

SUPREME COURT OF KENTUCKY

DECEMBER 18, 2014 MINUTES

RELEASED: 10:00 A.M.

186. ST. JOSEPH CATHOLIC ORPHAN SOCIETY, ET AL. V. HONORABLE BRIAN C. EDWARDS, JUDGE, JEFFERSON CIRCUIT COURT, ET AL. [2013-SC-000803-MR](#) FROM COURT OF APPEALS  
**TO BE PUBLISHED**
- Questions Presented:**  
Ecclesiastical Abstention Doctrine. Appellate Procedure-Denial of an Enlargement of Time. Ecclesiastical Abstention does not divest Kentucky courts of subject matter jurisdiction; it does not render our courts unable to hear types of cases, only specific cases pervaded by religious issues. However, ecclesiastical abstention is applicable in this case where the issue was of internal government of a religious organization.
- OPINION OF THE COURT BY CHIEF JUSTICE MINTON – AFFIRMING DENIAL OF WRIT, REVERSING DENIAL OF MOTION TO DISMISS, AND REMANDING WITH INSTRUCTIONS.**  
ALL SITTING. ALL CONCUR.
187. IN RE: MARGARET MACGLASHAN V. ABS LINGS KY, INC. D/B/A CUMBERLAND HALL HOSPITAL [2014-SC-000098-CL](#) FEDERAL  
**TO BE PUBLISHED**
- Questions Presented:**  
Certification of the Law. A plaintiff who alleges that her employment was wrongfully terminated in violation of KRS 216B.165 may assert a claim for the recovery of front pay, along with other damages she may have sustained, by reason of her discharge.
- OPINION OF THE COURT BY JUSTICE VENTERS – CERTIFYING THE LAW**  
ALL SITTING. ALL CONCUR.
188. MONTRIAL DEMETRIUS JOHNSON V. COMMONWEALTH OF KENTUCKY [2013-SC-000665-MR](#) FAYETTE  
**TO BE PUBLISHED**
- Questions Presented:**  
Criminal Procedure. Where this Court had reversed one of defendant’s multiple convictions, upon remand the trial court was bound by this Court’s mandate and the defendant was not entitled to a new penalty phase on the affirmed convictions.
- OPINION OF THE COURT BY JUSTICE NOBLE – DISMISSING APPEAL**  
ALL SITTING. ALL CONCUR.

SUPREME COURT OF KENTUCKY

DECEMBER 18, 2014 MINUTES

RELEASED: 10:00 A.M.

189. ANTONIO JOHNSON V. COMMONWEALTH OF KENTUCKY  
**OPINION OF THE COURT BY JUSTICE VENTERS – VACATING AND REMANDING**  
MINTON, C.J., ABRAMSON, KELLER, NOBLE AND SCOTT, JJ., CONCUR. CUNNINGHAM, J., DISSENTS BY SEPARATE OPINION.
- [2013-SC-000209-MR](#) CHRISTIAN  
**TO BE PUBLISHED**

**Questions Presented:**  
Third-degree terroristic threatening, possession of a handgun by a felon, possession of a defaced firearm, and PFO 1 – 20 years. *Batson* violation was structural error requiring conviction and sentence to be vacated and case remanded for retrial. No violation of the 180-day Speedy Trial provision contained in the Interstate Agreement on Detainers (IAD), KRS 440.450-KRS 440.510.

190. IRA BRANHAM, ETC., ET AL. V. TROY C. ROCK, M.D., ET AL.  
**OPINION OF THE COURT BY JUSTICE KELLER – AFFIRMING**  
ALL SITTING. MINTON, C.J.; ABRAMSON, CUNNINGHAM AND NOBLE, JJ., CONCUR. VENTERS, J., CONCURS IN RESULT ONLY BY SEPARATE OPINION IN WHICH SCOTT, J., JOINS.
- [2012-SC-000707-DG](#) FAYETTE  
**TO BE PUBLISHED**

**Questions Presented:**  
Negligence. Medical Malpractice. Jury Instructions. Issues include the proper jury instructions in a case where the doctors' failure to diagnose the patient's injuries lead to the patient's death.

SUPREME COURT OF KENTUCKY

DECEMBER 18, 2014 MINUTES

RELEASED: 10:00 A.M.

191. CARL SPEARS V. COMMONWEALTH OF KENTUCKY  
**OPINION OF THE COURT BY JUSTICE VENTERS – AFFIRMING**  
ALL SITTING. ALL CONCUR.
- [2013-SC-000140-MR](#) CUMBERLAND  
**TO BE PUBLISHED**

**Questions Presented:**  
Two counts of murder-Life without the possibility of parole. Trial court did not err in denying a motion for mistrial where a state police detective’s testimony, that the defendant was not interviewed because he had asked for an attorney, was harmless error. Defendant’s forensic expert witness was properly not permitted to sit with defense counsel during the testimony of the Commonwealth’s expert witness. KRE 615. Where there was no legally sufficient triggering event demonstrated by the defendant, the jury was not to be instructed on first-degree manslaughter based upon extreme emotional disturbance. Deviation from the capital sentencing protocols, KRS 532.025(3), did not entitle the defendant to a new penalty phase trial.

192. MARTIN COUNTY COAL CO./ PILGRIM MINING CO. V. WILLIAM GOBLE; HON. DOUGLAS WAYNE GOTT, ADMINISTRATIVE LAW JUDGE; AND WORKERS’ COMPENSATION BOARD  
**OPINION OF THE COURT BY JUSTICE KELLER – AFFIRMING**  
ALL SITTING. ALL CONCUR.
- [2013-SC-000230-WC](#) FROM COURT  
**TO BE PUBLISHED** OF APPEALS

**Questions Presented:**  
Workers Compensation. The Administrative Law Judge did not abuse her discretion in finding that the worker had a permanent psychological impairment rating.

SUPREME COURT OF KENTUCKY

DECEMBER 18, 2014 MINUTES

RELEASED: 10:00 A.M.

193. INVERULTRA, S.A. V.  
HONORABLE STEVEN A. WILSON,  
JUDGE, WARREN CIRCUIT COURT,  
ET AL.  
**OPINION OF THE COURT BY  
JUSTICE ABRAMSON –  
AFFIRMING**  
ALL SITTING. MINTON, C.J; KELLER,  
AND NOBLE, JJ., CONCUR.  
VENTERS, J., DISSENTS BY  
SEPARATE OPINION IN WHICH  
CUNNINGHAM AND SCOTT, JJ.,  
JOINS.

[2013-SC-000345-MR](#)  
**TO BE PUBLISHED**

FROM COURT  
OF APPEALS

**Questions Presented:**  
CR 81. Judgment Creditors-KRS 426.381.  
Discovery. Denial of writ to lift protective  
order. Adequacy of appeal.

194. AARON BASHAM V.  
COMMONWEALTH OF KENTUCKY  
**OPINION OF THE COURT BY  
JUSTICE NOBLE –  
AFFIRMING**  
ALL SITTING. MINTON, C.J.,  
ABRAMSON, KELLER, SCOTT  
AND VENTERS, JJ., CONCUR.  
CUNNINGHAM, J., DISSENTS BY  
SEPARATE OPINION.

[2013-SC-000588-MR](#)  
**TO BE PUBLISHED**

JEFFERSON

**Questions Presented:**  
First-degree rape, first-degree sexual abuse  
and PFO 1- Life without possibility of  
probation or parole for 25 years. Offer of  
proof that minor victim had been exposed to  
sexually explicit material on the internet failed  
to demonstrate that she was exposed to a  
prior source of knowledge about the specific  
sex acts charged and therefore, was not  
probative, relevant or admissible. Trial court  
did not abuse its discretion by striking juror for  
cause who had previously served in a criminal  
case and expressed frustration and  
uncertainty over the penalty process.

195. SAMUEL CRABTREE V.  
COMMONWEALTH OF KENTUCKY  
**OPINION OF THE COURT BY  
JUSTICE NOBLE –  
AFFIRMING IN PART AND  
REVERSING IN PART**  
ALL SITTING. ALL CONCUR.

[2012-SC-000591-DG](#)  
**TO BE PUBLISHED**

MADISON

**Questions Presented:**  
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.

SUPREME COURT OF KENTUCKY

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RELEASED: 10:00 A.M.

196. JOSEPH E. TOLER V. [2013-SC-000002-DG](#) JEFFERSON  
SUD-CHEMIE, INC., ET AL. **TO BE PUBLISHED**  
**AND**  
SUD-CHEMIE, INC. V. [2013-SC-000007-DG](#) JEFFERSON  
JOSEPH E. TOLER **TO BE PUBLISHED**  
**OPINION OF THE COURT BY**  
**CHIEF JUSTICE MINTON –**  
**AFFIRMING IN PART AND REVERSING**  
**IN PART**  
ALL SITTING. ALL CONCUR.

**Questions Presented:**  
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.

197. ROSS BRANDON SLUSS V. [2011-SC-000318-MR](#) MARTIN  
COMMONWEALTH OF KENTUCKY **TO BE PUBLISHED**  
**AND**  
ROSS BRANDON SLUSS V. [2013-SC-000258-MR](#) MARTIN  
COMMONWEALTH OF KENTUCKY **TO BE PUBLISHED**  
**OPINION OF THE COURT BY**  
**JUSTICE CUNNINGHAM –**  
**REVERSING**  
ALL SITTING. ALL CONCUR.

**Questions Presented:**  
Murder, fourth-degree assault, driving under the influence of intoxicants and tampering with physical evidence-Life sentence. Abuse of discretion not to strike a juror for cause who had three associations with the case.

198. COMMONWEALTH OF KENTUCKY V. [2013-SC-000004-DG](#) PULASKI  
JOSEPH ANDREWS **TO BE PUBLISHED**  
**OPINION OF THE COURT BY**  
**JUSTICE ABRAMSON –**  
**REVERSING**  
ALL SITTING. ALL CONCUR.

**Questions Presented:**  
Criminal Law. Probation Revocation. Public Safety and Offender Accountability Act (HB 463). KRS 439.3106. Issues include whether the trial court must find that the elements of KRS 439.3106 are met before revoking a defendant's probation.

SUPREME COURT OF KENTUCKY

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199. YOUR COMMUNITY BANK, INC. V. [2013-SC-000234-DG](#) NELSON  
WOODLAWN SPRINGS  
HOMEOWNERS ASSOCIATION, INC. **TO BE PUBLISHED**  
**OPINION OF THE COURT BY**  
**JUSTICE CUNNINGHAM –**  
**REVERSING**  
ALL SITTING. ALL CONCUR.

**Questions Presented:**  
Contract. Real Property. Restrictive Covenants. Issues include whether the bank succeeded to the original developer's rights when it acquired the property from the developer's estate via deed in lieu of foreclosure and obtained an express assignment of the developer's rights from the estate.

200. JEFFREY T. PEARCE V. [2011-SC-000756-DG](#) JEFFERSON  
UNIVERSITY OF LOUISVILLE, BY  
AND THROUGH ITS BOARD OF  
TRUSTEES  
**AND**  
STEPHEN DERRICK HILL V. [2012-SC-000104-DG](#) BULLITT  
CITY OF MT. WASHINGTON  
**OPINION OF THE COURT BY**  
**JUSTICE VENTERS –**  
**REVERSING AND REMANDING**  
NOBLE AND SCOTT, JJ., CONCUR.  
KELLER, J., CONCURS BY SEPARATE  
OPINION. MINTON, C.J., DISSENTS  
BY SEPARATE OPINION IN WHICH  
ABRAMSON AND CUNNINGHAM, JJ.,  
JOIN.

**Questions Presented:**  
**Police Officer Bill of Rights. KRS 15.520. Do the statutory due process protections provided by KRS 15.520 apply generally to police disciplinary proceedings or only if such proceedings are commenced after citizens register complaints?**

SUPREME COURT OF KENTUCKY

DECEMBER 18, 2014 MINUTES

RELEASED: 10:00 A.M.

201. US BANK HOME MORTGAGE V. ANDREA SCHRECKER, HONORABLE J. LANDON OVERFIELD, ADMINISTRATIVE LAW JUDGE; AND WORKERS' COMPENSATION BOARD  
**OPINION OF THE COURT BY JUSTICE KELLER – REVERSING AND REMANDING**  
ALL SITTING. MINTON, C.J., ABRAMSON, NOBLE AND VENTERS, JJ., CONCUR. SCOTT, J., DISSENTS BY SEPARATE OPINION IN WHICH CUNNINGHAM, J., JOINS.
- [2012-SC-000665-WC](#) FROM COURT OF APPEALS  
**TO BE PUBLISHED**
- Questions Presented:**  
Workers' Compensation. Personal Comfort Doctrine. Is a worker's injury which occurred off of the premises of her employer compensable if it happened during a paid break, even though the worker was not acting at the bequest of the employer?
202. OLIVIA JOHNSON V. COMMONWEALTH OF KENTUCKY  
**OPINION OF THE COURT – REVERSING AND REMANDING**  
ALL SITTING. MINTON, C.J., ABRAMSON, KELLER, SCOTT, JJ., CONCUR. CUNNINGHAM, J., CONCURS BY SEPARATE OPINION IN WHICH VENTERS, J., JOINS. NOBLE, J., CONCURS BY SEPARATE OPINION.
- [2013-SC-000383-DG](#) JEFFERSON  
**TO BE PUBLISHED**
- Questions Presented:**  
Criminal Law. Mens Rea. Issues include whether a defendant can be held guilty of violating a city ordinance regarding dangerous dogs even though the defendant was not present when the violation occurred.
203. SAMUEL STEVEN FIELDS V. COMMONWEALTH OF KENTUCKY  
**MEMORANDUM OPINION OF THE COURT – AFFIRMING**  
MINTON, C.J.; ABRAMSON, CUNNINGHAM, KELLER, NOBLE AND VENTERS, JJ., SITTING. ALL CONCUR. SCOTT, J., NOT SITTING.
- [2013-SC-000231-TG](#) FLOYD  
**NOT TO BE PUBLISHED**

**SUPREME COURT OF KENTUCKY**

**DECEMBER 18, 2014 MINUTES**

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

204. HOPE RENEE WHITE V. [2013-SC-000321-MR](#) WAYNE  
COMMONWEALTH OF KENTUCKY **NOT TO BE PUBLISHED**  
**MEMORANDUM OPINION OF**  
**THE COURT – AFFIRMING**  
ALL SITTING. MINTON, C.J.;  
ABRAMSON, CUNNINGHAM,  
KELLER, NOBLE AND VENTERS,  
JJ., CONCUR. SCOTT, J., CONCURS  
IN PART AND DISSENTS IN PART BY  
SEPARATE OPINION.
205. TROY WADE V. [2013-SC-000410-MR](#) MEADE  
COMMONWEALTH OF KENTUCKY **NOT TO BE PUBLISHED**  
**MEMORANDUM OPINION OF**  
**THE COURT – AFFIRMING**  
ALL SITTING. ALL CONCUR.
206. ANTONIO ELLISON V. [2013-SC-000518-MR](#) JEFFERSON  
COMMONWEALTH OF KENTUCKY **NOT TO BE PUBLISHED**  
**MEMORANDUM OPINION OF**  
**THE COURT – AFFIRMING**  
ALL SITTING. MINTON, C.J.;  
CUNNINGHAM, KELLER, NOBLE,  
SCOTT AND VENTERS, JJ., CONCUR.  
ABRAMSON, J., CONCURS IN RESULT  
ONLY.
207. STELLA KAVANAUGH V. [2013-SC-000543-WC](#) FROM COURT  
JEFFERSON COUNTY BOARD OF **NOT TO BE PUBLISHED** OF APPEALS  
EDUCATION; HONORABLE JOHN  
COLEMAN, ADMINISTRATIVE LAW  
JUDGE; AND WORKERS'  
COMPENSATION BOARD  
**MEMORANDUM OPINION OF**  
**THE COURT – AFFIRMING**  
ALL SITTING. MINTON, C.J.,  
ABRAMSON, NOBLE AND VENTERS,  
JJ., CONCUR. SCOTT, J., CONCURS  
IN PART AND DISSENTS IN PART BY  
SEPARATE OPINION IN WHICH  
CUNNINGHAM AND KELLER, JJ., JOIN.



**SUPREME COURT OF KENTUCKY**

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208. CHARLES STANFILL V. [2013-SC-000678-MR](#) CALLOWAY  
COMMONWEALTH OF KENTUCKY **NOT TO BE PUBLISHED**  
**MEMORANDUM OPINION OF**  
**THE COURT – AFFIRMING**  
ALL SITTING. ALL CONCUR.
209. DANIEL C. STOVALL V. [2013-SC-000788-MR](#) BOYLE  
COMMONWEALTH OF KENTUCKY **NOT TO BE PUBLISHED**  
**MEMORANDUM OPINION OF**  
**THE COURT – AFFIRMING**  
ALL SITTING. ALL CONCUR.
210. MELVIN K. DRURY, INDIVIDUALLY, [2013-SC-000815-MR](#) FROM COURT  
ET AL. V. **NOT TO BE PUBLISHED** OF APPEALS  
HONORABLE PAUL ISAACS, JUDGE,  
WOODFORD CIRCUIT COURT, ET AL.  
**MEMORANDUM OPINION OF THE**  
**COURT – AFFIRMING**  
ALL SITTING. ALL CONCUR.
211. CONSOL ENERGY, INC. V. [2014-SC-000012-MR](#) FROM COURT  
HONORABLE KIMBERLEY CHILDERS, **NOT TO BE PUBLISHED** OF APPEALS  
JUDGE, KNOTT CIRCUIT COURT, ET  
AL.  
**MEMORANDUM OPINION OF THE**  
**COURT – AFFIRMING**  
ALL SITTING. ALL CONCUR.
212. DONALD EALY V. [2014-SC-000031-WC](#) FROM COURT  
RC TRUCKING, INC., HONORABLE **NOT TO BE PUBLISHED** OF APPEALS  
J. LANDON OVERFIELD, CHIEF  
ADMINISTRATIVE LAW JUDGE; AND  
WORKERS' COMPENSATION BOARD  
**MEMORANDUM OPINION OF THE**  
**COURT - AFFIRMING**  
ALL SITTING. ALL CONCUR.

SUPREME COURT OF KENTUCKY

DECEMBER 18, 2014 MINUTES

RELEASED: 10:00 A.M.

213. RANDY DEAL V. [2014-SC-000102-WC](#) FROM COURT  
GUNTHER NASH MINING **NOT TO BE PUBLISHED** OF APPEALS  
CONSTRUCTION COMPANY; SPECIAL  
FUND; HONORABLE J. LANDON  
OVERFIELD, CHIEF ADMINISTRATIVE  
LAW JUDGE; AND WORKERS'  
COMPENSATION BOARD  
**MEMORANDUM OPINION OF THE  
COURT - AFFIRMING**  
ALL SITTING. ALL CONCUR.
214. KUHLMAN ELECTRIC CORP. V. [2014-SC-000189-WC](#) FROM COURT  
REX CUNIGAN; HONORABLE **NOT TO BE PUBLISHED** OF APPEALS  
CHRIS DAVIS, ADMINISTRATIVE LAW  
JUDGE; JOSEPH W. JUSTICE; AND  
WORKERS' COMPENSATION BOARD  
**MEMORANDUM OPINION OF THE  
COURT - AFFIRMING**  
ALL SITTING. MINTON, C.J.;  
ABRAMSON, CUNNINGHAM, NOBLE,  
KELLER, AND SCOTT, JJ., CONCUR.  
VENTERS, J., DISSENTS.
215. ST. ELIZABETH HEALTHCARE V. [2014-SC-000019-WC](#) FROM COURT  
WILLIAM GENTER, HONORABLE **NOT TO BE PUBLISHED** OF APPEALS  
WILLIAM J. RUDLOFF,  
ADMINISTRATIVE LAW JUDGE; AND  
WORKERS' COMPENSATION BOARD  
**MEMORANDUM OPINION OF THE  
COURT - AFFIRMING IN PART AND  
REVERSING IN PART**  
ALL SITTING. ALL CONCUR.

SUPREME COURT OF KENTUCKY

DECEMBER 18, 2014 MINUTES

RELEASED: 10:00 A.M.

216. HELENA WEATHERSPOON V. [2012-SC-000432-MR](#) HICKMAN  
COMMONWEALTH OF KENTUCKY **NOT TO BE PUBLISHED**  
**MEMORANDUM OPINION OF THE  
COURT – AFFIRMING IN PART AND  
REVERSING AND VACATING IN PART**  
ALL SITTING. ABRAMSON, CUNNINGHAM,  
NOBLE, SCOTT AND VENTERS, JJ.,  
CONCUR. KELLER, J., DISSENTS BY  
SEPARATE OPINION IN WHICH MINTON,  
C.J., JOINS.
217. JOHNNY WILDER V. [2014-SC-000085-WC](#) FROM COURT  
ENTERPRISE MINING, HONORABLE **NOT TO BE PUBLISHED** OF APPEALS  
WILLIAM J. RUDLOFF,  
ADMINISTRATIVE LAW; AND  
WORKERS' COMPENSATION BOARD  
**MEMORANDUM OPINION OF THE  
COURT - REVERSING**  
ALL SITTING. ALL CONCUR.
218. ANTHONY BENJAMIN MOORE V. [2013-SC-000385-MR](#) FAYETTE  
COMMONWEALTH OF KENTUCKY **NOT TO BE PUBLISHED**  
**MEMORANDUM OPINION OF  
THE COURT – REVERSING IN PART,  
AFFIRMING IN PART AND REMANDING**  
ALL SITTING. ALL CONCUR.

**OPINION AND ORDERS – DECEMBER 10, 2014**

MARIAN MUCKER V. 2013-SC-000443-DG JEFFERSON  
EULENE BROWN  
**ORDER GRANTED DISCRETIONARY REVIEW,  
VACATED THE COURT OF APPEALS DECISION  
AND REMANDED TO THE COURT OF APPEALS  
FOR FURTHER CONSIDERATION OF  
MARSON V. THOMASON, 438 S.W.3D 292  
(KY. 2014).**  
ALL SITTING. ALL CONCUR, EXCEPT SCOTT, J.,  
WOULD GRANT DISCRETIONARY REVIEW AND  
HEAR ORAL ARGUMENT.

SUPREME COURT OF KENTUCKY

DECEMBER 18, 2014 MINUTES

RELEASED: 10:00 A.M.

**OPINION AND ORDERS – DECEMBER 10, 2014**

KIM RASCHE V. 2014-SC-000132-DG JEFFERSON  
DR. SHELDON H. BERMAN, ET AL.  
**ORDER GRANTED DISCRETIONARY REVIEW,  
VACATED THE COURT OF APPEALS DECISION  
AND REMANDED TO THE COURT OF APPEALS  
FOR FURTHER CONSIDERATION OF  
MARSON V. THOMASON, 438 S.W.3D 292  
(KY. 2014).**  
ALL SITTING. ALL CONCUR, EXCEPT SCOTT, J.,  
WOULD GRANT DISCRETIONARY REVIEW AND  
HEAR ORAL ARGUMENT.

**OPINION AND ORDERS – DECEMBER 18, 2014**

KENTUCKY BAR ASSOCIATION V. [2013-SC-000689-KB](#) IN SUPREME  
RUSSELL W. BURGIN **TO BE PUBLISHED** COURT  
**ORDER OF PROBATION REVOKED AND  
SUSPENSION FOR REMAINING 30 DAYS.**  
ALL SITTING. ALL CONCUR.

KENTUCKY BAR ASSOCIATION V. [2014-SC-000400-KB](#) IN SUPREME  
BRIAN PATRICK CURTIS **TO BE PUBLISHED** COURT  
**ORDER OF SUSPENSION FROM THE  
PRACTICE OF LAW FOR 1 YEAR.**  
ALL SITTING. ALL CONCUR.

KENTUCKY BAR ASSOCIATION V. [2014-SC-000480-KB](#) IN SUPREME  
RUSSELL W. BURGIN **TO BE PUBLISHED** COURT  
**ORDER OF SUSPENSION FROM THE  
PRACTICE OF LAW FOR 181 DAYS.**  
ALL SITTING. ALL CONCUR.

KENTUCKY BAR ASSOCIATION V. [2014-SC-000482-KB](#) IN SUPREME  
D. STEVEN PARKS **TO BE PUBLISHED** COURT  
**ORDER OF SUSPENSION FROM THE  
PRACTICE OF LAW FOR 30 DAYS.**  
ALL SITTING. ALL CONCUR.

**SUPREME COURT OF KENTUCKY**

**DECEMBER 18, 2014 MINUTES**

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

**OPINION AND ORDERS – DECEMBER 18, 2014**

KENTUCKY BAR ASSOCIATION V.  
JOHN SCOTT BENTON  
**ORDER OF INDEFINITE SUSPENSION.**  
ALL SITTING. ALL CONCUR.

[2014-SC-000498-KB](#)  
**TO BE PUBLISHED**

IN SUPREME  
COURT

KENTUCKY BAR ASSOCIATION V.  
DANIEL EDWARD PRIDEMORE  
**ORDER OF SUSPENSION FROM THE  
PRACTICE OF LAW FOR 181 DAYS.**  
ALL SITTING. ALL CONCUR.

[2014-SC-000559-KB](#)  
**TO BE PUBLISHED**

IN SUPREME  
COURT

**COURT ORDERS GRANTING MOTION FOR DISCRETIONARY REVIEW –  
DECEMBER 10, 2014**

LARRY PENIX V.  
BARBARA DELONG

2014-SC-000083-DG

MARTIN

JANET OWEN V.  
UNIVERSITY OF KENTUCKY

2014-SC-000137-DG

FAYETTE

COMMONWEALTH OF KENTUCKY V.  
JOE TAYLOR

2014-SC-000211-DG

FULTON

JONATHAN MCDANIEL V.  
COMMONWEALTH OF KENTUCKY

2014-SC-000241-DG

CALLOWAY

DAVID DESHIELDS V.  
COMMONWEALTH OF KENTUCKY

2014-SC-000242-DG

MCCRACKEN

JOHN C. MARTIN V.  
COMMONWEALTH OF KENTUCKY

2014-SC-000243-DG

ANDERSON

COMMONWEALTH OF KENTUCKY V.  
DOUGLAS RANK

2014-SC-000266-DG

KENTON

SUPREME COURT OF KENTUCKY

DECEMBER 18, 2014 MINUTES

RELEASED: 10:00 A.M.

**COURT ORDERS GRANTING MOTION FOR DISCRETIONARY REVIEW –  
DECEMBER 10, 2014**

ANTHONY MALONEY V. 2014-SC-000339-DG MONTGOMERY  
COMMONWEALTH OF KENTUCKY

LYDIA ADDISON V. 2014-SC-000582-DGE HARDIN  
KEVIN ADDISON

**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW –  
DECEMBER 10, 2014**

JOSHUA CROMER V. 2011-SC-000560-D FAYETTE  
COMMONWEALTH OF KENTUCKY  
**THE OPINION OF THE COURT OF APPEALS  
IS ORDERED NOT TO BE PUBLISHED.**  
KELLER, J., NOT SITTING.

STEVE GERALD V. 2011-SC-000632-D JEFFERSON  
COMMONWEALTH OF KENTUCKY  
**THE OPINION OF THE COURT OF APPEALS  
IS ORDERED NOT TO BE PUBLISHED.**

KENNETH R. CAMPBELL V. 2014-SC-000040-D BRECKINRIDGE  
LADONNA THOMPSON, COMMISSIONER, ETC.

ROBERT W. MCKINNEY V. 2014-SC-000044-D JEFFERSON  
COMMONWEALTH OF KENTUCKY

CONNIE WRIGHT V. 2014-SC-000081-D JOHNSON  
JAMES A. BROWN ENTERPRISES, LLC, ETC.,  
ET AL.

DAVID WATKINS V. 2014-SC-000114-D BELL  
WALTER MULLINS, ET AL.

COREY JACKSON V. 2014-SC-000115-D FAYETTE  
COMMONWEALTH OF KENTUCKY  
**CUNNINGHAM AND SCOTT, JJ., WOULD  
GRANT.**

WILLIS L. WILSON V. 2014-SC-000120-D FAYETTE  
LOGAN ASKEW, ET AL.

**SUPREME COURT OF KENTUCKY**

**DECEMBER 18, 2014 MINUTES**

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

**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW –  
DECEMBER 10, 2014**

JAZETTE ENTERPRISES LIMITED, ETC. V. COMMONWEALTH OF KENTUCKY EX REL. J. MICHAEL BROWN, SECRETARY, ETC.	2014-SC-000135-D	FRANKLIN
NATIONWIDE AGRIBUSINESS INSURANCE V. KELLY MCCALLISTER, ET AL.	2014-SC-000142-D	MCCRACKEN
COMMONWEALTH CABINET FOR HEALTH & FAMILY SERVICES V. PERRY PUCKETT, ET AL.	2014-SC-000145-D	FRANKLIN
DANEL TAWAN MATHIS V. COMMONWEALTH OF KENTUCKY <b>ABRAMSON, J., NOT SITTING.</b>	2014-SC-000146-D	JEFFERSON
EVELYNE GOZAL V. UNIVERSITY OF LOUISVILLE SCHOOL OF MEDICINE	2014-SC-000147-D	JEFFERSON
SHARRON ELSEA, ET AL. V. FRED DAY, ET AL.	2014-SC-000162-D	PERRY
VERONICA MORGAN V. HAMPTON FARMS APARTMENT	2014-SC-000180-D	CAMPBELL
THERON COSBY V. COMMONWEALTH OF KENTUCKY	2014-SC-000204-D	HENDERSON
CITY OF PROVIDENCE, KENTUCKY V. THE OHIO CASUALTY INSURANCE COMPANY <b>THE OPINION OF THE COURT OF APPEALS IS ORDERED NOT TO BE PUBLISHED.</b>	2014-SC-000216-D	WEBSTER
KELLY JEAN WINKLE V. COMMONWEALTH OF KENTUCKY <b>THE OPINION OF THE COURT OF APPEALS IS ORDERED NOT TO BE PUBLISHED.</b>	2014-SC-000231-D	HARDIN

**SUPREME COURT OF KENTUCKY**

**DECEMBER 18, 2014 MINUTES**

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

**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW –  
DECEMBER 10, 2014**

DEBORAH RUSSELL V. CITY OF OWENSBORO <b>CUNNINGHAM AND VENTERS, JJ., WOULD GRANT.</b>	2014-SC-000252-D	DAVISS
CAROL PLUMMER, INDIVIDUALLY, ETC., ET AL. V. WILLIAM LAKE, INDIVIDUALLY, ETC., ET AL.	2014-SC-000260-D	GARRARD
CHRISTOPHER PAUL SMITH V. COMMONWEALTH OF KENTUCKY	2014-SC-000262-D	HARLAN
ELBERT STEVE ILES, ET AL. V. BAC HOME LOAN SERVICING	2014-SC-000263-D	CAMPBELL
WAYNE MICHAEL PUTNAM, ET AL. V. MARY MARGARET PHELPS, ET AL.	2014-SC-000269-D	FAYETTE
SONDRA DAVIDSON V. CHRISTOPHER KING	2014-SC-000272-D	PULASKI
GEORGE DAY V. CITY OF HENDERSON, ET AL.	2014-SC-000292-D	HENDERSON
EVERETT PATTON, ET AL. V. LONNIE STAMPER, ET AL.	2014-SC-000304-D	CARTER
DAVID NICHOLS V. COMMONWEALTH OF KENTUCKY	2014-SC-000314-D	MARION
THOMAS ARMISTEAD V. WILLIAM J. GRIDER	2014-SC-000325-D	JEFFERSON
JON POLK V. COLONIAL PACIFIC LEASING CORPORATION	2014-SC-000327-D	MARSHALL
GERALD GIBBINS V. COMMONWEALTH OF KENTUCKY	2014-SC-000364-D	WHITLEY



SUPREME COURT OF KENTUCKY

DECEMBER 18, 2014 MINUTES

RELEASED: 10:00 A.M.

**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW –  
DECEMBER 10, 2014**

TERRY WILLIAMS V. RALPH WILLIAM TURNER (EXECUTOR OF THE ESTATE OF EVELYN TURNER), ET AL. <b>THE OPINION OF THE COURT OF APPEALS IS ORDERED NOT TO BE PUBLISHED.</b>	2014-SC-000372-D	HARLAN
COMMONWEALTH OF KENTUCKY V. MICHAEL JACKSON	2014-SC-000384-D	FULTON
MITCHELL JACKSON V. COMMONWEALTH OF KENTUCKY	2014-SC-000393-D	JEFFERSON
SIDNEY JACKSON, JR. V. COMMONWEALTH OF KENTUCKY	2014-SC-000453-D	CHRISTIAN
MARVIN BAKER, JR. V. ANDREA PALMER	2014-SC-000455-DE	SCOTT
GREGORY WAYNE CHIPMAN V. DON BOTTOM, WARDEN, NORTHPOINT TRAINING CENTER	2014-SC-000461-D	BOYLE
FRANCIS GERARD PAYNE V. DON BOTTOM, WARDEN, NORTHPOINT TRAINING CENTER	2014-SC-000463-D	BOYLE
DORIS B. KILGORE, ET AL. V. GWENDA STANTON, ET AL. <b>CUNNINGHAM, J., NOT SITTING.</b>	2014-SC-000487-DE	LYON
BRANDON FORD V. COMMONWEALTH OF KENTUCKY	2014-SC-000510-D	CAMPBELL
J. T. B., SR. V. CABINET FOR HEALTH AND FAMILY SERVICES, ET AL.	2014-SC-000575-DE	FAYETTE

**SUPREME COURT OF KENTUCKY**

**DECEMBER 18, 2014 MINUTES**

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

**COURT ORDERS DENYING BELATED MOTION FOR ENLARGEMENT OF TIME TO FILE  
MOTION FOR DISCRETIONARY REVIEW**

KIT PRESCOTT V. 2014-SC-000359-D HARDIN  
COMMONWEALTH OF KENTUCKY  
**MINTON, CJ., KELLER, NOBLE AND SCOTT,  
JJ., SITTING. ALL CONCUR. CUNNINGHAM,  
JJ., SITTING.**  
ENTERED: OCTOBER 23, 2014

THERESA GERSTLE V. 2014-SC-000647-D JEFFERSON  
HOLLY HOUSE CONDOMINIUM HOMES, INC.  
**KELLER, NOBLE, SCOTT AND VENTERS,  
JJ., SITTING. ALL CONCUR.**  
ENTERED: DECEMBER 15, 2014

**COURT ORDERS GRANTING MOTION TO TRANSFER – DECEMBER 11, 2014**

TIMOTHY BRITTON V. 2014-SC-000659-T HOPKINS  
COMMONWEALTH OF KENTUCKY  
**ENTERED: DECEMBER 11, 2014**

SUPREME COURT OF KENTUCKY

DECEMBER 18, 2014 MINUTES

RELEASED: 10:00 A.M.

**COURT ORDERS DENYING PETITION FOR REHEARING – DECEMBER 18, 2014**

VIRGINIA GAITHER  
(ADMINISTRATRIX AND PERSONAL  
REPRESENTATIVE OF THE ESTATE  
OF LEBRON GAITHER, DECEASED) V.  
JUSTICE & PUBLIC SAFETY CABINET,  
COMMONWEALTH OF KENTUCKY,  
DEPARTMENT OF KENTUCKY STATE  
POLICE, AND BOARD OF CLAIMS

2012-SC-000324-DG

FRANKLIN

**AND**

JUSTICE & PUBLIC SAFETY CABINET,  
COMMONWEALTH OF KENTUCKY; AND  
DEPARTMENT OF KENTUCKY  
STATE POLICE V.

2012-SC-000835-DG

FRANKLIN

VIRGINIA GAITHER  
(ADMINISTRATRIX AND PERSONAL  
REPRESENTATIVE OF THE ESTATE  
OF LEBRON GAITHER, DECEASED)  
AND KENTUCKY BOARD OF CLAIMS,  
COMMONWEALTH OF KENTUCKY  
**ORDER DENIED PETITION FOR  
REHEARING.**

MINTON, C.J., ABRAMSON,  
CUNNINGHAM, NOBLE, SCOTT AND  
VENTERS, JJ., CONCUR. KELLER, J.,  
NOT SITTING.

PHILLIP TIBBS, M.D. ET AL. V.  
HONORABLE KIMBERLY N.  
BUNNELL (JUDGE, FAYETTE  
CIRCUIT COURT) AND ESTATE OF  
LUVETTA GOFF, ET AL.

2012-SC-000603-MR

FROM COURT  
OF APPEALS

**ORDER DENIED PETITION FOR  
REHEARING.**

CUNNINGHAM, SCOTT AND VENTERS, JJ.,  
WOULD NOT GRANT REHEARING. MINTON,  
C.J., ABRAMSON AND NOBLE, JJ., WOULD  
GRANT REHEARING. KELLER, J.,  
NOT SITTING.

SUPREME COURT OF KENTUCKY

DECEMBER 18, 2014 MINUTES

RELEASED: 10:00 A.M.

**COURT ORDERS DENYING PETITION FOR REHEARING – DECEMBER 18, 2014**

VIRGIN MOBILE U.S.A., L. P. V. COMMONWEALTH OF KENTUCKY ON BEHALF OF COMMERCIAL MOBILE RADIO SERVICE TELECOMMUNICATIONS BOARD <b>AND</b> COMMONWEALTH OF KENTUCKY ON BEHALF OF COMMERCIAL MOBILE RADIO SERVICE TELECOMMUNICATIONS BOARD V. VIRGIN MOBILE U.S.A., LP <b>ORDER DENIED APPELLANT'S PETITION FOR REHEARING AND MODIFIED THE OPINION OF THE COURT RENDERED AUGUST 21, 2014 BY SUBSTITUTION OF THE ENTIRE OPINION IN LIEU OF THE ORIGINAL. ALL SITTING. ALL CONCUR.</b>	<a href="#">2012-SC-000621-DG</a> <b>TO BE PUBLISHED</b>	JEFFERSON
	<a href="#">2012-SC-000626-DG</a> <b>TO BE PUBLISHED</b>	JEFFERSON

**COURT ORDERS DISMISSING**

KAREN DEAN, ET AL. V. BILLY HUMPHREY, ET AL. <b>CUNNINGHAM, KELLER, NOBLE AND SCOTT, JJ., SITTING. ALL CONCUR.</b> ENTERED: OCTOBER 22, 2014	2012-SC-000831-DG	MERCER
R. EDWARD MCGHEE, ET AL. V. HON. ERNESTO SCORSONE, JUDGE, FAYETTE CIRCUIT COURT, ET AL. <b>ENTERED: DECEMBER 18, 2014</b>	2013-SC-000724-MR	FROM COURT OF APPEALS
PEGGY NEAL, INDIVIDUALLY, AND AS CO-EXECUTOR OF THE ESTATE OF MAMIE L. STRUNK, DECEASED, ET AL. V. ESTATE OF MAMIE L. STRUNK, ET AL. <b>CUNNINGHAM, KELLER, NOBLE AND SCOTT, JJ., SITTING. ALL CONCUR.</b> ENTERED: OCTOBER 22, 2014	2014-SC-000017-D	MCCREARY

SUPREME COURT OF KENTUCKY

DECEMBER 18, 2014 MINUTES

RELEASED: 10:00 A.M.

**COURT ORDERS DISMISSING**

KENTUCKY SPIRIT HEALTH PLAN, ET AL. V. PREMIERTOX, INC., ET AL. <b>CUNNINGHAM, KELLER, NOBLE AND SCOTT, JJ., SITTING. ALL CONCUR.</b> ENTERED: OCTOBER 22, 2014	2014-SC-000079-D	RUSSELL
JOHN D. SANDLIN V. HONORABALE VERNON MINIARD JR., CIRCUIT JUDGE, RUSSELL CIRCUIT COURT, ET AL. <b>CUNNINGHAM, KELLER, NOBLE AND SCOTT, JJ., SITTING. ALL CONCUR.</b> ENTERED: OCTOBER 22, 2014	2014-SC-000322-MR	RUSSELL
SAEID SHAFIZADEH V. DENISE SHAFIZADEH <b>ENTERED: OCTOBER 20, 2014</b>	2014-SC-000434-D	JEFFERSON
MLP RESTAURANT, INC., D/B/A PEKING HIBACHI V. HON. STEVEN D. COMBS, JUDGE, PIKE CIRCUIT COURT, ET AL. <b>KELLER, NOBLE, SCOTT AND VENTERS, JJ., SITTING. ALL CONCUR.</b> ENTERED: DECEMBER 15, 2014	2014-SC-0000441-MR	PIKE
EXTENDICARE, INC., ET AL. V. BONNIE SANDAGE, AS NEXT FRIEND OF REVIL ROETTGER, AN INCAPACITATED PERSON <b>CUNNINGHAM, KELLER, NOBLE AND SCOTT, JJ., SITTING. ALL CONCUR.</b> ENTERED: OCTOBER 23, 2014	2014-SC-000485-D	MEADE
TAQUAN CORTEZ NEBLETT V. COMMONWEALTH OF KENTUCKY <b>CUNNINGHAM, KELLER, NOBLE AND SCOTT, JJ., SITTING. ALL CONCUR.</b> ENTERED: OCTOBER 23, 2014	2014-SC-000501-MR	FAYETTE

**SUPREME COURT OF KENTUCKY**

**DECEMBER 18, 2014 MINUTES**

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

**COURT ORDERS DISMISSING**

PERRY COUNTY COAL CORPORATION V. CLIFFORD COBB, ET AL. <b>CUNNINGHAM, KELLER, NOBLE AND SCOTT, JJ., SITTING. ALL CONCUR.</b> ENTERED: OCTOBER 22, 2014	2014-SC-000533-WC	FROM COURT OF APPEALS
JAMES R. BUNCH V. COMMONWEALTH OF KENTUCKY <b>CUNNINGHAM, KELLER, NOBLE AND SCOTT, JJ., SITTING. ALL CONCUR.</b> ENTERED: OCTOBER 23, 2014	2014-SC-000544-D	JEFFERSON
WILLIAM D. SLONE V. COMMONWEALTH OF KENTUCKY <b>CUNNINGHAM, KELLER, NOBLE AND SCOTT, JJ., SITTING. ALL CONCUR.</b> ENTERED: OCTOBER 23, 2014	2014-SC-000547-MR	CAMPBELL
WILLIAM D. SLONE V. COMMONWEALTH OF KENTUCKY <b>CUNNINGHAM, KELLER, NOBLE AND SCOTT, JJ., SITTING. ALL CONCUR.</b> ENTERED: OCTOBER 23, 2014	2014-SC-000548-MR	CAMPBELL
HOMER LEE SHERLEY, JR. V. COMMONWEALTH OF KENTUCKY <b>ENTERED: OCTOBER 27, 2014</b>	2014-SC-000579-D	MCCRACKEN
CATHOLIC HEALTH INITIATIVES, INC., ET AL. V. HON. GREGORY A. LAY, JUDGE, LAUREL CIRCUIT COURT, ET AL. <b>ENTERED: DECEMBER 15, 2014</b>	2014-SC-000637-D	MCCREARY
WALLY DEAN JACKSON, ET AL. V. HON. WILLIAM MITCHELL NANCE, JUDGE, BARREN CIRCUIT COURT, ET AL. <b>ENTERED: DECEMBER 3, 2014</b>	2014-SC-000648-MR	FROM COURT OF APPEALS

**SUPREME COURT OF KENTUCKY**

**DECEMBER 18, 2014 MINUTES**

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

**COURT ORDERS DISMISSING**

BUFFALO TRACE DISTILLERY, INC., ET AL. V. MICHAEL R. MILLS, ET AL. ALL SITTING. ALL CONCUR. <b>ENTERED: DECEMBER 18, 2014</b>	2014-SC-000296-MR	FROM COURT OF APPEALS
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**COURT ORDERS**

JAMES A, NEWTON, JR. V. UNIVERSITY OF LOUISVILLE <b>ORDER DENIED MOTION FOR RECONSIDERATION.</b> MINTON, C.J.,CUNNINGHAM, KELLER, NOBLE, SCOTT AND, VENTERS, JJ., CONCUR. ABRAMSON, J., NOT SITTING. <b>ENTERED: DECEMBER 18, 2014</b>	2010-SC-000782-DG	JEFFERSON
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UNITED STATES OF AMERICA, BY AND THROUGH THE UNITED STATES ATTORNEYS FOR THE EASTERN AND WESTERN DISTRICTS OF KENTUCKY V. KENTUCKY BAR ASSOCIATION <b>ORDER GRANTED CORRECTION OF NAME AS IT APPEARS ON PAGE 36 OF THE OPINION OF THIS COURT RENDERED ON AUGUST 21, 2014.</b> ENTERED: OCTOBER 23, 2014	2013-SC-000270-KB	IN SUPREME COURT
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ROGER HALL V. MARC I. ROSEN, ET AL. <b>ORDER DENYING PETITION FOR INTERLOCUTORY RELIEF.</b> ALL SITTING. ALL CONCUR. <b>ENTERED: DECEMBER 18, 2014</b>	2014-SC-000312-I	BOYD
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**SUPREME COURT OF KENTUCKY**

**DECEMBER 18, 2014 MINUTES**

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

**COURT ORDERS**

SAEID SHAFIZADEH V. 2014-SC-000434-D JEFFERSON  
DENISE SHAFIZADEH  
**ORDER DENIED MOTION TO RECONSIDER  
TIMELY FILING OF MOTION FOR  
DISCRETIONARY REVIEW.**  
KELLER, NOBLE, SCOTT AND VENTERS,  
JJ., SITTING. ALL CONCUR.  
**ENTERED: DECEMBER 15, 2014**

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

JAMES RICK JONES V. 2014-SC-000660-KB IN SUPREME  
KENTUCKY BAR ASSOCIATION COURT  
**ENTERED: NOVEMBER 6, 2014**

STAN DEL CLARK V. 2014-SC-000668-KB IN SUPREME  
KENTUCKY BAR ASSOCIATION COURT  
**ENTERED: NOVEMBER 12, 2014**

CATHERINE HELEN ALEXANDER V. 2014-SC-000693-KB IN SUPREME  
KENTUCKY BAR ASSOCIATION COURT  
**ENTERED: NOVEMBER 25, 2014**

KATIE L. BENWARD V. 2014-SC-000694-KB IN SUPREME  
KENTUCKY BAR ASSOCIATION COURT  
**ENTERED: NOVEMBER 25, 2014**

LOUISE JEANETTE MCGEE COOK V. 2014-SC-000695-KB IN SUPREME  
KENTUCKY BAR ASSOCIATION COURT  
**ENTERED: NOVEMBER 25, 2014**

RAYMOND M. CLOONEY V. 2014-SC-000696-KB IN SUPREME  
KENTUCKY BAR ASSOCIATION COURT  
**ENTERED: NOVEMBER 25, 2014**

SHELIA CONNERS WULF V. 2014-SC-000697-KB IN SUPREME  
KENTUCKY BAR ASSOCIATION COURT  
**ENTERED: NOVEMBER 25, 2014**