

SUPREME COURT OF KENTUCKY

OCTOBER 24, 2013 MINUTES

RELEASED: 10:00 A.M.

155. BARBARA A. ABEL, ET AL. V. [2010-SC-000426-DG](#) FAYETTE  
J. BRENT AUSTIN, ET AL. **TO BE PUBLISHED**

**OPINION OF THE COURT BY JUSTICE VENTERS –  
AFFIRMING**  
MINTON, C.J.; ABRAMSON, CUNNINGHAM AND KELLER, JJ., CONCUR. SCOTT, J., DISSENTS BY SEPARATE OPINION IN WHICH NOBLE, J., JOINS.

**Questions Presented:**  
Legal Malpractice. Statute of Limitations. Choice of Laws. Summary Judgment. This case involves alleged malpractice by attorneys involved in Fen-Phen litigation. The issues include whether the Alabama or Kentucky statute of limitations applies; whether the claims are legal malpractice or fraud, and whether the trial court properly granted summary judgment against all Plaintiffs.

156. ARLEN CASTLE V. [2011-SC-000717-MR](#) BOYLE  
COMMONWEALTH OF KENTUCKY **TO BE PUBLISHED**

**OPINION OF THE COURT BY CHIEF JUSTICE MINTON –  
AFFIRMING**  
ALL SITTING. ALL CONCUR.

**Questions Presented:**  
Guilty plea to first-degree robbery, first-degree sodomy, first-degree rape, kidnapping, first-degree sexual abuse and tampering with physical evidence. Trial court did not err in ordering defendant's sentences to be served consecutively, not to exceed sixty years. KRS 532.110 and 532.080(6)(a).

157. SAMANTHA MAYSE V. [2012-SC-000015-MR](#) KENTON  
COMMONWEALTH OF KENTUCKY **TO BE PUBLISHED**

**OPINION OF THE COURT BY JUSTICE CUNNINGHAM –  
AFFIRMING**  
ALL SITTING. ALL CONCUR.

**Questions Presented:**  
Complicity to murder and first-degree complicity to robbery-Life without parole for 25 years. Commonwealth's references, during voir dire, re-direct of witness and closing argument, to co-indictees' guilty pleas did not mandate declaration of a mistrial. Admission of jail letters was not error. Effect of co-indictee's invocation of right not to testify. Jury's brief access to defense exhibits which had not been placed into evidence did not mandate a mistrial.

SUPREME COURT OF KENTUCKY

OCTOBER 24, 2013 MINUTES

RELEASED: 10:00 A.M.

158. COMPREHENSIVE HOME HEALTH SERVICES, INC., ETC. V. PROFESSIONAL HOME HEALTH CARE AGENCY, INC., ET AL. [2012-SC-000090-DG](#) FRANKLIN  
**TO BE PUBLISHED**  
**OPINION OF THE COURT BY JUSTICE ABRAMSON - AFFIRMING**  
ALL SITTING. ALL CONCUR.

**Questions Presented:**  
Administrative Law. Health Care Providers. Certificate of Need. Issues include whether the State Health Plan (SHP) figures applicable on remand are the current SHP figures or the SHP figures in effect at the time of the agency's original decision.

159. YASMANY ORO-JIMENEZ V. COMMONWEALTH OF KENTUCKY [2012-SC-000101-MR](#) JEFFERSON  
**TO BE PUBLISHED**  
**OPINION OF THE COURT BY JUSTICE VENTERS - AFFIRMING**  
ALL SITTING. ALL CONCUR.

**Questions Presented:**  
Two counts of first-degree robbery, possession of a handgun by a convicted felon, resisting arrest, five counts of third-degree terroristic threatening, and PFO II-25 years. Trial court's unchallenged jury selection method did not constitute a substantial deviation from the proper method and did not require reversal. Use of single prior felony conviction to establish the offense of possession of a handgun by a convicted felon and to enhance the first-degree robbery sentences under the PFO statute, did not constitute double enhancement. Juror's innocent comment to witness did not mandate a mistrial.

SUPREME COURT OF KENTUCKY

OCTOBER 24, 2013 MINUTES

RELEASED: 10:00 A.M.

160. ERICK VEGA V. [2012-SC-000111-DG](#) FAYETTE  
COMMONWEALTH OF KENTUCKY  
**OPINION OF THE COURT BY  
JUSTICE CUNNINGHAM –  
AFFIRMING**  
MINTON, C.J.; ABRAMSON, AND  
NOBLE, JJ., CONCUR. SCOTT, J.,  
DISSENTS BY SEPARATE OPINION  
IN WHICH VENTERS, J., JOINS.  
KELLER, J., NOT SITTING.
- Questions Presented:**  
Concealed Weapon, Issues include whether  
a gun in a vehicle is considered concealed  
when partially obscured by an item."
161. COMMONWEALTH OF KENTUCKY V. [2010-SC-000326-DG](#) LOGAN  
JAMES W. STEADMAN  
**AND**  
JAMES W. STEADMAN V. [2011-SC-000508-DG](#) LOGAN  
COMMONWEALTH OF KENTUCKY  
**OPINION OF THE COURT BY JUSTICE**  
**NOBLE -**  
**AFFIRMING IN PART,**  
**REVERSING IN PART, AND**  
**REMANDING**  
ALL SITTING. ALL CONCUR.
- Questions Presented:**  
Criminal Law. Restitution. Jurisdiction.  
The questions presented include whether a  
defendant can consent to a delay in a  
restitution hearing and disposition beyond  
ten days after entry of final judgment.
162. COMMONWEALTH OF KENTUCKY V. [2011-SC-000227-DG](#) KNOX  
FRANK D. HAMILTON, ET AL.  
**OPINION OF THE COURT BY CHIEF  
JUSTICE MINTON -**  
**REVERSING AND REMANDING**  
ALL SITTING. ALL CONCUR.
- Questions Presented:**  
"Challenge to Reclassification of a  
controlled substance by the Cabinet for  
Health and Family Services."
163. CHESTER DEAN ALLEN V. [2012-SC-000631-MR](#) MAGOFFIN  
COMMONWEALTH OF KENTUCKY  
**MEMORANDUM OPINION OF  
THE COURT – AFFIRMING**  
MINTON, C.J.; ABRAMSON,  
CUNNINGHAM, KELLER, NOBLE, AND  
SCOTT, JJ., CONCUR. VENTERS, J.,  
CONCURS IN RESULT ONLY.

SUPREME COURT OF KENTUCKY

OCTOBER 24, 2013 MINUTES

RELEASED: 10:00 A.M.

164. C & T OF HAZARD V. [2012-SC-000834-WC](#) FROM COURT  
CHANTELLA STOLLINGS, DR. **NOT TO BE PUBLISHED** OF APPEALS  
KATHERINE BALLARD, THE  
PAIN TREATMENT CENTER;  
HONORABLE R. SCOTT BORDERS,  
ADMINISTRATIVE LAW JUDGE; AND  
WORKERS' COMPENSATION BOARD  
**MEMORANDUM OPINION OF  
THE COURT – AFFIRMING**  
ALL SITTING. ALL CONCUR.
165. JON M. STRAUSS, M.D. V. [2013-SC-000151-MR](#) FROM COURT  
HONORABLE BARRY WILLETT, **NOT TO BE PUBLISHED** OF APPEALS  
(JUDGE, JEFFERSON CIRCUIT  
COURT), ET AL.  
**MEMORANDUM OPINION OF  
THE COURT – AFFIRMING**  
ALL SITTING. ALL CONCUR.
166. VILLAGE OF LEBANON, LLC V. [2012-SC-000763-WC](#) FROM COURT  
SONDRA THOMPSON, **NOT TO BE PUBLISHED** OF APPEALS  
HONORABLE EDWARD D. HAYS,  
ADMINISTRATIVE LAW JUDGE; AND  
WORKERS' COMPENSATION BOARD  
**MEMORANDUM OPINION OF THE  
COURT - REVERSING AND  
REMANDING**  
MINTON, C.J.; ABRAMSON,  
CUNNINGHAM, NOBLE, SCOTT, AND  
VENTERS, JJ., SITTING. ALL CONCUR.  
KELLER, J., NOT SITTING.

**OPINIONS AND ORDERS – OCTOBER 24, 2013**

- JESSICA MARIE ALLEN V. 2013-SC-000107-DG FLEMING  
COMMONWEALTH OF KENTUCKY  
**ORDER GRANTED DISCRETIONARY REVIEW,  
VACATED THE COURT OF APPEALS OPINION  
AND REMANDED BACK TO THE COURT OF  
APPEALS.**  
ALL SITTING. ALL CONCUR.

SUPREME COURT OF KENTUCKY

OCTOBER 24, 2013 MINUTES

RELEASED: 10:00 A.M.

OPINIONS AND ORDERS – OCTOBER 24, 2013

PHILIP R. COMBS V. KENTUCKY BAR ASSOCIATION <b>ORDER SUSPENDED MOVANT FROM THE PRACTICE OF LAW FOR 30 DAYS WITH CONDITIONS.</b> ALL SITTING. ALL CONCUR.	<a href="#">2013-SC-000238-KB</a> <b>TO BE PUBLISHED</b>	IN SUPREME COURT
KENTUCKY BOARD OF MEDICAL LICENSURE V. HONORABLE STEVEN D. COMBS, JUDGE, PIKE CIRCUIT COURT, ET AL. <b>ORDER VACATED AND REMANDED.</b> MINTON, C.J.; ABRAMSON, CUNNINGHAM, KELLER, NOBLE, AND VENTERS, JJ. CONCUR. SCOTT, J., DISSENTS BY SEPARATE OPINION.	2013-SC-000247-I <b>NOT TO BE PUBLISHED</b>	PIKE
KENTUCKY BAR ASSOCIATION V. THOMAS E. ROBERTS <b>ORDER SUSPENDED RESPONDENT FROM THE PRACTICE OF LAW FOR THIRTY DAYS WITH CONDITIONS.</b> ALL SITTING. MINTON, C.J.; ABRAMSON, KELLER, NOBLE, SCOTT AND VENTERS, JJ., CONCUR. CUNNINGHAM, J., CONCURS IN PART AND DISSENTS IN PART TO THE EXTENT THAT HE WOULD ALSO REQUIRE REIMBURSEMENT OF THE \$500.00 RETAINER.	<a href="#">2013-SC-000615-KB</a> <b>TO BE PUBLISHED</b>	IN SUPREME COURT
TIMOTHY CRAWFORD V. KENTUCKY BAR ASSOCIATION <b>ORDER REINSTATED MOVANT TO THE PRACTICE OF LAW.</b> ALL SITTING. ALL CONCUR.	<a href="#">2013-SC-000669-KB</a> <b>TO BE PUBLISHED</b>	IN SUPREME COURT

SUPREME COURT OF KENTUCKY

OCTOBER 24, 2013 MINUTES

RELEASED: 10:00 A.M.

**COURT ORDERS GRANTING MOTION FOR DISCRETIONARY REVIEW –  
OCTOBER 16, 2013**

JOSEPH E. TOLER V. SUD-CHEMIE, INC., ET AL. <b>AND</b> SUD-CHEMIE, INC. V. JOSEPH E. TOLER	2013-SC-000002-DG  2013-SC-000007-DG	JEFFERSON  JEFFERSON
BULLITT FISCAL COURT, ETC., ET AL. V. BULLITT COUNTY BOARD OF HEALTH <b>KELLER, J., NOT SITTING.</b>	2013-SC-000023-DG	BULLITT
Q.M., A CHILD UNDER EIGHTEEN V. COMMONWEALTH OF KENTUCKY <b>KELLER, J., NOT SITTING.</b>	2013-SC-000210-DG	CHRISTIAN

**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW –  
OCTOBER 16, 2013**

MARK ANTHONY WILLIAMS V. COMMONWEALTH OF KENTUCKY <b>KELLER, J., NOT SITTING.</b>	2012-SC-000801-D	MASON
JOHNNY EUGENE FAIRCHILD V. COMMONWEALTH OF KENTUCKY	2013-SC-000008-D	JOHNSON
BARRY SHARP, ET AL. V. RALPH WAYNE ADAMS, ET AL. <b>AND</b> BARRY SHARP, ET AL. V. RALPH WAYNE ADAMS, ET AL.	2013-SC-000014-D  2013-SC-000015-D	FRANKLIN  FRANKLIN

**THE OPINIONS OF THE COURT OF APPEALS  
ARE ORDERED NOT TO BE PUBLISHED.**

SUPREME COURT OF KENTUCKY

OCTOBER 24, 2013 MINUTES

RELEASED: 10:00 A.M.

**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW –  
OCTOBER 16, 2013**

KELLY POTTER, INDIVIDUALLY AND AS ADMINISTRATOR OF THE ESTATE OF BRITTANI AMES, DECEASED, AND SONYA POTTER V. KIMBERLY BOLAND, M.D. AND ARAYAMPARAMBIL ANILKUMAR, M.D. <b>THE OPINION OF THE COURT OF APPEALS IS ORDERED NOT TO BE PUBLISHED. CUNNINGHAM, KELLER AND NOBLE, JJ., WOULD GRANT.</b>	2013-SC-000017-D	JEFFERSON
JEREMY DESHANNON RICE V. COMMONWEALTH OF KENTUCKY <b>KELLER, J., NOT SITTING.</b>	2013-SC-000022-D	FAYETTE
SHERRI GAIL CLARK, NOW PUCKETT V. WILLIAM THOMAS CLARK <b>CUNNINGHAM AND KELLER, JJ., WOULD GRANT.</b>	2013-SC-000026-D	GRAVES
JAMES BAGBY V. COMMONWEALTH OF KENTUCKY	2013-SC-000038-D	TAYLOR
GARY WEITER, SR., ET AL. V. JOSEPH KURTZ, ET AL.	2013-SC-000040-D	JEFFERSON
CATHLEEN WRIGHT, AS ADMINISTRATRIX OF THE ESTATE OF MICHAEL HANSEN V. PHILLIP SCOTT SMITHA, ET AL. <b>SCOTT, J., WOULD GRANT.</b>	2013-SC-000043-D	JEFFERSON
MARCUS R. BRITT V. COMMONWEALTH OF KENTUCKY <b>KELLER, J., NOT SITTING.</b>	2013-SC-000074-D	BARREN
THOMAS E. BOGGAN, SR. V. COMMONWEALTH OF KENTUCKY <b>KELLER, J., NOT SITTING.</b>	2013-SC-000075-D	BOONE

SUPREME COURT OF KENTUCKY

OCTOBER 24, 2013 MINUTES

RELEASED: 10:00 A.M.

**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW –  
OCTOBER 16, 2013**

JOHN W. MASON, III V. COMMONWEALTH OF KENTUCKY, CABINET FOR HEALTH AND FAMILY SERVICES, ETC. <b>KELLER, J., WOULD GRANT.</b>	2013-SC-000076-D	FRANKLIN
CEDRIC LAKEITH BOONE V. COMMONWEALTH OF KENTUCKY <b>THE OPINION OF THE COURT OF APPEALS IS ORDERED TO BE PUBLISHED.</b>	2013-SC-000084-D	FAYETTE
REGINA CARROLL V. COMMONWEALTH OF KENTUCKY	2013-SC-000092-D	MERCER
MASON D. CANTRILL V. COMMONWEALTH OF KENTUCKY	2013-SC-000098-D	MONTGOMERY
MICHAEL P. ZIEGLER, ET AL. V. PHILIP DAVID KNOCK, ET AL.	2013-SC-000103-D	BOONE
RONALD EDWARD SAMMONS V. COMMONWEALTH OF KENTUCKY <b>SCOTT AND VENTERS, JJ., WOULD GRANT.</b>	2013-SC-000113-D	BOYD
MICHELLE HENRY V. ROBERT DALLAS	2013-SC-000117-D	JEFFERSON
BRANDON HURST, ET AL. V. KELLY JANE BONTA, AS CO-EXECUTRICE OF THE ESTATE OF PAUL EDWARD HURST, ET AL. <b>SCOTT, J., WOULD GRANT.</b>	2013-SC-000123-D	FAYETTE
SHAFI ULLAH KHAN V. COMMONWEALTH OF KENTUCKY	2013-SC-000137-D	BUTLER
CONNIE R. WITHROW V. CALGON CARBON CORPORATION	2013-SC-000187-D	BOYD



SUPREME COURT OF KENTUCKY

OCTOBER 24, 2013 MINUTES

RELEASED: 10:00 A.M.

**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW –  
OCTOBER 16, 2013**

STEPHON L. TRAMBER V. COMMONWEALTH OF KENTUCKY	2013-SC-000194-D	JEFFERSON
KEITH STEVENSON V. COMMONWEALTH OF KENTUCKY	2013-SC-000259-D	BOYD
DANNY GIBSON V. READY MIX CONCRETE <b>CUNNINGHAM AND SCOTT, JJ., WOULD GRANT.</b>	2013-SC-000279-D	PULASKI
RANDY ROBINSON AND TERRENCE DICKINSON V. OFFICER MICHAEL MEECE, IN HIS INDIVIDUAL AND OFFICIAL CAPACITY; LOUISVILLE METRO POLICE DEPARTMENT; AND UNKNOWN DEFENDANTS	2013-SC-000288-D	JEFFERSON
CHARLES BROWNING KELLY, II V. COMMONWEALTH OF KENTUCKY	2013-SC-000312-D	FAYETTE
K.C. V. M.C. AND CABINET FOR HEALTH AND FAMILY SERVICES, COMMONWEALTH OF KENTUCKY	2013-SC-000491-DE	KENTON
SCOTT HORNBACK V. PRISCILLA SPEARS, FORMERLY ESTREMARA	2013-SC-000512-DE	HARDIN

**COURT ORDERS DENYING BELATED MOTION FOR ENLARGEMENT OF TIME TO FILE  
MOTION FOR DISCRETIONARY REVIEW – OCTOBER 24, 2013**

SISTERS OF CHARITY, INC., D/B/A NAZARETH HOME V. ROSETTA BAKER	2013-SC-000627-D	JEFFERSON
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SUPREME COURT OF KENTUCKY

OCTOBER 24, 2013 MINUTES

RELEASED: 10:00 A.M.

**COURT ORDERS DENYING MOTION TO TRANSFER – OCTOBER 24, 2013**

UNIVERSITY OF LOUISVILLE V. 2013-SC-000539-T FRANKLIN  
JAMES WELDON LILLARD  
**MINTON, C.J., CUNNINGHAM, KELLER,  
NOBLE, SCOTT, AND VENTERS, JJ. CONCUR.  
ABRAMSON, J., NOT SITTING.**

JAMES T. KELLY V. 2013-SC-000544-T JEFFERSON  
ENTERPRISE RENT-A-CAR COMPANY OF  
KENTUCKY, LLC D/B/A ENTERPRISE RENT-  
A-CAR D/B/A ENTERPRISE CAR SALES  
**ALL SITTING. ALL CONCUR.**

**COURT ORDERS DENYING PETITION FOR REHEARING – OCTOBER 24, 2013**

STEPHON NEWCOMB V. 2009-SC-000726-MR SCOTT  
COMMONWEALTH OF KENTUCKY  
**ALL SITTING. MINTON, C.J., ABRAMSON,  
CUNNINGHAM, KELLER, NOBLE, AND SCOTT,  
JJ., CONCUR. VENTERS, J., WOULD GRANT.**

GLENN RAHAN DONEGHY V. 2011-SC-000590-MR FAYETTE  
COMMONWEALTH OF KENTUCKY  
**ALL SITTING. ALL CONCUR.**

WESTERN KENTUCKY COCA-COLA 2011-SC-000784-DG WARREN  
BOTTLING COMPANY, INC. V.  
TREVOR RUNYON, ET AL.  
**ALL SITTING. ALL CONCUR.**

SUPREME COURT OF KENTUCKY

OCTOBER 24, 2013 MINUTES

RELEASED: 10:00 A.M.

**COURT ORDERS DENYING PETITION FOR REHEARING – OCTOBER 24, 2013**

GARNETT GIBSON (AS EXECUTOR  
AND PERSONAL REPRESENTATIVE  
OF THE ESTATE OF TOPSIE  
GIBSON) V.

2010-SC-000072-DG

KNOTT

FUEL TRANSPORT, INC.

**AND**

FUEL TRANSPORT, INC. V.  
GARNETT GIBSON (AS EXECUTOR  
AND PERSONAL REPRESENTATIVE  
OF THE ESTATE OF TOPSIE  
GIBSON)

2010-SC-000682-DG

KNOTT

**ALL SITTING. MINTON, C.J., ABRAMSON,  
CUNNINGHAM, AND VENTERS, JJ., CONCUR.  
KELLER, NOBLE AND SCOTT, JJ., WOULD  
GRANT.**

PATRICIA HORNBACK V.  
HARDIN MEMORIAL HOSPITAL, ET AL.  
**ORDER MODIFIED THE OPINION OF THE  
COURT RENDERED MAY 23, 2013 BY  
SUBSTITUTION OF THE ATTACHED OPINION  
IN LIEU OF THE ORIGINAL OPINION.**  
ALL SITTING. ALL CONCUR.

[2012-SC-000195-WC](#)  
**TO BE PUBLISHED**

FROM COURT  
OF APPEALS

SUPREME COURT OF KENTUCKY

OCTOBER 24, 2013 MINUTES

RELEASED: 10:00 A.M.

**COURT ORDERS**

HAL D. FRIEDMAN V. 2013-SC-000010-DG JEFFERSON  
SUSAN E. LEA

**THE VOTE OF THE SIX MEMBERS OF THIS COURT PARTICIPATING IN THE DETERMINATION OF THIS APPEAL BEING EQUALLY DIVIDED, PURSUANT TO SCR 1.020, THE OPINION OF THE COURT OF APPEALS HEREBY STANDS AFFIRMED.**

MINTON, C.J., ABRAMSON, AND NOBLE, JJ., WOULD AFFIRM THE OPINION OF THE COURT OF APPEALS. SCOTT, CUNNINGHAM AND VENTERS, JJ., WOULD REVERSE THE OPINION OF THE COURT OF APPEALS. KELLER, J., NOT SITTING.

**ENTERED: OCTOBER 24, 2013**

KENTUCKY BAR ASSOCIATION V. [2013-SC-000422-KB](#) IN SUPREME  
LOUIS EDWARD REINHART, III **TO BE PUBLISHED** COURT

**ORDER MODIFIED THE OPINION AND ORDER ENTERED SEPTEMBER 26, 2013, BY SUBSTITUTION OF THE ATTACHED OPINION AND ORDER IN LIEU OF THE ORIGINAL.**

**ENTERED: OCTOBER 4, 2013**

COMMONWEALTH OF KENTUCKY, FINANCE 2013-SC-000429-T FRANKLIN  
AND ADMINISTRATION CABINET, ET AL. V.  
KENTUCKY SPIRIT HEALTH PLAN, INC.

**ORDER GRANTED MOVANT'S MOTION TO WITHDRAW THE MOTION TO TRANSFER.**

**ENTERED: OCTOBER 8, 2013**

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

STEPHEN CHARLES BULLOCK V. 2013-SC-000675-KB IN SUPREME  
KENTUCKY BAR ASSOCIATION COURT

**ENTERED: SEPTEMBER 27, 2013**