

SUPREME COURT OF KENTUCKY

MINUTES

MARCH 23, 2006

RELEASED: 2:00 P.M.

49. JEFFREY MATHENEY V. [2002-SC-000920-MR](#) HOPKINS  
COMMONWEALTH OF KENTUCKY **TO BE PUBLISHED**  
**OPINION OF THE COURT BY**  
**JUSTICE ROACH – AFFIRMING.**  
GRAVES, J., ALSO CONCURS BY  
SEPARATE OPINION IN WHICH  
SCOTT, J., JOINS. COOPER, J.,  
DISSENTS BY SEPARATE OPINION.  
JOHNSTONE, J., DISSENTS AND  
WOULD AFFIRM THE HOPKINS  
CIRCUIT COURT IN ACCORDANCE  
WITH THE LEGAL ANALYSIS CON-  
TAINED IN JUSTICE COOPER’S  
DISSENTING OPINION, BUT DOES  
NOT JOIN THE DICTA CONTAINED  
THEREIN.
50. GAINSCO COMPANIES, H & H AUTO [2004-SC-000276-DG](#) BARREN  
& TRAILER SALES, ET AL V. **TO BE PUBLISHED**  
DARRELL GENTRY, ETC., ET AL  
**OPINION OF THE COURT BY**  
**JUSTICE JOHNSTONE – AFFIRMING**  
GRAVES, J., DISSENTS BY SEPARATE  
OPINION, WITH COOPER AND SCOTT, JJ.,  
JOINING THAT DISSENTING OPINION.
51. MICHAEL BRUCE NEIGHBORS V. [2005-SC-000681-WC](#) FROM COURT  
RIVER CITY INTERIORS, ET AL **TO BE PUBLISHED** OF APPEALS  
**OPINION OF THE COURT - AFFIRMING.**

SUPREME COURT OF KENTUCKY

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RELEASED: 2:00 P.M.

52. KEITH JACKSON V. [2004-SC-000118-MR](#) JEFFERSON  
COMMONWEALTH OF KENTUCKY TO BE PUBLISHED  
AND  
DARON HAYDON V. [2004-SC-000319-MR](#) JEFFERSON  
COMMONWEALTH OF KENTUCKY TO BE PUBLISHED  
**OPINION OF THE COURT BY  
JUSTICE GRAVES – AFFIRMING,  
IN PART AND REVERSING AND  
REMANDING, IN PART.**  
ALL CONCUR AS TO PART I. GRAVES,  
JOHNSTONE, SCOTT, AND WINTERSHEIMER,  
JJ., CONCUR AS TO PART II A. GRAVES,  
JOHNSTONE, ROACH, SCOTT, AND  
WINTERSHEIMER, J.J., CONCUR AS TO  
PART II B. LAMBERT, C.J., DISSENTS BY  
SEPARATE OPINION TO PART II WITH  
COOPER, J., JOINING THIS DISSENT.  
ROACH, J., DISSENTS TO PART II A.
53. SHANE LAYTON RAGLAND V. [2002-SC-000388-MR](#) FAYETTE  
COMMONWEALTH OF KENTUCKY TO BE PUBLISHED  
AND  
SHANE LAYTON RAGLAND V. [2003-SC-000084-TG](#) FAYETTE  
COMMONWEALTH OF KENTUCKY TO BE PUBLISHED  
**OPINION OF THE COURT BY  
JUSTICE COOPER – REVERSING  
AND REMANDING.**  
COOPER, J., CONCURS AS TO PARTS  
I-V AND DISSENTS AS TO PART VI, BY  
SEPARATE OPINION IN WHICH LAMBERT,  
C. J., AND JOHNSTONE, J., JOIN. ROACH,  
J., CONCURS AS TO PARTS II-V, CONCURS  
IN RESULT ONLY AS TO PART I, AND NEITHER  
CONCURS NOR DISSENTS AS TO PART VI,  
BY SEPARATE OPINION. WINTERSHEIMER, J.,  
DISSENTS BY SEPARATE OPINION IN WHICH  
GRAVES, J., JOINS.

SUPREME COURT OF KENTUCKY

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RELEASED: 2:00 P.M.

54. AMANDA BAKER V. [2004-SC-000085-DG](#) CAMPBELL  
THERESA KAMMERER **TO BE PUBLISHED**  
**OPINION OF THE COURT BY**  
**JUSTICE ROACH – REVERSING.**  
COOPER, J., DISSENTS BY SEPARATE  
OPINION IN WHICH SCOTT AND  
WINTERSHEIMER, JJ., JOIN.
55. AMERICAN PHYSICIANS ASSURANCE [2004-SC-000171-DG](#) JEFFERSON  
CORPORATION, ETC., V. **TO BE PUBLISHED**  
STEVEN SCHMIDT, ET AL  
**OPINION OF THE COURT BY**  
**JUSTICE COOPER – REVERSING.**
56. BECKHAM B. BARNES V. [2004-SC-000197-MR](#) WAYNE  
COMMONWEALTH OF KENTUCK **NOT TO BE PUBLISHED**  
AND  
BECKHAM B. BARNES V. [2004-SC-000258-TG](#) WAYNE  
COMMONWEALTH OF KENTUCKY **NOT TO BE PUBLISHED**  
**MEMORANDUM OPINION OF THE**  
**COURT – AFFIRMING.**  
SCOTT, J., DISSENTS.
57. WILLIAM DILLARD SMITH V. [2004-SC-000259-MR](#) LAUREL  
COMMONWEALTH OF KENTUCKY **NOT TO BE PUBLISHED**  
**MEMORANDUM OPINION OF THE**  
**COURT – AFFIRMING.**  
COOPER, J., DISSENTS BECAUSE HE  
DOES NOT BELIEVE THAT APPELLANT’S  
CLAIM THAT HIS WIFE CAUSED THE  
CHILDREN TO REPORT THE SEXUAL  
ABUSE “OPENED THE DOOR” TO  
EVIDENCE OF APPELLANT’S BAD  
CHARACTER FOR VIOLENCE.

SUPREME COURT OF KENTUCKY

MINUTES

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- |     |   |   |                          |
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| 58. | PHILLIP A. WHALEY V.<br>COMMONWEALTH OF KENTUCKY<br><b>MEMORANDUM OPINION OF THE<br/>COURT – <u>AFFIRMING.</u></b><br>COOPER, J., WOULD REVERSE AND<br>REMAND FOR THE SAME REASONS<br>STATED IN HIS DISSENTING OPINION<br>IN <u>JACKSON V. COMMONWEALTH</u> ,<br>113 S.W.3d 128 (KY. 2003) AND<br>JOHNSTONE, J., WHO DISSENTS<br>WITHOUT OPINION. | <a href="#">2004-SC-000733-MR</a><br><b>NOT TO BE PUBLISHED</b> | WOODFORD                 |
| 59. | ROSCOE KEVIN TRUITT V.<br>COMMONWEALTH OF KENTUCKY<br><b>MEMORANDUM OPINION OF THE<br/>COURT – <u>AFFIRMING.</u></b><br>COOPER AND ROACH, JJ., CONCUR<br>IN RESULT ONLY.  | <a href="#">2005-SC-000302-MR</a><br><b>NOT TO BE PUBLISHED</b> | JEFFERSON                |
| 60. | ROBERT ADKINS V.<br>ELKHORN CITY AREA AMBULANCE,<br>ET AL<br><b>MEMORANDUM OPINION OF THE<br/>COURT – <u>AFFIRMING.</u></b>   | <a href="#">2005-SC-000504-WC</a><br><b>NOT TO BE PUBLISHED</b> | FROM COURT<br>OF APPEALS |
| 61. | AMY DAWN STODGELL V.<br>COMMONWEALTH OF KENTUCKY<br><b>MEMORANDUM OPINION OF THE<br/>COURT – <u>AFFIRMING.</u></b>  | <a href="#">2005-SC-000601-MR</a><br><b>NOT TO BE PUBLISHED</b> | DAVISS                   |
| 62. | KIM BRYANT V.<br>DOLLAR GENERAL CORPORATION<br>ET AL<br><b>MEMORANDUM OPINION OF THE<br/>COURT – <u>AFFIRMING.</u></b>  | <a href="#">2005-SC-000624-WC</a><br><b>NOT TO BE PUBLISHED</b> | FROM COURT<br>OF APPEALS |
| 63. | RANDALL DANIELS V.<br>B.R. & D. ENTERPRISES, INC., ET AL<br><b>MEMORANDUM OPINION OF THE<br/>COURT – <u>AFFIRMING.</u></b>  | <a href="#">2005-SC-000652-WC</a><br><b>NOT TO BE PUBLISHED</b> | FROM COURT<br>OF APPEALS |

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MARCH 23, 2006

RELEASED: 2:00 P.M.

64. MICHAEL WARDIA V. [2004-SC-000556-MR](#) KENTON  
COMMONWEALTH OF KENTUCKY **NOT TO BE PUBLISHED**  
**MEMORANDUM OPINION OF THE**  
**COURT – REVERSING.**  
JOHNSTONE, J., CONCURS IN  
RESULT ONLY. WINTERSHEIMER,  
J., DISSENTS WITHOUT SEPARATE  
OPINION.

**OPINIONS AND ORDERS**

KENTUCKY BAR ASSOCIATION V. [2004-SC-000722-KB](#) IN SUPREME  
KEVIN M. CALLIHAN COURT  
**OPINION AND ORDER SUSPENDING**  
**RESPONDENT FROM THE PRACTICE OF**  
**LAW FOR 181 DAYS, WITH THE SUSPENSION**  
**TO BE PROBATED FOR 2 YEARS ACCORDING**  
**TO THE CONDITIONS SET FORTH.**  
ENTERED: MARCH 23, 2006

KENTUCKY BAR ASSOCIATION V. [2005-SC-000971-KB](#) IN SUPREME  
CAROLINE LAURIE GRIFFITH **TO BE PUBLISHED** COURT  
**OPINION AND ORDER SUSPENDING**  
**RESPONDENT FROM THE PRACTICE OF**  
**LAW FOR A PERIOD OF 1 YEAR AND THAT**  
**THIS SUSPENSION BE SERVED CONSECU-**  
**TIVELY WITH RESPONDENT'S CURRENT**  
**5 YEAR SUSPENSION.**  
ENTERED: MARCH 23, 2006

ROBERT W. STEVENS, ESQ. V. [2006-SC-000094-KB](#) IN SUPREME  
KENTUCKY BAR ASSOCIATION **TO BE PUBLISHED** COURT  
**OPINION AND ORDER FINDING THAT**  
**MOVANT BE PUBLICLY REPRIMANDED.**  
ENTERED: MARCH 23, 2006

**SUPREME COURT OF KENTUCKY**

**MINUTES**

**MARCH 23, 2006**

**RELEASED: 2:00 P.M.**

**OPINIONS AND ORDERS**

AN UNNAMED ATTORNEY V.  
KENTUCKY BAR ASSOCIATION  
**OPINION AND ORDER PRIVATELY  
REPRIMANDING MOVANT.**  
ENTERED: MARCH 23, 2006

[2006-SC-000099-KB](#)  
**TO BE PUBLISHED**

IN SUPREME  
COURT

THOMAS VICTOR MONTGOMERY V.  
HIGH SCHOOL ATHLETIC ASSOCIATION  
**OPINION AND ORDER DENYING INTER-  
LOCUTORY RELIEF PURSUANT TO  
CR 65.09(3).**  
ENTERED: MARCH 13, 2006

2006-SC-000205-I

JEFFERSON

**COURT ORDERS GRANTING MOTION FOR DISCRETIONARY REVIEW ENTERED  
MARCH 15, 2006**

QUEENSWAY FINANCIAL  
HOLDINGS, LTD., ET AL V.  
COTTON & ALLEN, P.S.C.

2004-SC-000254-DG

JEFFERSON

STEEL TECHNOLOGIES, INC. V.  
JASON CONGLETON

2005-SC-000551-DG

GALLATIN

BRIAN M. SCHMIDT V.  
HAROLD C. LEPPERT, JR., ET AL

2005-SC-000555-DG

JEFFERSON

ERIC MITCHELL, ET AL V.  
ALLSTATE INSURANCE COMPANY

2005-SC-000571-DG

HARRISON

GEORGE HENRY GRIPSHOVER V.  
DARLENE GRIPSHOVER

2005-SC-000729-DG

BOONE

SHARON LYNN STORM,  
F/K/A SHARON LYNN MULLINS V.  
JERRY MULLINS, ET AL

2006-SC-000008-DGE

FLOYD

BARRY GORDON, ETC., ET AL V.  
WARREN KEMPER, M.D.

2006-SC-000077-DG

JEFFERSON

SUPREME COURT OF KENTUCKY

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MARCH 23, 2006

RELEASED: 2:00 P.M.

**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW ENTERED  
MARCH 15, 2006**

CITY OF RUSSELLVILLE, KENTUCKY V. PUBLIC SERVICE COMMISSION OF KENTUCKY, ET AL	2005-SC-000217-D	FRANKLIN
EDNA FAYE MILLER V. JULIE HOPE BAKER	2005-SC-000427-D	OLDHAM
DOUGLAS PUGH, ETC., ET AL V. DOUGLAS HAMILTON, ET AL <b>COURT OF APPEALS OPINION IS ORDERED NOT TO BE PUBLISHED.</b>	2005-SC-000511-D	JOHNSON
THE CITY OF SCIENCE HILL, KENTUCKY V. MAYES, SUDDERTH & ETHEREDGE, INC., ET AL	2005-SC-000524-D	PULASKI
MICHAEL JAMES MEZO V. COMMONWEALTH OF KENTUCKY	2005-SC-000540-D	UNION
JAMES GARY BALE V. SHARON ALICIA BALE	2005-SC-000566-D	FRANKLIN
BOBBY WAYNE RUSHING V. COMMONWEALTH OF KENTUCKY	2005-SC-000581-D	HENDERSON
DAVID R. HARROD V. VERSAILLES PROPERTIES, INC., ET AL	2005-SC-000594-D	FRANKLIN
JEFFERY L. CARPENTER V. COMMONWEALTH OF KENTUCKY	2005-SC-000598-D	BUTLER
PAUL MILLER FORD, INC. V. WILLIAM CRAYCRAFT <b>COURT OF APPEALS OPINION IS ORDERED NOT TO BE PUBLISHED.</b>	2005-SC-000613-D	FAYETTE
HOUSTON GOLDSBERRY V. COMMONWEALTH OF KENTUCKY	2005-SC-000713-D	HENDERSON

SUPREME COURT OF KENTUCKY

MINUTES

MARCH 23, 2006

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**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW ENTERED  
MARCH 15, 2006**

JAMES R. SEALS, ET AL V. CHESTER HOLLAND, ET AL	2005-SC-000720-D	LETCHER
JIMMY DWIGHT DOYLE V. COMMONWEALTH OF KENTUCKY	2005-SC-000788-D	MCCRACKEN
D.D., A CHILD UNDER EIGHTEEN V. COMMONWEALTH OF KENTUCKY	2005-SC-000795-D	MERCER
TIMOTHY A. HUTCHINSON V. COMMONWEALTH OF KENTUCKY	2005-SC-000796-D	GRAVES
CHARLES C. CONN, INDIVIDUALLY V. MARJORIE CONN, ET AL <b>COURT OF APPEALS OPINION IS ORDERED NOT TO BE PUBLISHED.</b>	2005-SC-000810-D	MADISON
LOIS CLARK, ET AL V. CITY OF FRANKFORT, ET AL	2005-SC-000819-D	FRANKLIN
CECIL CARL CLEM V. COMMONWEALTH OF KENTUCKY	2005-SC-000823-D	FAYETTE
BUTLER & ASSOCIATES, P.S.C. V. DAVID R. HARROD	2005-SC-000850-D	FRANKLIN
JOE TURNER, ET AL V. KENTUCKY DEPARTMENT OF CORRECTIONS AND VERTNER TAYLOR, FORMER DEPARTMENT OF CORRECTIONS COMMISSIONER	2005-SC-000868-D	FRANKLIN
JAMES P. LYVERS V. COMMONWEALTH OF KENTUCKY	2005-SC-000903-D	NELSON
MICHELE CRAWFORD V. COMMONWEALTH OF KENTUCKY	2005-SC-000922-D	FAYETTE



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**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW ENTERED  
MARCH 15, 2006**

JOHN BOSTON V. COMMONWEALTH OF KENTUCKY	2005-SC-000928-D	JEFFERSON
SANDRA K. CLIFTON, ET AL V. THE KENTUCKY SPEEDWAY, LLC, ET AL	2005-SC-000935-D	GALLATIN
ELIZABETH D. LOWDER, ET AL V. FAMILY DENTAL CARE ASSOCIATES, ET AL	2005-SC-000978-D	BOONE
COURTNEY LOGAN V. COMMONWEALTH OF KENTUCKY	2005-SC-000987-D	JEFFERSON
S.A., NEXT FRIEND OF Z.A. V. CITY OF LOUISVILLE	2005-SC-000988-D	JEFFERSON
D. AND S.P. V. COMMONWEALTH OF KENTUCKY, CABINET FOR HEALTH AND FAMILY SERVICES, ET AL	2006-SC-000004-DE	JEFFERSON
JESSE LEO WHITT V. JACQUELINE KING WHITT	2006-SC-000016-D	BELL
J.M. V. R.V., ET AL	2006-SC-000021-DE	FAYETTE
STATE AUTO MUTUAL INSURANCE CO. V. JOHN AND MARY GREENROSE <b>COURT OF APPEALS OPINION IS ORDERED NOT TO BE PUBLISHED.</b>	2006-SC-000033-D	JEFFERSON
JAMES CECIL V. COMMONWEALTH OF KENTUCKY	2006-SC-000064-D	HARDIN
JOHN W. RIDLEY V. ROIANN RIDLEY	2006-SC-000067-DE	WARREN

**SUPREME COURT OF KENTUCKY**

**MINUTES**

**MARCH 23, 2006**

**RELEASED: 2:00 P.M.**

**COURT ORDERS DENYING BELATED MOTION FOR ENLARGEMENT  
OF TIME TO FILE A MOTION FOR DISCRETIONARY REVIEW ENTERED MARCH 15, 2006.**

C. E. PENNINGTON COMPANY V. 2006-SC-000083-D FRANKLIN  
B & H ELECTRICAL CONTRACTORS, ET AL

**COURT ORDERS DENYING PETITION FOR REHEARING ENTERED MARCH 23, 2006.**

COMMONWEALTH OF KENTUCKY V. 2003-SC-000041-MR JEFFERSON  
LLOYD A. PRIDDY

SHARON JO ANN HARRISON V. [2004-SC-000015-DG](#) CHRISTIAN  
GEORGE R.VALENTINI, M.D.  
**MODIFYING OPINION RENDERED  
DECEMBER 22, 2005 BY SUBSTITUTION OF  
PAGES 1 AND 2 TO CORRECT FOOTNOTE.**

CHARLES K. BROWN, ETC., ET AL V. 2004-SC-000065-DG SHELBY  
INDIANA INSURANCE COMPANY, ET AL  
AND

SHELBY AND FINCH GARDEN, LLC, 2004-SC-000067-DG SHELBY  
D/B/A WILLOWBANK GARDEN COMPANY,  
ET AL V.

INDIANA INSURANCE COMPANY, ET AL  
AND

CSX TRANSPORTATION, INC. V. 2004-SC-000070-DG SHELBY  
INDIANA INSURANCE COMPANY  
AND

WENDY O'BANION, ETC. V. 2004-SC-000071-DG SHELBY  
INDIANA INSURANCE COMPANY, ET AL

LINDA H. WILLIAMS V. 2004-SC-000080-DG BARREN  
WAL-MART STORES, INC.

DARRYL BATTS V. 2004-SC-000364-MR JEFFERSON  
COMMONWEALTH OF KENTUCKY

EUGENE PAUL JOHNSON V. 2004-SC-000516-MR WARREN  
COMMONWEALTH OF KENTUCKY

SUPREME COURT OF KENTUCKY

MINUTES

MARCH 23, 2006

RELEASED: 2:00 P.M.

**COURT ORDERS**

LOUISE HOWELL V. DARRELL A. HERALD, EXECUTOR OF THE ESTATE OF JOHN R. TURNER <b>ORDER OF CORRECTION OF THE OPINION OF THE COURT ENTERED FEBRUARY 23, 2006 TO CORRECT A TYPOGRAPHICAL ERROR.</b> ENTERED: FEBRUARY 24, 2006	<a href="#">2003-SC-000476-DG</a> <b>TO BE PUBLISHED</b>	FAYETTE
FLYNN'S CONCRETE FOUNDATION CONSTRUCTION V. ALMA MAYFIELD, SURVIVING SPOUSE OF JERRY MAYFIELD, ET AL <b>ORDER GRANTING MOTION TO DISMISS.</b> ENTERED: MARCH 23, 2006	2005-SC-000422-WC	FROM COURT OF APPEALS
AUDREY WILLIAMS V. HON. DARREN W. PECKLER, JUDGE MERCER CIRCUIT COURT, ET AL <b>ORDER DISMISSING APPEAL FOR FAILURE TO PERFECT.</b> ENTERED: FEBRUARY 23, 2006	2006-SC-000061-OA	FROM COURT OF APPEALS
<b><u>COURT ORDERS PERMITTING MOVANT TO WITHDRAW AS A MEMBER OF THE KENTUCKY BAR ASSOCIATION</u></b>		
CHARLES D. KAPLAN V. KENTUCKY BAR ASSOCIATION <b>ENTERED: FEBRUARY 23, 2006</b>	2006-SC-000149	IN SUPREME COURT
DEBORAH WOLIN GATES V. KENTUCKY BAR ASSOCIATION <b>ENTERED: MARCH 2, 2006</b>	2006-SC-000166	IN SUPREME COURT