

**SUPREME COURT OF KENTUCKY**

**DISCRETIONARY REVIEW GRANTED**  
(Pending Cases Only)

**DISCRETIONARY REVIEW GRANTED 9/12/12 and CROSS MOTION GRANTED 11/14/12**

Commonwealth v. Tigue, 2011-SC-737-DG and  
Tigue v. Commonwealth, 2012-SC-599-DG

Criminal Law. Issues include whether the withdrawal of a defendant's guilty plea is a "critical stage" of trial which entitles a defendant to legal counsel.

Oral argument-December 2013

**DISCRETIONARY REVIEW GRANTED 12/12/12**

Miami Management Company v. Bruner, 2012-SC-318-DG

Torts. Open and Obvious Doctrine. The issue in this case, arising out of a fall in a restaurant parking lot which had been plowed and salted after a winter storm, involves the applicability of Kentucky River Medical Center v. McIntosh, 319 S.W.3d 385 (Ky. 2010).

Oral argument-June 2013

**DISCRETIONARY REVIEW GRANTED 4/17/13**

Crabtree v. Commonwealth, 2012-SC-591-DG

Criminal Law. Possession of Matter Portraying Sexual Performance by a Minor. Issues involve arguments for a "temporary innocent possession" instruction and addressing lack of knowledge of a hidden thumbcache on defendant's computer

Oral argument-September 2013

Commonwealth v. Terrell, 2012-SC-550-DG

Criminal Law. Criminal Procedure. RCr 2.14. Sixth Amendment to the United States Constitution. *West v. Commonwealth*, 887 S.W.2d 338 (Ky. 1994). Issues include whether RCr 2.14 conflicts with the Sixth Amendment, the continued vitality of *West v. Commonwealth* and the proper interpretation and application of RCr 2.14(2).

Oral argument-February 13, 2014.

### **DISCRETIONARY REVIEW GRANTED 8/21/13**

Commonwealth v. Bedway, 2012-SC-771-DG

Criminal Law. DUI. KRS 189A.105(3). Issues include the scope of the right to counsel created by KRS 189A.105(3) and whether or not denial of the statutory right requires the exclusion of subsequently obtained evidence.

Oral argument-April 9, 2014

Dixon v. Daymar Colleges Group, 2012-SC-687-DG

Arbitration. Contract Law. Unconscionability. Issues include whether cost-prohibitiveness of arbitration can render an agreement to arbitrate unconscionable and unenforceable.

Oral argument-April 2014

### **DISCRETIONARY REVIEW GRANTED WITHOUT ORAL ARGUMENT 8/21/13**

Ballinger v. Commonwealth, 2012-SC-694-DG

Criminal Law. KRS 189A.010(5)(e). Issues include the correct interpretation of KRS 189A.010(5)(e) and whether the statute requires a "conviction to offense" or a "conviction to conviction" sequence for the enhancement of penalties for subsequent DUI convictions.

### **DISCRETIONARY REVIEW GRANTED 9/18/13**

Pennyrile Allied Community Services, Inc. v. Rogers, 2013-SC-12-DG

Employment Law. Retaliation. Whistleblower Act. Issues include whether the protections of the Whistleblower Act apply if the conduct reported by the employee does not touch on a matter of public concern.

Oral argument-March 12, 2014

**DISCRETIONARY REVIEW GRANTED 10/16/13**

Toler v. Sud-Chemie, Inc., 2013-SC-2-DG

Sud-Chemie, Inc. v. Toler, 2013-SC-7-DG

Employment Law. Defamation. Qualified Privilege. Issues include whether an employee's testimony that his co-workers' defamatory allegations are false is sufficient to create a jury question on abuse of the qualified privilege.

Oral argument-June 2014

Q.M., A Child Under Eighteen v. Commonwealth, 2013-SC-210-DG

Juvenile Law. Informal Adjustment. Issues include what are the proper steps a district court must undertake when giving a juvenile an informal adjustment; and whether a juvenile is entitled to certain due process rights when a court revokes an informal adjustment?

Oral argument-June 2014

**DISCRETIONARY REVIEW GRANTED 9/18/13 AND  
CROSS-MOTION GRANTED 11/13/13**

Scott v. Davis, 2013-SC-228-DG and

(Cross-Motion) Davis v. Scott, 2013-SC-682-DG

Statute of Limitations. Law of the Case Doctrine. Issues include whether the statute of limitations is tolled when the underlying action was dismissed due to the improper assignment of a legal malpractice claim, so as to allow the plaintiff to re-file the action.

Oral argument-August 2014

**DISCRETIONARY REVIEW GRANTED 11/13/13**

Council on Developmental Disabilities, Inc. v. Cabinet for Health and Family Services, 2013-SC-357-DG

Open Records. KRS 209.140. Issues include whether a private agency which serves as an advocate for adults with mental disabilities may receive certain records from the Cabinet for Health and Family Services via an open records request.

Oral argument-August 2014

Oliphant v. Ries, 2013-SC-59-DG

Evidence Law. Issues include the standard of reversal for evidentiary errors and the application of *Daubert v. Merrill Dow Pharmaceuticals*, 509 U.S. 579 (1993) to scientific testimony in a medical malpractice action.

Oral argument-August 2014

**DISCRETIONARY REVIEW GRANTED 12/11/13**

Muhammad v. Kentucky Parole Board, 2013-SC-420-DG

Criminal Law. Postincarceration Supervision. Issues include whether a defendant who made a plea bargain with the Commonwealth's Attorney to not revoke his postincarceration supervision is entitled to the benefit of that bargain even though KRS 532.043(5) gives full authority to the Parole Board to make that determination.

Oral argument-December 2014

Sargent v. Shaffer, 2013-SC-111-DG

Evidence Law. Jury Instructions. Medical Malpractice. Informed Consent. KRS 304.40-320(2). Issue is whether a jury instruction on informed consent in a medical negligence action must contain the duty enumerated in KRS 304.40-320(2).

Oral argument-June 2014

**DISCRETIONARY REVIEW GRANTED 11/13/13 and  
CROSS MOTION 2/12/14**

Banker v. University of Louisville Athletic Association, Inc.,

2013-SC-108-DG **and** (Cross Motion) University of Louisville Athletic Association, Inc. v. Banker, 2013-SC-778-DG

Employment Law. Retaliatory Discharge. Issues involve the sufficiency of the evidence of causation or pretext to support the jury verdict for the discharged plaintiff.

Oral argument-February 2015

**DISCRETIONARY REVIEW GRANTED 12/11/13 and  
CROSS MOTION 2/12/14**

Commonwealth v. McGorman, 2013-SC-149-DG **and** (Cross Motion) McGorman v. Commonwealth, 2013-SC-818-DG  
Criminal Law. RCr 11.42. Issues include defense counsel's strategy in permitting a juvenile to be interviewed by police in counsel's presence in February of 2000.

**DISCRETIONARY REVIEW GRANTED 2/12/14**

Commonwealth v. Gamble, 2013-SC-141-DG  
Criminal Law. HB 463. KRS 218A.1413. Issue is whether the amendments to KRS 218A.1413(2)(b) and KRS 532.080(8)(b) by HB 463 prevent prior convictions for possession of controlled substances from being used to enhance later offenses under the Persistent Felony Offender statute.

Oral argument-September 2014

Maras v. Commonwealth, 2013-SC-267-DG  
Criminal Law. KRS 508.140. Stalking. RCr 10.04. Post-Verdict Juror Statements. Issues include: (1) whether the elements of the stalking statute are met where the victim does not fear for her own safety, but does fear for the safety of others; (2) whether jurors' post-verdict comments suggesting that they may have misinterpreted the instructions are admissible to impeach the verdict.

Oral argument-December 2014

Carter v. Bullitt Host, LLC, 2013-SC-325-DG  
Torts. Personal Injury. Open and Obvious Doctrine. Issues include whether application of the open and obvious doctrine allows for summary judgment in this case, arising out of a fall in an icy hotel parking lot.

Oral argument- October 2014

**DISCRETIONARY REVIEW GRANTED 12/11/13 and  
CROSS MOTION 3/12/14**

Commonwealth v. Wright, 2013-SC-226-DG and (Cross Motion Wright v. Commonwealth, 2013-SC-824-DG  
Criminal Law. Jury Use of Evidence. Issues include the propriety of a jury's use of the prosecutor's laptop to replay audiotape of a drug transaction admitted into evidence as an exhibit.

Oral argument-December 2014

**DISCRETIONARY REVIEW GRANTED WITHOUT ORAL ARGUMENT  
12/11/13 and CROSS MOTION GRANTED 3/12/14**

Sparkman v. CONSOL Energy, 2013-SC-119-DG

CONSOL Energy v. Sparkman, 2013-SC-831-DG

Civil Procedure. Parties. Standing. Issues include whether the Court of Appeals properly vacated the trial court's judgment in favor a business entity that was not a named plaintiff.

**DISCRETIONARY REVIEW GRANTED 3/12/14**

Kentucky Farm Bureau Mutual Ins. Co. v. Conley, 2013-SC-252-DG

Civil Procedure. Appeals. CR 59.05. CR 7.02. The issue is whether a timely CR 59.05 motion which does not state grounds is invalid due to the particularity requirements of CR 7.02 and, if so, whether filing of the CR 59.05 motion tolls the time to file an appeal.

Oral argument-September 2014

B.H. v. Commonwealth, 2013-SC-254-DG

Criminal Law. Juvenile Law. Constitutional Law. Issues include whether KRS 510.140 is unconstitutional as applied when both the victim and the accused are under the age of consent and there is no proof of forcible compulsion, and whether KRS 531.335 may constitutionally be applied when both the accused and the victim are minors.

Oral argument-February 2015

Adams-Smyrichinsky v. Smyrichinsky, 2013-SC-812-DG

Family Law. Child Support. Emancipation. UIFSA. Issues include whether Kentucky or Indiana law regarding the age of emancipation applies when: (1) the initial child support order was entered in Indiana; (2) both parties subsequently moved to Kentucky; and (3) the Kentucky court has assumed continuing, exclusive jurisdiction to modify the support.

Oral argument-August 2014

**DISCRETIONARY REVIEW GRANTED 3/20/14**

Brewer v. Commonwealth, 2013-SC-467-DG

Criminal Law. KRS 508.032. Issues involve whether prior convictions for fourth-degree assault and surrounding circumstances are admissible in the guilt phase of KRS 508.032 prosecutions for third or subsequent offense fourth-degree assault of a KRS 403.720 “family member” or “member of an unmarried couple.”

Oral argument- September 2014

### **DISCRETIONARY REVIEW GRANTED 4/9/14**

Milam v. Commonwealth, 2013-SC-681-DG

Criminal Law. Warrantless Search. Issues include whether a fraternity house should be treated as a private residence or as an apartment building or hotel for purposes of searches and seizures.

Oral argument-February 2015

Commonwealth v. Duncan, 2013-SC-742-DG

Criminal Law. DUI. Issues include whether a police officer violated a DUI suspect’s Fourth Amendment rights when he only offered to give him a blood test to detect alcohol in his blood stream after he failed a series of field sobriety tests.

Oral argument-February 2015

Beaumont v. Zeru, 2013-SC-489-DG

Motor Vehicle Insurance. Statute of Limitations. KRS 304.39-230(6). Issues involve the date of the last basic reparation payment when the last check as reported by the basic reparations obligor to the plaintiff actually was a replacement check for one previously lost by a different payee.

Oral argument-October 2014

Keysor v. Commonwealth, 2013-SC-531-DG

Criminal Law. Police Questioning of a Defendant Represented by Counsel on Other Charges. Issues involve the impact of Montejo v. Louisiana, 556 U.S. 778 (2009) (overruling Michigan v. Jackson, 475 U.S. 625 (1986)) upon Kentucky cases dating back to Linehan v. Commonwealth, 878 S.W.2d 8 (Ky. 1994).

Oral argument- March 2015

Kidd v. Commonwealth, 2013-SC-608-DG

Criminal Law. Probation Revocation. KRS 439.3106. Issues involve 2012 violation of a 2009 guilty plea probation condition that the defendant move out of Kentucky for five years.

Oral argument-February 2015

Coppage Construction Co., Inc. v. Sanitation District No. 1,  
2013-SC-122-DG

Sovereign Immunity. Issues include whether sanitary sewer districts are entitled to sovereign immunity.

Oral argument-October 2014

Commonwealth v. Young, 2013-SC-367-DG

Criminal Law. KRS 514.040. Theft By Deception. Adoption. Birth Mother Living Expenses. Issues include whether the trial court correctly refused to dismiss theft by deception charges against birth parents who solicited and accepted living expenses from prospective adoptive parents without disclosing that they had already accepted living expenses from an adoption agency representing other prospective adoptive parents.

Oral argument-December 2014

### **DISCRETIONARY REVIEW GRANTED WITHOUT ORAL ARGUMENT** **4/9/14**

Wright v. Carroll, 2013-SC-528-DG

Torts. Motor Vehicle Accident. Issues include whether, on retrial, plaintiff was entitled to a directed verdict as to defendant trucker's liability for injuries resulting from the trailer portion of the tractor-trailer striking plaintiff's vehicle in the proper lane of travel on a two-lane highway.

### **DISCRETIONARY REVIEW GRANTED 6/11/14**

Wright v. Ecolab, Inc., 2013-SC-653-DG

Appellate Procedure. Issues involve whether a premature notice of appeal from an interlocutory decision not containing the necessary CR 54.02 recitations of finality can be salvaged by the "relation forward" rule or entry of a *nunc pro tunc* order adding the CR 54.02 recitations.

Oral argument-February 2015

Harrod Concrete and Stone Co. v. Crutcher, 2013-SC-549-DG

Trespass. Damages. Issues include the proper measure of damages for removal of underground limestone absent reduction in the fair market value of the real estate.

Oral argument-December 2014

Baker v. Magnum Hunter Production, Inc., 2013-SC-497-DG

Mineral Law. Oil and Gas. Issue is what is the correct definition in Kentucky law of "market value at the well" and what costs natural gas lessees may deduct when calculating the royalty to be paid to lessors.

Oral argument-February 2015

Norton Healthcare, Inc. v. Deng, 2013-SC-526-DG

Employment Law. Discrimination. Retaliation. Issues include whether summary judgment was properly granted dismissing a retaliation claim, whether certain statements were made during settlement negotiations and whether the claimant established that it would have been futile for him to apply or re-apply for employment.

Oral argument-March 2015

Cadle v. Cornett, 2013-SC-538-DG

Torts. Negligence. Causation. Superseding Cause. Issues include whether Kentucky's acceptance of the law of comparative fault has changed the effect of the doctrine of superseding cause, and if so, to what extent.

Oral argument-February 2015

Patton v. Bickford, 2013-SC-560-DG

Torts. Negligence. Causation. Qualified Immunity. Issues include whether summary judgment was properly granted based on qualified immunity of school officials and whether suicide is a superseding cause which extinguishes tort liability.

Oral argument-March 2015

State Farm v. Riggs, 2013-SC-555-DG

Contract. Automobile Insurance. Underinsured Motorist Coverage. Issues include whether an automobile insurance policy provision requiring underinsured motorist claims to be brought within the same time period as tort claims under the Motor Vehicle Reparations Act—two years from the

date of the accident or last basic reparations payment, whichever is later— is valid and enforceable.

Oral argument- February 2015

### **DISCRETIONARY REVIEW GRANTED WITHOUT ORAL ARGUMENT 6/11/14**

Commonwealth v. Cox, 2013-SC-618-DG

Criminal Law. Constitutional Law. Fourth Amendment. Roadblocks.

*Commonwealth v. Buchanon*, 122 S.W.3d 565 (Ky. 2003). Issue is whether a roadblock was unconstitutionally established and conducted under controlling Kentucky and federal law.

### **DISCRETIONARY REVIEW GRANTED 8/13/14**

Allstate Insurance Company v. Smith, 2013-SC-732-DG

Insurance. MVRA. KRS 304.20-040(13) "Notice of First Renewal" Requirement. The question is whether, although the insured never requested or paid any premium for optional KRS 304.39-320 underinsured motorist coverage, the insurer adequately complied with the KRS 304.20-040(13) "notice of first renewal" requirement of "a notice stating in substance that added uninsured motorists, underinsured motorists, and personal injury protection coverages may be purchased by the insured."

Northern Kentucky University v. Weickgennant, 2013-SC-820-DG

Gender Discrimination. KRS 344.040. Issues include whether or not the Court of Appeals correctly followed Kentucky and federal employment discrimination precedent.

Overstreet v. Kindred Nursing Centers Limited Partnership, 2013-SC-620-DG

Limitation of Actions. KRS 216.515. Issues include whether KRS 216.515 created a new cause of action or whether the cause of action was one for personal injury, and whether the statute of limitations for personal injury or for a newly established statutory action applies.

Oral argument-March 2015

Pate v. Dept. of Corrections, 2013-SC-558-DG

Pate v. Commonwealth, 2013-SC-559-DG

Criminal Law. KRS 439.3401. Violent Offender. Department of Corrections. Issues include whether Corrections acted properly when it reclassified an inmate convicted of a Class A felony drug offense from nonviolent offender to violent offender based on its changed interpretation of the violent offender statute.

Nissan Motor Company v. Maddox, 2013-SC-685-DG

Torts. Products Liability. Design Defect. Punitive Damages. Issues include whether the plaintiff presented sufficient evidence to warrant a punitive damages instruction where the defendant car manufacturer complied with federal safety standards.

Wagner's Pharmacy v. Pennington, 2013-SC-541-DG

Kentucky Civil Rights Act. KRS 344.040. Disability Discrimination. Issues include whether, under the KCRA, a claimant alleging disability discrimination based on morbid obesity required to prove that his or her condition is attributable to an underlying physiology.

Oral argument-March 2015

### **DISCRETIONARY REVIEW GRANTED WITHOUT ORAL ARGUMENT 8/13/14**

Commonwealth, etc. v. AT&T Corporation, 2013-SC-800-DG

Taxation. Constitutional Challenges. Ripeness. The primary question involves the ripeness of a facial state constitutional challenge to KRS 139.505(2), interstate business communications service sales tax refundable credit amendments, in view of the circuit court conclusion that the other seven counts of the declaratory judgment action should await resolution by the Kentucky Board of Tax Appeals.

Falk v. Alliance Coal, LLC, 2013-SC-655-DG

Workers' Compensation. Issue is whether or not the Respondent is the Workers' Compensation "carrier" as the term is defined in KRS 342.011(6), and therefore immune from suit for alleged negligence resulting in the deaths of three miners.

### **DISCRETIONARY REVIEW GRANTED 9/10/14**

Sadler v. Van Buskirk, 2013-SC-809-DG

Family Law. Property Settlement Agreements. Retirement Accounts. Issues include whether the property settlement agreement provision stating that the ex-wife disclaimed her interest in the retirement account owned by the ex-husband was sufficient to rescind the form he filed with the investment company during the marriage naming her as beneficiary upon his death.

Cabinet for Health and Family Services v. J.M.G., 2013-SC-797-DG

Contempt. Issue is whether the Family Court erred in holding the Cabinet for Health and Family Services in contempt as a result of the failure of an attorney employed by the Cabinet to follow statutes and court rules.

Commonwealth v. Parrish, 2013-SC-830-DG

Criminal Law. Evidence. KRS 189A.104. *Brady v. Maryland*, 373 U.S. 83 (1963). Issues include whether a police officer's failure to preserve evidence of the results of a Preliminary Breath Test (PBT) constituted a *Brady* violation, and the admissibility of a PBT below .08 as exculpatory evidence.

Oral argument-March 2015

Saint Joseph Healthcare, Inc. v. Thomas, 2014-SC-8-DG

Punitive Damages. KRS 411.184. Issues include whether or not physicians whom the hospital alleges are independent contractors are considered as employees of the hospital for the purpose of assessing punitive damages under the provisions of the federal Emergency Medical Treatment and Active Labor Act (EMTALA), whether an award of punitive damages was so excessive as to constitute a denial of federal Constitutional due process, and the interplay between the EMTALA and KRS 411.184.

**DISCRETIONARY REVIEW GRANTED WITHOUT ORAL ARGUMENT**  
**9/10/14**

Addison v. Addison, 2014-SC-309-DGE

Child Custody. Issues include the propriety of limiting proof to one day and restricting witnesses on a motion to change custody.

**DISCRETIONARY REVIEW GRANTED 10/15/14**

Asbury University v. Powell, 2014-SC-95-DG

Employment Law. Retaliatory Discharge. Issues include (1) the propriety of recovery for retaliation absent an underlying violation of the Kentucky Civil Rights Act as well as (2) the appropriate jury instructions for retaliatory discharge and (3) the applicability of University of Texas Southwestern Medical Center v. Nassar, 133 S. Ct. 2517 (2013).

Tower Insurance v. Horn, 2014-SC-015-DG

Contract. Automobile Insurance. Employee Exclusion. Severability-of-Interests Clause. Issues include whether the severability-of-interests clause in a business auto insurance policy operates to defeat the policy's employee exclusion when the "insured" seeking coverage is not the policyholder business, but a permissive user.

Charalambakis v. Asbury University, 2014-SC-215-D

Employment Law. Retaliatory Discharge. Issues include the propriety of recovery for retaliation absent an underlying violation of the Kentucky Civil Rights Act.

Jamgotchian v. Kentucky Horse Racing Commission,  
2014-SC-108-DG

Administrative Law. Constitutional Law. The question presented is whether "claiming jail" regulation 810 KAR 1:015 § 1(6) is unconstitutional as violative of the "dormant" Commerce Clause of the United States Constitution.

Pettingill v. Pettingill, 2014-SC-456-DGE

Domestic Violence. Appellate Procedure. Issues involve the use of "lethality factors" in a domestic violence determination and the interplay between CR 75.07(4) and CR 98 when the trial videotape is omitted from the record on appeal.

**DISCRETIONARY REVIEW GRANTED 8/13/14 and CROSS MOTION GRANTED 10/15/14**

C.D.G. v. N.J.S., 2014-SC-329-DGE **and** (Cross Motion) N.J.S. v. C.D.G.,  
2014-SC-495-DGE

Child Support. Issues include whether KRS 403.211 or other Kentucky law requires that Social Security dependent retirement benefits received by a

child must be credited against the child support obligation, and whether a lump-sum payment of dependent benefits creates an "overpayment" which must be reimbursed by the child's representative payee to the obligor.

**DISCRETIONARY REVIEW GRANTED WITHOUT ORAL ARGUMENT**  
**10/15/14**

Estate of McVey v. Dept. of Revenue, 2014-SC-13-DG

Estate and Inheritance Tax. Wills. Administrative Law. Issues include the effect of a will clause directing that inheritance taxes be deducted as a cost of administration and taxation of "bequests of tax."









