

SUPREME COURT OF KENTUCKY

DECEMBER 20, 2012 MINUTES

RELEASED: 10:00 A.M.

178. COMMONWEALTH OF KENTUCKY V. [2010-SC-000685-CL](#) FAYETTE
RICHARD EUGENE DERRINGER
**CERTIFICATION OF LAW BY
CHIEF JUSTICE MINTON**
ABRAMSON, CUNNINGHAM, NOBLE,
SCOTT, AND VENTERS, JJ., CONCUR.
SCHRODER, J., NOT SITTING.

TO BE PUBLISHED

Questions Presented:

"Certification of the Law. Whether a conviction for which a defendant is on diversion can be used to qualify for PFO status when he commits a subsequent offense."

179. DAVID WADE V. [2010-SC-000572-DG](#) JEFFERSON
POMA GLASS & SPECIALTY
WINDOWS, INC., ETC.
**OPINION OF THE COURT BY
CHIEF JUSTICE MINTON**
AFFIRMING
ABRAMSON, CUNNINGHAM, NOBLE,
AND VENTERS, JJ., CONCUR. SCOTT,
J., DISSENTS BY SEPARATE
OPINION. SCHRODER, J., NOT
SITTING.

TO BE PUBLISHED

Questions Presented:

Statute of Limitations. Judgments. Issues include how broadly to construe the word "execution" as used in KRS 413.090, the statute of limitations applicable to judgments.

180. STEPHEN POINDEXTER V. [2011-SC-000275-DG](#) ADAIR
COMMONWEALTH OF KENTUCKY
**OPINION OF THE COURT BY
JUSTICE SCOTT -
AFFIRMING**
MINTON, C.J.; ABRAMSON,
CUNNINGHAM, AND VENTERS, JJ.,
CONCUR. NOBLE, J., DISSENTS BY
SEPARATE OPINION. SCHRODER,
J., NOT SITTING.

TO BE PUBLISHED

Questions Presented:

Criminal contempt of court for failing to appear at a client's arraignment.

SUPREME COURT OF KENTUCKY

DECEMBER 20, 2012 MINUTES

RELEASED: 10:00 A.M.

181. CHRISTOPHER STEWARD V.
COMMONWEALTH OF KENTUCKY
**OPINION OF THE COURT BY
JUSTICE SCOTT -
AFFIRMING**
MINTON, C.J.; ABRAMSON,
CUNNINGHAM, NOBLE, AND
VENTERS, JJ., CONCUR. SCHRODER,
J., NOT SITTING.

[2011-SC-000393-MR](#)
TO BE PUBLISHED

KENTON

Questions Presented:

Wanton Murder-28 years. On remand for a second sentencing phase. Successive representation. RCr 8.30. Videotaped testimony of witnesses was permitted at sentencing retrial where all the witnesses had testified at the guilt phase of the trial and had been available for cross examination.

182. FORT MITCHELL COUNTRY CLUB V.
TIMOTHY LAMARRE, ET AL.
**OPINION OF THE COURT BY
JUSTICE CUNNINGHAM
REVERSING**
MINTON, C.J.; ABRAMSON, NOBLE,
AND VENTERS, JJ., CONCUR.
SCOTT, J., DISSENTS BY SEPARATE
OPINION. SCHRODER, J., NOT
SITTING.

[2011-SC-000665-DG](#)
TO BE PUBLISHED

KENTON

Questions Presented:

Torts. Dram Shop Act. Issues include: whether statutory violations other than the sale of alcohol to a minor deprive a dram shop of the Act's protection; and whether intent to hold intoxicated tortfeasors primarily liable and licensed alcohol sellers only secondarily liable survives Taylor v. King, 345 S.W.3d 237(Ky. App. 2010).

SUPREME COURT OF KENTUCKY

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RELEASED: 10:00 A.M.

183. BRENDA C. OSBORNE V. [2010-SC-000397-DG](#) JEFFERSON
STEVEN H. KEENEY, ET AL. **TO BE PUBLISHED**
- AND**
- STEVEN H. KEENEY V. [2010-SC-000430-DG](#) JEFFERSON
BRENDA C. OSBORNE, ET AL. **TO BE PUBLISHED**
- OPINION OF THE COURT BY
CHIEF JUSTICE MINTON –
REVERSING AND REMANDING**
ABRAMSON, CUNNINGHAM, AND
NOBLE, JJ., CONCUR. VENTERS, J.,
CONCURS IN PART AND DISSENTS
IN PART BY SEPARATE OPINION IN
WHICH SCOTT, J., JOINS.
SCHRODER, J., NOT SITTING.

Questions Presented:

Legal Malpractice. Emotional Distress. Damages. Issues include: 1. Whether a physical touching is still required for a Plaintiff to recover emotional distress damages; 2. Whether a Plaintiff may recover “lost punitive” damages in a legal malpractice claim; 3. Whether CR 8.01 limits the damages a Plaintiff may recover; 4. Whether and how a Plaintiff may file an Amended Complaint to include the Defendant’s insurance company; 5. Must the trial court instruct the jury on and must the jury make findings on the “case-within-a-case;” 6. Did the trial court err by using “should have realized” language in the fraud instruction, and 7. Did the Court of Appeals, by affirming in part and reversing in part, create an unconstitutional ratio between compensatory and punitive damages such that the punitive award is now excessive?

SUPREME COURT OF KENTUCKY

DECEMBER 20, 2012 MINUTES

RELEASED: 10:00 A.M.

184. W.B., AN ADULT CITIZEN OF JEFFERSON COUNTY, KENTUCKY V. COMMONWEALTH OF KENTUCKY, CABINET FOR HEALTH AND FAMILY SERVICES, DEPARTMENT FOR COMMUNITY BASED SERVICES, A KENTUCKY ADMINISTRATIVE AGENCY [2011-SC-000202-DG](#) JEFFERSON
TO BE PUBLISHED
- Questions Presented:**
"Constitutionality of Kentucky registry of substantiated child abusers."
- OPINION OF THE COURT BY JUSTICE VENTERS – VACATING AND REMANDING**
MINTON, C.J.; ABRAMSON, CUNNINGHAM, NOBLE, AND SCOTT, JJ., CONCUR. SCHRODER, J., NOT SITTING.
185. CHRISTOPHER BOYD JOHNSON V. COMMONWEALTH OF KENTUCKY [2010-SC-000810-MR](#) JEFFERSON
MEMORANDUM OPINION OF THE COURT – AFFIRMING
NOT TO BE PUBLISHED
MINTON, C.J.; ABRAMSON, CUNNINGHAM, NOBLE, SCOTT, AND VENTERS, JJ., CONCUR. SCHRODER, J., NOT SITTING.
186. EDWARD MARQUISE STOKLEY V. COMMONWEALTH OF KENTUCKY [2011-SC-000104-MR](#) FAYETTE
MEMORANDUM OPINION OF THE COURT – AFFIRMING
NOT TO BE PUBLISHED
MINTON, C.J.; CUNNINGHAM, NOBLE, SCOTT, AND VENTERS, JJ., CONCUR. ABRAMSON, J., CONCURS IN RESULT ONLY. SCHRODER, J., NOT SITTING.

SUPREME COURT OF KENTUCKY

DECEMBER 20, 2012 MINUTES

RELEASED: 10:00 A.M.

187. SHERMAN D. PERRY V. [2011-SC-000478-MR](#) MARTIN
COMMONWEALTH OF KENTUCKY **NOT TO BE PUBLISHED**
MEMORANDUM OPINION OF
THE COURT – AFFIRMING
MINTON, C.J.; ABRAMSON,
CUNNINGHAM, NOBLE, SCOTT, AND
VENTERS, JJ., CONCUR. SCHRODER,
J., NOT SITTING.
188. CYNTHIA MULLINS V. [2011-SC-000634-MR](#) PIKE
COMMONWEALTH OF KENTUCKY **NOT TO BE PUBLISHED**
MEMORANDUM OPINION OF
THE COURT – AFFIRMING
MINTON, C.J.; ABRAMSON,
CUNNINGHAM, NOBLE, SCOTT, AND
VENTERS, JJ., CONCUR. SCHRODER,
J., NOT SITTING.
189. COMMONWEALTH OF KENTUCKY, [2011-SC-000694-WC](#) FROM COURT
UNINSURED EMPLOYERS' FUND V. **NOT TO BE PUBLISHED** OF APPEALS
OLD TAYLOR PARTNERS, LLC;
OSBALDO RUEDA; G & B DEMOLITION,
LLC; HONORABLE EDWARD D. HAYS,
ADMINISTRATIVE LAW JUDGE; AND
WORKERS' COMPENSATION BOARD
MEMORANDUM OPINION OF
THE COURT - AFFIRMING
MINTON, C.J.; ABRAMSON,
CUNNINGHAM, NOBLE, SCOTT, AND
VENTERS, JJ., CONCUR. SCHRODER,
J., NOT SITTING.
190. MERCER COUNTY FISCAL COURT V. [2011-SC-000706-WC](#) FROM COURT
JERRY ARNOLD, ET AL. **NOT TO BE PUBLISHED** OF APPEALS
MEMORANDUM OPINION OF
THE COURT - AFFIRMING
MINTON, C.J.; ABRAMSON,
CUNNINGHAM, NOBLE, SCOTT, AND
VENTERS, JJ., CONCUR. SCHRODER,
J., NOT SITTING.

SUPREME COURT OF KENTUCKY

DECEMBER 20, 2012 MINUTES

RELEASED: 10:00 A.M.

191. REID D. RIPPETOE V. [2011-SC-000736-MR](#) RUSSELL
COMMONWEALTH OF KENTUCKY **NOT TO BE PUBLISHED**
MEMORANDUM OPINION OF
THE COURT – AFFIRMING
MINTON, C.J.; ABRAMSON,
CUNNINGHAM, NOBLE, SCOTT, AND
VENTERS, JJ., CONCUR. SCHRODER,
J., NOT SITTING.

OPINIONS AND ORDERS – DECEMBER 12, 2012

MICHAEL WAYNE ALLEN V. 2012-SC-000307-DG FAYETTE
COMMONWEALTH OF KENTUCKY
ORDER GRANTED DISCRETIONARY
REVIEW, VACATED THE COURT OF APPEALS
OPINION AND REMANDED BACK TO THE
COURT OF APPEALS.
MINTON, C.J.; ABRAMSON, CUNNINGHAM,
NOBLE, SCOTT AND VENTERS, JJ.,
CONCUR. SCHRODER, J., NOT
SITTING.

OPINIONS AND ORDERS – DECEMBER 20, 2012

ROCKY MCCLINTOCK V. [2012-SC-000688-KB](#) IN SUPREME
KENTUCKY BAR ASSOCIATION **TO BE PUBLISHED** COURT
ORDER PERMANENTLY DISBARRED
MOVANT FROM THE PRACTICE OF
LAW.
MINTON, C.J.; ABRAMSON, CUNNINGHAM,
NOBLE, SCOTT AND VENTERS, JJ.,
CONCUR. SCHRODER, J., NOT SITTING.

MATTHEW BOWLING V. 2012-SC-000702-KB IN SUPREME
KENTUCKY BAR ASSOCIATION COURT
ORDER RESTORED MOVANT TO
THE PRACTICE OF LAW.
MINTON, C.J.; ABRAMSON, CUNNINGHAM,
NOBLE, SCOTT AND VENTERS, JJ.,
CONCUR. SCHRODER, J., NOT SITTING.

SUPREME COURT OF KENTUCKY

DECEMBER 20, 2012 MINUTES

RELEASED: 10:00 A.M.

**COURT ORDERS GRANTING MOTION FOR DISCRETIONARY REVIEW –
DECEMBER 12, 2012**

JAMES D. NICHOLS V. 2012-SC-000317-DG JEFFERSON
ZURICH AMERICAN INSURANCE COMPANY
SCHRODER, J., NOT SITTING.

MIAMI MANAGEMENT COMPANY, INC. AND 2012-SC-000318-DG JESSAMINE
WENDY'S INTERNATIONAL, INC. V.
ELGAN BRUNER AND DEANNA BRUNER
SCHRODER, J., NOT SITTING.

VIRGINIA GAITHER, ADMINISTRATRIX AND 2012-SC-000324-DG FRANKLIN
PERSONAL REPRESENTATIVE OF THE
ESTATE OF LEBRON GAITHER, DECEASED V.
JUSTICE & PUBLIC SAFETY CABINET,
COMMONWEALTH OF KENTUCKY AND
DEPARTMENT OF KENTUCKY STATE POLICE
SCHRODER, J., NOT SITTING.

**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW –
DECEMBER 12, 2012**

DARRELL J. CAIN V. 2011-SC-000596-D PULASKI
KENTUCKY UNEMPLOYMENT INSURANCE
COMMISSION, ET AL.
SCHRODER, J., NOT SITTING.

JOE WILLIE BYRD V. 2012-SC-000103-D FAYETTE
COMMONWEALTH OF KENTUCKY
SCHRODER, J., NOT SITTING.

ROBERT HOLLON V. 2012-SC-000128-D FRANKLIN
COMMONWEALTH OF KENTUCKY
SCHRODER, J., NOT SITTING.

MICHAEL FOLK V. 2012-SC-000132-D BOONE
KATHRYN FOLK
SCHRODER, J., NOT SITTING.

SUPREME COURT OF KENTUCKY

DECEMBER 20, 2012 MINUTES

RELEASED: 10:00 A.M.

**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW –
DECEMBER 12, 2012**

LEONEL MARTINEZ V. COMMONWEALTH OF KENTUCKY SCHRODER, J., NOT SITTING.	2012-SC-000157-D	DAVISS
ANNA TURNER V. KENTUCKY UNEMPLOYMENT INSURANCE COMMISSION AND ACS INSURANCE SCHRODER, J., NOT SITTING.	2012-SC-000167-D	PIKE
KENTUCKY RETIREMENT SYSTEMS V. RICHARD ROSE SCHRODER, J., NOT SITTING.	2012-SC-000172-D	FRANKLIN
MICKEY TOOLEY V. COMMONWEALTH OF KENTUCKY SCHRODER, J., NOT SITTING.	2012-SC-000186-D	MONROE
BARRY EVANS V. COMMONWEALTH OF KENTUCKY SCHRODER, J., NOT SITTING.	2012-SC-000206-D	LOGAN
PAULA B. BROWN V. LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT CIVIL SERVICE COMMISSION, ET AL. NOBLE, J., WOULD GRANT. SCHRODER, J., NOT SITTING.	2012-SC-000224-D	FAYETTE
RONALD HOPKINS V. COMMONWEALTH OF KENTUCKY SCHRODER, J., NOT SITTING.	2012-SC-000232-D	ANDERSON
RICHARD OSBAN V. ALYSSA CHAMBERS SCHRODER, J., NOT SITTING.	2012-SC-000244-D	CALLOWAY
WILLIE JACKSON V. J.B. HUNT TRANSPORT, INC. SCHRODER, J., NOT SITTING.	2012-SC-000248-D	JEFFERSON

SUPREME COURT OF KENTUCKY

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**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW –
DECEMBER 12, 2012**

JAMES NICK HARRISON V. COMMONWEALTH OF KENTUCKY SCHRODER, J., NOT SITTING.	2012-SC-000294-D	MADISON
TRISHA ANN WILLIAMS V. KEITH MCCORMICK, ET AL. THE OPINION OF THE COURT OF APPEALS IS ORDERED NOT TO BE PUBLISHED. SCHRODER, J., NOT SITTING.	2012-SC-000299-D	ROWAN
NICK RATLIFF V. COMMONWEALTH OF KENTUCKY SCHRODER, J., NOT SITTING.	2012-SC-000308-D	LAWRENCE
JOHN F. JACKSON V. COMMONWEALTH OF KENTUCKY SCHRODER, J., NOT SITTING.	2012-SC-000309-D	NELSON
J.D.N., A CHILD UNDER EIGHTEEN V. COMMONWEALTH OF KENTUCKY SCHRODER, J., NOT SITTING.	2012-SC-000319-D	HARDIN
ANGELA CORNETTE V. COMMONWEALTH OF KENTUCKY SCHRODER, J., NOT SITTING.	2012-SC-000320-D	MARTIN
WHITNEY KAREKEN, ET AL. V. ERIC BARKMAN, ET AL. SCHRODER, J., NOT SITTING.	2012-SC-000332-D	MERCER
ANITA GEORGE V. JILL GEORGE COFFEY, EXECUTRIX, ETC., ET AL. SCHRODER, J., NOT SITTING.	2012-SC-000339-D	FULTON

SUPREME COURT OF KENTUCKY

DECEMBER 20, 2012 MINUTES

RELEASED: 10:00 A.M.

**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW –
DECEMBER 12, 2012**

CALVIN TIPTON V. 2012-SC-000346-D ESTILL
JOHN SCOTT LEE AND AMANDA LEE
**THE OPINION OF THE COURT OF APPEALS
IS ORDERED NOT TO BE PUBLISHED.
SCHRODER, J., NOT SITTING.**

ROBIN KIMBERLY YATES, NOW KEETON V. 2012-SC-000527-DE CARTER
STEPHEN LEE YATES
SCHRODER, J., NOT SITTING.

E.M., A CHILD UNDER EIGHTEEN V. 2012-SC-000623-DE FAYETTE
COMMONWEALTH OF KENTUCKY
SCHRODER, J., NOT SITTING.

COURT ORDERS DENYING MOTION TO TRANSFER – DECEMBER 20, 2012

BOARD OF REGENTS OF KENTUCKY 2012-SC-000492-T FRANKLIN
COMMUNITY AND TECHNICAL COLLEGE
SYSTEM, ET AL. V.
RENEE FARRELL, ET AL.

AND
STEVEN L. BESHEAR, IN HIS OFFICIAL 2012-SC-000566-T FRANKLIN
CAPACITY AS GOVERNOR, COMMONWEALTH
OF KENTUCKY, ET AL. V.
RENEE FARRELL, ET AL.
**MINTON, C.J.; ABRAMSON, CUNNINGHAM,
NOBLE, SCOTT AND VENTERS, JJ.,
CONCUR. SCHRODER, J., NOT
SITTING.**

COURT ORDERS DENYING PETITION FOR REHEARING – DECEMBER 20, 2012

JOHN SAWYERS, ET AL. V. 2010-SC-000678-DG ALLEN
ARTHUR BELLER, ET AL.
**MINTON, C.J.; ABRAMSON, CUNNINGHAM,
NOBLE, SCOTT, AND VENTERS, JJ.,
CONCUR. SCHRODER, J., NOT
SITTING.**

SUPREME COURT OF KENTUCKY

DECEMBER 20, 2012 MINUTES

RELEASED: 10:00 A.M.

COURT ORDERS DENYING PETITION FOR REHEARING – DECEMBER 20, 2012

DARIUS HARRIS V. COMMONWEALTH OF KENTUCKY ORDER MODIFIED OPINION OF THE COURT BY JUSTICE ABRAMSON RENDERED SEPTEMBER 20, 2012 BY SUBSTITUTION OF PAGES 1 AND 24 -26 IN LIEU OF THE ORIGINAL. MINTON, C.J.; ABRAMSON, CUNNINGHAM, NOBLE, SCOTT AND VENTERS, JJ., CONCUR. SCHRODER, J., NOT SITTING.	2011-SC-000001-MR TO BE PUBLISHED	KENTON
MARCUS D. SWAN V. COMMONWEALTH OF KENTUCKY AND D'ANDRE OWENS V. COMMONWEALTH OF KENTUCKY ORDER MODIFIED OPINION OF THE COURT BY JUSTICE NOBLE RENDERED AUGUST 23, 2012 BY SUBSTITUTION OF PAGES 1 AND 4 IN LIEU OF PAGES 1 AND 4 OF THE ORIGINAL. MINTON, C.J.; ABRAMSON, CUNNINGHAM, NOBLE, SCOTT AND VENTERS, JJ., CONCUR. SCHRODER, J., NOT SITTING.	2011-SC-000085-MR TO BE PUBLISHED	JEFFERSON
	2011-SC-000086-MR TO BE PUBLISHED	JEFFERSON
TERRY W. ROACH V. COMMONWEALTH OF KENTUCKY MINTON, C.J.; ABRAMSON, CUNNINGHAM, NOBLE, SCOTT AND VENTERS, JJ., CONCUR. SCHRODER, J., NOT SITTING.	2011-SC-000141-DG TO BE PUBLISHED	MCCRACKEN
COMMONWEALTH OF KENTUCKY V. MICHAEL L. WILSON MINTON, C.J.; ABRAMSON, CUNNINGHAM, NOBLE, SCOTT AND VENTERS, JJ., CONCUR. SCHRODER, J., NOT SITTING.	2011-SC-000157-CL TO BE PUBLISHED	JEFFERSON

SUPREME COURT OF KENTUCKY

DECEMBER 20, 2012 MINUTES

RELEASED: 10:00 A.M.

COURT ORDERS DENYING PETITION FOR REHEARING – DECEMBER 20, 2012

TAX EASE LIEN INVESTMENTS 1, LLC V. 2011-SC-000277-DG SHELBY
COMMONWEALTH BANK & TRUST CO.,
ET AL.
**MINTON, C.J.; ABRAMSON, CUNNINGHAM,
NOBLE, SCOTT AND VENTERS, JJ.,
CONCUR. SCHRODER, J., NOT
SITTING.**

IN RE: WEHR CONSTRUCTORS, [2012-SC-000221-CL](#) FEDERAL
INC. V. **TO BE PUBLISHED**
ASSURANCE COMPANY OF AMERICA
**ORDER MODIFIED THE OPINION
OF THE COURT RENDERED OCTOBER
25, 2012, BY SUBSTITUTION OF PAGES
1, 2, AND 15 IN LIEU OF THE ORIGINAL.**
MINTON, C.J.; ABRAMSON, CUNNINGHAM,
NOBLE, SCOTT AND VENTERS, JJ.,
CONCUR. SCHRODER, J., NOT
SITTING.

KNOTT COUNTY BOARD OF EDUCATION V. 2011-SC-000509-WC FROM COURT
LOIS HAMILTON; HONORABLE CAROLINE **NOT TO BE PUBLISHED** OF APPEALS
PITT CLARK, ADMINISTRATIVE LAW JUDGE;
AND WORKERS' COMPENSATION BOARD
**MINTON, C.J.; ABRAMSON, CUNNINGHAM,
NOBLE, SCOTT AND VENTERS, JJ.,
CONCUR. SCHRODER, J., NOT
SITTING.**

COURT ORDERS

KENTUCKY BAR ASSOCIATION V. 2012-SC-000413-KB IN SUPREME
EDWARD L. JACOBS COURT
**ORDER CORRECTED THE OPINION AND
ORDER OF THE COURT ENTERED
NOVEMBER 21, 2012 BY SUBSTITUTION
OF THE ENTIRE OPINION AND ORDER.
ENTERED: NOVEMBER 28, 2012**

SUPREME COURT OF KENTUCKY

DECEMBER 20, 2012 MINUTES

RELEASED: 10:00 A.M.

COURT ORDERS

RAYMOND L. WRIGHT V. COMMONWEALTH OF KENTUCKY ORDER DENIED APPELLANT'S MOTION FOR BELATED APPEAL. ENTERED: DECEMBER 13, 2012	2012-SC-000475-MR	FAYETTE
JAMES L. GRADY V. COMMONWEALTH OF KENTUCKY ORDER DENIED MOTION TO RECONSIDER ENTERED: NOVEMBER 21, 2012	2012-SC-000588-MR	LOGAN
KENTUCKY BAR ASSOCIATION V. MICHAEL S. WADE RESPONDENT AUTOMATICLY SUSPENDED FROM THE PRACTICE OF LAW. ENTERED: NOVEMBER 26, 2012	2012-SC-000758-KB TO BE PUBLISHED	IN SUPREME COURT

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

LINDA SENG V. KENTUCKY BAR ASSOCIATION ENTERED: NOVEMBER 28, 2012	2012-SC-000776-KB	IN SUPREME COURT
MICHAEL DAVID GRAVES V. KENTUCKY BAR ASSOCIATION ENTERED: DECEMBER 10, 2012	2012-SC-000804-KB	IN SUPREME COURT
LYNN NIX MEYER V. KENTUCKY BAR ASSOCIATION ENTERED: DECEMBER 10, 2012	2012-SC-000805-KB	IN SUPREME COURT