEMBER 21, 2013

2013-SC-000684-CL

JEFFERSON

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

JAMES JOSEPH MONTGOMERY V.
KENTUCKY BAR ASSOCIATION
ENTERED: OCTOBER 31, 2013

2013-SC-000750-KB

IN SUPREME
COURT