

## **SUPREME COURT OF KENTUCKY**

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

#### **DISCRETIONARY REVIEW GRANTED 6/3/15**

AEP Industries, Inc. v. B.G. Properties, Inc., 2014-SC-512-DG  
Contracts. Specific Performance. Material Breach by a Non-Binding Appraisal. The first issue is whether appeal of an order granting specific performance on an option to purchase property is moot where the party ordered to specifically perform transfers the property in exchange for payment, does not seek a stay while on appeal of the order granting specific performance, or does not post a supersedeas bond. A second issue is whether a non-binding appraisal may constitute a “material breach” of an option to purchase agreement which would suspend performance of the agreement for sale of property.

Oral argument-August 2016

#### **DISCRETIONARY REVIEW GRANTED 8/12/15**

Brown-Forman Corporation v. Miller, 2014-SC-717-DG  
Nuisance. Trespass. State Law Tort Claims. Preemption. The issue to be determined is whether the federal Clean Air Act preempts state law tort claims.

Oral argument-March 2016

#### **DISCRETIONARY REVIEW GRANTED 10/21/15**

Indiana Insurance Company v. Demetre, 2015-SC-107-DG  
Insurance. Bad Faith. Damages. Emotional Distress. The primary issue on this review is whether expert testimony is necessary to substantiate damages for emotional distress in a bad faith case.

Oral argument-June 2016

McCain v. The Sullivan University System, 2015-SC-144-DG  
KRS 337.385. Statutory interpretation. Class Action Certification. The issue is whether the language of KRS 337.385 prohibits the bringing of claims by employees for wage and hour violations under Kentucky state law as a class action.

Oral argument-June 2016

**DISCRETIONARY REVIEW GRANTED WITHOUT ORAL ARGUMENT**  
**2/10/16**

Pace v. Commonwealth, 2015-SC-399-DG and Collins v. Commonwealth, 2015-SC-400-DG

Criminal Procedure. Search and Seizure. The first issue is whether a police officer conducts an illegal search when he ostensibly enters a person's patio, while investigating individuals who were possibly about to engage in violent behavior, and then observes illegal drugs through an open back door. The second issue is whether these circumstances are governed by the "protective sweep" or "emergency aid" exceptions to warrantless searches. The third issue is whether the officer can obtain a belated consent to search the premises after police had already entered and observed illegal drugs.

**DISCRETIONARY REVIEW GRANTED 3/9/16**

Hughes and Coleman, PLLC v. Chambers, 2015-SC-435-DG

Attorney Fees. Issues involve whether, despite the circuit court's award (following a bench trial and supported by expert testimony) of a partial fee on a quantum meruit basis to a law firm terminated by a personal injury plaintiff, that firm's handling of basic and added reparation benefits created "good cause" for the termination and therefore defeated the claim for any portion of the fee.

Oral argument-October 2016

Wright v. LP Pikeville, LLC, 2014-SC-238-DG

Guardianship. Contract. Arbitration Agreements. KRS 387.660. Issues include whether a legal guardian has the authority to enter into a binding pre-litigation arbitration agreement on behalf of her ward.

**DISCRETIONARY REVIEW GRANTED WITHOUT ORAL ARGUMENT**  
**3/9/16**

Isaacs v. Caldwell, 2015-SC-265-DG

Civil Procedure. Notice of Appeal. Summons. CR 3.01. Issues include whether the plaintiffs' appeal from a decision of the planning commission was properly dismissed for improper service of process.

**DISCRETIONARY REVIEW GRANTED 4/27/16**

State Farm v. Adams, 2015-SC-366-DG

Auto Accidents. Insurance. MVRA. Examination Under Oath. Issues include whether an injured passenger is obligated to comply with a driver's insurance policy provision requiring an examination under oath as a prerequisite to uninsured motorist or basic reparations benefits.

Oral argument-March 2017

University of Kentucky v. Carpenter, 2015-SC-384-DG

Sex Discrimination. Retaliation. Kentucky Civil Rights Act. Kentucky Whistleblower Act. Issues include: (1) whether the circuit court properly ordered separate trials for each of the female police officers; (2) whether the female police officers presented sufficient evidence of discrimination and retaliation to survive summary judgment or a directed verdict; and (3) whether the female police officers' supervisors are subject to individual liability under the Kentucky Whistleblower Act.

Oral argument-February 2017

Dugan & Meyers Construction Company v. The Ascent at Roebing's Bridge, LLC, 2015-SC-635-DG, and The Ascent at Roebing's Bridge, LLC v. Superior Steel, 2015-SC-636-DG (cross-motions with Superior Steel v. The Ascent at Roebing's Bridge, LLC, 2015-SC-204-DG)

Contracts. Indemnity. Extra Work. Attorney Fees. Unjust Enrichment. Jury Instructions. These cross-motions for discretionary review seek review of those portions of the Court of Appeals' decision which granted the general contractor indemnity against the owner and construction manager, and their insurer for amounts owed by the general contractor to the subcontractors for extra work performed and for attorney fees awarded. In addition, review is sought of the Court of Appeals' decision which vacated the jury verdict and judgment in favor of the construction manager against the general contractor. Review is also sought of the jury

instructions under which the trial court found unjust enrichment against the owner of the property.

Oral argument-March 2017

### **DISCRETIONARY REVIEW GRANTED 6/8/16**

Utility Management Group, LLC v. Pike County Fiscal Court,  
2015-SC-680-DG

Open Records. KRS 61.870(1)(h) "Public Agency." Issues, including a constitutional challenge, involve whether a private for-profit entity contracting for operational and management services with a public entity is a "public agency" for purposes of the Kentucky Open Records Act.

Oral argument-February 2017

Traft v. Commonwealth, 2015-SC-470-DG

Criminal Law. 4<sup>th</sup> Amendment. Traffic Stop. License Plate Reader.

Issues include whether the police have reasonable suspicion to conduct a traffic stop based solely on a license plate reader alert indicating that the owner of a vehicle has a pending warrant.

Oral argument-March 2017

### **DISCRETIONARY REVIEW GRANTED 8/17/16**

Adams v. Sietsema, 2015-SC-483-DG

Negligence. Medical Malpractice. Jail Healthcare. Expert Testimony.

Issues include whether an inmate who claims that the jail's medical director and nurse practitioner caused his illness to become life threatening by inadequately supervising and communicating with the jail's nursing staff was required to present expert testimony to establish the standard of care for jail medical staff.

Oral argument-March 2017

Talley v. Paisley, 2016-SC-92-DG

Real Estate. Partition. Joint Tenancy with Right of Survivorship. Issues involve division of proceeds of sale of realty owned by unmarried cohabiting couple in joint tenancy with right of survivorship.

Oral argument-February 2017

Majestic Oaks Homeowners Association, Inc. v. Majestic Oaks Farms, Inc.,  
2016-SC-213-DG

Easements. Expiration of easement. The issue in this case is whether the original roadway easement given to the developer of property was extinguished automatically after conveyance of developer's lots and after conveyance of the common areas to the homeowners' association, such that the developer was denied access to another property owned by the developer via roadways in the original development.

Oral argument-March 2017

Riffe v. Commonwealth, 2016-SC-219-DG

Criminal Law. Suspension of driver's license for refusal to take breathalyzer. Subsequent acquittal on DUI charge. The issue in this case is whether the trial court erred in suspending the driver's license for 36 months following his acquittal on a DUI-third offense, where the driver had refused a breathalyzer on advice of counsel.

Oral argument-June 2017

Moss v. Commonwealth, 2016-SC-165-DG

Criminal Law. Evidence. Adoptive admissions. Pre-arrest silence. The primary issue in this case is whether a defendant's failure to respond to a witness' statement made during a police investigation constitutes an adoptive admission, which may be introduced into evidence, or whether this failure to respond to the witness' statement is pre-arrest silence which may not be introduced as evidence against the defendant.

Oral argument-June 2017

**DISCRETIONARY REVIEW GRANTED 4/27/16 and CROSS MOTION GRANTED 8/17/16**

Nami Resources Company, LLC v. Asher Land and Minerals, Ltd, 2015-SC-489-DG **and** (Cross Motion) Asher Land and Minerals, Ltd v. Nami Resources Company, LLC, 2016-SC-235-DG

Oil and Gas. Contracts. Fraud. Punitive Damages. Issues involve alleged fraud and/or breach of contract in underpayment of oil and gas royalties pursuant to lease plus the propriety of imposing punitive damages.

Oral argument-April 2017

**DISCRETIONARY REVIEW GRANTED WITHOUT ORAL ARGUMENT 8/17/16**

Hawkins v. Commonwealth, 2015-SC-639-DG

Criminal Law. First-Degree Trafficking in a Controlled Substance. KRS 218A.1412. Issues include whether the provisions of the first-degree trafficking statute that enhance a defendant's felony class based on the weight of the drug trafficked are intended to refer to the aggregate weight of the entire substance, i.e., pure drug plus filler substances, or solely to the portion of the substance's total weight that consists of the pure drug itself.

Morrison v. Commonwealth, 2015-SC-712-DG

Criminal Law. Jury selection. Strikes for cause. Familial relation to county attorney. Abuse of discretion. The issue in this case is whether the trial court abused its discretion in refusing to strike for cause a potential juror who is the mother of the county attorney who had conducted the preliminary hearing in this case.

**DISCRETIONARY REVIEW GRANTED 9/15/16**

Big Sandy Regional Jail Authority v. Lexington-Fayette Urban County Government, 2016-SC-8-DG

Sovereign Immunity. KRS 441.025. At issue in this matter is whether sovereign immunity bars an action by a regional jail against a county to recover the costs of housing that county's prisoners, after they were arrested and held pursuant to a warrant from courts of that county. In addition, at issue is whether KRS 441.025 obligates a county to pay for the incarceration of prisoners arrested and held on warrants issued by the courts of that county which are served in the county where the prisoner is incarcerated.

Oral argument-April 2017

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

Lake Cumberland Regional Hospital, LLC v. Adams,  
2016-SC-181-DG **and** Spring View Hospital, LLC v. Jones,  
2016-SC-189-DG **and** Spring View Hospital, LLC v. Spalding,  
2016-SC-259-DG **and** Spalding v. Spring View Hospital, LLC,  
2016-SC-277-DG

Torts. Negligent Credentialing. Whether the tort of negligent hospital credentialing should be recognized in Kentucky.

Oral argument-August 2017

St. Augustine School v. Cropper, 2016-SC-243-DG

Contracts. Ecclesiastical Abstention. Whether a breach of contract claim by a parochial school administrator involves a matter of internal church governance requiring judicial abstention.

Oral argument-April 2017

Kentucky State Police v. Scott, 2016-SC-303-DG

Sovereign immunity. Facial vs. As-applied Constitutional Challenge to Exhaustion of Administrative Remedies Requirement. Application of Administrative Regulation. At issue in this case is whether sovereign immunity bars a complaint against the KSP for payment of retroactive wages and benefits to the Respondents, who were denied salaries and benefits equal to another employee who occupied the same position at another KSP post. Another issue is whether the failure of the Respondents to exhaust their administrative remedies barred their claims in circuit court against the KSP, where they challenged the constitutionality of the administrative regulation under which their claims were denied.

Oral argument-June 2017

Department of Revenue v. Interstate Gas Supply, 2016-SC-281-DG

Kentucky Constitution § 170. Tax Exemption. Institution of Purely Public Charity. The issue in this case is whether an institution of purely public charity should be exempt from payment of a use tax under § 170 of the Kentucky Constitution.

Oral argument-April 2017

**DISCRETIONARY REVIEW GRANTED WITHOUT ORAL ARGUMENT**  
**10/13/16**

Justice and Public Safety Cabinet v. Gaither, 2016-SC-345-DG

Board of Claims. Post-judgment Interest on Award. Whether and when interest may accrue on an award made by the Board of Claims.

**DISCRETIONARY REVIEW GRANTED 12/8/16**

Ford v. Shah, 2016-SC-136-DG

Tort Law. Conversion. Uniform Commercial Code. Issues include whether the defendants committed the tort of conversion when a signatory

on the plaintiff's bank accounts used his apparent authority over the accounts to transfer funds for the benefit of the defendants.

Oral argument-September 2017

Martin/Elias Properties, LLC v. Acuity, 2016-SC-195-DG

Insurance Law. Commercial General Liability Coverage. "Occurrence" or "Accident." Issues include whether a concrete contractor's CGL insurer was required to cover damage caused when the contractor, who was hired to dig a deeper basement under an existing building, failed to properly support the foundation and caused the entire structure to become unstable.

Oral argument-August 2017

Auslander Properties, LLC v. Nalley, 2016-SC-99-DG

Negligence Per Se. KOSHA/OSHA. Property Management Companies. Issues include whether a small property rental company was required to comply with KOSHA/OSHA fall prevention regulations when it hired an independent contractor to trim trees at one of its properties.

Oral argument-August 2017

Commonwealth v. Thompson, 2016-SC-365-DG

Criminal Law. Ineffective assistance of counsel. Advice on a guilty plea. The issue for consideration is whether it is ineffective assistance of counsel when counsel fails to advise their client, who intends to plead guilty to the crime of attempted kidnapping of a minor, that they will also be required to register as a sex offender.

Oral argument-August 2017

Baumann Paper Co. v. Holland, 2016-SC-511-DG

Contracts. Statute of Frauds. Unjust enrichment. The issue involves the enforceability of an agreement to provide future benefits in lieu of a retirement plan, which though signed by the employee was never executed by the employer.

Oral argument-August 2017

Board of Commissioners of the City of Danville v. Advocate Communications, Inc., 2016-SC-280-DG

Open Meetings. Issues include applicability of the KRS 61.810(1)(b) exception regarding "deliberations on the future acquisition . . . of real property" in circumstances involving bidding at public auction.

Oral argument-August 2017

**DISCRETIONARY REVIEW GRANTED WITHOUT ORAL ARGUMENT**  
**12/8/16**

Kentucky Unemployment Insurance Commission v. Wilson,  
2016-SC-411-DG

Appeal of denial of benefits. Verification requirement. Substantial compliance. The issue is whether a verification statement signed by the person filing an appeal of a denial of benefits, but without a notary is compliant with the statute requiring a verified complaint to invoke the jurisdiction of the circuit court.

Edmondson v. Commonwealth, 2016-SC-427-DG

Criminal Law. Jury selection. Prosecutorial misconduct. The primary issue is whether the brother-in-law of the assistant Commonwealth Attorney should have been permitted to sit on the jury. This relationship was apparently unknown to the defense until after the trial. Among additional issues is whether it was prosecutorial misconduct to compare the defense to the Catholic Church molestation cases.

**DISCRETIONARY REVIEW GRANTED 2/9/17**

Storm v. Martin, 2016-SC-457-DG

Torts. Public Employee Personal Liability. Issues include whether the use of the word "shall" in KRS 179.070(1) imposes mandatory liability upon a county engineer for tree removal from a public right-of-way creating a traffic hazard.

Oral argument-September 2017

University of Louisville v. Rothstein, 2016-SC-220-DG

Sovereign Immunity. Government Contracts. Employment. KRS 45A.245. Issues include whether the University is immune from a former employee's claim for breach of his written employment contract.

Oral argument-September 2017

Grasch v. Grasch, 2016-SC-591-DG

KRS 403.190. Marital Property. Contingent Fee Cases. The only issue to be addressed in this matter is whether contingent fee cases of an attorney spouse should be treated as marital property under KRS 403.190.

Oral argument-September 2017

Dept. of Medicaid Services v. Sexton, 2016-SC-529-DG, Coventry Health and Life Insurance Company v. Sexton, 2016-SC-0534-DG, and Sexton v. Cabinet for Health and Family Services, 2016-SC-540-DG

Medicaid. Denial of benefits. Appeals. Waiver of Sovereign Immunity. KRS 13B.140. KRS 45A.245. Issues include (1) whether a Medicaid recipient has standing to challenge a denial of benefits; (2) and if so, whether the venue should be determined by the residence of the properly designated real party in interest, the medical provider of services seeking the reimbursement; (3) and if not, what is the reason for KRS 13B.140, which allows an appeal from the final orders of an administrative agency such as the Dept. of Medicaid Services; (4) what is the reason for KRS 45A.245, which permits any person or corporation who has contracted with the Commonwealth to bring an action for breach of contract, or for enforcement, or both; and (5) which statute applies in this instance, since venue shall be determined by whichever statute applies.

**DISCRETIONARY REVIEW GRANTED WITHOUT ORAL ARGUMENT**  
**2/9/2017**

Marchese v. Aebersold, 2016-SC-644-DGE  
Family Law. Domestic Violence Orders. Extrajudicial Information. Issues include whether the Respondent in a domestic violence case was denied a fair hearing when the family court considered extrajudicial information in support of its decision to enter a DVO.

**DISCRETIONARY REVIEW GRANTED 3/15/17**

Maupin v. Tankersley, 2016-SC-572-DG  
Torts. Dog Bite Law. Issues involve application of KRS 258.235(4) as well as strict liability and negligence principles in a case involving unconfined dogs in a rural setting.

Oral argument-September 2017

Commonwealth v. Moore, 2016-SC-275-DG  
DUI. Indigent Defendants. KRS 534.040. KRS 189A.010. Issues include whether the district court properly imposed a fine on an indigent defendant convicted of a DUI.

Scalise v. Sewell-Scheuermann, 2016-SC-246-DG

Taxes. Mayor and City Council. KRS 92.340. Issues include whether the city's mayor and council members are personally liable for spending excess funds raised under the city's sanitation tax on other legitimate city expenses.

Norfolk Southern v. Johnson, 2016-SC-248-DG

Torts. Property Owner Liability. Firefighter's Rule. Issues include whether a police officer is barred from suing a property owner for injuries incurred when she fell down a hill while pursuing a suspect.

Oral argument-September 2017

**DISCRETIONARY REVIEW GRANTED WITHOUT ORAL ARGUMENT**  
**3/15/17**

Ellington v. Becraft, 2016-SC-513-DG

Real Property. Public and Private Roads. Issues involve whether a prescriptive easement exists, if not a county road or public passway.

**DISCRETIONARY REVIEW GRANTED 2/9/17 and CROSS MOTION**  
**GRANTED 4/19/17**

Dept. of Medicaid Services v. Sexton, 2016-SC-529-DG, Coventry Health and Life Insurance Company v. Sexton, 2016-SC-0534-DG, and Sexton v. Cabinet for Health and Family Services,

2016-SC-540-DG **and** (Cross Motion) Coventry Health and Life Insurance Company v. Sexton, 2017-SC-95-DG

Medicaid. Denial of benefits. Appeals. Standing. On this cross-motion, a managed care organization which contracted with the Cabinet for Health and Family Services to provide services to a Medicaid recipient asks for a determination of whether the recipient has standing to invoke the Cabinet's fair hearing procedures and the subsequent judicial review after receiving all of the medical treatment, and even though the recipient is not financially liable for unpaid expenses.

**DISCRETIONARY REVIEW GRANTED WITHOUT ORAL ARGUMENT**  
**2/9/17 and CROSS MOTION GRANTED 4/19/17**

Commonwealth v. Helm, 2016-SC-370-DG **and** (Cross Motion) Helm v. Commonwealth, 2017-SC-84-DG

Criminal Law. RCr 11.42. Issues involve whether prejudice flowed from advice given by trial counsel regarding parole eligibility. On cross-motion, alleged ineffective assistance of appellate counsel is at issue.

**DISCRETIONARY REVIEW GRANTED 3/15/17 and  
CROSS MOTION GRANTED 4/19/17**

Yung v. Grant Thornton, LLP, 2016-SC-571-DG **and** (Cross Motion) Grant Thornton, LLP v. Yung, 2017-SC-151-DG

Torts. Punitive Damages. Issues include the propriety of the Court of Appeals panel's remittitur of \$60 million of the \$80 million awarded in punitive damages in addition to compensatory damages of \$19.315 million for fraudulent and grossly negligent tax and accounting services. Issues presented in the cross-motion concern the compensatory damages award as well as the punitive damages.

**DISCRETIONARY REVIEW GRANTED WITHOUT ORAL ARGUMENT  
3/15/17 and CROSS MOTION GRANTED 4/19/17**

Lanham v. Seeger, 2017-SC-146-DG **and** (Cross Motion) Seeger v. Lanham, 2016-SC-677-DG

Family Law. Child Support. Credit for Social Security Retirement Dependent Benefits. The issue is whether the trial can may credit excess Social Security retirement dependent benefits received on child's behalf against the father's pre-petition support liabilities.

**DISCRETIONARY REVIEW GRANTED 4/19/17**

Phon v. Commonwealth, 2016-SC-468-DG

Criminal Law. RCr 11.42 and CR 60.02. Issues involve application of *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016) to a 1998 sentence of life without parole for crimes including multiple murders committed before the offender's 18<sup>th</sup> birthday.

Government Employees Insurance Company v. Houchens,  
2016-SC-546-DG

Insurance. MVRA. KRS 304.39-270-(1). The question is whether a Kentucky motor vehicle reparations obligor may terminate their insured's basic reparations benefits premised purely upon "paper reviews" of medical records not tendered for court review.

Elliott v. Lanham, 2017-SC-52-DG

KRS 15.520. Kentucky Law Enforcement Foundation Program. Due Process. Termination of deputy sheriff. The issue is whether a sheriff who has elected to receive funds pursuant to KRS 15.520, is required to follow the due process requirements of the statute for the termination of a deputy sheriff even though there is no deputy sheriff review board in the county.

American Mining Insurance Co. v. Peters Farms, LLC,  
2017-SC-66-DG

Insurance Coverage. Interpretation of "Occurrence." Measure of Damages. The issue involves the interpretation of insurance policy language as to an "occurrence," to determine whether there is coverage for the mistaken mining of another's property. In addition, there is an issue regarding the measure of damages in such a case, specifically, the reasonable royalty rate vs. the market rate of the coal minus the extraction costs.

**DISCRETIONARY REVIEW GRANTED WITHOUT ORAL  
ARGUMENT 4/19/17**

Conover v. Lawless, 2016-SC-320-DG

Prison Discipline. Video Evidence. Adjustment Officer's Findings. Issues include: (1) whether the adjustment officer in a prison discipline case must describe the contents of surveillance video of the incident in her findings; and (2) whether the circuit court must review the surveillance video in the inmate's declaration of rights action challenging the discipline.

Commonwealth v. Caudill, 2016-SC-419-DG

Criminal Law. Jury Instructions. Wanton Endangerment and Self-Defense. KRS 503.120(2). Issues include whether the Court of Appeals correctly reversed the defendant's wanton endangerment convictions when the circuit court's jury instructions incorrectly allowed self-defense to serve as a defense to wanton endangerment of innocent bystanders.

**DISCRETIONARY REVIEW GRANTED 6/8/17**

Commonwealth v. Muchrison, 2016-SC-378-DG

Criminal Law. Conflicting Interests of Counsel. Issues involve disposition of trial defense counsel's motion to withdraw as counsel in this heroin trafficking and P.F.O. case based upon counsel's previous representation

(in an entirely unrelated and final case) of a client previously romantically involved with the confidential informant testifying in this case.

Peterson, Administratrix v. Foley, et al., 2017-SC-28-DG

Torts. Qualified Official Immunity. Issues involve allegations of negligent performance of ministerial duties of intake and supervision by deputies at a county jail, in which a prisoner died in her detox cell after a hydrocodone overdose.

Harper v. University of Louisville, 2016-SC-632-DG

Whistleblower Act. Issues involve evidentiary sufficiency to support a jury verdict for violation of the Kentucky Whistleblower Act.

Maupin v. Commonwealth, 2016-SC-448-DG

Criminal Law. KY Constitution § 115. Judgment of Acquittal. Sex Offender Registry. Issues include whether the Commonwealth may appeal from a judgment of acquittal entered by a trial judge after the jury returned a guilty verdict.

Cales v. Baptist Healthcare System, Inc., 2017-SC-57-DG and Baptist Healthcare System, Inc. v. Cales, 2017-SC-76-DG

Products Liability. Medical Malpractice. Federal Preemption. Off-Label Use of Medical Devices. Informed Consent. Hospital Standard of Care. An issue of first impression in Kentucky is whether the trial court properly dismissed the state products liability claims against the hospital on the basis of express federal preemption in circumstances involving the off-label use of a medical device. Another issue is the standard of care applicable to the hospital when a medical device is being used off-label. Did the Court of Appeals err when it determined that the hospital had a duty to inform the patient of the regulatory status of the device and its off-label use and the risks attendant thereto?

Baker v. Fields, 2017-SC-144-DG.

Qualified Immunity. Summary Judgment. Negligence. Slip and Fall. The issue is whether Court of Appeals' analysis usurped the role of the jury, in deciding the issue of negligence on this interlocutory appeal, when the trial court denied a motion for summary judgment and determined that qualified immunity did not apply to these circumstances, but had not yet addressed the issue of negligence of school employees.

**DISCRETIONARY REVIEW GRANTED WITHOUT ORAL ARGUMENT**  
**6/8/17**

Commonwealth v. Patton, 2016-SC-425-DG

Criminal Law. Post-Verdict Guilty Plea. Waiver of Appeal. Issues include whether the defendant knowingly and voluntarily waived his right to appeal when he was convicted by a jury and informed that he had a right to appeal the verdict, but subsequently entered a guilty plea and was informed that he was waiving his right to appeal.

Commonwealth v. Hughes, 2017-SC-110-DG

Criminal Law. KRS 218A.1412(1)(c). Indictment. Choice of crime. The issue is whether the Commonwealth may choose to indict on a greater offense, when there is also a lesser offense upon which it may indict a defendant. Inherent in this issue is whether it was the legislature's intent in enacting KRS 218A.1412(1)(c) to afford the Commonwealth the option to charge the greater offense, so long as there is probable cause to do so.

Ritchie v. Turner, 2017-SC-157-DG

Qualified Immunity. School Administrators. Discretionary v. Ministerial Acts. Application of KRS 620.030. The issue is whether the acts or omissions to act on the part of school administrators in addressing accusations of sexual abuse against a student by a school teacher were discretionary, and thus, subject to qualified immunity. An additional issue is even if the acts were discretionary, did the administrators act in bad faith, and thus abrogate any claim of qualified immunity. Also at issue is whether the duty to report abuse of a child under KRS 620.030 is discretionary, and if not, then should the administrators be immune from liability under those circumstances when they have been convicted of violating the statute.

Dorsey v. Commonwealth, 2017-SC-5-DG

Criminal Law. RCr 11.42. Denial of Counsel. Conflict of Interest. The issue is whether the Movant was denied his right to counsel during the motion to withdraw his guilty plea when his trial counsel was questioned under oath by the court as to what counsel advised his client regarding the minimum sentence (85%) he would have to serve prior to consideration for parole. It was asserted that this created a conflict of interest between counsel and his client, and thus denied him effective counsel at this critical stage of the proceedings.

Commonwealth v. Blake, 2016-SC-346-DG

Criminal Law. Traffic Stop. Collective Knowledge Doctrine. Issues include whether the traffic stop was supported by reasonable, articulable suspicion when a fellow officer observed possible drug-dealing activity.

Moberly v. Commonwealth, 2016-SC-429-DG

Criminal Law. Traffic Stop. Drug Dog Sniff. Reasonable, Articulable Suspicion. Issues include whether a police officer had reasonable, articulable suspicion to justify extending a traffic stop for a drug dog sniff when the defendant appeared unusually nervous and had a history of drug charges.

Commonwealth v. Smith, 2016-SC-558-DG

Criminal Law. Traffic Stop. Drug Dog Sniff. Reasonable, Articulable Suspicion. Issues include whether a police officer had reasonable, articulable suspicion to justify extending a traffic stop for a drug dog sniff when a fellow officer observed the defendant, who was on parole for cocaine trafficking, engaging in possible drug-dealing activity.

Commonwealth v. Lane, 2016-SC-655-DG

Criminal Law. Suppression of Evidence. Dog Sniff. Issues involve evidence discovered with the assistance of a K-9 unit instantaneously after an appropriate traffic stop.

### **DISCRETIONARY REVIEW GRANTED 8/16/17**

Don Hensley V. Keith Gadd and JHT Properties, LLC, 2017-SC-0189-DG

Property. Deed Restrictions. Short-term rental of property. The issue is whether the language of the deed regarding its use as a single-family residence permitted short term rentals of lake property or whether it constituted the operation of a business which violated certain deed restrictions.

Corey M. Jeter V. Commonwealth of Kentucky, 2017-SC-232-DG

Criminal Law. Bond Increase Post-Indictment. Application of Bail Credit. The primary issue is whether the trial court may increase pretrial bond set in district court when only difference in circumstances is that the defendant has been indicted by the grand jury since bond was set.

Big Sandy Company v. EQT Gathering, 2016-SC-561-DG

Contract. Oil Pipeline Easement. Issues include whether the pipeline easement agreement between the parties applies to the portion of the pipeline that EQT constructed before the agreement was signed.

VanHook Enterprises v. Kay & Kay Contracting, 2016-SC-666-DG  
Contract. Quantum Meruit. Unclean Hands. Federal HUBZone Program. Issues include whether a subcontractor who allegedly performed more work than allowed on a bridge construction project governed by the Federal HUBZone Program may recover for the value of that work from the prime contractor under quantum meruit.

Jacobi v. Holbert, 2017-SC-92-DG  
Torts. Legal malpractice. Qualified Immunity. Issues involve whether a public defender is entitled to qualified official immunity from a legal malpractice action as an agent of the Commonwealth.

Department of Revenue v. Sommer, 2017-SC-71-DG  
Open Records. Issues involve the interplay between provisions of the KRS 131 Taxpayer Bill of Rights and Open Records Act exclusion KRS 61.878(1)(l) regarding Department of Revenue rulings not appealed to the Kentucky Board of Tax Appeals.

Commonwealth v. B.H., 2017-SC-155-DG  
Juvenile Law. Competency. Jurisdiction. KRS 635.020(4). Issues involve district court jurisdiction to conduct a competency hearing regarding a 14-year old who allegedly committed murder and first-degree robbery.

**DISCRETIONARY REVIEW GRANTED WITHOUT ORAL ARGUMENT**  
**8/16/17**

C.W. Hoskins Heirs v. Wells, 2017-SC-004-DG  
Real Property. Boundary Dispute. Issues include whether the Hoskins Heirs' surveyor's location of the boundary line contradicts the deeds and should have been rejected by the circuit court.

EQT Production Co. V. Danny Potter and Blue Flame Energy Corporation V. Danny Potter, 2017-SC-0161-DG, 2017-SC-0164-DG  
Property. Deeds. Conveyance of Surface Rights v. Mineral Rights. Summary Judgment. At issue is whether the term "surface" includes

unspecified mineral rights below the surface when only coal, but not oil and gas were specifically excluded in the deed of conveyance.

**DISCRETIONARY REVIEW GRANTED WITHOUT ORAL ARGUMENT**  
**6/8/17 and CROSS MOTION GRANTED WITHOUT ORAL ARGUMENT**  
**8/16/17**

Commonwealth v. Caudill, 2016-SC-544-DG and Caudill v.  
Commonwealth, 2017-SC-288-DG (Cross-Motion)

Criminal Law. Sexual Abuse. Joinder of Offenses. RCr 9.12. RCr 8.31. Issues include whether the trial court abused its discretion by joining for trial two indictments under which the defendant was charged with sexually abusing two unrelated stepdaughters when the abuse of each victim allegedly: (1) occurred when both girls were pre-teens; (2) took place in the defendant's home; (3) involved different types of illicit touching;(4) included offers to pay money for sexually gratifying acts; and (5) happened during two different timeframes that were eight years apart. Issues presented in the cross motion include whether the circuit court correctly refused to strike for cause a juror who was one of the victim's former middle school teachers.