

SUPREME COURT OF KENTUCKY

AUGUST 23, 2012 MINUTES

RELEASED: 10:00 A.M.

98. RUSSELL D. ALRED, CIRCUIT JUDGE OF THE 26<sup>TH</sup> JUDICIAL CIRCUIT V. COMMONWEALTH OF KENTUCKY, JUDICIAL CONDUCT COMMISSION [2011-SC-000558-RR](#) IN SUPREME COURT  
**TO BE PUBLISHED**

**OPINION OF THE COURT BY CHIEF JUSTICE MINTON – AFFIRMING**

NOBLE AND SCHRODER, JJ., CONCUR. VENTERS, J., CONCURS BY SEPARATE OPINION IN WHICH ABRAMSON, J., JOINS. CUNNINGHAM, J., CONCURS, IN PART, AND DISSENTS, IN PART, BY SEPARATE OPINION IN WHICH SCOTT, J., JOINS. (RENDERED JULY 23, 2012)

**Questions Presented:**  
Removal from judicial office for judicial misconduct.

99. B. DAHLENBURG BONAR, P.S.C.; AND BARBARA D. BONAR V. WAITE, SCHNEIDER, BAYLESS & CHESLEY CO., L.P.A.; STANLEY M. CHESLEY; AND ROBERT A. STEINBERG [2010-SC-000087-DG](#) BOONE  
**TO BE PUBLISHED**

**OPINION OF THE COURT BY JUSTICE CUNNINGHAM – AFFIRMING**

MINTON, C.J.; ABRAMSON, SCOTT AND VENTERS, JJ.; AND SPECIAL JUSTICES ROGER L. CRITTENDEN AND ROBERT M. COOTS, CONCUR. NOBLE AND SCHRODER, JJ., NOT SITTING.

**Questions Presented:**  
Class Action Litigation. Attorneys' Fees. The issues include whether and to what extent a former class action co-counsel is entitled to recover fees following settlement of a class action lawsuit.

100. HAROLD GENE CUNNINGHAM, ET AL. V. DIANE WHALEN, ET AL. [2010-SC-000564-DG](#) BOONE  
[2011-SC-000174-DG](#)  
**TO BE PUBLISHED**

**OPINION OF THE COURT BY JUSTICE SCHRODER - AFFIRMING**  
ALL SITTING. ALL CONCUR.

**Questions Presented:**  
Open Meetings Act. Litigation Exception. Issues include whether the litigation exception to the Open Meeting Act's requirements applies where a zoning decision is the focus of the litigation.

SUPREME COURT OF KENTUCKY

AUGUST 23, 2012 MINUTES

RELEASED: 10:00 A.M.

101. EDWARD JOHN JACOBSEN V.  
COMMONWEALTH OF KENTUCKY  
**OPINION OF THE COURT BY  
JUSTICE ABRAMSON -  
AFFIRMING**  
ALL SITTING. ALL CONCUR.

[2011-SC-000108-MR](#)  
**TO BE PUBLISHED**

FAYETTE

**Questions Presented:**  
"First degree robbery and second degree PFO–30 years." Defendant was not entitled to suppression of the eyewitness identification from a photo array. Trial court correctly limited penalty-range *voir dire* to the unenhanced penalties for the indicted offense. Penalty phase mistrial for prosecutorial misconduct did not require an entire new trial of defendant's guilt, but only a new penalty phase.

102. COMMONWEALTH OF KENTUCKY V.  
WILLIAM JOSEPH REED  
**OPINION OF THE COURT BY  
JUSTICE SCHRODER –  
AFFIRMING**  
ALL SITTING. ALL CONCUR.

[2011-SC-000111-DG](#)  
**TO BE PUBLISHED**

JEFFERSON

**Questions Presented:**  
Criminal law. Guilty plea. Sentencing. Fines. KRS 534.030. Issues include whether in the case of an unenforceable bargained-for plea agreement an appellate court may vacate part of the sentence or whether the entire judgment and sentence of conviction must be set aside.

103. ROGER W. TUDOR V.  
INDUSTRIAL MOLD & MACHINE CO.,  
INC.; HONORABLE RICHARD M.  
JOINER, ADMINISTRATIVE LAW  
JUDGE; AND WORKERS'  
COMPENSATION BOARD  
**OPINION OF THE COURT  
AFFIRMING**  
ALL SITTING. ALL CONCUR.

[2011-SC-000589-WC](#)  
**TO BE PUBLISHED**

FROM COURT  
OF APPEALS

**Questions Presented:**  
Workers' Compensation. Issues include the method for excluding impairment from a non-compensable disability when calculating a worker's income benefit under KRS 342.730(1)(b).

**SUPREME COURT OF KENTUCKY**

**AUGUST 23, 2012 MINUTES**

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

104. GREG'S CONSTRUCTION V. [2011-SC-000605-WC](#) FROM COURT  
JERRY KEETON; JOHNSON FLOYD **TO BE PUBLISHED** OF APPEALS  
COAL COMPANY; MILLER BROTHERS  
COAL COMPANY; APOSTLE FUELS;  
HONORABLE OTTO DANIEL WOLFF,  
ADMINISTRATIVE LAW JUDGE; AND  
WORKER'S COMPENSATION BOARD  
**OPINION OF THE COURT**  
**AFFIRMING**  
ALL SITTING. ALL CONCUR.
- Questions Presented:**  
Workers' Compensation. Issues include whether KRS 342.7305 imposes liability for noise-induced hearing loss on the last employer with whom the worker sustained an injurious exposure although the claim was filed and impairment rating assigned before the employment commenced.
105. JAMES T. ENGLISH TRUCKING V. [2011-SC-000686-WC](#) FROM COURT  
AARON K. BEELER; HONORABLE **TO BE PUBLISHED** OF APPEALS  
DOUGLAS W. GOTT, ADMINISTRATIVE  
LAW JUDGE; AND WORKERS'  
COMPENSATION BOARD  
**OPINION OF THE COURT**  
**AFFIRMING**  
ALL SITTING. ALL CONCUR.
- Questions Presented:**  
Workers' Compensation. Issues include whether a worker's entire income benefit may be tripled at reopening when the increased impairment results in a lack of the physical capacity to perform the type of work performed at the time of the injury.

SUPREME COURT OF KENTUCKY

AUGUST 23, 2012 MINUTES

RELEASED: 10:00 A.M.

106. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY V. JAMES BALDWIN

[2010-SC-000144-DG](#)  
TO BE PUBLISHED

GRANT

AND

RONDA REYNOLDS V. SAFECO INSURANCE COMPANY OF ILLINOIS

[2010-SC-000665-DG](#)  
TO BE PUBLISHED

BATH

**OPINION OF THE COURT BY CHIEF JUSTICE MINTON – AFFIRMING AND REVERSING**

ABRAMSON, CUNNINGHAM, NOBLE, SCHRODER, AND VENTERS, JJ., CONCUR. SCOTT, J., CONCURS AND STATES: I CONCUR WITH MY COLLEAGUES IN THIS CASE FOR REASONS THAT THE PLASTIC COVERING INVOLVED HEREIN WAS NOT A STATUTORILY REQUIRED OR COMMERCIALY USED TARPAULIN.

**Questions Presented:**

Uninsured Motorist Coverage. Physical impact requirement is upheld. The "strike" and "hit" requirements in the Uninsured Motorist clauses are satisfied if the uninsured vehicle, or an integral part of it, makes physical contact with the insured's vehicle; or if the uninsured vehicle exerts force upon an intermediate object, which then makes physical contact with the insured's vehicle in a chain-reaction accident.

107. QUAYNELL DURON KING V. COMMONWEALTH OF KENTUCKY  
**OPINION OF THE COURT BY JUSTICE SCOTT – AFFIRMING IN PART AND REVERSING AND REMANDING IN PART**  
ALL SITTING. ALL CONCUR.

[2011-SC-000110-TG](#)  
[2011-SC-000151-TG](#)  
TO BE PUBLISHED

FAYETTE

**Questions Presented:**

Defendant who timely and unequivocally asserted his right to represent himself and knowingly, intelligently, and voluntarily accepted the dangers inherent in self-representation had a right to proceed pro-se. As the defendant had abandoned his vehicle, he did not have standing to challenge its warrantless search.

SUPREME COURT OF KENTUCKY

AUGUST 23, 2012 MINUTES

RELEASED: 10:00 A.M.

108. MICHAEL SCHNUERLE, AMY GILBERT, LANCE GILBERT AND ROBIN WOLFF V. INSIGHT COMMUNICATIONS, COMPANY, L.P. AND INSIGHT COMMUNICATIONS MIDWEST, LLC  
**OPINION OF THE COURT BY JUSTICE VENTERS – AFFIRMING IN PART, REVERSING IN PART AND REMANDING**  
MINTON, C.J.; ABRAMSON, CUNNINGHAM, AND SCOTT, JJ., CONCUR. SCHRODER, J., CONCURS IN PART AND DISSENTS IN PART BY SEPARATE OPINION, IN WHICH NOBLE, J., JOINS.
- [2008-SC-000789-DG](#) JEFFERSON  
[2009-SC-000390-DG](#)  
**TO BE PUBLISHED**
- Questions Presented:**  
Contracts. Arbitration. Issues include the validity of mandatory dispute resolution contract clauses barring consumer class actions.
109. MARCUS D. SWAN COMMONWEALTH OF KENTUCKY V. AND D'ANDRE OWENS V. COMMONWEALTH OF KENTUCKY  
**OPINION OF THE COURT BY JUSTICE NOBLE – AFFIRMING IN PART, AND REVERSING IN PART AND REMANDING**  
MINTON, C.J.; ABRAMSON AND VENTERS, JJ., CONCUR. CUNNINGHAM, J., CONCURS IN RESULT BY SEPARATE OPINION IN WHICH SCOTT, J., JOINS. SCHRODER, J., CONCURS IN PART AND DISSENTS IN PART BY SEPARATE OPINION.
- [2011-SC-000085-MR](#) JEFFERSON  
**TO BE PUBLISHED**
- [2011-SC-000086-MR](#) JEFFERSON  
**TO BE PUBLISHED**
- Questions Presented:**  
"Four counts of first-degree robbery, first-degree burglary, two counts of first-degree assault, six counts of first-degree wanton endangerment, and one count of tampering with physical evidence, all by a complicity theory-70 years." (Owens also convicted of first-degree sodomy.) Convictions affirmed except for Owens' convictions for first degree assault, where the proof required an instruction on the lesser-included offense of second degree assault, and for first degree wanton endangerment relating to Ms. Lumpkins.

SUPREME COURT OF KENTUCKY

AUGUST 23, 2012 MINUTES

RELEASED: 10:00 A.M.

110. BRENT ARNOLD V. TOYOTA MOTOR MANUFACTURING; HONORABLE RICHARD M. JOINER, ADMINISTRATIVE LAW JUDGE; AND WORKERS' COMPENSATION BOARD  
**OPINION OF THE COURT**  
**AFFIRMING IN PART, REVERSING IN PART, AND REMANDING**  
ALL SITTING. ALL CONCUR.
- [2011-SC-000588-WC](#) FROM COURT  
**TO BE PUBLISHED** OF APPEALS
- Questions Presented:**  
**Question presented:** Workers' Compensation. Issues include whether the ALJ made sufficient findings to support the date to commence temporary total disability benefits.
111. ANTHONY WAYNE FAGAN V. COMMONWEALTH OF KENTUCKY  
**OPINION OF THE COURT BY CHIEF JUSTICE MINTON –**  
**AFFIRMING IN PART, VACATING IN PART AND REMANDING**  
ALL SITTING. ALL CONCUR.
- [2010-SC-000791-MR](#) MCCRACKEN  
**TO BE PUBLISHED**
- Questions Presented:**  
"Theft by unlawful taking over \$10,000 and three counts of first-degree criminal mischief –20 years." Convictions for theft by unlawful taking over \$10,000 and first-degree criminal mischief did not violate double jeopardy. Trial court's restitution order did not violate the statutory cap. Trial court erred by amending the final judgment more than ten days after its entry.
112. MARK BOLTON, DIRECTOR METRO CORRECTIONS V. RICKIE IRVIN  
**OPINION OF THE COURT BY JUSTICE SCHRODER –**  
**REVERSING**  
MINTON, C.J.; ABRAMSON, CUNNINGHAM, AND VENTERS, JJ., CONCUR. SCOTT, J., CONCURS IN PART AND DISSENTS IN PART BY SEPARATE OPINION IN WHICH NOBLE, J., JOINS.
- [2010-SC-000520-DG](#) JEFFERSON  
**TO BE PUBLISHED**
- Questions Presented:**  
Criminal Law. Bond. District court may increase defendant's bail following a finding of probable cause.

SUPREME COURT OF KENTUCKY

AUGUST 23, 2012 MINUTES

RELEASED: 10:00 A.M.

113. COMMONWEALTH OF KENTUCKY V. [2011-SC-000507-DG](#) NICHOLAS  
JOSHUA ABNEE  
**TO BE PUBLISHED**  
**OPINION OF THE COURT BY**  
**JUSTICE VENTERS –**  
**REVERSING**  
MINTON, C.J., ABRAMSON, NOBLE,  
SCHRODER, AND SCOTT, JJ.,  
CONCUR. CUNNINGHAM, J.,  
CONCURS IN RESULT ONLY.
- Questions Presented:**  
Criminal Law. Jury Deliberations. Defendant is not entitled to a hearing on a motion for a new trial based upon a juror's letter, unsupported by affidavit, regarding alleged impropriety in deliberations.
114. DONNA PING, EXECUTRIX OF THE [2010-SC-000558-DG](#) FRANKLIN  
ESTATE OF ALMA CALHOUN DUNCAN, **TO BE PUBLISHED**  
DECEASED V.  
BEVERLY ENTERPRISES, INC., ET AL.  
**OPINION OF THE COURT BY**  
**JUSTICE ABRAMSON**  
**REVERSING AND REMANDING**  
ALL SITTING. ALL CONCUR.
- Questions Presented:**  
Contracts. Arbitration. General Power of Attorney for property and health care management did not authorize agent to agree to arbitration.
115. BILLY REED CAUDILL V. [2011-SC-000119-MR](#) BREATHITT  
COMMONWEALTH OF KENTUCKY  
**OPINION OF THE COURT**  
**REVERSING AND REMANDING**  
ALL SITTING. ALL CONCUR.
- Questions Presented:**  
"Murder and three counts of wanton endangerment-35 years." Improper conduct by the Commonwealth Attorney during his cross-examination of the defendant constituted reversible prosecutorial misconduct.

SUPREME COURT OF KENTUCKY

AUGUST 23, 2012 MINUTES

RELEASED: 10:00 A.M.

- |   |   |   |                          |
|---|---|---|--------------------------|
| 116.  | JEFFREY WAYNE CHAVIES V.<br>COMMONWEALTH OF KENTUCKY<br><b>OPINION OF THE COURT</b><br><b><u>REVERSING AND REMANDING</u></b><br>ALL SITTING. ALL CONCUR.  | <a href="#">2011-SC-000140-MR</a><br><b>TO BE PUBLISHED</b>     | KNOX                     |
| <p style="text-align: center;"><b>Questions Presented:</b></p> <p>"First-degree sodomy, use of a minor in a sexual performance, and first-degree sexual abuse—70 years." Commonwealth's introduction of an egregious amount of inadmissible character evidence combined with improper bolstering of the alleged victims' testimony rose to the level of palpable error mandating reversal of the case and remand for a new trial.</p> |   |   |                          |
| 117.  | JOHNNY D. GREENE V.<br>COMMONWEALTH OF KENTUCKY<br><b>MEMORANDUM OPINION OF</b><br><b>THE COURT – <u>AFFIRMING</u></b><br>ALL SITTING. ALL CONCUR.  | <a href="#">2010-SC-000776-MR</a><br><b>NOT TO BE PUBLISHED</b> | MONTGOMERY               |
| 118.  | LEAMON WESNER V.<br>COMMONWEALTH OF KENTUCKY<br><b>MEMORANDUM OPINION OF</b><br><b>THE COURT – <u>AFFIRMING</u></b><br>ALL SITTING. ALL CONCUR.   | <a href="#">2011-SC-000039-MR</a><br><b>NOT TO BE PUBLISHED</b> | FAYETTE                  |
| 119.  | GASSAN M. QUTIEFAN V.<br>HONORABLE ELEANORE M. GARBER,<br>JUDGE, JEFFERSON FAMILY COURT,<br>AND<br>RITA IQTAIFAN<br><b>MEMORANDUM OPINION OF</b><br><b>THE COURT – <u>AFFIRMING</u></b><br>ALL SITTING. ALL CONCUR. | <a href="#">2011-SC-000684-MR</a><br><b>NOT TO BE PUBLISHED</b> | FROM COURT<br>OF APPEALS |



SUPREME COURT OF KENTUCKY

AUGUST 23, 2012 MINUTES

RELEASED: 10:00 A.M.

120. MOTORISTS MUTUAL INSURANCE [2012-SC-000082-MR](#) FROM COURT  
COMPANY V. **NOT TO BE PUBLISHED** OF APPEALS  
HONORABLE EDDY COLEMAN, JUDGE,  
PIKE CIRCUIT COURT  
AND  
GYPSIE THACKER  
**MEMORANDUM OPINION OF  
THE COURT – AFFIRMING**  
ALL SITTING. ALL CONCUR.
121. MARCUS RIGNEY, RONNIE L. [2012-SC-000147-MR](#) FROM COURT  
RIGNEY; AND MARY BETH RIGNEY V. **NOT TO BE PUBLISHED** OF APPEALS  
HONORABLE JUDITH BARTHOLOMEW,  
SPECIAL JUDGE FOR BULLITT  
CIRCUIT COURT, FAMILY DIVISION;  
AND CABINET FOR HEALTH AND  
FAMILY SERVICES, DEPARTMENT OF  
COMMUNITY BASED SERVICES  
AND  
MISTY D. FLINT  
**MEMORANDUM OPINION OF  
THE COURT – AFFIRMING**  
ALL SITTING. ALL CONCUR.
122. DENNIS JACKSON V. [2011-SC-000008-MR](#) BREATHITT  
COMMONWEALTH OF KENTUCKY **NOT TO BE PUBLISHED**  
**MEMORANDUM OPINION OF  
THE COURT – AFFIRMING IN PART,  
REVERSING IN PART, AND  
REMANDING**  
ALL SITTING. ALL CONCUR.
123. JIMMY THACKER, JR. V. [2011-SC-000338-MR](#) FLOYD  
COMMONWEALTH OF KENTUCKY **NOT TO BE PUBLISHED**  
**MEMORANDUM OPINION OF  
THE COURT – AFFIRMING IN PART  
AND VACATING IN PART**  
ALL SITTING. ALL CONCUR.

**SUPREME COURT OF KENTUCKY**

**AUGUST 23, 2012 MINUTES**

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

124. KNOTT COUNTY BOARD OF EDUCATION V. LOIS HAMILTON; HONORABLE CAROLINE PITT CLARK, ADMINISTRATIVE LAW JUDGE; AND WORKERS' COMPENSATION BOARD  
**MEMORANDUM OPINION OF THE COURT – REVERSING**  
ALL SITTING. ALL CONCUR.

[2011-SC-000509-WC](#)  
**NOT TO BE PUBLISHED**

FROM COURT OF APPEALS

**OPINIONS AND ORDERS – AUGUST 15, 2012**

ALAN OSTER V. PAULA OSTER  
**ORDER GRANTED DISCRETIONARY REVIEW, VACATED THE COURT OF APPEALS' OPINION AND REMANDED TO THE COURT OF APPEALS FOR FURTHER PROCEEDINGS.**  
ALL SITTING. ALL CONCUR.

2011-SC-000362-DE  
**NOT TO BE PUBLISHED**

JEFFERSON

**OPINIONS AND ORDERS – AUGUST 23, 2012**

KENTUCKY BAR ASSOCIATION V. WILLIAM ERIC MINAMYER  
**ORDER RETROACTIVELY SUSPENDED RESPONDENT FROM THE PRACTICE OF LAW FOR A PERIOD OF ONE YEAR EFFECTIVE APRIL 24, 2012.**  
ALL SITTING. ALL CONCUR.

[2011-SC-000744-KB](#)  
**TO BE PUBLISHED**

IN SUPREME COURT

KENTUCKY BAR ASSOCIATION V. CHARLEY GREENE DIXON  
**ORDER PUBLICLY REPRIMANDED RESPONDENT.**  
ALL SITTING. ALL CONCUR.

[2012-SC-000006-KB](#)  
**TO BE PUBLISHED**

IN SUPREME COURT

**SUPREME COURT OF KENTUCKY**

**AUGUST 23, 2012 MINUTES**

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

**OPINIONS AND ORDERS – AUGUST 23, 2012**

KENTUCKY BAR ASSOCIATION V.  
JULIETTE ALANE HOUSE  
**BOARD OF GOVERNORS' RECOMMENDATION  
TO SUSPEND RESPONDENT FROM THE  
PRACTICE OF LAW IS RENDERED MOOT AS  
A RESULT OF RESPONDENT'S DISBARMENT  
ON JUNE 21, 2012.**  
ALL SITTING. ALL CONCUR.

[2012-SC-000255-KB](#)  
**TO BE PUBLISHED**

IN SUPREME  
COURT

JAMES GRANT KING V.  
KENTUCKY BAR ASSOCIATION  
**ORDER PUBLICLY REPRIMANDED MOVANT  
WITH CONDITIONS.**  
ALL SITTING. ALL CONCUR.

[2012-SC-000300-KB](#)  
**TO BE PUBLISHED**

IN SUPREME  
COURT

PATRICK EDWARD MOEVES V.  
KENTUCKY BAR ASSOCIATION  
**ORDER PERMANENTLY DISBARRED  
MOVANT FROM THE PRACTICE OF  
LAW.**  
ALL SITTING. ALL CONCUR.

[2012-SC-000302-KB](#)  
**TO BE PUBLISHED**

IN SUPREME  
COURT

HEATHER ROCHET V.  
KENTUCKY BAR ASSOCIATION  
**ORDER RESTORED MOVANT TO  
THE PRACTICE OF LAW.**  
ALL SITTING. ALL CONCUR.

[2012-SC-000349-KB](#)  
**TO BE PUBLISHED**

IN SUPREME  
COURT

SCOTT A. GREGG V.  
KENTUCKY BAR ASSOCIATION  
**ORDER RESTORED MOVANT TO  
THE PRACTICE OF LAW.**  
ALL SITTING. ALL CONCUR.

2012-SC-000351-KB

IN SUPREME  
COURT

**COURT ORDERS GRANTING MOTION FOR DISCRETIONARY REVIEW –  
AUGUST 15, 2012**

STEVE HANEY, ET AL. V.  
ONTARIO THOMAS

2011-SC-000453-DG

LYON

**SUPREME COURT OF KENTUCKY**

**AUGUST 23, 2012 MINUTES**

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

**COURT ORDERS GRANTING MOTION FOR DISCRETIONARY REVIEW –  
AUGUST 15, 2012**

ENERGY HOME, DIVISON OF SOUTHERN ENERGY HOMES, INC. <b>V.</b> BRIAN PEAY AND LORI PEAY	2011-SC-000462-DG	DAVISS
DR. PHILIP C. TROVER <b>V.</b> ESTATE OF JUDITH BURTON AND TROVER CLINIC FOUNDATION, INC. <b>AND</b> THE TROVER CLINIC FOUNDATION, INC. D/B/A REGIONAL MEDICAL CENTER OF HOPKINS <b>V.</b> ESTATE OF JUDITH BURTON AND PHILIP C. TROVER, M.D.	2011-SC-000565-DG	HOPKINS
RICK PANNELL <b>V.</b> ANN SHANNON AND ELEGANT INTERIORS, LLC	2011-SC-000587-DG	FAYETTE
JOSEPH WAYNE MCFELIA <b>V.</b> DORINDA MCFELIA	2011-SC-000610-DG	LARUE
UNITED BROTHERHOOD OF CARPENTERS <b>V.</b> BIRCHWOOD CONSERVANCY, A CALIFORNIA CORPORATION AUTHORIZED TO DO BUSINESS IN KENTUCKY AS A FOREIGN CORPORATION, ET AL.	2011-SC-000659-DG	SCOTT
MICKIEL PETE, ET AL. <b>V.</b> MICHAEL ANDERSON, JR. AND MALIK ANDERSON	2011-SC-000692-DG	JEFFERSON
JEFFERY T. PEARCE <b>V.</b> UNIVERSITY OF LOUISVILLE, BY AND THROUGH ITS BORAD OF TRUSTEES	2011-SC-000756-DG	JEFFERSON
COMMONWEALTH OF KENTUCKY <b>V.</b> CHRISTINE GOSS	2011-SC-000780-DG	LAUREL

SUPREME COURT OF KENTUCKY

AUGUST 23, 2012 MINUTES

RELEASED: 10:00 A.M.

**COURT ORDERS GRANTING MOTION FOR DISCRETIONARY REVIEW –  
AUGUST 15, 2012**

MICHAEL S. BELL V. MARY H. BELL	2012-SC-000026-DG	MERCER
MICHELLE SMITH V. COMMONWEALTH OF KENTUCKY	2012-SC-000034-DG	CRITTENDEN
WILLIAM TID GRIFFIN, ET AL. V. R. DEAN LINDEN, PH.D.	2012-SC-000377-DG	JEFFERSON

**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW –  
AUGUST 15, 2012**

MITCHELL C. MOODY V. KENTUCKY UNEMPLOYMENT INSURANCE COMMISSION, ET AL.	2011-SC-000374-D	WARREN
CHARLES FRANKLIN LAYNE, JR. V. COMMONWEALTH OF KENTUCKY	2011-SC-000434-D	PIKE
COMMONWEALTH OF KENTUCKY V. TIMOTHY QUINN BEELER <b>THE OPINION OF THE COURT OF APPEALS IS ORDERED NOT TO BE PUBLISHED.</b>	2011-SC-000444-D	HARDIN
MICHAEL CRISP V. STEVE HANEY, WARDEN, LITTLE SANDY CORRECTIONAL COMPLEX	2011-SC-000469-D	BOYLE
TIMOTHY M. SMITH V. KIM WOLFE <b>SCHRODER, J., NOT SITTING.</b>	2011-SC-000517-D	KENTON
MACKADOO MAYNARD V. THOMAS E. WILLIAMSON AND VALERIE WILLIAMSON <b>THE OPINION OF THE COURT OF APPEALS IS ORDERED NOT TO BE PUBLISHED.</b>	2011-SC-000520-D	PIKE

**SUPREME COURT OF KENTUCKY**

**AUGUST 23, 2012 MINUTES**

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

**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW –  
AUGUST 15, 2012**

DAVID H. DIXON. V. BOARD OF EDUCATION OF HARLAN COUNTY, KENTUCKY	2011-SC-000523-D	HARLAN
HENRY CLAYTON V. COMMONWEALTH OF KENTUCKY	2011-SC-000527-D	GRANT
DAVID MORRW V. COMMONWEALTH OF KENTUCKY	2011-SC-000528-D	MCCREARY
JANET JONES AND RONALD JONES V. STEPHEN K. OVERSTREET, M.D., STEPHEN K. OVERSTREET, M.D., P.L.L.C., AND HUMANA INSURANCE COMPANY	2011-SC-000534-D	JEFFERSON
FINLEY PERRY V. COMMONWEALTH OF KENTUCKY	2011-SC-000536-D	MCCREARY
SHELTER MUTUAL INSURANCE COMPANY V. RICHARD YATES <b>THE OPINION OF THE COURT OF APPEALS IS ORDERED NOT TO BE PUBLISHED.</b>	2011-SC-000564-D	HARDIN
SHAWN HELBIG V. CITY OF BOWLING GREEN, KENTUCKY	2011-SC-000601-D	WARREN
JOSEPH L. DONAHUE, ET AL. V. KOETTER WOODWORKING, INC.	2011-SC-000645-D	LARUE
FREELAND RILEY V. COMMONWEALTH OF KENTUCKY	2011-SC-000646-D	MCCRACKEN
ANTHONY WARREN V. COMMONWEALTH OF KENTUCKY	2011-SC-000666-D	JEFFERSON
COMMONWEALTH OF KENTUCKY V. ADDISON LEE CUTSINGER	2011-SC-000687-D	JEFFERSON

SUPREME COURT OF KENTUCKY

AUGUST 23, 2012 MINUTES

RELEASED: 10:00 A.M.

**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW –  
AUGUST 15, 2012**

BOYD DANIEL MATTHEWS V. COMMONWEALTH OF KENTUCKY	2011-SC-000701-D	MCCRACKEN
SOHAL PROPERTIES, LLC V. MOA PROPERTIES, LLC AND MOTELS OF AMERICA, LLC <b>THE OPINION OF THE COURT OF APPEALS IS ORDERED NOT TO BE PUBLISHED.</b>	2011-SC-000711-D	JEFFERSON
JOHN R. MORGAN V. APPALACHIAN REGIONAL HEALTHCARE, INC. <b>THE OPINION OF THE COURT OF APPEALS IS ORDERED NOT TO BE PUBLISHED.</b>	2011-SC-000712-D	FAYETTE
AMERICAN ATHEISTS, INC., ET AL. V. KENTUCKY OFFICE OF HOMELAND SECURITY, ET AL. <b>VENTERS, J., WOULD GRANT.</b>	2011-SC-000719-D	FRANKLIN
FLOYD RITCHIE V. TOURISM, ARTS AND HERITAGE CABINET, DEPARTMENT OF PARKS, COMMONWEALTH OF KENTUCKY AND DANA LYONS	2011-SC-000726-D	CARROLL
THE MEDICAL PROTECTIVE COMPANY V. AURELIA WILES AND DONALD WILES <b>THE OPINION OF THE COURT OF APPEALS IS ORDERED NOT TO BE PUBLISHED.</b>	2011-SC-000728-D	KENTON
TORIE DEWAYNE QUALLS V. COMMONWEALTH OF KENTUCKY	2011-SC-000733-D	HARDIN
CHARLES G. DUKES. V. JOHN KEATING, ET AL.	2011-SC-000735-D	MUHLENBERG
DAVID DUNAWAY V. COMMONWEALTH OF KENTUCKY	2011-SC-000738-D	LEE

**SUPREME COURT OF KENTUCKY**

**AUGUST 23, 2012 MINUTES**

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

**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW –  
AUGUST 15, 2012**

BRUNSWICK BOWLING & BILLIARDS V. MARGARET NG-CADLAON	2011-SC-000739-D	BOYD
JAMES M. LAVALLE V. MURRAY STATE UNIVERSITY, ET AL.	2011-SC-000740-D	CALLOWAY
GREGORY HARPER V. COMMONWEALTH OF KENTUCKY	2011-SC-000742-D	JEFFERSON
POWELL COUNTY SOIL AND WATER CONSERVATION V. POWELL COUNTY FISCAL COURT; DARREN FARMER; SHIRLEY CRABTREE; RICKY CREED; JIM DENNIS; BOBBY GINTER; AND BUD PARKS	2011-SC-000748-D	POWELL
CHRISTOPHER SHAFFER V. COMMONWEALTH OF KENTUCKY	2011-SC-000753-D	JEFFERSON
PHILLIP DEAN V. COMMONWEALTH OF KENTUCKY	2011-SC-000758-D	KENTON
DONNIE PROPE V. COMMONWEALTH OF KENTUCKY, DEPARTMENT OF KENTUCKY STATE POLICE	2011-SC-000763-D	CASEY
CHRIS GORMAN V. STITES & HARBISON, PLLC	2011-SC-000764-D	JEFFERSON
CLIFFORD E. REED, AKA CLIFFORD "PETE" REED V. COMMONWEALTH OF KENTUCKY	2011-SC-000766-D	FLEMING
KERNEL FRANCIS AND JAMES FRANCIS V. KENTUCKY RIVER COAL CORPORATION	2011-SC-000768-D	KNOTT
ANGEL MEDINA-SANTIAGO V. COMMONWEALTH OF KENTUCKY	2011-SC-000776-D	BOONE



**SUPREME COURT OF KENTUCKY**

**AUGUST 23, 2012 MINUTES**

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

**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW –  
AUGUST 15, 2012**

JAMES MATTHEWS V. COMMONWEALTH OF KENTUCKY	2011-SC-000782-D	KENTON
TERESA K. ISON V. MCDONALD'S #12237	2011-SC-000783-D	LETCHER
JAMES D. COLLETT, JR. V. ONEETA C. DAILEY, AS GUARDIAN OF HAZEL C. COLLETT	2011-SC-000786-D	KENTON
CALVIN HOUSTON V. COMMONWEALTH OF KENTUCKY	2011-SC-000789-D	FAYETTE
DAWN CHANTE RUSSELL, AKA DAWN ZABAD V. COMMONWEALTH OF KENTUCKY	2012-SC-000012-D	JEFFERSON
ANTHONY THOMAS GRIMES V. COMMONWEALTH OF KENTUCKY	2012-SC-000016-D	DAVISS
BETTY GATES POE, ET AL. V. BRENT E. GAUNCE, ET AL.	2012-SC-000025-D	NICHOLAS
LORENZA FIGUEROA V. CHRIS MEINHART, ADMINSTRATOR OF THE ESTATE OF SAUL FIGUEROA-BAUTISTA, ET AL.	2012-SC-000027-D	JEFFERSON
FELIX CASTILLO V. COMMONWEALTH OF KENTUCKY <b>THE OPINION OF THE COURT OF APPEALS IS ORDERED NOT TO BE PUBLISHED. VENTERS, J., WOULD GRANT.</b>	2012-SC-000028-D	JEFFERSON
JAMES A. SAMUELS V. COMMONWEALTH OF KENTUCKY	2012-SC-000030-D	ANDERSON

**SUPREME COURT OF KENTUCKY**

**AUGUST 23, 2012 MINUTES**

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

**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW –  
AUGUST 15, 2012**

COMMONWEALTH OF KENTUCKY V. CHARLES JACKSON <b>THE OPINION OF THE COURT OF APPEALS IS ORDERED NOT TO BE PUBLISHED.</b>	2012-SC-000035-D	KENTON
VALERIE GUEST V. FRANKLIN DOUGLAS SMITH	2012-SC-000039-D	DAVIESS
BARBARA FERGUSON V. UNDERTOW TRUCKING, INC.	2012-SC-000043-D	JOHNSON
TERESA GOODLETT V. COMMONWEALTH OF KENTUCKY	2012-SC-000044-D	SHELBY
KLINTON E. KELLEY, JR. V. STEPHEN J. KELLEY AND MELANIE W. KELLEY	2012-SC-000046-D	CARLISLE
JAMES T. CLEMONS V. COMMONWEALTH OF KENTUCKY	2012-SC-000072-D	GARRARD
JAMES L. TICE V. REBECCA TICE	2012-SC-000073-D	LOGAN
JAMES R. BLACK V. COMMONWEALTH OF KENTUCKY	2012-SC-000086-D	BOONE
RONNIE BOWLING V. COMMONWEALTH OF KENTUCKY	2012-SC-000096-D	ROCKCASTLE
BRYAN FULLER (FATHER AND FRIEND OF ANDREW FULLER) V. JOANN BLAIR, ET AL.	2012-SC-000218-D	CAMPBELL
GREGORY NAPIER V. COMMONWEALTH OF KENTUCKY	2012-SC-000230-D	DAVIESS

**SUPREME COURT OF KENTUCKY**

**AUGUST 23, 2012 MINUTES**

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

**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW –  
AUGUST 15, 2012**

JOSEPH HOHMAN V. 2012-SC-000234-DE JEFFERSON  
JENNIFER DERY  
**CUNNINGHAM AND SCOTT, JJ., WOULD  
GRANT.**

J.R. V. 2012-SC-000325-DE LARUE  
COMMONWEALTH OF KENTUCKY, CABINET  
FOR HEALTH AND FAMILY SERVICES AND  
S. Y. R.  
**SCHRODER, J., NOT SITTING.**

CAREY LOOMIS V. 2012-SC-000342-DE MENIFEE  
MARCY MITCHELL

**COURT ORDERS GRANTING MOTION TO TRANSFER – JUNE 22, 2012**

MICHAEL HELPHENSTINE V. 2012-SC-000251-T GRAYSON  
COMMONWEALTH OF KENTUCKY

**COURT ORDERS DENYING PETITION FOR REHEARING – AUGUST 23, 2012**

COMMONWEALTH OF KENTUCKY V. 2010-SC-000343-DG PULASKI  
PATRICK O'CONNOR  
**ORDER MODIFIED THE OPINION OF  
THE COURT BY JUSTICE CUNNINGHAM,  
RENDERED APRIL 26, 2012, BY  
SUBSTITUTION OF PAGES 1 AND 2 IN LIEU  
OF THE ORIGINAL PAGES 1 AND 2.  
ALL SITTING. ALL CONCUR.**

CHARLES L. WILSON, JR. V. 2010-SC-000394-DG MUHLENBERG  
CITY OF CENTRAL CITY, KENTUCKY  
ALL SITTING. ALL CONCUR.

**SUPREME COURT OF KENTUCKY**

**AUGUST 23, 2012 MINUTES**

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

**COURT ORDERS DISMISSING**

NOEL LEE JENKINS V.  
COMMONWEALTH OF KENTUCKY  
**ORDER DISMISSED APPEAL.**  
**ENTERED: AUGUST 16, 2012**

2006-SC-000523-MR

MONROE

HARRISON ROBERTS V.  
HEART CLINIC OF SOUTHEAST KENTUCKY,  
P.S.C., ET AL.  
**ENTERED: JUNE 15, 2012**

2011-SC-000418-TG

LAUREL

KENTUCKY BAR ASSOCIATION V.  
JULIETTE A. HOUSE  
**ORDER DISMISSED ACTION AS MOOT.**  
**ENTERED: AUGUST 23, 2012**

2011-SC-000751-KB

IN SUPREME  
COURT

ERNST & YOUNG, LLP, ET AL. V.  
SHARON CLARK, COMMISSIONER OF THE  
KENTUCKY DEPARTMENT OF INSURANCE,  
IN HER CAPACITY AS REHABILITATOR OF  
AIK COMP  
**ENTERED: AUGUST 23, 2012**

2012-SC-000243-I

FRANKLIN

**COURT ORDERS**

BRANDON BENNINGFIELD (BY AND  
THROUGH HIS MOTHER AND NEXT FRIEND,  
LAURIE BENNINGFIELD) V.  
HELEN ZINSMEISTER, DECEASED; AND  
WADE ZINSMEISTER  
**ORDER CORRECTED THE OPINION OF THE  
COURT BY JUSTICE NOBLE, RENDERED  
JUNE 21, 2012 BY SUBSTITUTION OF NEW  
PAGES 1 AND 2.**  
ENTERED: JUNE 25, 2012

[2009-SC-000660-DG](#)  
**TO BE PUBLISHED**

FRANKLIN

SUPREME COURT OF KENTUCKY

AUGUST 23, 2012 MINUTES

RELEASED: 10:00 A.M.

**COURT ORDERS**

TECO MECHANICAL CONTRACTOR, INC. V. [2009-SC-000821-DG](#) FRANKLIN  
COMMONWEALTH OF KENTUCKY, **TO BE PUBLISHED**  
ENVIRONMENTAL AND PUBLIC PROTECTION  
CABINET, ET AL.  
**ORDER CORRECTED THE OPINION OF THE  
COURT BY JUSTICE SCOTT, RENDERED  
MARCH 22, 2012 BY SUBSTITUTION OF  
PAGES 1, 12 AND 19.**  
ENTERED: JUNE 27, 2012

KENTUCKY UNEMPLOYMENT INSURANCE [2010-SC-000252-DG](#) FAYETTE  
COMMISSION V. **TO BE PUBLISHED**  
DAVID G. HAMILTON  
**ORDER CORRECTED THE OPINION  
OF THE COURT, RENDERED DECEMBER,  
22, 2011 BY SUBSTITUTION OF PAGE 1 AND  
7 IN LIEU OF THE ORIGINAL PAGES 1 AND 7.**  
ENTERED: JULY 2, 2012

JAMES NICK HARRISON V. 2012-SC-000276-MR MADISON  
HON. WILLIAM G. CLOUSE, JUDGE, MADISON  
CIRCUIT COURT, ET AL.  
**ORDER DENIED MOTION TO  
RECONSIDER.**  
ENTERED: AUGUST 7, 2012

JAMES HARRISON V. 2012-SC-000277-MR FROM COURT  
COMMONWEALTH OF KENTUCKY OF APPEALS  
**ORDER DENIED MOTION TO  
RECONSIDER AND DISMISSED ACTION.**  
ENTERED: AUGUST 7, 2012

KENTUCKY BAR ASSOCIATION V. [2012-SC-000406-KB](#) IN SUPREME  
MEREDITH L. LAWRENCE **TO BE PUBLISHED** COURT  
**RESPONDENT AUTOMATICLY  
SUSPENDED FROM THE PRACTICE OF  
LAW.**  
ENTERED: JULY 18, 2012

**SUPREME COURT OF KENTUCKY**

**AUGUST 23, 2012 MINUTES**

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

**COURT ORDERS**

**KENTUCKY BAR ASSOCIATION V.  
SUZANNE P. LAND  
RESPONDENT AUTOMATICLY  
SUSPENDED FROM THE PRACTICE OF  
LAW.**

[2012-SC-000473-KB](#)  
**TO BE PUBLISHED**

**IN SUPREME  
COURT**

**ENTERED: AUGUST 14, 2012**

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

**ROSANN SCATTOLONI V.  
KENTUCKY BAR ASSOCIATION  
ENTERED: JUNE 21, 2012**

2012-SC-000357-KB

**IN SUPREME  
COURT**

**RICHARD TIMM TRETTIN V.  
KENTUCKY BAR ASSOCIATION  
ENTERED: JUNE 21, 2012**

2012-SC-000358-KB

**IN SUPREME  
COURT**

**RICHARD FRANCIS LYNCH V.  
KENTUCKY BAR ASSOCIATION  
ENTERED: JUNE 21, 2012**

2012-SC-000359-KB

**IN SUPREME  
COURT**

**THOMAS MARTIN JONES V.  
KENTUCKY BAR ASSOCIATION  
ENTERED: JUNE 21, 2012**

2012-SC-000360-KB

**IN SUPREME  
COURT**

**STEPHEN EUGENE CASTLEN V.  
KENTUCKY BAR ASSOCIATION  
ENTERED: JUNE 21, 2012**

2012-SC-000361-KB

**IN SUPREME  
COURT**

**MARION GERHARDT V.  
KENTUCKY BAR ASSOCIATION  
ENTERED: JUNE 21, 2012**

2012-SC-000362-KB

**IN SUPREME  
COURT**

**MATTHEW ALLEN MCCORD V.  
KENTUCKY BAR ASSOCIATION  
ENTERED: JUNE 21, 2012**

2012-SC-000363-KB

**IN SUPREME  
COURT**

**SUPREME COURT OF KENTUCKY**

**AUGUST 23, 2012 MINUTES**

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

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

<b>WILLIAM BURTON PETTUS V. KENTUCKY BAR ASSOCIATION ENTERED: JUNE 21, 2012</b>	<b>2012-SC-000364-KB</b>	<b>IN SUPREME COURT</b>
<b>DANIEL MCDOWELL DEEGAN V. KENTUCKY BAR ASSOCIATION ENTERED: JUNE 21, 2012</b>	<b>2012-SC-000365-KB</b>	<b>IN SUPREME COURT</b>
<b>GERRIT LAWRENCE HOPMAN V. KENTUCKY BAR ASSOCIATION ENTERED: JUNE 21, 2012</b>	<b>2012-SC-000366-KB</b>	<b>IN SUPREME COURT</b>
<b>DAVID W. HARDYMON V. KENTUCKY BAR ASSOCIATION ENTERED: JULY 9, 2012</b>	<b>2012-SC-000390-KB</b>	<b>IN SUPREME COURT</b>
<b>STEPHEN CRAIG JONES V. KENTUCKY BAR ASSOCIATION ENTERED: JULY 9, 2012</b>	<b>2012-SC-000391-KB</b>	<b>IN SUPREME COURT</b>
<b>ROBIN RISBERG MCCRAW V. KENTUCKY BAR ASSOCIATION ENTERED: JULY 9, 2012</b>	<b>2012-SC-000392-KB</b>	<b>IN SUPREME COURT</b>
<b>RICHARD SCOTT GELLER V. KENTUCKY BAR ASSOCIATION ENTERED: JULY 9, 2012</b>	<b>2012-SC-000393-KB</b>	<b>IN SUPREME COURT</b>
<b>LISA BRIDGES CLARE V. KENTUCKY BAR ASSOCIATION ENTERED: JULY 9, 2012</b>	<b>2012-SC-000394-KB</b>	<b>IN SUPREME COURT</b>
<b>AMANDA BIRDWHISTELL WARD V. KENTUCKY BAR ASSOCIATION ENTERED: JULY 13, 2012</b>	<b>2012-SC-000408-KB</b>	<b>IN SUPREME COURT</b>

**SUPREME COURT OF KENTUCKY**

**AUGUST 23, 2012 MINUTES**

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

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

JEFFERY LAWRENCE KLINGER V. KENTUCKY BAR ASSOCIATION <b>ENTERED: JULY 19, 2012</b>	2012-SC-000424-KB	IN SUPREME COURT
LEE M. MACCRACKEN V. KENTUCKY BAR ASSOCIATION <b>ENTERED: JULY 19, 2012</b>	2012-SC-000425-KB	IN SUPREME COURT
JAMES MITCHELL EAKLE V. KENTUCKY BAR ASSOCIATION <b>ENTERED: JULY 19, 2012</b>	2012-SC-000426-KB	IN SUPREME COURT
STEPHEN RONALD VETH V. KENTUCKY BAR ASSOCIATION <b>ENTERED: JULY 24, 2012</b>	2012-SC-000440-KB	IN SUPREME COURT
GARRY LEE BAUMGARTNER V. KENTUCKY BAR ASSOCIATION <b>ENTERED: AUGUST 8, 2012</b>	2012-SC-000467-KB	IN SUPREME COURT
CLINTON LEE WOODS V. KENTUCKY BAR ASSOCIATION <b>ENTERED: AUGUST 8, 2012</b>	2012-SC-000468-KB	IN SUPREME COURT
MARISSA LYNN GODBY V. KENTUCKY BAR ASSOCIATION <b>ENTERED: AUGUST 8, 2012</b>	2012-SC-000469-KB	IN SUPREME COURT