

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name**: State full name (include any former names used).

Lisabeth Tabor Hughes
(Lisabeth Hughes Abramson, Lisa Abramson, Lisabeth Hughes, Lisa Hughes)

2. **Position**: State the position for which you have been nominated.

United States Circuit Judge for the Sixth Circuit

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

Kentucky Supreme Court
Jefferson County Judicial Center, Suite 1000
700 West Jefferson Street
Louisville, Kentucky 40202

4. **Birthplace**: State year and place of birth.

1955; Marion, Kentucky

5. **Education**: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1977 – 1980, University of Louisville; J.D. (*magna cum laude*), 1980
1974 – 1977, University of Louisville; B.A. (with highest honors), 1977
1973 – 1974, Stephens College; no degree received

6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

2007 – present
Kentucky Supreme Court
Jefferson County Judicial Center, Suite 1000

700 West Jefferson Street
Louisville, Kentucky 40202
Justice

1997 – 1998; 2006 – 2007
Kentucky Court of Appeals
Jefferson County Judicial Center, Suite 1020
700 West Jefferson Street
Louisville, Kentucky 40202
Judge

1999 – 2006
Jefferson Circuit Court
Jefferson County Judicial Center, Suite 703
700 West Jefferson Street
Louisville, Kentucky 40202
Judge

1996 – 1997
Reed Weitkamp Schell & Vice
2400 Citizens Plaza
500 West Jefferson Street
Louisville, Kentucky 40202
Partner

1987 – 1996
Hirn Doheny Reed & Harper
2000 Meidinger Tower
462 South Fourth Street
Louisville, Kentucky 40202
Partner (1994 – 1996)
Associate (1987 – 1993)

1978 – 1984
Greenebaum Doll & McDonald (now Bingham Greenebaum Doll LLP)
101 South Fifth Street, Suite 3500
Louisville, Kentucky 40202
Associate (1980 – 1984)
Law Clerk (1978 – 1979)

1979 – 1980
University of Louisville School of Law
Belknap Campus
2301 South Third Street
Louisville, Kentucky 40208
Research Assistant for Professor David Leibson

Summer 1977
Trice Hughes Chevrolet, Inc.
111 Highway 91-N
Princeton, Kentucky 42445
Office Worker

Other Affiliations (uncompensated unless otherwise indicated):

2012 – present
HughesSib, Inc.
111 Highway 91-N
Princeton, Kentucky 42445
Shareholder (24% profit share)

2008 – present
Kentucky Bar Foundation Interest on Lawyers' Trust Accounts (IOLTA) Fund
514 West Main Street
Frankfort, Kentucky 40601
Trustee

2007 – present
Jefferson County Courts Planning and Coordinating Council
No physical address
Louisville, Kentucky
Chair

2013 – 2015
Louis D. Brandeis American Inn of Court
No physical address
Louisville, Kentucky
President (2013 – 2015)

2004 – 2007; 2013 – 2014
The Law Club
No physical address
Louisville, Kentucky
President (2006 – 2007, 2013 – 2014)
Vice-President (2005 – 2006)
Secretary (2004 – 2005)

2000 – 2012
Kentucky Judicial Form Retirement Board
Whitaker Bank Building, Suite 302
305 Ann Street
Frankfort, Kentucky 40601

Trustee (2000 – 2012)

1977 – 2012

Hughes Leasing Co., Inc.

111 Highway 91-N

Princeton, Kentucky 42445

Shareholder (12.5% profit share)

2006 – 2008

University of Louisville Law Alumni Council

University Club & Alumni Center

200 East Brandeis Avenue

Louisville, Kentucky 40208

Immediate Past President (2007 – 2008)

President (2006 – 2007)

1988 – 1992

Chance School Board of Trustees

4200 Lime Kiln Lane

Louisville, Kentucky 40222

President (1991 – 1992)

Board Attorney (1988 – 1991)

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I have never served in the U.S. Military. I was not required to register for selective service.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Professional

Louisville Magazine, The Power 50 – Elected Officials (2014)

Judge of the Year, Louisville Bar Association (2012)

Alumni Fellow, University of Louisville School of Law (2009)

Blanche B. Ottenheimer Award, Jewish Community Center (2009)

Jefferson County Women Lawyers Association Member of the Year (2009)

The LawDragon 500 Leading Judges in America (2006)

Distinguished Alumna, University of Louisville School of Law (2000)

Distinguished Alumna, University of Louisville College of Arts and Sciences (1999)

Kentucky Court of Justice, Law-Related Education Award (1998)

Educational

Outstanding Graduate, Class of 1980, University of Louisville School of Law (1980)

Salutatorian, University of Louisville School of Law (1980)

Executive Editor, *Journal of Family Law* (later *University of Louisville Law Review*) (1979 – 1980)

Brandeis Honor Society, University of Louisville School of Law (1978 – 1980)

Phi Kappa Phi National Honor Society (1977 – 1980)

Winner, Pirtle-Washer Moot Court Competition, University of Louisville (1978)

Woodcock Society, University of Louisville (1977)

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

American Bar Association

Jefferson County Courts Planning and Coordinating Council
Chair (2007 – present)

Jefferson County Women Lawyers Association

Judicial Education Committees

Kentucky Circuit Courts, Member (2005 – 2006)

Kentucky Court of Appeals, Member (2006 – 2007)

Joint Appellate Committee, Member (2007 – 2008)

Kentucky Bar Association

Annual Convention Planning Committee (2007, 2012, 2013, 2016)

Continuing Legal Education Commission, Supreme Court Representative (2008 – 2009)

Kentucky Bar Foundation

Fellow (2012 – present)

Kentucky Civil Rules Committee

Chair (2011 – present)

Kentucky Court of Appeals Court Operations Committee

Kentucky Interest on Lawyers' Trust Accounts (IOLTA)

Board of Trustees (2008 – present)

Kentucky Judicial Form Retirement Board

Chair, Judicial Investment Committee (2009 – 2012)

Kentucky Supreme Court Committees

Appellate eFiling Committee (2014 – present)
Civil Rules Committee (2011 – present)
Jury Education Task Force (2005)
Justice William E. McAnulty, Jr. Bust Committee, Co-chair (2008 – 2010)
Mass Tort Litigation and Class Action Committee, Co-chair (2007 – 2010)

The Law Club

President (2006 – 2007, 2013 – 2014)
Vice-President (2005 – 2006)
Secretary (2004 – 2005)

Louis D. Brandeis American Inn of Court

President (2013 – present)
Master (2007 – present)

Louisville Bar Association

United States District Court, Western District of Kentucky

Bench-Bar Liaison Committee (1996 – 1997)
Judge Edward H. Johnstone Portrait Committee (1996)

University of Louisville Law Alumni Council

Immediate Past President (2007 – 2008)
President (2006 – 2007)

10. Bar and Court Admission:

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Kentucky, 1980

There has been no lapse in membership.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

United States Court of Appeals for the Sixth Circuit, 1987
United States District Court for the Eastern District of Kentucky, 1983
United States District Court for the Western District of Kentucky, 1980
United States Tax Court, 1991

There have been no lapses in membership.

11. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Bas Bleu Book Club (2006 – present)

Boy Scouts of America, Lincoln Heritage Council, Cub Scout Pack 30
Assistant Den Leader (1996 – 1998)

Brandeis Elementary School Parent Teacher Student Association (1993 – 1996,
1998 – 2001)

Business & Professional Women, River City, Inc. (1997 – 2000)

Chance School Board of Trustees (1988 – 1992)

President (1991 – 1992)

Board Attorney (1988 – 1991)

duPont Manual High School Parent Teacher Student Association (1998 – 2007)

duPont Manual High School Soccer Boosters (1998 – 2002, 2003 – 2007)

Junior League of Louisville (1986 – 1992)

Kammerer Middle School Parent Teacher Student Association (1995 – 1999)

Leadership Louisville (2007)

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To the best of my knowledge, none of the organizations listed above currently discriminates or formerly discriminated on the basis of race, sex, religion or national origin, either through formal membership requirements or the practical implementation of membership policies.

12. Published Writings and Public Statements:

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

Kentucky Supreme Court Report, LOUISVILLE BAR BRIEFS (Vol. 10, Issue 3; Mar. 2010). Copy supplied.

Kentucky Supreme Court Report, LOUISVILLE BAR BRIEFS (Vol. 9, Issue 12; Dec. 2009). Copy supplied.

Kentucky Supreme Court Report, LOUISVILLE BAR BRIEFS (Vol. 9, Issue 11; Nov. 2009). Copy supplied.

Kentucky Supreme Court Report, LOUISVILLE BAR BRIEFS (Vol. 9, Issue 10; Oct. 2009). Copy supplied.

Kentucky Supreme Court Report, LOUISVILLE BAR BRIEFS (Vol. 9, Issue 8; Aug. 2009). Copy supplied.

Kentucky Supreme Court Report, LOUISVILLE BAR BRIEFS (Vol. 9, Issue 7; July 2009). Copy supplied.

Kentucky Supreme Court Report, LOUISVILLE BAR BRIEFS (Vol. 9, Issue 6; June 2009). Copy supplied.

Kentucky Supreme Court Report, LOUISVILLE BAR BRIEFS (Vol. 9, Issue 5; May 2009). Copy supplied.

Kentucky Supreme Court Report, LOUISVILLE BAR BRIEFS (Vol. 9, Issue 4; Apr. 2009). Copy supplied.

Kentucky Supreme Court Report, LOUISVILLE BAR BRIEFS (Vol. 9, Issue 3; Mar. 2009). Copy supplied.

Kentucky Supreme Court Report, LOUISVILLE BAR BRIEFS (Vol. 9, Issue 1; Jan. 2009). Copy supplied.

Kentucky Supreme Court Report, LOUISVILLE BAR BRIEFS (Vol. 8, Issue 11; Nov. 2008). Copy supplied.

Kentucky Supreme Court Report, LOUISVILLE BAR BRIEFS (Vol. 8, Issue 10; Oct. 2008). Copy supplied.

Kentucky Supreme Court Report, LOUISVILLE BAR BRIEFS (Vol. 8, Issue 9; Sept. 2008). Copy supplied.

Kentucky Supreme Court Report, LOUISVILLE BAR BRIEFS (Vol. 8, Issue 8; Aug. 2008). Copy supplied.

Kentucky Supreme Court Report, LOUISVILLE BAR BRIEFS (Vol. 8, Issue 6; June 2008). Copy supplied.

Kentucky Supreme Court Report, LOUISVILLE BAR BRIEFS (Vol. 8, Issue 5; May 2008). Copy supplied.

Kentucky Supreme Court Report, LOUISVILLE BAR BRIEFS (Vol. 8, Issue 4; Apr. 2008). Copy supplied.

When I ran for judge in 2008, I had a campaign website. The website is no longer active and I have no records of its contents. Much of the content was not developed by me, although I contributed biographical and other background information. I believe the URL for the website was www.justiceabramson.com.

Abramson Recalls Influence of "The Judge," LOUISVILLE BAR BRIEFS (Vol. 4, Issue 9; Sept. 2004). Copy supplied.

A Flawed Judicial Bias Study, Courier-Journal (Louisville, Kentucky), Aug. 5, 2003. Copy supplied.

Readers' Forum: Lawyers are 'Dedicated Professionals', Courier-Journal (Louisville, Kentucky), Feb. 10, 2000. Copy supplied.

With James T. Crain III, *Closely Held Corporation Governance and Minority Shareholder Issues*, in KENTUCKY CORPORATIONS LAW (University of Kentucky, 1997). Copy supplied.

Uniform Commercial Code – Sales, in 4 KENTUCKY PRACTICE (West, 1990). Copy supplied.

With Marvin Hirn, *Closely Held Corporations*, in KENTUCKY BUSINESS ORGANIZATIONS (University of Kentucky, 1989). I was unable to obtain a copy of this publication, but the chapter on closely held corporations was an earlier version of the "Closely Held Corporation Governance and Minority Shareholder Issues" chapter previously supplied and published in 1997.

Letters of Credit, in 1 UNIFORM COMMERCIAL CODE OF KENTUCKY (The Michie Co., 1980). Copy supplied.

Interstate Enforcement of Support Obligations through Long Arm Statutes and URESA, 18 J. FAM. L. 537 (1980). Copy supplied.

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

Mass Tort Litigation and Class Action Committee Report, March 2010. Copy supplied.

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

None.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

The following list reflects my best effort to identify the public speeches, talks and remarks that I have delivered. To compile the list, I consulted my own files and Internet sources. There may, however have been speeches, talks or remarks that I have been unable to recall or identify, and I have occasionally spoken at informal events for which I did not retain any record.

2008 – 2016: Panelist, “Supreme Court Rules Hearing,” Annual Convention, Kentucky Bar Association, Louisville, Kentucky. Except in 2011 and 2015, I participated with my fellow justices of the Kentucky Supreme Court in an annual hearing held for members of the Kentucky Bar. Video recordings are supplied for the events held on June 19, 2013; June 6, 2012; June 18, 2010; June 10, 2009; and June 18, 2008. I have no notes, transcripts or recordings for the events held on May 11, 2016 or June 18, 2014. The address of the Kentucky Bar Association is 514 West Main Street, Frankfort, Kentucky 40601.

2007 – 2015: Speaker, Brief Remarks as Presiding Justice at the Administration of Oath to New Attorneys, Kentucky Court of Justice, Fourth Appellate District,

Louisville and Frankfort, Kentucky. Since 2007, I have welcomed new attorneys to the bar and discussed their entry into the legal profession, their role in preserving and advancing the rule of law and the need to express gratitude to family, friends, and mentors who have helped them achieve their goals. Notes for the October 7, 2008 ceremony are supplied. I have no notes, transcripts or recordings for the ceremonies on October 15, 2007; October 25, 2007; October 17, 2008; October 15, 2009; October 23, 2009; October 5, 2010; October 15, 2010; October 12, 2011; October 21, 2011; October 4, 2012; October 19, 2012; October 3, 2013; October 18, 2013; October 2, 2014; October 17, 2014; October 7, 2015. The address for the Kentucky Court of Justice is 1001 Vandalay Drive, Frankfort, Kentucky 40601.

April 3, 2015: Judge, First Year Oral Arguments Moot Court Competition, University of Louisville Louis D. Brandeis School of Law, Louisville, Kentucky. After announcing the winner, I and the other judges offered constructive comments regarding each student's performance. I have no notes, transcript or recording. The address for the University of Louisville Louis D. Brandeis School of Law is 2301 South Third Street, Louisville, Kentucky 40208.

January 4, 2015: Speaker, Welcoming Remarks at Investiture Ceremony, Jefferson Trial Courts, Louisville, Kentucky. I welcomed the judges and audience, congratulated all of the judges on their election or reelection and introduced Chief Justice John D. Minton, Jr., who then spoke and administered the oath. I have no notes, transcript or recording. The address of the Jefferson Trial Courts is 700 West Jefferson Street, Louisville, Kentucky 40202.

November 26, 2014: Speaker, Graduation Event for Women Inmates, Western Kentucky Correctional Complex, Fredonia, Kentucky. I commended the graduates upon their educational achievements, discussed some lessons I learned as a trial judge and emphasized the importance of continuing education at all stages of a person's life. I have no notes, transcript or recording. The address of the Western Kentucky Correctional Complex is 374 New Bethel Church Road, Fredonia, Kentucky 42411.

October 23, 2014: Speaker, Annual Law Update on Kentucky Supreme Court Cases, Kentucky Bar Association, Louisville, Kentucky. PowerPoint supplied.

August 14, 2014: Speaker, Oath Signing Ceremony for First-Year Students, University of Louisville Louis D. Brandeis School of Law, Louisville, Kentucky. I spoke about the importance of the student oath, emphasizing that work habits and reputation in law school form first impressions that outlast law school and gave some practical advice on how to make the most of the next three years. I have no notes, transcript or recording. The address for the University of Louisville Louis D. Brandeis School of Law is 2301 South Third Street, Louisville, Kentucky 40208.

November 18, 2013: Speaker, "Supreme Court Update," Kentucky Circuit Judges' Judicial College, Lexington, Kentucky. PowerPoint supplied.

November 1, 2013: Speaker (with Chief Justice John D. Minton, Jr.), "Case Decisions and Recent Developments in the Kentucky Supreme Court," Kentucky Association of Criminal Defense Lawyers Conference, Louisville, Kentucky. PowerPoint supplied.

October 24, 1997; October 5, 2007; October 22, 2010; October 28, 2011; October 26, 2013: Judge, Annual Pirtle-Washer Moot Court Competition, University of Louisville Louis D. Brandeis School of Law, Louisville, Kentucky. After announcing the winner, I and the other judges offered constructive comments regarding each student's performance. I have no notes, transcripts or recordings. The address for the University of Louisville Louis D. Brandeis School of Law is 2301 South Third Street, Louisville, Kentucky 40208.

October 24, 2013: Speaker, "Kentucky Law Update: Supreme Court Case Update," Kentucky Bar Association, Louisville, Kentucky. PowerPoint supplied.

June 21, 2013: Moderator, "Appellate Rules: A Roundtable Discussion," Annual Convention, Kentucky Bar Association, Louisville, Kentucky. Handouts supplied.

June 19, 2013: Panelist, "Plea Bargaining Obligations: The New Normal for Counsel after *Padilla*," Annual Convention, Kentucky Bar Association, Louisville, Kentucky. I discussed the Kentucky Supreme Court decisions in *Commonwealth v. Pridham*, 394 S.W.3d 867 (Ky. 2012) and *Stiger v. Commonwealth*, 381 S.W.3d 230 (Ky. 2012). I have no notes, transcript or recording. The address for the Kentucky Bar Association is 514 West Main Street, Frankfort, Kentucky 40601.

March 20, 2013: Speaker, Question and Answer Session at the Judicial Conversation Series, University of Kentucky College of Law, Lexington, Kentucky. I gave a brief description of my professional career and answered questions regarding being a judge and justice, as well as the criteria used in considering law clerk applicants. I have no notes, transcript or recording. The address for the University of Kentucky College of Law is 620 South Limestone Street, Lexington, Kentucky 40508.

March 20, 2013: Guest Lecturer, Conflict of Laws Class, University of Kentucky College of Law, Lexington, Kentucky. I spoke in Professor Mary Davis's class about several Kentucky conflict of laws decisions. I have no notes, transcript or recording. The address for the University of Kentucky College of Law is 620 South Limestone Street, Lexington, Kentucky 40508.

November 28, 2012: Speaker, "2012 Kentucky Law Update: Supreme Court

Review,” Kentucky Bar Association, Louisville, Kentucky. PowerPoint supplied.

November 2, 2012: Speaker, “Case Decisions and Recent Developments in the Kentucky Supreme Court,” Kentucky Association of Criminal Defense Lawyers Conference, Louisville, Kentucky. PowerPoint supplied.

October 30, 2012: Speaker, “Supreme Court Update,” Kentucky Circuit Judges’ Judicial College, Lexington, Kentucky. PowerPoint supplied.

June 6, 2012: Panelist, “Defending Merit Selection,” Annual Convention, Kentucky Bar Association, Louisville, Kentucky. Video recording supplied.

May 2012: Speaker, Commencement Address, University of Louisville Louis D. Brandeis School of Law, Louisville, Kentucky. Notes supplied.

March 21, 2012: Panelist, “Effective Oral Argument,” Louis D. Brandeis American Inn of Court, Louisville, Kentucky. The audience at this event was presented with vignettes depicting common missteps by appellate counsel, and the panel then commented on each vignette and offered feedback regarding the positive and negative aspects of counsel’s performance. I have no notes, transcript or recording, but a copy of the November 2008 Louisville Bar Briefs column upon which this presentation was based, *Kentucky Supreme Court Report*, is supplied in response to Question 12a. The Louis D. Brandeis American Inn of Court has no mailing address.

March 16, 2012: Speaker, Kentucky High School Mock Trial State Tournament, Jefferson County Judicial Center, Louisville, Kentucky. I delivered remarks to open the state tournament. I have no notes, transcript or recording. The address for the Jefferson County Judicial Center is 700 West Jefferson Street, Louisville, Kentucky 40202.

January 26, 2012: Panelist, Clerkship Panel, American Constitution Society Kentucky Lawyer Chapter, Louisville, Kentucky. I participated with judges and former law clerks in a discussion of the role of law clerks, with my remarks focusing on what I look for in hiring a clerk. I have no notes, transcript or recording. The address of the American Constitution Society is 1333 H Street Northwest, 11th Floor, Washington, District of Columbia 20005.

November 30, 2011: Speaker, “2011 Circuit Judges College: Supreme Court Update,” Kentucky Bar Association, Louisville, Kentucky. PowerPoint supplied.

November 18, 2011: Speaker, “Best Practices: Do’s and Don’t’s When Practicing Before the Kentucky Supreme Court,” Kentucky Defense Counsel Fall Seminar, Louisville, Kentucky. Outline and handout supplied.

October 28, 2011: Speaker, “Case Decisions and Recent Developments in the

Kentucky Supreme Court,” Kentucky Association of Criminal Defense Lawyers Conference, Elizabeth, Indiana. PowerPoint supplied.

October 11, 2011: Speaker, “Supreme Court Update,” Kentucky Circuit Judges’ Judicial College, Frankfort, Kentucky. I have no notes, transcript or recording. The address of the Kentucky Circuit Judges’ Judicial College is 1001 Vandalay Drive, Frankfort, Kentucky 40601.

July 13, 2011: Speaker, Kentucky Legal Education Opportunity Program, Frankfort, Kentucky. I delivered brief remarks with other appellate judges to a group of KLEO scholars about law school as the beginning of their legal careers, with an emphasis on practical suggestions for making the most of the next three years. I have no notes, transcript or recording, but press coverage is supplied. The address for the Kentucky Capitol is 700 Capitol Avenue, Frankfort, Kentucky 40601.

March 18, 2011: Speaker, Kentucky Mock Trial State Tournament, Jefferson County Judicial Center, Louisville, Kentucky. I delivered remarks with a court of appeals judge to open the Kentucky Mock Trial State Tournament. I have no notes, transcript or recording. The address for the Jefferson County Judicial Center is 700 West Jefferson Street, Louisville, Kentucky 40202.

January 2, 2011: Speaker, Investiture Ceremony, Jefferson District Court, Louisville, Kentucky. I welcomed the audience, talked about the importance of the district court, and introduced each judge by name prior to the administration of the oath of office by Chief Justice John D. Minton, Jr. I have no notes, transcript or recording. The address of the Jefferson District Court is 600 West Jefferson Street, Louisville, Kentucky 40202.

December 17, 2010: Speaker, Leadership Academy December Meeting, Louisville Bar Association, Louisville, Kentucky. I spoke about the rule of law with an emphasis on access to justice for all people, regardless of income, and the judiciary’s role in ensuring efficient, effective and fair access. I have no notes, transcript or recording. The address of the Louisville Bar Association is 600 West Main Street #100, Louisville, Kentucky 40202.

November 5, 2010: Speaker, “Case Decisions and Recent Developments in the Kentucky Supreme Court,” Kentucky Association of Criminal Defense Lawyers Conference, Elizabeth, Indiana. PowerPoint supplied.

October 18, 2010: Keynote Speaker, Kentucky Visit by National Legal Services Corporation Board, Louisville Bar Association, Louisville, Kentucky. Notes supplied.

September 2, 2010: Speaker, “Kentucky Supreme Court Update: Survey of Criminal Cases July 2008 to June 2009,” Kentucky Bar Association, Louisville,

Kentucky. PowerPoint supplied.

July 4, 2010: Speaker, Chamber of Commerce Luncheon, Princeton-Caldwell Chamber of Commerce, Princeton, Kentucky. I spoke about the importance of Princeton, my hometown, in my life and professional career. I have no notes, transcript or recording, but press coverage is supplied. The address of the Princeton-Caldwell Chamber of Commerce is 102 Cash Drive, Princeton, Kentucky 42445.

June 16, 2010: Speaker, "Evidentiary Issues," Annual Convention, Kentucky Bar Association, Lexington, Kentucky. Outline supplied.

June 15, 2010: Panelist, "Preservation of Error for Appellate Review – Standards of Review Seminar," Louisville Bar Association Appellate Law Section, Louisville, Kentucky. Outline supplied.

March 5, 2010: Speaker, Kentucky High School Mock Trial State Tournament, Jefferson County Judicial Center, Louisville, Kentucky. I delivered remarks to open the state tournament. I have no notes, transcript or recording. The address for the Jefferson County Judicial Center is 700 West Jefferson Street, Louisville, Kentucky 40202.

February 24, 2010: Panelist, "Appellate Practice," Louis D. Brandeis American Inn of Court, New Albany, Indiana. I participated on a panel with two Indiana Supreme Court Justices. An excerpt was played from an appellate argument and then the panelists commented on the strengths and weaknesses of the attorney's oral advocacy. The panel also discussed questions frequently asked by attorneys regarding best practices in an appellate court. I have no notes, transcript or recording. The Louis D. Brandeis Americans Inn of Court has no mailing address.

December 9, 2009: Speaker, "2009 Kentucky Supreme Court Update," Kentucky Bar Association, Louisville, Kentucky. PowerPoint supplied.

October 30, 2009: Speaker, "Case Decisions and Recent Developments in the Kentucky Supreme Court," Kentucky Association of Criminal Defense Lawyers Conference, Elizabeth, Indiana. I have no notes, transcript or recording. The address of the Kentucky Association of Criminal Defense Lawyers is P.O. Box 326, Hebron, Kentucky 41048.

October 15, 2009: Speaker, Opening Remarks at the Opening of the Jefferson County Domestic Violence Intake Center, Jefferson County Judicial Center, Louisville, Kentucky. I spoke about the importance of a safe, secure center for victims of domestic violence and thanked those who worked on the project. I have no notes, transcript or recording. The address of the Jefferson County Judicial Center is 700 West Jefferson Street, Louisville, Kentucky 40202.

October 8, 2009: Speaker, Alumni Fellow Award Ceremony Event, University of Louisville Louis D. Brandeis School of Law, Louisville, Kentucky. I gave brief remarks upon receipt of the Alumni Fellow award. I have no notes, transcript, or recording. The address for the University of Louisville Louis D. Brandeis School of Law is 2301 South Third Street, Louisville, Kentucky 40208.

September 21, 2009: Speaker, "Supreme Court Case Update," Kentucky Circuit Judges' Judicial College, Lexington, Kentucky. Notes supplied.

July 28, 2009: Speaker, "Women as Leaders in the Criminal Justice System," Global Leadership Conference, FBI National Academy Associates, Inc., Louisville, Kentucky. I spoke about my legal career and the impact of women as judges, especially trial judges, on the criminal justice system. I have no notes, transcript or recording. The address of the FBI National Academy Associates, Inc. is 422 Garrisonville Road, Suite 103, Stafford, Virginia 22554.

June 29, 2009: Speaker, Receipt of the Blanche B. Ottenheimer Award, Jewish Community Center, Louisville, Kentucky. I spoke briefly about my research on Blanche Ottenheimer and the criteria for the award that flowed from her community work as well as my respect for the prior recipients and gratitude to be included on a distinguished roll of honor. I have no notes, transcript or recording, but press coverage is supplied. The address of the Jewish Community Center is 3600 Dutchman's Lane, Louisville, Kentucky 40205.

June 2009: Appeared in a juror orientation video, "*You, the Juror*," produced by the Kentucky Court of Justice and Administrative Office of the Courts. Video recording supplied.

March 27, 2009: Speaker, Kentucky High School Mock Trial State Tournament, Jefferson County Judicial Center, Louisville, Kentucky. I delivered remarks to open the state tournament. I have no notes, transcript or recording. The address of the Jefferson County Judicial Center is 700 West Jefferson Street, Louisville, Kentucky 40202.

March 9, 2009: Panelist, "So You Want to Be a Judge," 2009 Campaign School, Metropolitan Louisville Women's Political Caucus, Louisville, Kentucky. I participated in a panel discussion concerning advice on how to successfully and ethically run a non-partisan judicial campaign. I have no notes, transcript or recording. The address of the Metropolitan Louisville Women's Political Caucus is 1906 Hillcircle Road, Louisville, Kentucky 40214.

February 24, 2009: Panelist, "And You're Out of Here: Striking the Judge Under Indiana's Recusal Statute," Louis D. Brandeis American Inn of Court, New Albany, Indiana. I participated in a panel discussion that focused on the pros and cons of an Indiana statute that allows counsel to strike a trial judge from a case

without stating reasons. Lawyers from both Indiana and Kentucky discussed their experiences with the statute and then Indiana and Kentucky judges discussed the judicial perspective on this type of “free strike” procedure. I have no notes, transcript or recording. The Louis D. Brandeis American Inn of Court has no mailing address.

January – November 2008: As a candidate for the Supreme Court, I appeared at more than two hundred meetings of business, political and professional clubs, fraternal and civic organizations, neighborhood councils and similar groups to speak briefly regarding my campaign. These presentations were limited to a discussion of my background, career and qualifications and a request for their vote in the upcoming election. I have no notes, transcripts or recordings. Other than the three events, listed below, I am unable to locate additional details for any of my other campaign speaking engagements.

October 30, 2008: Speaker, Judicial Candidates Forum, Women Lawyers Association of Jefferson County, Junior League of Louisville and the League of Women Voters, Louisville, Kentucky. I spoke concerning my judicial experience and desire to retain my seat on the Kentucky Supreme Court. I have no notes, transcript or recording. The address for the Jefferson County Women Lawyers Association is P.O. Box 70271, Louisville, Kentucky 40270.

October 30, 2008: Speaker, Meeting, Louisville Rotary Club, Louisville, Kentucky. I delivered remarks concerning my judicial experience and desire to retain my seat on the Kentucky Supreme Court. I have no notes, transcript or recording, but press coverage is supplied. The address for the Louisville Rotary Club is 401 West Main Street #810, Louisville, Kentucky 40202.

October 22, 2008: Speaker, Judicial Candidate Forum, Federalist Society, Louisville, Kentucky. I gave a brief introduction about myself and then participated in a candidate forum where my opponent and I were questioned by Professor Paul Salamanca of the University of Kentucky College of Law, who was the moderator. I have no notes, transcript or recording, but press coverage is supplied. The address for the Louisville Chapter of the Federalist Society is c/o John K. Bush, 3300 National City Tower, Louisville, Kentucky 40202.

October 27, 2008: Speaker, “Supreme Court Case Update,” Kentucky Circuit Judges’ Judicial College, Covington, Kentucky. I have no notes, transcript or recording. The address of the Kentucky Circuit Judges’ Judicial College is 1001 Vandalay Drive, Frankfort, Kentucky 40601.

October 15, 2008: Speaker, Justice William E. McAnulty, Jr.’s Portrait Dedication, Kentucky Supreme Court, Frankfort, Kentucky. Notes supplied.

September 4, 2008: Speaker, "Supreme Court Update," Kentucky Bar Association, Louisville, Kentucky. PowerPoint supplied.

August 26, 2008: Keynote Speaker, Women's Equality Day, Fort Knox Command Center, Fort Knox, Kentucky. Notes supplied.

June 27, 2008: Speaker, Investiture of Chief Justice John D. Minton, Jr., Kentucky Supreme Court, Frankfort, Kentucky. Video recording supplied.

June 20, 2008: Panelist, "Legal Writing Workshop," Annual Convention, Kentucky Bar Association, Lexington, Kentucky. I and two appellate judges provided feedback to a small group of pre-registered practitioners who provided writing samples extracted from old cases. I have no notes, transcript or recording. The address of the Kentucky Bar Association is 514 West Main Street, Frankfort, Kentucky 40601.

May 15, 2008: Speaker, Justice Donald C. Wintersheimer's Portrait Dedication, Kentucky Supreme Court, Frankfort, Kentucky. Notes supplied.

May 1, 2008: Speaker, Annual Law Day Event, Kentucky State Capitol, Frankfort, Kentucky. Notes supplied.

February 27, 2008: Speaker, Tribute Honoring the Late Kentucky Supreme Court Justice William E. McAnulty, Jr., University of Louisville Louis D. Brandeis School of Law and Louisville Bar Association, Louisville, Kentucky. I spoke about Justice McAnulty's professional accomplishments, our friendship and my role as his successor on the Kentucky Supreme Court. I have no notes, transcript or recording. The address of the University of Louisville Louis D. Brandeis School of Law is 2301 South Third Street, Louisville, Kentucky 40208.

November 29, 2007: Speaker, "Kentucky Supreme Court Update," Kentucky Bar Association, Louisville, Kentucky. PowerPoint supplied.

October 26, 2007: Speaker, Investiture, Kentucky Supreme Court, Frankfort, Kentucky. Video recording supplied.

October 8, 2007: Speaker, New Lawyers Program, Kentucky Bar Association, Louisville, Kentucky. I do not recall the topic which I was asked to address. I have no notes, transcript or recording. The address of the Kentucky Bar Association is 514 West Main Street, Frankfort, Kentucky 40601.

September 17, 2007: Speaker, "Who's the Father? – Paternity by Estoppel, Waiver and Related Principles Affecting Child Support and Custody," Kentucky Circuit Judges' Judicial College, Louisville, Kentucky. Notes supplied.

December 14, 2006: Speaker, "Expert Witnesses," Newly Elected Officials' Orientation – Circuit Judges Track, Kentucky Court of Justice, Lexington, Kentucky. Notes supplied.

December 7, 2006: Speaker, Kentucky Court of Appeals Law Update, Kentucky Bar Association, Louisville, Kentucky. I discussed recent court of appeals cases. I have no notes, transcript or recording. The address of the Kentucky Bar Association is 514 West Main Street, Frankfort, Kentucky 40601.

August 1, 2006: Speaker, Investiture, Kentucky Court of Appeals, Louisville, Kentucky. I delivered remarks thanking the Judicial Nominating Commission and the Governor for my appointment, expressing my appreciation to those who had been influential in my early years and in my professional life, and emphasizing my intention to endeavor to be an effective and productive appellate judge. I have no notes, transcript or recording. The address of the Kentucky Court of Appeals is 360 Democrat Drive, Frankfort, Kentucky 40601.

March 28, 2006: Panelist, "Jury Instructions – Art or Science?" Louis D. Brandeis American Inn of Court, Louisville, Kentucky. I participated, as a trial judge, in a panel discussion regarding drafting jury instructions, preserving objections to the instructions given and interacting with the court and opposing counsel during the jury instruction conference. I have no notes, transcript or recording. The Louis D. Brandeis American Inn of Court has no mailing address.

October 19, 2005: Speaker and Moderator, "Death Penalty Cases," Kentucky Circuit Judges' Judicial College, Covington, Kentucky. Notes supplied.

June 10, 2005: Panelist, "Civility in the Profession," Annual Convention, Kentucky Bar Association, Louisville, Kentucky. I participated as a trial judge in a panel discussion of civility and professionalism. I have no notes, transcript or recording. The address of the Kentucky Bar Association is 514 West Main Street, Frankfort, Kentucky 40601.

September 15, 2004: Speaker, "Warrantless Search and Seizure," Kentucky Circuit Judges' Judicial College, Jamestown, Kentucky. Outline supplied.

April 23, 2004: Co-Presenter, Kentucky Evidence Workshop, Professional Education Systems Institute, Louisville, Kentucky. Using materials prepared by the Professional Education Systems Institute, the audience viewed vignettes depicting various evidentiary issues. As a trial judge, I, along with two practitioners, discussed the correct answer to each scenario and discussed any variations under Kentucky law. I have no notes, transcript or recording. The address of the Professional Education Systems Institute is P.O. Box 1000, Eau Claire, Wisconsin 54702.

March 2004: Judge, Kentucky Mock Trial State Tournament, Kentucky Court of

Justice, Frankfort, Kentucky. I announced the winner and offered constructive comments on the students' performances. I have no notes, transcript or recording. The address for the Kentucky Court of Justice is 1001 Vandalay Drive, Frankfort, Kentucky 40601.

February 25, 2004: Speaker, "An Ounce of Prevention – Thinking About an Appeal in the Trial Court," Louisville Bar Association Appellate Practice Section, Louisville, Kentucky. Outline supplied.

May 7, 2003: Speaker, "Some Practical Thoughts on Obtaining a Restraining Order or Injunctive Relief in State Court" Continuing Legal Education Seminar, Louisville Bar Association, Louisville, Kentucky. Outline supplied.

February 1999: Speaker, Investiture, Jefferson Circuit Court, Louisville, Kentucky. I delivered remarks expressing my gratitude to the Judicial Nominating Commission and the Governor, expressing my appreciation to those who had been influential in my early years and in my professional life, and emphasizing my intention to be a strong, effective trial court judge. I have no notes, transcript or recording. The address of the Jefferson Circuit Court is 700 West Jefferson Street, Louisville, Kentucky 40202.

December 1998: Speaker, Kentucky Court of Appeals Law Update, Kentucky Bar Association, Louisville, Kentucky. I discussed recent court of appeals cases. I have no notes, transcript or recording. The address of the Kentucky Bar Association is 514 West Main Street, Frankfort, Kentucky 40601.

January – November 1998: As a candidate for the Kentucky Court of Appeals, I appeared at more than two hundred meetings of business, political and professional clubs, fraternal and civic organizations, neighborhood councils and similar groups to speak briefly regarding my campaign. These presentations were limited to a discussion of my background, career and qualifications and a request for their vote in the upcoming election. I have no notes, transcript or recording.

October 1998: Speaker, Kentucky Court of Appeals Law Update, Kentucky Bar Association, Louisville, Kentucky. I discussed recent court of appeals cases. I have no notes, transcript or recording. The address of the Kentucky Bar Association is 514 West Main Street, Frankfort, Kentucky 40601.

August 1998: Speaker, "Professionalism – Seven Important Steps," University of Louisville Louis D. Brandeis School of Law, Louisville, Kentucky. I discussed with law students several important considerations in the practice of law, including courtesy, punctuality, thoroughness, and integrity. I have no notes, transcript or recording. The address of the University of Louisville Louis D. Brandeis School of Law is 2301 South Third Street, Louisville, Kentucky 40208.

December 1997: Speaker, Kentucky Court of Appeals Law Update, Kentucky Bar

Association, Louisville, Kentucky. I discussed recent court of appeals cases. I have no notes, transcript or recording. I have no notes, transcript or recording. The address of the Kentucky Bar Association is 514 West Main Street, Frankfort, Kentucky 40601.

September 4, 1997: Speaker, Kentucky Court of Appeals Law Update, Kentucky Bar Association, Louisville, Kentucky. I have no notes, transcript or recording. The address of the Kentucky Bar Association is 514 West Main Street, Frankfort, Kentucky 40601.

August 1997: Presenter, "Town Hall Meeting on the Appellate Courts," Kentucky Educational Television Studios, Lexington, Kentucky. I participated in a panel discussion with Chief Justice Robert Stephens and Judge Sara Combs on the Kentucky court system and its role in Kentucky government. I have no notes, transcript or recording. The address of Kentucky Education Television is 600 Cooper Drive, Lexington, Kentucky 40502.

June 1997: Speaker, "The Essential Steps to an Effective Appeal" Continuing Legal Education Seminar, Louisville Bar Association and University of Louisville Louis D. Brandeis School of Law, Louisville, Kentucky. I discussed the importance of the trial court record, preservation of error, preparation of an appellate brief, and effective oral argument. I have no notes, transcript or recording. The address of the Louisville Bar Association is 600 West Main Street #110, Louisville, Kentucky 40202.

April 1997: Speaker, "A Look at the Kentucky Court of Appeals," Louisville Bar Association Appellate Practice Section, Louisville, Kentucky. I discussed the Kentucky Court of Appeals, its composition, jurisdiction, method of assigning cases, and criteria for deciding if a case merits oral argument. I have no notes, transcript or recording. The address of the Louisville Bar Association is 600 West Main Street #110, Louisville, Kentucky 40202.

February 20, 1997: Speaker, Investiture, Kentucky Court of Appeals, Louisville, Kentucky. I delivered remarks expressing my gratitude to the Judicial Nominating Commission and the Governor and expressing my appreciation to people who had a positive impact on my life, both as a student and a practicing attorney. I discussed my legal career and attributes that I hoped would serve me well as an appellate judge. Finally, I committed to work hard to merit the trust placed in me by all of those who had a role in my nomination and appointment. I have no notes, transcript or recording. The address of the Kentucky Court of Appeals is 360 Democrat Drive, Frankfort, Kentucky 40601.

February 1997: Speaker, "Kentucky Corporation Law: Closely Held Corporations," Sixth Biennial Kentucky Business Association Institute, University of Kentucky College of Law, Lexington, Kentucky. I spoke about closely-held corporations. I have no notes, transcript or recording, but a copy of

the publication on which the discussion was based, *Closely Held Corporation Governance and Minority Shareholder Issues*, is supplied in response to Question 12a. The address for the University of Kentucky College of Law is 620 South Limestone Street, Lexington, Kentucky 40508.

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

Press Conference, *Reorganization of District Court Docket Schedules*, Jefferson District Court, June 1, 2011. I have no notes, transcript, or recording, but press coverage is supplied.

Trust Accounts for Lawyers Mandatory, Courier-Journal (Louisville, Kentucky), December 29, 2009. Copy supplied.

Shelia Steinman Wallace, *Justice Abramson to Receive 2009 Ottenheimer Award*, Community, June 19, 2009. Copy supplied.

R.G. Dunlop and Jason Riley, *Police Seek to Improve Officers' Court Appearance*, Courier-Journal (Louisville, Kentucky), April 8, 2009. Copy supplied.

Press Release, *Jason M. Nemes Leaving the Administrative Office of the Courts to Join Dinsmore & Shohl*, Kentucky Court of Justice, March 12, 2009. Copy supplied.

Andrew Wolfson, *Abramson Defeats Shake to Keep Seat*, Courier-Journal (Louisville, Kentucky), November 5, 2008. Copy supplied.

Voter Guide; Kentucky Supreme Court District 4, Courier-Journal (Louisville, Kentucky), November 2, 2008. Copy supplied.

Andrew Wolfson, *Election 2008; Judge Hopefuls Tout Experience*, Courier-Journal (Louisville, Kentucky), October 31, 2008. Copy supplied.

Joe Biesk, *One Seat Up for Grabs on Kentucky Supreme Court*, Associated Press, October 27, 2008. Copy supplied.

Andrew Wolfson, *Kentucky Supreme Court; Abramson, Shake Both 'Outstanding,'* Courier-Journal (Louisville, Kentucky), October 20, 2008. Copy supplied.

Retain Justice Abramson, Courier-Journal (Louisville, Kentucky), October 12, 2008. Copy supplied.

Fen-Phen Litigation: Judge Admits Poor Judgment on \$200M Deal, Associated Press, July 1, 2008. Copy supplied.

Andrew Wolfson and Jason Riley, *Kentucky Chief Justice Will Retire*, Courier-Journal (Louisville, Kentucky), April 25, 2008. Copy supplied.

Jack Brammer and Brandon Ortiz, *State's Chief Justice to Retire, Some Colleagues Interested in the Job*, Lexington Herald Leader, April 25, 2008. Copy supplied.

Press Release, *Justice Abramson to Give Keynote Speech at Kentucky's Law Day Celebration May 1*, Kentucky Court of Justice, April 15, 2008. Copy supplied.

Jason Riley, *Supreme Court Hopefuls Praised*, Courier-Journal (Louisville, Kentucky), April 1, 2008. Copy supplied.

Kentucky Lawyers Review Lawsuits to Prevent Wrongdoing, Class Action Reporter, March 27, 2008. Copy supplied.

I produced three television advertisements for my 2008 Supreme Court Election Campaign Advertisements. Those videos may be viewed at <http://www.youtube.com/watch?v=oQz6ld4c6ts>, <http://www.youtube.com/watch?v=Ok8-l6DD79s>, and <http://www.youtube.com/watch?v=TWD1Dl-VheU>.

Laura Grinstead, *An Interview with Justice Abramson*, Underwired Magazine, March 2008. I have been unable to locate a copy of this article.

Kentucky Lawyers, Judges Discuss How to Prevent Wrongdoing Among Attorneys, Associated Press, February 18, 2008. Copy supplied.

Susan Duncan, *On The Bench: An Interview with Justice Lisabeth Hughes Abramson*, LOUISVILLE BAR BRIEFS (Vol. 8, Issue 1; Jan. 2008). Copy supplied.

Jason Riley, *Clayton First Black Woman on Kentucky Appeals Court*, Courier-Journal (Louisville, Kentucky), October 19, 2007. Copy supplied.

Phyllis Shaikun, *Abramson Follows McAnulty on Kentucky Supreme Court*, Community, September 28, 2007. Copy supplied.

Deborah Yetter, *McAnulty Favorite Takes His Seat as Justice*, Courier-Journal (Louisville, Kentucky), September 11, 2007. Copy supplied.

John O'Brien, *Abramson Sworn In to Kentucky Court*, Legal News Line, September 11, 2007. Copy supplied.

Tony McVeigh, *New Kentucky Supreme Court Justice Named*, WKU Public Radio, September 10, 2007. Audio is available at <http://wkyufm.org/post/new-ky-supreme-court-justice-named#stream/0>.

Gov. Fletcher Appoints Judge Abramson to Kentucky Supreme Court, US States News, September 10, 2007. Copy supplied.

Tom Loftus, *Board Selects Three for High Court Seat*, Courier-Journal (Louisville, Kentucky), September 7, 2007. Copy supplied.

Press Release, *Governor Fletcher Appoints Judge Abramson to Kentucky Court of Appeals*, Office of Kentucky Governor Ernie Fletcher, June 30, 2006. Copy supplied.

Jason Riley, *Courts Wrestle with Jury Questions*, Courier-Journal (Louisville, Kentucky), April 23, 2006. Copy supplied.

Gregory A. Hall, *Fairness Panel Questions Report That Cited Bias in Jefferson Courts*, Courier-Journal (Louisville, Kentucky), August 22, 2003. Copy supplied.

Kim Wessel, *Lawyers Rate State, Federal Judges Highly; Bankruptcy Judge Joan L. Cooper Gets Perfect Score*, Courier-Journal (Louisville, Kentucky), February 21, 2001. Copy supplied.

Al Cross, *Women of the Bench Convene; More Female Judges Sought*, Courier-Journal (Louisville, Kentucky), March 31, 1999. Copy supplied.

Kim Wessel, *Patton Appoints Abramson to Jefferson Circuit Court*, Courier-Journal (Louisville, Kentucky), January 28, 1999. Copy supplied.

Kim Wessel, *Ten Seek Seat on Circuit Bench*, Courier-Journal (Louisville, Kentucky), January 7, 1999. Copy supplied.

Nina Walfoort, *McAnulty Narrowly Beats Abramson After Tough Campaign; Experience Cited*, Courier-Journal (Louisville, Kentucky), November 4, 1998. Copy supplied.

Retain Judge Abramson on the Court of Appeals, Courier-Journal (Louisville, Kentucky), October 19, 1998. Copy supplied.

Michael Quinlan, *Appeals Court Candidates Taking Their Case to Voters*, Courier-Journal (Louisville, Kentucky), May 22, 1998. Copy supplied.

Workshop Tackles Women's Political Tactics, Courier-Journal (Louisville, Kentucky), January 18, 1998. Copy supplied.

Kim Wessel, *Louisville Lawyer to Fill Appeals Court Vacancy*, Courier-Journal (Louisville, Kentucky), February 1, 1997. Copy supplied.

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I was nominated to the Kentucky Supreme Court by the statewide Judicial Nominating Commission and appointed by Governor Ernie Fletcher in September 2007. I was elected to retain my seat in November 2008 and reelected in 2014. As the Commonwealth's highest court, the Kentucky Supreme Court has jurisdiction over the matter-of-right appeals of all criminal defendants who receive a sentence of 20 or more years, life, or death. It also may exercise discretionary jurisdiction over those criminal and civil cases decided by the Kentucky Court of Appeals for which review is sought as well as decisions of the district courts which the Kentucky Court of Appeals has declined to hear and for which discretionary review is sought. The Kentucky Supreme Court also has appellate jurisdiction over workers' compensation cases from the court of appeals and all lawyer disciplinary matters. Finally, it has original jurisdiction for writs involving the Kentucky Court of Appeals.

I was nominated to the Kentucky Court of Appeals by the statewide Judicial Nominating Commission and appointed by Governor Ernie Fletcher in July 2006. I was elected to the court unopposed in November 2006. I had previously been appointed to that seat by Governor Paul E. Patton in February 1997, but I was defeated in the November 1998 election. The Commonwealth's intermediate appellate court has appellate jurisdiction of all appeals from the circuit courts and original jurisdiction for writs involving the circuit courts. The Kentucky Court of Appeals also exercises discretionary jurisdiction over district court cases for which review is sought. Finally, the appellate court has jurisdiction of Kentucky Workers' Compensation Board matters for which review is sought.

I was nominated to the Jefferson Circuit Court by a local Judicial Nominating Commission and appointed by Governor Paul E. Patton in January 1999. I was elected unopposed in November 1999. The circuit court, the Commonwealth's highest level of trial court, has jurisdiction over all criminal felony cases, all civil cases in which the amount in controversy exceeds \$5,000, and all matters involving equity. The circuit court also has appellate jurisdiction as to all matters arising in the district court and for certain administrative agency decisions. In Jefferson County, the general circuit court has no jurisdiction over family law cases such as divorce, custody, termination of parental rights and paternity because all such matters are heard by the circuit judges of Jefferson Family Court.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment?

Jefferson Circuit Court statistics maintained by the court administrator reflect that

in seven and one-half years as the presiding judge of Division Three, I closed 7,685 circuit court cases, which included 2,051 criminal cases and 5,634 civil cases. From 1999 through 2006, I presided over approximately 150 trials, approximately half of which were criminal trials. I did not preside over trials as a court of appeals judge or supreme court justice.

i. Of these, approximately what percent were:

jury trials:	95%
bench trials:	5%
civil proceedings:	73%
criminal proceedings:	27%

b. Provide citations for all opinions you have written, including concurrences and dissents.

See attached list.

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

1. *Beshear v. Haydon Bridge Co., Inc.*, 416 S.W.3d 280 (Ky. 2013) (author of opinion).

Three years earlier in *Haydon Bridge I*, the Supreme Court of Kentucky had held portions of state budget bills that transferred excess funds from the workers' compensation benefit reserve fund to the general fund violated Kentucky Constitution. On remand, the trial court entered retroactive injunctive relief requiring the governor and the state budget director to return over \$32 million to the reserve fund and also awarded counsel a 25% attorney fee pursuant to statute. In this appeal, *Haydon Bridge II*, the Supreme Court of Kentucky held that, while the trial court had authority to issue prospective relief prior to any transfer, the retroactive injunction violated the sovereign immunity and separation of powers provisions of the state constitution. The court also concluded that the trial court erred in addressing the transfer of funds from the separate pneumoconiosis fund because the plaintiff-employers, having never contributed to the fund, had no standing. Finally, the court concluded that because the plaintiff-employers had not recovered a common fund for the benefit of others, no attorney's fee was justified under the statute.

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Counsel for Haydon Bridge Co., Inc. and other Appellees

2. *Bowling v. Ky. Dep't of Corrections*, 301 S.W.3d 478 (Ky. 2009) (author of opinion).

Three death row inmates brought a declaratory judgment action alleging that the state's lethal injection protocol was invalid because it had not been adopted as an administrative regulation pursuant to the state's Administrative Procedure Act. The Supreme Court of Kentucky held that all of a defendant's various challenges to implementation of the death penalty should be joined in a single declaratory judgment action rather than asserted in a series of successive actions. While two inmates' claims were barred, a third inmate who had not previously challenged the manner of implementation of his death sentence had a cognizable claim. As to the substantive issue, the court held that the state's lethal injection protocol was not "a matter of internal management not affecting private rights" and thus had to be promulgated as an administrative regulation before death sentences could be implemented by the Commonwealth. All three defendants' sentences were stayed pending adoption of an administrative regulation. They remain stayed by virtue of separate litigation still pending in circuit court.

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Counsel for Department of Corrections

3. *Giddings & Lewis, Inc. v. Indus. Risk Insurers*, 348 S.W.3d 729 (Ky. 2011)

(author of opinion).

The “economic loss rule” prevents the commercial purchaser of a product from suing in tort to recover for economic losses arising from the malfunction of the product itself, and requires that damages must be recovered, if at all, pursuant to contract law. In this case, involving the destruction of a diffuser cell system, the Supreme Court of Kentucky adopted the economic loss rule, holding that it precluded tort claims based on negligence, strict liability and negligent misrepresentation, and that the commercial purchaser’s remedies were limited to the terms of the contract and any implied warranties. This issue had been unsettled for many years and had prompted numerous federal courts to attempt to predict how the Kentucky Supreme Court would rule.

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Counsel for Industrial Risk Insurers

4. *Jefferson County Bd. of Educ. v. Fell*, 391 S.W.3d 713 (Ky. 2012) (author of opinion).

Parents of Jefferson County Public School students filed suit against the board of education and various defendants, alleging that the school busing plan that affected over 100,000 students violated a state statute that gave students the right to enroll in and attend the school nearest their home. Construing the relevant statutory language and considering the legislative history, the Supreme Court of Kentucky held that the statute provided for enrollment in a student’s local school but did not ensure attendance there. Moreover, other Kentucky statutes reflected that the legislature had committed student assignment decisions, including the adoption of busing plans, to the sound discretion of the local school district. As a result, the court concluded that the school busing plan did not violate state law, and the students were properly assigned to their respective schools.

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502-562-7354
Counsel for Jefferson County Board of Education and other Appellants

Teddy Gordon
Solo Practitioner
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502-585-3534
Counsel for Fell and other Appellees

5. *McGaren v. Kentucky Revenue Cabinet*, Jefferson Circuit Court, No. 99-CI-1392 (Dec. 9, 2002) (trial judge).

This class action challenged the manner in which Kentucky assessed sales tax on vehicle purchases involving the trade-in of used vehicles purchased out-of-state as opposed to used vehicles that had been purchased in-state. I certified the class and eventually, on the Kentucky Revenue Cabinet's motion, held the challenged disparate tax treatment infringed on interstate commerce in violation of the Commerce Clause of the United States Constitution. Over 800,000 taxpayers received notice of entitlement to refunds of the unconstitutional taxes.

Irvin D. Foley (deceased)
Counsel for McGaren and the Taxpayer Class

Douglas M. Dowell
Kentucky Department of Revenue Office of General Counsel
501 High Street
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502-564-4581
Counsel for Kentucky Revenue Cabinet

6. *Parrish v. Commonwealth*, Jefferson Circuit Court, No. 97-CR-3022 (trial judge), *aff'd*, 121 S.W.3d 198 (Ky. 2003), *cert. denied*, 541 U.S. 1050 (2004). Denial of post-conviction relief affirmed in *Parrish v. Commonwealth*, 272 S.W.3d 161 (Ky. 2008). Habeas corpus dismissed in part *sub nom. Parrish v. Simpson*, No. 3:09CV-254, 2010 WL 750204 (W.D. Ky. Feb. 26, 2010).

The Commonwealth charged Mr. Parrish with two counts of murder in the stabbing death of a young mother and her ten-year-old son, attempted murder in the stabbing of her five-year-old son and first-degree robbery. Following a four-week death penalty trial, Parrish was convicted on all counts and the jury recommended sentences of death for the murder of the child, life without parole for the murder of the mother, life in prison for the attempted murder and 50 years imprisonment for the robbery. I sentenced in accord with the jury's recommendation. The Supreme Court of Kentucky affirmed and the United

States Supreme Court denied certiorari. I later denied post-conviction relief alleging ineffective assistance of counsel and was again affirmed by the Kentucky Supreme Court. Parrish's petition for a writ of habeas corpus is pending before the federal district court.

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Trial Counsel for Parrish

Carol Cobb
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Trial Counsel for the Commonwealth

Anne L. Haynie (formerly with Commonwealth Attorney's Office)
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Trial Counsel for the Commonwealth

7. *Rodgers v. Commonwealth*, 285 S.W. 3d 740 (Ky. 2009) (author of opinion).

In 2006, the Kentucky General Assembly adopted a statute that provided that the right to use force, even deadly force, in self-defense is not contingent upon a duty to retreat and that one who uses justifiable force in self-defense is immune from prosecution. The statute, patterned on one adopted by many states across the country, did not provide guidance on how the immunity determination was to be made in the district and circuit courts. In this case of first impression, the Supreme Court of Kentucky outlined the procedure to be followed by the courts in determining whether there is probable cause (the standard provided in the statute) to conclude that the defendant acted in justifiable self-defense and was therefore immune from prosecution.

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Perry T. Ryan
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502-696-5300
Counsel for the Commonwealth

8. *Univ. of the Cumberlands v. Pennybacker*, 308 S.W.3d 668 (Ky. 2010) (author of opinion).

This declaratory judgment action challenged the constitutionality of the Kentucky General Assembly's appropriation of \$10 million for the establishment of a pharmacy school at a religious college and further appropriation of \$1 million for a pharmacy scholarship program at the college. The Kentucky Supreme Court held that the appropriation for the pharmacy school violated a provision of the state constitution prohibiting appropriations of public funds to religious schools and that the state constitutional provision barring such appropriations did not violate the Free Exercise and Free Speech Clauses or Equal Protection Clause of the United States Constitution. As for the scholarship program created for the benefit of pharmacy students at one religious college, the court held that it violated a provision of the Kentucky Constitution prohibiting special legislation.

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Counsel for the University of the Cumberlands

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Counsel for Pennybacker and other Appellees

9. *Vaughn v. Kentuckiana Colon and Rectal Surgery PLLC and Tuckson, M.D.*, Jefferson Circuit Court, 02-CI-07754 (Feb. 15, 2005) (trial judge).

In this medical malpractice action against a colorectal surgeon and a gastroenterologist, the plaintiff alleged that both physicians misdiagnosed his colorectal condition, leading to an unnecessary complete proctocolectomy. After a seven-day trial, the jury found that the physicians had breached the relevant standards of care and returned a verdict in excess of \$3 million. The jury apportioned 20% of the fault to the surgeon and his practice group, the only non-settling defendants, which resulted in a judgment of over \$610,000 against these trial defendants. There was no appeal. As a trial judge, I presided over several medical malpractice actions like this one and include it as representative of those civil trials.

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Counsel for Kentuckiana and Tuckson

10. *Wheeler v. Commonwealth*, Jefferson Circuit Court, Nos. 97-CR-2621 & 97-CR-2768 (trial judge), *aff'd*, 121 S.W.3d 173 (Ky. 2003), *cert. denied*, 541 U.S. 1051 (2004). Denial of post-conviction relief affirmed in *Wheeler v. Commonwealth*, No. 2006-SC-000901, 2008 WL 5051579 (Nov. 26, 2008), *cert. denied sub nom. Wheeler v. Kentucky*, 558 U.S. 982 (2009). Denial of writ of habeas corpus affirmed in part, reversed in part by *Wheeler v. Simpson*, 779 F.3d 366 (6th Cir. 2015), *cert. granted sub nom. White v. Wheeler*, 136 S. Ct. 456 (2015) (reversing the Sixth Circuit Court of Appeals and reinstating trial court judgment) (trial judge).

The Commonwealth charged Mr. Wheeler with two counts of murder in the stabbing deaths of a young couple in their home. After a four-week death penalty trial, the jury convicted Wheeler on both counts and recommended the death penalty. I sentenced in accord with the jury's recommendation and the Supreme Court of Kentucky affirmed on appeal. The United States Supreme Court denied certiorari in the direct appeal. My denial of post-conviction relief based on ineffective assistance of counsel also was affirmed by the Supreme Court of Kentucky, and the United States Supreme Court denied certiorari. The federal district court subsequently denied habeas corpus relief. The United States Court of Appeals for the Sixth Circuit affirmed the conviction, reversed the death sentence, and remanded the case with instructions to issue the writ of habeas corpus. The United States Supreme Court granted certiorari and reversed the judgment of the Sixth Circuit as to the death sentence, reinstating my trial court judgment.

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Trial Counsel for the Commonwealth

- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

1. *Beshear v. Haydon Bridge Co., Inc.*, 416 S.W.3d 280 (Ky. 2013)

M. Stephen Pitt (formerly with Wyatt Tarrant & Combs)
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2. *Bowling v. Ky. Dep't of Corrections*, 301 S.W.3d 478 (Ky. 2009).

David M. Barron
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502-564-7554
Counsel for Department of Corrections

3. *Brown v. Commonwealth*, 313 S.W.3d 577 (Ky. 2010), *cert. denied*, 131 S. Ct. 904 (2011).

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4. *Directv, Inc. v. Treesh*, 290 S.W.3d 638 (Ky. 2009).

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Kentucky Revenue Cabinet
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502-564-4581
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5. *Giddings & Lewis, Inc. v. Indus. Risk Insurers*, 348 S.W.3d 729 (Ky. 2011).

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James J. Bigoness
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312-606-7595
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6. *Hollon v. Commonwealth*, 334 S.W.3d 431 (Ky. 2010).

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Counsel for the Commonwealth

7. *Inter-Tel Technologies, Inc. v. Linn Station Properties, LLC*, 360 S.W.3d 152 (Ky. 2012).

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Counsel for Linn Station Properties, LLC

8. *Jefferson County Bd. of Educ. v. Fell*, 391 S.W.3d 713 (Ky. 2012).

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9. *Rodgers v. Commonwealth*, 285 S.W. 3d 740 (Ky. 2009).

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10. *Univ. of the Cumberlands v. Pennybacker*, 308 S.W.3d 668 (Ky. 2010).

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- e. Provide a list of all cases in which certiorari was requested or granted.

Petition for writ of certiorari granted:

Commonwealth v. Padilla, 253 S.W.3d 482 (Ky. 2008), *rev'd and remanded sub nom. Padilla v. Kentucky*, 559 U.S. 356 (2010) (joined majority).
King v. Commonwealth, 302 S.W.3d 649 (Ky. 2010), *rev'd and remanded sub nom. Kentucky v. King*, 131 S. Ct. 1849 (2011) (joined majority).
Owens v. Commonwealth, 244 S.W.3d 83 (Ky. 2008), *cert. granted, judgment vacated sub nom. Owens v. Kentucky*, 556 U.S. 1218 (2009) (joined majority).

Petition for writ of certiorari pending:

Commonwealth v. Duncan, 483 S.W.3d 353 (Ky. 2015), *petition for cert. filed*, No. 15-840.
Tibbs v. Bunnell, 448 S.W.3d 796 (Ky. 2014) (dissenting), *petition for cert. filed*, No. 14-1140.

Petition for writ of certiorari denied:

Opinions that I authored:

Brown v. Commonwealth, 313 S.W.3d 577 (Ky. 2010), *cert. denied*, 131 S. Ct. 904 (2011) (authored and filed opinion concurring in part and dissenting in part).
Commonwealth v. Pridham, 394 S.W.3d 867 (Ky. 2012), *cert. denied sub nom. Cox v. Kentucky*, 134 S. Ct. 312 (2013).
Commonwealth, Cabinet for Health & Family Servs. v. T.G., Nos. 2007-SC-000436-DGE, 2007-SC-000821-DGE, 2008 WL 3890033 (Ky. Aug. 21, 2008), *cert. denied*, 558 U.S. 878 (2009).
Directv, Inc v. Treesh, 290 S.W.3d 638 (2009), *cert. denied*, 558 U.S. 1111 (2010).
Foley v. Beshear, 462 S.W.3d 389, 390 (Ky. 2015), *cert. denied*, 136 S. Ct. 797 (2016).
Goncalves v. Commonwealth, 404 S.W.3d 180 (Ky. 2013), *cert. denied*, 134 S. Ct. 705 (2013).
Mills v. Commonwealth, Nos. 2011-SC-000541-MR, 2011-SC-000585-MR, 2014 WL 2809790 (Ky. June 19, 2014), *cert. denied*, 135 S. Ct. 1711 (2015).
Ping v. Beverly Enters., Inc., 376 S.W.3d 581 (Ky. 2012), *cert. denied*, 133 S. Ct. 1996 (2013).
Taylor v. Commonwealth, 276 S.W.3d 800 (Ky. 2008), *cert. denied*, 558 U.S. 865 (2009).

Opinions in which I participated as an associate justice:

Abbott v. Chesley, 413 S.W.3d 589 (Ky. 2013), *cert. denied*, 134 S. Ct. 2672 (2014) (joined majority).
Barrett v. Commonwealth, 470 S.W.3d 337 (Ky. 2015), *cert. denied*, No. 15-7523, 2016 WL 763576 (U.S. Feb. 29, 2016) (joined majority).
Bauder v. Commonwealth, 299 S.W.3d 588 (Ky. 2009), *cert. denied*, 130 S. Ct. 3395 (2010) (joined majority).
Baze v. Thompson, 302 S.W.3d 57 (Ky. 2010), *cert. denied*, 131 S. Ct. 111 (2010) (joined majority).
Blue Movies, Inc. v. Louisville/Jefferson County Metro Gov't, 317 S.W.3d 23 (Ky. 2010), *cert. denied*, 131 S. Ct. 1617 (2011) (joined concurring opinion).
Blum v. Ky. Bar Assoc., 404 S.W.3d 841 (Ky. 2013), *cert. denied*, 134 S. Ct. 1952 (2014) (joined majority).
Bowling v. Commonwealth, No. 2006-SC-000034-MR, 2008 WL 4291670 (Ky. Sept. 18, 2008), *cert. denied*, 558 U.S. 1117 (2010) (joined majority).
Bowling v. Simpson, No. 2008-SC-000245-TG, 2010 WL 4156747 (Ky. Oct. 21, 2010), *cert. denied sub nom. Bowling v. Parker*, 132 S. Ct. 260 (2011) (joined majority).
Brown v. Commonwealth, 416 S.W.3d 302 (Ky. 2013), *cert. denied*, 134 S. Ct. 2733 (2014) (joined majority).
Caudill v. Commonwealth, No. 2006-SC-000457-MR, 2009 WL 1110398 (Ky. Apr. 23, 2009), *cert. denied*, 559 U.S. 1051 (2010) (joined majority).

Commonwealth v. Alleman, 306 S.W.3d 484 (Ky. 2010), *cert. denied*, 131 S. Ct. 418 (2010) (joined majority).

Commonwealth v. Ayers, 435 S.W.3d 625 (Ky. 2013), *cert. denied*, 135 S. Ct. 86 (2014) (joined majority).

Commonwealth v. Baker, 295 S.W.3d 437 (Ky. 2009), *cert. denied*, 559 U.S. 992 (2010) (dissented with opinion).

Commonwealth v. Carneal, 274 S.W.3d 420 (Ky. 2008), *cert. denied*, 558 U.S. 906 (2009) (joined majority).

Commonwealth v. Marshall, 319 S.W.3d 352 (Ky. 2010), *cert. denied*, 131 S. Ct. 1793 (2011) (joined majority).

Commonwealth v. Pollini, 437 S.W.3d 144 (Ky. 2014), *cert. denied*, 135 S. Ct. 1181 (2015) (joined majority).

Cunningham v. Whalen, 373 S.W.3d 438 (Ky. 2012), *cert. denied*, 133 S. Ct. 1245 (2013) (joined majority).

Dennis v. Commonwealth, No. 2010-SC-000425-MR, 2011 WL 4430881 (Ky. Sept. 22, 2011), *cert. denied*, 132 S. Ct. 1584 (2012) (joined majority).

Dunlap v. Commonwealth, 435 S.W.3d 537 (Ky. 2014), *cert. denied*, 135 S. Ct. 87 (2014) (joined majority).

Ernst & Young, LLP v. Clark, 323 S.W.3d 682 (Ky. 2010), *cert. denied*, 131 S. Ct. 1478 (2011) (joined majority).

Fields v. Commonwealth, 274 S.W.3d 375 (Ky. 2008), *cert. denied*, 558 U.S. 971 (2009) (joined majority).

Fields v. Commonwealth, No. 2013-SC-000231-TG, 2014 WL 7688714 (Ky. Dec. 18, 2014), *cert. denied*, 136 S. Ct. 798 (2016) (joined majority).

Flick v. Commonwealth, No. 2008-SC-000233-MR, 2009 WL 1451923 (Ky. May 21, 2009), *cert. denied*, 558 U.S. 1052 (2009) (concurring in result only).

Fortner v. Commonwealth, Nos. 2006-SC-000002-MR, 2006-SC-000020-MR, 2007 WL 2404477 *cert. denied*, 552 U.S. 1260 (2008) (joined majority).

Fuller v. Commonwealth, No. 2006-SC-000364-MR, 2009 WL 1452648 (Ky. May 21, 2009), *cert. denied*, 558 U.S. 1081 (2009) (joined majority).

Furnish v. Commonwealth, 267 S.W.3d 656 (Ky. 2007), *cert. denied*, 558 U.S. 831 (2009) (joined majority).

Goforth v. Commonwealth, No. 2006-SC-000456-MR, 2009 WL 1110400 (Ky. Apr. 23, 2009), *cert. denied*, 560 U.S. 943 (2010) (joined majority).

Hamm v. Commonwealth, No. 2007-SC-000616-MR, 2010 WL 1006279 (Ky. Mar. 18, 2010), *cert. denied*, 131 S. Ct. 201 (2010) (joined majority).

Hodge v. Commonwealth, 2009-SC-000791-MR, 2011 WL 3805960 (Ky. Aug. 25, 2011), *cert. denied*, 133 S. Ct. 506 (2012) (joined majority).

Hunt v. Commonwealth, 304 S.W.3d 15 (Ky. 2009), *cert. denied*, 131 S. Ct. 203 (2009) (joined majority).

Ky. Bar Ass'n v. Deters, 406 S.W.3d 812 (Ky. 2013), *reconsideration denied* (Aug. 29, 2013), *cert. denied*, 134 S. Ct. 965 (2014) (joined majority).

King v. Commonwealth, 386 S.W.3d 119 (Ky. 2012), *cert. denied*, 133 S. Ct. 1995 (2013) (concurring in result only).

Langley v. Commonwealth, No. 2006-SC-000853-MR, 2008 WL 746462 (Ky. Mar. 20, 2008), *cert. denied*, 556 U.S. 1104 (2009) (joined majority).

Meece v. Commonwealth, 348 S.W.3d 627 (Ky. 2011), *cert. denied*, 133 S. Ct. 105 (2012) (joined majority).

Miller v. Johnson Controls, Inc., 296 S.W.3d 392 (Ky. 2009), *cert. denied*, 560 U.S. 935 (2010) (dissented with opinion).

N.C. v. Commonwealth, 396 S.W.3d 852 (Ky. 2013), *cert. denied*, 134 S. Ct. 303 (2013) (joined majority and filed concurring opinion).

Ordway v. Commonwealth, 352 S.W.3d 584 (Ky. 2011), *cert. denied*, 132 S. Ct. 1575 (2012) (joined majority).

Parker v. Commonwealth, 291 S.W.3d 647 (Ky. 2009), *cert. denied*, 559 U.S. 910 (2010) (joined majority).

Petitioner F. v. Brown, 306 S.W.3d 80 (Ky. 2010), *cert. denied sub nom.*

Petitioner G. v. Brown, 131 S. Ct. 422 (2010) (joined majority).

Peyton v. Commonwealth, 253 S.W.3d 504 (Ky. 2008), *cert. denied*, 555 U.S. 1035 (2008) (joined majority).

Rice v. Commonwealth, No. 2006-SC-000743-MR, 2008 WL 3890106 (Ky. Aug. 21, 2008), *cert. denied*, 555 U.S. 1110 (2009) (joined majority).

Rogers v. Commonwealth, No. 2009-SC-000241-MR, 2010 WL 3377754 (Ky. Aug. 26, 2010), *cert. denied*, 131 S. Ct. 2912 (2011) (joined majority).

Sanders v. Commonwealth, 339 S.W.3d 427 (Ky. 2011), *cert. denied*, 132 S. Ct. 1792 (2012) (joined majority).

Schlagel v. Frohlich, No. 2006-SC-000430-MR, 2007 WL 3226224 (Ky. Nov. 1, 2007), *cert. denied*, 555 U.S. 1032 (2008) (joined majority).

St. Clair v. Commonwealth, 455 S.W.3d 869 (Ky. 2015), *cert. denied*, 136 S. Ct. 194 (2015) (joined majority).

Steward v. Commonwealth, 397 S.W.3d 881 (Ky. 2012), *cert. denied*, 134 S. Ct. 442 (2013) (joined majority).

Tackett v. Commonwealth, 445 S.W.3d 20 (Ky. 2015), *cert. denied*, 135 S. Ct. 1852 (2015) (joined majority).

Tolle v. Commonwealth, No. 2008-SC-000345-MR, 2009 WL 4251726 (Ky. Nov. 25, 2009), *cert. denied*, 559 U.S. 1069 (2010) (joined majority).

Wallace v. Commonwealth, No. 2009-SC-000659-MR, 2011 WL 1103330 (Ky. Mar. 24, 2011), *cert. denied*, 132 S. Ct. 504 (2011) (joined majority).

Watkins v. Commonwealth, Nos. 2008-SC-000798-MR, 2008-SC-000823-MR, 2011 WL 1641764 (Ky. Apr. 21, 2011), *cert. denied*, 132 S. Ct. 1580 (2012) (joined majority).

Windsor v. Commonwealth, 413 S.W.3d 568 (Ky. 2010), *cert. denied*, 132 S. Ct. 230 (2011) (joined majority and concurred).

Yell v. Commonwealth, 242 S.W.3d 331 (Ky. 2007), *cert. denied*, 553 U.S. 1011 (2008) (joined majority).

Kentucky Court of Appeals - Petition for writ of certiorari denied

Opinions that I authored:

Long v. Commonwealth, 2005-CA-002065-MR, 2006 WL 2708542 (Ky. Ct. App. Sept. 22, 2006), *cert. denied*, 552 U.S. 870 (2007).

L.R. v. Commonwealth, 2006-CA-000243-ME, 2007 WL 188101 (Ky. Ct. App.

Jan. 26, 2007), *cert. denied*, 552 U.S. 911 (2007).

Bischoff v. Bischoff, 1997-CA-000375-MR, 987 S.W.2d 798 (Ky. Ct. App. 1998), *cert. denied*, 528 U.S. 872 (1999).

Opinions in which I participated on the panel:

Aljami v. Commonwealth, 1995-CA-003130-MR (Ky. Ct. App. Oct. 17, 1997), *cert. denied*, 524 U.S. 909 (1998).

Taylor v. O'Neil, 2005-CA-001301-MR, 2007 WL 2069590 (Ky. Ct. App. July 20, 2007), *cert. denied*, 555 U.S. 1035 (2008).

- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

Kentucky Supreme Court

In my tenure on the Kentucky Supreme Court, I have participated in more than 1,700 opinions. The United States Supreme Court has reversed on review of two of those opinions.

King v. Commonwealth, 302 S.W.3d 649 (Ky. 2010) (joined the majority), *rev'd and remanded sub nom. Kentucky v. King*, 131 S. Ct. 1849 (2011). Police officers knocked on a door that they thought a fleeing suspect may have entered and, smelling a strong odor of marijuana, announced "police" and demanded entry. When the occupants failed to open the door and the officers heard noises that they thought indicated evidence was being destroyed, they kicked in the door and, in plain view, found cocaine and marijuana. The trial court declined to suppress the evidence and the court of appeals affirmed. The Kentucky Supreme Court reversed, holding that the exigent circumstances exception to the warrant requirement does not apply if the police deliberately created the exigency with bad faith intent to avoid the warrant requirement or, even absent bad faith, if it was reasonably foreseeable that the officers' investigative tactics would create exigent circumstances. The court found no bad faith but, concluding it was reasonably foreseeable that the occupants would destroy evidence when the police announced their presence, refused to apply the exigent circumstances exception. Acknowledging a multitude of tests within federal and state courts regarding the so-called "police-created exigency" doctrine, the Supreme Court reversed, holding that exigent circumstances justify a warrantless search when the conduct of the police preceding the exigency is reasonable in nature. Where the police do not create the exigency by engaging in or threatening to engage in conduct violative of the Fourth Amendment, warrantless entry to prevent the destruction of evidence is allowed. Assuming as the Kentucky Supreme Court did that exigent circumstances existed, the United States Supreme Court concluded that there was no evidence that the officers violated, or threatened to violate, the

Fourth Amendment prior to entering the apartment. The case was reversed and remanded for further proceedings with the Kentucky Supreme Court directed to determine on remand whether an exigency actually existed. On remand, the court held that the prosecution failed to show an exigency existed, and the Supreme Court denied certiorari of that decision. 386 S.W.3d 119 (2012), *cert. denied*, 133 S. Ct. 1995 (2013).

Commonwealth v. Padilla, 253 S.W.3d 482 (Ky. 2008) (joined the majority but voted with the two dissenters to grant the petition for rehearing), *rev'd and remanded sub nom. Padilla v. Kentucky*, 559 U.S. 356 (2010). Padilla, a native of Honduras who had lived in the United States for over 40 years, sought post-conviction relief, arguing that his attorney misadvised him about the deportation consequences of entering his guilty plea. The trial court held the challenged advice pertained to a collateral matter and was outside the scope of the Sixth Amendment right to counsel guarantee. Concluding that defendant had alleged a viable ineffective assistance claim, the court of appeals reversed and remanded for an evidentiary hearing on the advice actually given by counsel. The Kentucky Supreme Court reversed, holding that the alleged misadvice regarding the potential for deportation pertained to a collateral consequence of the plea and thus was outside the scope of the constitutional right to counsel guarantee. The United States Supreme Court reversed, holding that as a matter of federal law, deportation is an integral part of the penalty that may be imposed on a non-citizen. The Court did not address the direct/collateral consequences distinction because the unique nature of deportation rendered that unnecessary. Instead, the Supreme Court found that the weight of prevailing professional norms supported the conclusion that a competent attorney would advise her client regarding deportation risks. Accepting Padilla's allegations as to his attorney's advice as true, the Court held that the first prong of the two-part test for ineffective of assistance of counsel set forth in *Strickland v. Washington*, constitutionally deficient assistance, had been met. The case was reversed and remanded for further proceedings in the trial court, including a hearing on the advice given and, if consistent with Padilla's allegations, whether there was prejudice under the second prong of *Strickland*.

Kentucky Court of Appeals

In three years as a Kentucky Court of Appeals judge, I authored 307 published and unpublished opinions, six of which were reversed by the Supreme Court of Kentucky. I served as a panel member on approximately 600 cases, ten of which were reversed by the Kentucky Supreme Court.

Greene v. Commonwealth of Ky., Administrative Office of the Courts, 349 S.W.3d 892 (Ky. 2011), *rev'g* 2007 WL 1196541 (Ky. Ct. App. 2007) (panel member). The court of appeals affirmed the Kentucky Board of Claims' dismissal of plaintiff's claims against the Administrative Office of the Courts, a circuit judge and a master commissioner for damages suffered when the master commissioner

converted funds from judicial sales of property to his own personal use. The Kentucky Supreme Court reversed solely as to the circuit judge who continued using the master commissioner's services after the expiration of his term and without ensuring that a proper surety bond had been posted, finding those allegations of negligent performance of a state official's ministerial duties invoked the limited sovereign immunity waiver under the Board of Claims Act. The Kentucky Supreme Court remanded those claims for further proceedings in the Board of Claims.

Calor v. Ashland Hospital Corp., 2007-SC-00573-DG, 2011 WL 4431143 (Ky. Sept. 22, 2011), *rev'g* 2007 WL 1574606 (Ky. Ct. App. 2007) (panel member). The court of appeals reversed a jury verdict in favor of a physician who brought slander and tortious interference with contractual relations claims against a hospital and its CFO, holding that the defendants were entitled to judgment as a matter of law based on the qualified common business interest privilege. Reversing, the Kentucky Supreme Court disagreed with the court of appeals that the defendants were entitled to summary judgment, given issues of fact about statements hospital employees made concerning the physician, but agreed that on remand for a new trial the jury should be properly instructed on the qualified common business interest privilege.

Jenkins v. Commonwealth, 308 S.W.3d 704 ((Ky. 2010), *rev'g* 2007 WL 706843 (Ky. Ct. App. 2007) (panel member). The court of appeals affirmed in part and reversed in part a sexual abuse and indecent exposure conviction, remanding for a hearing on whether the defendant had been improperly denied the opportunity to present the expert testimony of a forensic psychologist regarding improper interviewing techniques which can result in unreliable reporting by child witnesses. In a case of first impression, the Kentucky Supreme Court agreed that the psychologist's testimony was potentially admissible and further concluded that a remand was not necessary because the trial court had clearly erred in excluding the testimony. The case was remanded for a new trial on the sexual abuse charge with directions to the trial court to admit the psychologist's testimony and previously excluded videotapes of the child witness's interviews.

Meece v. Feldman Lumber Co., 290 S.W.3d 631 (Ky. 2009), *rev'g* 2007 WL 2332585 (Ky. Ct. App. 2007) (panel member). In a quiet title action between a lumber company and an adjoining landowner, the court of appeals affirmed a judgment in favor of the landowner and a damage award for the stump value of the timber the lumber company had improperly removed from the tract in dispute. The Kentucky Supreme Court reversed solely as to damages, concluding that the landowner was not limited to stump value but was entitled to statutory treble damages because the lumber company lacked "color of title."

Mattingly v. Stinson, 281 S.W.3d 796 (Ky. 2009), *rev'g* 2007 WL 1191906 (Ky. Ct. App. 2007) (author). At a motor vehicle accident trial, the trial court precluded any reference to Stinson's underinsured motorist (UIM) coverage, and

after the jury found Stinson 100% liable for the accident, dismissed his claim. The court of appeals reversed, concluding that the prohibition on reference to the UIM coverage violated the rule set forth in *Earle v. Cobb*, a Kentucky Supreme Court decision. Reversing the court of appeals and reinstating the trial court judgment, the Kentucky Supreme Court declined to extend *Earle* to those cases where there has been no pretrial settlement between the UIM carrier and the tortfeasor.

McClendon v. Hodges, 272 S.W.3d 188 (Ky. 2008), *rev'g* 2007 WL 2069595 (Ky. Ct. App. 2007) (panel member). In an election contest claim, the trial court found fraud in the walk-in absentee voting in one voting district and voided the entire mayoral election. On appeal by the prevailing candidate, the court of appeals concluded that because fraud was limited to one voting district, it did not require voiding the entire election and that exclusion of the walk-in absentee votes from the one district was sufficient. The Kentucky Supreme Court reversed and reinstated the trial court judgment, concluding that under the relevant election statute the entire election had to be voided despite the limited nature of the fraud.

Triple Crown Subdivision Homeowners' Ass'n, Inc., v. Oberst, 279 S.W.3d 138 (Ky. 2008), *rev'g* 2006 WL 2457411 (Ky. Ct. App. 2006) (panel member, concurred in result only). Reversing a partial summary judgment in favor of a homeowners' association, the court of appeals concluded that certain restrictive covenants at issue did not apply to the landowners because they had after-acquired property which was not encompassed in the land developer's (the association's predecessor in title) declaration of covenants and restrictions on file in the county clerk's office. Reversing the court of appeals, the Kentucky Supreme Court held the landowners' property was after-acquired property that was covered by the declaration's expansion clause and the developer's failure to amend the declaration to include the specific legal descriptions of the landowners' properties did not preclude the association's claims.

Hartsfield v. Commonwealth, 277 S.W.3d 239 (Ky. 2007), *aff'g in part, rev'g in part* 2007 WL 29385 (Ky. Ct. App. 2006) (panel member). The court of appeals reversed the exclusion of certain evidence in a sexual offense prosecution, holding that certain excluded statements were admissible pursuant to exceptions to the hearsay rule and that statements to a sexual assault nurse did not violate the Confrontation Clause. Affirming in part and reversing in part, the Kentucky Supreme Court held that the court of appeals erred only as to the statements to the sexual assault nurse, which were testimonial under *Crawford v. Washington* and its progeny and therefore properly excluded.

Holman v. Holman, 84 S.W.3d 903 (Ky. 2002), *rev'g* 1997-CA-000736 (Ky. Ct. App. 1998) (author) (copy supplied). The court of appeals affirmed the trial court's classification of the husband's future entitlement to firefighter disability retirement payments as marital property and awarded the wife a portion of those future payments. Reversing, the Kentucky Supreme Court held that the husband's

future, post-dissolution disability retirement benefits replaced his future non-marital earnings and thus constituted his separate non-marital property.

Combs v. Commonwealth, 74 S.W.3d 738 (Ky. 2002), *rev'g* 1997-CA-001143 (Ky. Ct. App. 1998) (author) (copy supplied). The court of appeals affirmed defendant's convictions for trafficking in a controlled substance. Reversing, the Kentucky Supreme Court held that it was error for the trial court to exclude the testimony of the defendant's alibi witness even though the witness intended to invoke her Fifth Amendment privilege against self-incrimination as to most questions.

Union Underwear Co. Inc. v. Barnhart, 50 S.W.3d 188 (Ky. 2001), *rev'g* 1996-CA-000780 (Ky. Ct. App. 1998) (author) (copy supplied). The court of appeals affirmed a \$1 million jury verdict in this age discrimination action, addressing numerous issues raised by the employer. In a 4-3 opinion, the Kentucky Supreme Court reversed, holding that the Kentucky Civil Rights Act (KCRA) did not apply to the plaintiff because, even though his employer had its corporate headquarters in Kentucky, the employee was not a Kentucky resident nor did he perform his employment duties in Kentucky.

City of Florence v. Chipman, 38 S.W.3d 387 (Ky. 2001), *rev'g* 1996-CA-001287 (Ky. Ct. App. 1998) (panel member) (copy supplied). The court of appeals reversed summary judgment in favor of the defendants in a wrongful death action brought against the city and three city police officers after plaintiff's decedent was killed in a motor vehicle accident. The court of appeals concluded that plaintiff's decedent had been in police custody shortly before the accident and therefore had a special relationship with the officers that gave rise to a duty on the officers' part to protect her from harm. Reversing and reinstating the summary judgment, the Kentucky Supreme Court held that there was no special relationship between the officers and the deceased woman, and consequently no duty to her.

Commonwealth v. Davis, 14 S.W.3d 9 (Ky. 2000), *rev'g* 1996-CA-002620 (Ky. Ct. App. 1997) (panel member) (copy supplied). After the trial court denied defendant's post-conviction motion based on ineffective assistance of counsel without having conducted an evidentiary hearing, the court of appeals reversed and remanded with directions to conduct a hearing. Reversing the court of appeals, the Kentucky Supreme Court held that allegations regarding trial counsel's failure to object to jury instruction and failure to preserve issue of admission of evidence of victim's gang activities could be determined without an evidentiary hearing.

Commonwealth v. Walker, 989 S.W.2d 165 (Ky. 1999), *rev'g* 1996-CA-000879 (Ky. Ct. App. 1997) (panel member) (copy supplied). The juvenile defendant, who had served more than six months in a juvenile detention center prior to sentencing, sought to have that pretrial detention credited against a six-month term to be served as condition of probation. The trial court denied the credit but

the court of appeals reversed, concluding that sentencing statutes required that any pretrial detention be credited against confinement ordered as a condition of probation. Reversing the court of appeals, the Kentucky Supreme Court construed the two applicable sentencing statutes as requiring that defendant be given credit against service of his five-year prison term but not any term imposed as a condition of probation.

Commonwealth v. Alexander, 5 S.W.3d 104 (Ky. 1999), *rev'g* 1996-CA-002058 (Ky. Ct. App. 1998) (author) (copy supplied). The court of appeals reversed a police officer's reckless homicide conviction because a fellow officer's testimony regarding the cause of accident improperly went to the ultimate issue in the case, in violation of long-standing Kentucky law. Although the Kentucky Supreme Court had recently abandoned the ultimate issue rule in *Stringer v. Commonwealth*, nothing in that opinion indicated it should be applied retroactively. The court of appeals further rejected the Commonwealth's argument that the defense had opened the door to the challenged evidence. Reversing the court of appeals, the Kentucky Supreme Court held that defendant opened the door to the evidence by his questions about the accident, that *Stringer* applied retroactively and, finally, the expert's opinion about the cause of the accident did not address the ultimate issue.

Leeco, Inc. v. Smith, 970 S.W.2d 337 (Ky. 1998), *rev'g* 1996-CA-002025 (Ky. Ct. App. 1997) (author) (copy supplied). The court of appeals affirmed a Workers' Compensation Board award, finding that a coal miner's benefits should be based on a 1995 rate because his last injurious exposure was in June 1995 – and further, that there should be a tier-down of the award pursuant to statute. The Kentucky Supreme Court reversed, holding that the 1991 rate applied because the claimant initially filed for benefits in 1991, and that the tier-down benefit was to be reapportioned consistent with a decision recently rendered by the court on the identical issue.

Jefferson Circuit Court

As a circuit court judge for over seven years, I handled approximately 7,685 cases. In the following 25 cases, either the United States Court of Appeals for the Sixth Circuit, the Kentucky Supreme Court or the Kentucky Court of Appeals reversed the judgment that I had entered in the circuit court. I have supplied copies of my decisions where a written opinion was issued. Where the reversal was based on trial error, I have not included the final judgment of conviction in criminal cases or the final judgment in the one civil case because those orders are not reflective of any grounds on which the reversal was premised.

Wheeler v. Commonwealth, 779 F.3d 366 (6th Cir. 2015), *cert. granted, judgment rev'd sub nom. White v. Wheeler*, 136 S. Ct. 456 (2015). A jury convicted Wheeler on two counts of murder and recommended the death penalty. I sentenced in accord with the jury's recommendation and the Supreme Court of

Kentucky affirmed on appeal. The United States Supreme Court denied certiorari in the direct appeal. My denial of post-conviction relief based on ineffective assistance of counsel also was affirmed by the Supreme Court of Kentucky and the United States Supreme Court denied certiorari. The federal district court subsequently denied habeas corpus relief. The United States Court of Appeals for the Sixth Circuit affirmed the conviction, reversed the death sentence, and remanded the case with instructions to issue the writ of habeas corpus. A divided panel of the Sixth Circuit concluded that it was error to remove a potential juror based on his responses concerning whether he could impose the death penalty. However, the United States Supreme Court granted certiorari and reversed the judgment of the court of appeals, reinstating my trial judgment.

Coleman v. Bee Line Courier, 284 S.W.3d 123 (Ky. 2009). Based on the broad language of a release signed by a plaintiff after a motor vehicle accident, I entered summary judgment in favor of the courier service and denied a motion for reconsideration. Copies supplied. The Kentucky Supreme Court reversed, concluding that release was for settlement of the personal injury claim only and did not encompass basic reparation benefits recoverable under the Kentucky Motor Vehicle Reparations Act.

Labor Ready, Inc. v. Johnston, 289 S.W.3d 200 (Ky. 2009). Concluding that the exclusivity of the workers' compensation remedy precluded the claim, I granted summary judgment to a subcontractor and its temporary employee in a suit brought by the contractor's employee struck by vehicle driven by the temporary employee. Copy supplied. The Kentucky Supreme Court held the claim was not precluded by statute and reversed.

Wilbanks v. Commonwealth, 2008 WL 5264276 (Ky. Ct. App. 2008). I entered judgment of conviction and resentenced a juvenile upon his reaching the age of majority without considering probation because I concluded he was statutorily ineligible. In light of the recent Kentucky Supreme Court decision in *Merriman v. Commonwealth*, the court of appeals reversed and remanded for resentencing, because defendant was eligible for probation at his age-of-majority resentencing despite his violent offender status.

Mason v. Underhill, 2008 WL 1917179 (Ky. Ct. App. 2008). I entered judgment in favor of a lessor in an action for breach of a commercial lease agreement following a multi-day bench trial. Copy supplied. Although the court of appeals affirmed as to most of the issues on appeal, it reversed calculations of rent and common area maintenance fees as partially in error.

Fuggett v. Commonwealth, 250 S.W.3d 604 (Ky. 2008). A judgment of conviction I entered following jury verdict in a double murder trial was reversed. The Kentucky Supreme Court found an abuse of discretion in not striking for cause a juror who believed police officers had greater credibility than the average person. This was reversible error even though the challenged juror did not sit on

the jury, because defendant was deprived of a peremptory challenge.

Craycroft v. Pippin, 245 S.W.3d 804 (Ky. Ct. App. 2008). I entered summary judgment in favor of the defendant on a malicious prosecution claim because the district court had found probable cause. Copy supplied. The court of appeals reversed, holding that the circuit court's finding of probable cause raised a rebuttable presumption but was not conclusive as a matter of law. The case was remanded for the circuit court to address probable cause as a mixed question of law and fact.

Brown v. Commonwealth, 226 S.W.3d 74 (Ky. 2007). A judgment of conviction that I entered following a jury trial was reversed by the Kentucky Supreme Court because I allowed trial counsel to withdraw and leave the courtroom during defendant's testimony, due to the counsel's ethical concerns about the testimony to be offered. This resulted in defendant testifying without the aid of counsel and making *pro se* closing arguments. A divided Kentucky Supreme Court held that the defendant was improperly denied assistance of counsel.

McCullum v. Commonwealth, 2006 WL 436107 (Ky. 2006). I entered judgment following a jury trial convicting defendant of sodomy, unlawful imprisonment and possession of handgun by a convicted felon. The Kentucky Supreme Court reversed based on the admission of defendant's 19-year-old conviction for sexual assault and testimony regarding a rape video discovered on his personal computer, which was viewed on the day of the offense. The court held that those rulings on admissibility were an abuse of discretion, as was the failure to allow admission of the teenage victim's diary.

Jackson v. Commonwealth, 187 S.W.3d 300 (Ky. 2006). I entered judgments as to two defendants following their entry of conditional guilty pleas. Copy supplied. The Kentucky Supreme Court vacated the judgments on the grounds that the denial of motions for separate trials constituted an abuse of discretion. While all other parts of my suppression ruling were affirmed, the court ordered an evidentiary hearing as to one defendant's claim that he was improperly subjected to a question-first technique.

Cape Publications v. City of Louisville, 191 S.W.3d 10 (Ky. Ct. App. 2006). In an Open Records Act matter, I ordered access to the Parks Department's records regarding an investigation of two employees accused of criminal wrongdoing in the course of employment, but denied access to the employees' performance evaluations based on the statutory privacy exemption. Copy supplied. Reversing, the court of appeals held that public interest outweighed the privacy interest as to some portions of the performance evaluations and ordered that redacted copies of those evaluations be produced to a newspaper.

Bruce v. Commonwealth, 2006 WL 2519539 (Ky. Ct. App. 2006). I denied post-conviction relief to a defendant convicted of three counts of rape, six counts of

sodomy and one count of criminal abuse. The court of appeals reversed and remanded for an evidentiary hearing as to whether trial counsel was ineffective in failing to ask for lesser-included offense instruction as to two counts of rape.

Thomas v. Commonwealth, 170 S.W.3d 343 (Ky. 2005). Following a jury verdict, I entered judgment convicting the defendant of first and second-degree assaults in a bar altercation. Reversing, the Kentucky Supreme Court held that the prosecutor's hypothetical question regarding blood alcohol level was improper, the victims' statements during their police interviews were not excited utterances and that the defendant was entitled not only to the self-defense instruction, which he received, but also to an assault under extreme emotional disturbance instruction.

Domino v. Commonwealth, 2004 WL 2634454 (Ky. Ct. App. 2004). My judgment following a jury verdict convicting the defendant of terroristic threatening was affirmed in all respects except as to fines assessed against the defendant. The court of appeals held that the fines were improperly assessed because defendant's indigent status was sufficiently established.

Conseco Finance Servicing Corp. v. Hurstbourne Healthcare, LLC, 2004 WL 2755850 (Ky. Ct. App. 2004). I entered a default judgment in favor of the defendant on a cross-claim and subsequently denied a motion to set aside the default judgment. The court of appeals reversed, concluding that defendant failed to properly serve the cross-claim, rendering the default judgment void.

Brasher v. Commonwealth, 2003 WL 1204081 (Ky. 2003). I entered judgment following a jury verdict convicting defendant of several offenses. The Kentucky Supreme Court reversed as to the second-degree manslaughter conviction because the imperfect self-defense jury instruction was worded improperly in light of *Commonwealth v. Hager*, 41 S.W.3d 828 (Ky. 2001), a case rendered after the *Brasher* trial.

Nationwide Mutual Ins. Co. v. Hatfield, 122 S.W.3d 36 (Ky. 2003). Construing exclusions in an insurance policy, I dismissed plaintiffs' claims against their underinsured motorists insurance carrier. Copy supplied. Based on a recent case "which the trial judge did not have the benefit of," the Kentucky Supreme Court reversed in a 4-3 decision, holding that damages were "due by law" to plaintiffs despite the sovereign immunity of the municipality, and, in an issue of first impression, the exclusion of government-owned vehicles from underinsured motorists coverage was deemed void as against the public policy expressed in the Kentucky Motor Vehicle Reparations Act.

Roberts v. Nelson, 2003 WL 22319263 (Ky. Ct. App. 2003). I entered judgment following a defense verdict in a motor vehicle accident trial in which I disallowed the reading of the treating physician's deposition due to an absence of the required signature on the deposition. The Kentucky Court of Appeals held that

the exclusion was an abuse of discretion and reversed.

Commonwealth v. DeWeese, 141 S.W.3d 372 (Ky. Ct. App. 2003). I denied a writ of prohibition against a district court judge who had ordered the Commonwealth to produce discovery in a juvenile proceeding. Copy supplied. The court of appeals reversed, ruling that the juvenile court did not have jurisdiction to order discovery before a probable cause hearing was held on the transfer to circuit court, and that discovery is not available pursuant to statute until probable cause is established.

Brown v. Commonwealth, 2000-CA-002121 (Ky. Ct. App. 2003) (copy supplied). My order denying defendant's motion to set aside his judgment of conviction was affirmed as to the conviction but reversed as to the sentence. The court of appeals remanded the case for resentencing, giving the defendant credit for time served on federal sentence.

Bowen v. Hewlett-Packard Co., 2001-CA-001815 (Ky. Ct. App. 2003) (copy supplied). I entered an order dismissing a class action raising claims of fraud and violation of the Kentucky Consumer Protection Act (KCPA). Copy supplied. The court of appeals affirmed as to the fraud claim, but reversed as to the KCPA claim.

Light v. City of Louisville, 93 S.W.3d 696 (Ky. Ct. App. 2002). I entered an order dismissing a class action regarding ad valorem taxes because the taxpayers had not exhausted their administrative remedies before the Kentucky Board of Tax Appeals (KBTA). Copy supplied. In a case of first impression, the court of appeals held that the taxpayers had fully exhausted their remedies by seeking a refund from the City and that they were not required to submit their claims to the KBTA.

Kirk v. Watts, 62 S.W.3d 37 (Ky. Ct. App. 2001). I entered summary judgment in favor of an attorney in a legal malpractice action. Copy supplied. The court of appeals reversed, concluding that the client lost a viable sexual harassment claim due to her attorney's failure to advise her to list the claim on her bankruptcy petition.

Cox v. Louisville and Jefferson Co. Metro. Sewer Dist., 1999-CA-002753 (Ky. Ct. App. 2001) (copy supplied). I entered summary judgment in favor of a metropolitan sewer district in a suit brought by a pedestrian who stepped into an uncovered sewer drain while walking at night down the middle of the street. Copy supplied. The court of appeals reversed, holding that the statute granting immunity for injuries caused by failure to make inspection does not apply to a municipality's failure to maintain its property.

Vaughn v. Commonwealth, 1999-CA-001449 (Ky. Ct. App. 2000) (copy supplied). Following a jury trial, I entered a judgment of conviction against

defendant for sexual misconduct. The court of appeals reversed, noting that the jury was improperly instructed on sexual misconduct because, despite the absence of language in the statute so indicating, the Kentucky Supreme Court had held the statute only applied when both the victim and defendant are under the age of 21.

The following case is erroneously attributed to me:

Wells Fargo Bank, Minnesota, N.A. and Central Bank of Jefferson Co., Inc. v. Commonwealth, Finance & Administration Cabinet, Dept. of Revenue, 345 S.W.3d 800 (Ky. 2011). The trial court entered judgment and an order of sale in favor of a bank that held a mortgage lien. The Kentucky Supreme Court reversed, concluding that statutory tax liens were superior to later-filed mortgage liens and mortgagees were not entitled to equitable subrogation. This case is erroneously attributed to me, the appealed order having been entered by a senior status judge more than three months after I left the circuit court.

- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

Virtually all unpublished Kentucky Supreme Court opinions are issued as memorandum opinions and the author of the opinion is not publicly known. I have been responsible for a number of memorandum opinions during my tenure on the court. All memorandum opinions are available on Westlaw. The one unpublished opinion that I authored that bears my name is *Commonwealth, Cabinet for Health & Family Servs. v. T.G.*, Nos. 2007-SC-000436-DGE & 2007-SC-000821-DGE, 2008 WL 3890033 (Ky. Aug. 21, 2008), *cert. denied*, 558 U.S. 878 (2009).

Kentucky Court of Appeals opinions that are unpublished include the name of the author. I authored 100 unpublished opinions during my court of appeals service from July 2006 through September 2007. Those opinions are available on Westlaw. I authored 185 unpublished opinions during my court of appeals service from February 1997 through November 1998. Those opinions are no longer available on Westlaw but can be found in the searchable Public Records Database for the Kentucky Court of Appeals, available at <http://courts.ky.gov/Pages/default.aspx>.

- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

Beshear v. Haydon Bridge Co., Inc., 416 S.W.3d 280 (Ky. 2013).

Brown v. Commonwealth, 313 S.W.3d 577 (Ky. 2010).

Commonwealth v. Pridham, 394 S.W.3d 867 (Ky. 2012).

Commonwealth v. Simmons, 394 S.W.3d 903 (Ky. 2013).

Cook v. Popplewell, 394 S.W.3d 323 (Ky. 2011) (concurring).

Directv, Inc. v. Treesh, 290 S.W.3d 638 (Ky. 2009).

Foley v. Beshear, 462 S.W.3d 389 (Ky. 2015).

Hollon v. Commonwealth, 334 S.W.3d 431 (Ky. 2010).

Jamgotchian v. Kentucky Horse Racing Comm'n, No. 2014-SC-000108-DG, 2016 WL 2865615 (Ky. May 5, 2016).

Miller v. Johnson Controls, Inc., 296 S.W.3d 392 (Ky. 2009) (dissenting).

N.C. v. Commonwealth, 396 S.W.3d 852 (Ky. 2013) (concurring).

Univ. of the Cumberlands v. Pennybacker, 308 S.W.3d 668 (Ky. 2010).

- i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

I have never sat by designation on a federal court of appeals.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

The Supreme Court of Kentucky has an automatic recusal system whereby I am automatically recused from any case in which I have previously participated as either the trial judge or as a court of appeals judge. The vast majority of recusals during my tenure on the supreme court are because of this automatic recusal system. Also, I voluntarily chose not to sit on several cases that were ready for disposition the first week I came on the bench in September 2007, because the cases could be rendered with six justices participating and my participation would have delayed their rendition.

I have been the subject of a recusal motion only in *Stilger v. Flint*, 391 S.W.3d 751 (Ky. 2013), and have recused sua sponte in subsequent cases filed by Mr. Flint. Mr. Flint, an active *pro se* litigant in Kentucky state and federal courts, moved for my recusal in his dispute with his condominium association and the association's attorney, based on his erroneous assumption that my then-husband and I were close personal friends with the association's attorney. Although the motion was baseless, Mr. Flint's repeated and threatening motions eventually resulted in my recusing from the case and notifying the Jefferson County Sheriff's office.

My former husband is a law professor at the University of Louisville and, as a consequence, a disclosure was automatically made to counsel in every case involving the University until we were divorced in December 2015. I was never asked to recuse in any of those cases. I recused sua sponte in *Newton v. Univ. of Louisville*, No. 2010-SC-000782-DG (2014) (with a companion case styled *Furtula v. Univ. of Ky.*, 438 S.W.3d 303 (Ky. 2014)), because it related to the status of the Redbook issued to all University employees and would directly affect all University employees, including my former husband.

I have also recused sua sponte in the following cases for the reasons noted:

Associated Ins. Serv., Inc. v. Garcia, 307 S.W.3d 58 (Ky. 2010) (prior knowledge of the case from discussions with the trial judge during my trial court tenure).

Ballard v. 1400 Willow Council of Co-Owners, Inc., 430 S.W.3d 229 (Ky. 2013) (prior knowledge of the case from discussions with the trial judge during my trial court tenure).

Bubalo, Hiestand & Rotman, PLC v. McDonald-Burkman, No. 2009-SC-00032-MR, 2010 WL 252255 (Ky. Jan. 21, 2010) (attorney Bubalo was actively involved in fundraising for my judicial campaign and as a member of the Mass Tort and Class Action Committee).

Cardine v. Commonwealth, 283 S.W.3d 641 (Ky. 2009) (prior knowledge of the case from discussions with the trial judge during my trial court tenure).

Commonwealth, Fin. & Admin. Cabinet v. White, No. 2013-SC-000459-MR, 2014

WL1118227 (Ky. Mar. 20, 2014) (family members were members in a class action regarding defective concrete in commercial buildings and residences).

Dudley v. Stevens, 338 S.W.3d 774 (Ky. 2011) (the father of the injured teenage plaintiff is friend of mine and my former husband's).

Ky. Bar Ass'n v. Rowsey, 334 S.W.3d 105 (Ky. 2011) (I was absent from court the week this case was heard due to a family medical emergency, and declined to participate to avoid delaying rendition).

Louisville/Jefferson County Metro Gov't v. TDC Group, Inc., 283 S.W.3d 657 (Ky. 2009) (prior knowledge of the case from my court of appeals service and discussions among judges regarding similar pending cases).

O'Connell v. Cowan, 332 S.W.3d 34 (Ky. 2010) (writ action from Jefferson County about which I had received information in my administrative role in the Fourth Appellate District).

Ten Broeck Dupont Inc. v. Brooks, 283 S.W.3d 705 (Ky. 2009) (prior knowledge of the case from discussions with trial judge during my trial court tenure).

Weird v. Emberton, 306 S.W.3d 67 (Ky. 2010) (automatically recused when discretionary review was granted because my election opponent was the presiding judge in the lower court).

I also recused in the following disciplinary cases where the lawyer was a law school classmate or a member of the Louisville legal community with whom I had regular contact:

Coorssen v. Ky. Bar Ass'n, 266 S.W.3d 237 (Ky. 2008).

Friedman v. Ky. Bar Ass'n, 385 S.W.3d 207 (Ky. 2012).

Hipwell v. Ky. Bar Ass'n, 267 S.W.3d 682 (Ky. 2008).

Ky. Bar. Ass'n v. Fernandez, 397 S.W.3d 383 (Ky. 2013).

Ky. Bar Ass'n v. Porath, 397 S.W.3d 905 (Ky. 2013).

Ky. Bar Ass'n v. Porath, 398 S.W.3d 440 (Ky. 2013).

The court of appeals had an automatic recusal system administered by the clerk's office pursuant to which I was recused from all cases which I had participated in as either a trial judge or attorney. I was never asked to recuse, nor did I recuse sua sponte, except pursuant to the following monthly screening process. Cases were assigned to three-judge panels on a monthly basis. I would be designated as

the presiding judge on ten to 12 cases and as a member of the panel on the remaining 18 to 26 cases. I would screen all cases upon receipt and return any for which I had a conflict. Occasionally, a trial court case would be inadvertently assigned and I would return it. Also during my service from 1997 to 1998, I recused on all cases in which my former law firm was counsel. During my second term on the court of appeals from 2006 to 2007, I recused in those cases involving my former law firm only if the case was pending during my time at the law firm and in those cases about which I had prior knowledge due to conversations with a Jefferson County Circuit Court judge during my tenure as a circuit court judge. I do not recall the names of these cases.

As a Jefferson County Circuit Court judge, I recused from all cases in which I had participated as an attorney and, for five years, from all cases in which my former law firm was counsel. I continued to recuse on any matter in which my former law firm was involved after that five-year period if the case was pending during my time at the law firm. I presided over 7,685 cases and I do not remember being asked to recuse except in the following three cases:

In one case, I made a disclosure regarding my former husband's faculty position at the University of Louisville and a *pro se* litigant who had brought suit against the University asked me to recuse. To the best of my memory, I did so. I do not recall the name of the case and I have been unable to locate it.

A second case involved a plaintiff who sued a contractor after he slipped and fell in his own home despite being told by the contractor that he should not enter the premises. The plaintiff was represented by at least two to three different attorneys during the pendency of the case, declined several settlement offers and was *pro se* by the time he asked me to recuse. Because I had ruled against the plaintiff on several pretrial matters, I regarded the motion as an attempt to remove me from the case in hopes of having a successor judge revisit my pretrial rulings. I reviewed the Judicial Code of Conduct and, after concluding that I had no conflict of interest, declined to recuse. I do not recall the name of the case and have been unable to locate it.

The third case was *Johnson v. Jewish Hospital*, No. 04-CI-005457, a case brought by a plaintiff who contracted MRSA (an antibiotics-resistant staph infection) during a stay at Jewish Hospital. I disclosed that my elderly mother-in-law had contracted MRSA while a patient at Jewish Hospital. Because my former husband and his sisters had never considered bringing suit against the hospital, plaintiff's counsel believed that I was predisposed to rule against any plaintiff who did bring suit against the hospital after contracting MRSA and, consequently, moved for my recusal. I examined the Code of Judicial Conduct and, believing I had no conflict, declined to recuse in January 2006. The plaintiff voluntarily dismissed that action later that month.

15. Public Office, Political Activities and Affiliations:

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have neither held nor run for any public office, other than judge or justice.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have not participated in any political party or election committee and I have never been involved in any campaign other than my own judicial campaigns.

16. **Legal Career:** Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:

- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I never clerked for a judge.

- ii. whether you practiced alone, and if so, the addresses and dates;

I never practiced law alone.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1980 – 1984

Greenebaum Doll & McDonald (now Bingham Greenebaum Doll LLP)

101 South Fifth Street, Suite 3500

Louisville, Kentucky 40202

Associate (1980 – 1984)

1987 – 1996

Hirn Doheny Reed & Harper

2000 Meidinger Tower

462 South Fourth Street

Louisville, Kentucky 40202
Associate (1987 – 1993)
Partner (1994 – 1996)

1996 – 1997
Reed Weitkamp Schell & Vice
2400 Citizens Plaza
500 West Jefferson Street
Louisville, Kentucky 40202
Partner (1996 – 1997)

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

None.

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

As an associate at the state's largest law firm in my first years of practice, I was involved in a variety of business and commercial litigation matters in state and federal courts with an emphasis on contract disputes, shareholder actions and tax cases. I handled a number of certificate of need matters for a national hospital corporation before the administrative agency and in the subsequent judicial appeals. In subsequent years, as an associate and later a partner, at smaller, business-oriented firms, I continued to practice in the business and commercial litigation area, while also developing a state tax law practice.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

Throughout my law practice, my clients included national and international corporations, several banks, health care companies, non-profit corporations such as the Presbyterian Church USA, and the Commonwealth of Kentucky Transportation Cabinet. I also represented a number of closely-held corporations and partnerships as well as individual physicians, dentists and stockbrokers involved in disputes with their professional associates or employer.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

My law practice was devoted almost exclusively to litigation in state and federal courts or before administrative agencies. I did author or co-author extensive opinion letters for corporate clients on several occasions (addressing legal issues that were not germane to any existing litigation), but I would estimate that comprised less than two percent of my practice. In the first two or three years of practice as a young associate, I appeared in court only occasionally with senior attorneys but by my fourth year of practice I appeared in court more regularly and sometimes without senior attorneys. As a senior associate and a young partner, I appeared in court frequently at times and only occasionally at other times, depending on the nature of the cases I was then handling.

i. Indicate the percentage of your practice in:

- | | |
|-----------------------------|-----|
| 1. federal courts: | 10% |
| 2. state courts of record: | 80% |
| 3. other courts: | 0% |
| 4. administrative agencies: | 10% |

ii. Indicate the percentage of your practice in:

- | | |
|--------------------------|------|
| 1. civil proceedings: | 100% |
| 2. criminal proceedings: | 0% |

- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I served as counsel in two jury trials, one of which resulted in a mistrial. My practice also included a number of administrative proceedings, several bench trials, and several lengthy injunction hearings. The majority of matters were either resolved through dispositive motions or settled. I was lead counsel in one of the jury trials and associate counsel in the other. I was lead counsel in four multi-day bench trials, several injunction hearings, and many matters resolved by summary judgment or settlement. I was associate counsel in one bench trial, one injunction hearing, and many matters resolved by summary judgment or settlement.

i. What percentage of these trials were:

- | | |
|--------------|-----|
| 1. jury: | 5% |
| 2. non-jury: | 95% |

- e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have never practiced before the Supreme Court of the United States.

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:
- a. the date of representation;
 - b. the name of the court and the name of the judge or judges before whom the case was litigated; and
 - c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *Bloom, M.D. v. Mahl, M.D. and Retina Associates, P.S.C.*, No. 94-CI-4659 (Jefferson Circuit Court Jan. 7, 1997).

I represented Dr. Bloom, an ophthalmologist and retinal surgeon, following the wrongful breach of his employment agreement by a local ophthalmology practice. As sole litigation counsel, I prepared and filed the complaint in Jefferson Circuit Court alleging breach of contract claims arising from the employment agreement, a stock purchase agreement and a stock restriction agreement, and seeking a declaration that a covenant prohibiting Dr. Bloom's continued practice of medicine in the area was unenforceable. Shortly after the filing of the complaint, I represented Dr. Bloom in an injunction proceeding in Jefferson Circuit Court that resulted in the court enjoining the enforcement of the restrictive covenant. Throughout the following year, I handled all discovery in the matter, including numerous depositions of both fact witnesses and expert witnesses. Following a multi-day bench trial in January 1996, Judge Kenneth Conliffe issued findings of fact and conclusions of law in Dr. Bloom's favor on virtually every issue and a judgment of approximately \$580,000. Dr. Bloom subsequently appealed from the circuit court's January 1997 judgment and a later post-appeal judgment, raising issues regarding the damages awarded pursuant to the employment contract and the damage calculation regarding the repurchase of his stock, but I did not handle either appeal because they occurred after I became an appellate judge in February 1997. Unpublished appellate decisions of the court of appeals include *Bloom v. Mahl*, Nos. 1997-CA-001416 & 1997-CA-001561 (Ky. Ct. App. Feb. 19, 1999) and *Bloom v. Mahl*, No. 2000-CA-001544 (Ky. Ct. App. Aug. 31, 2001). Due to the injunction and subsequent judgment voiding the restrictive covenant, Dr. Bloom and his wife, an internist, were able to continue practicing medicine in the Louisville area.

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2. *Knuckles v. J.R. Hoe and Sons, Inc.*, No. 91-CI-506 (Bell Circuit Court July 5, 1994).

J.R. Hoe and Sons, Inc. (JRH) is a fourth-generation closely-held corporation established over a century ago as a foundry, which now also engineers and fabricates steel products. At the time of the litigation, JRH was doing business in over 30 states. I was sole litigation counsel for JRH and five members of its board of directors in this suit brought by Knuckles, a minority shareholder, alleging fraud, breach of fiduciary duties, waste and mismanagement. Knuckles's complaint asserted both individual and derivative claims that focused primarily on certain of JRH's deferred compensation agreements, executive compensation, and dividend policy. I prepared the answer in late 1991 and handled all discovery prior to September 1993, including numerous depositions of fact and expert witnesses. On July 5, 1994, Judge Ron Johnson of Harlan Circuit Court (sitting as a special judge due to the Bell Circuit Court judge's recusal) entered a judgment in favor of JRH and the individual defendants, dismissing the complaint and awarding defendants their costs.

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3. *Remcor Products Company v. SerVend International, Inc. and Fischer Enterprises, Ltd.*, No. NA 96-174-C R/H (S.D. Ind.).

I represented SerVend, an international manufacturer of ice-beverage dispensers, which was sued by Remcor for patent infringement. I was involved when the suit was initially filed in the Northern District of Illinois and was a principal author of a successful change of venue motion. I also was a principal author of a successful motion for partial summary judgment on laches grounds, premised on Remcor's long delay in filing suit against SerVend despite its knowledge of the ice-beverage dispenser that allegedly infringed its patent. I did not actively participate in proceedings in the Southern District of Indiana before Judge Sarah Evans Barker, but I played a central role in the two principal motions, with accompanying memoranda, that precipitated a settlement of a suit that enabled SerVend to continue to operate.

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4. *Dayton Hudson Inc. d/b/a Target Stores v. Kentucky Revenue Cabinet*, 1997 Ky. Tax LEXIS 203 (Kentucky Board of Tax Appeals May 4, 1997).

The Kentucky Revenue Cabinet assessed a use tax on advertising circulars (preprints) purchased out-of-state by Target Stores and shipped to Kentucky over a four-year period for inclusion in and distribution with newspapers. The assessment differed from the Cabinet's prior practice regarding preprints. Specifically, the Cabinet had audited several

companies that used preprints and had never imposed use tax. Target challenged the assessment and argued that the Revenue Cabinet was estopped from changing the tax treatment of preprints based on an internal agency determination and without an intervening change in the relevant statute. As primary counsel for Target Stores in proceedings before the Kentucky Board of Tax Appeals (KBTA), I handled all of the discovery and was lead counsel in the eventual hearing. The KBTA ruled in favor of Target on the grounds that the Cabinet was bound by its prior interpretation of the relevant tax statute and could not change its policy without an intervening change in the law. Moreover, to the extent a change could be justified it had to be adopted in a properly promulgated administrative regulation. The KBTA ruling came after I became a judge and I did not participate in the appeal to circuit court. The Cabinet appealed to the Franklin Circuit Court where it was held in abeyance pending a decision in a case which raised the identical issue. Ultimately, in *Revenue Cabinet v. Lazarus, Inc.*, 49 S.W.3d 172 (Ky. 2001), the Kentucky Supreme Court ruled in favor of the Revenue Cabinet.

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5. *Butler v. Groce*, 880 S.W.2d 547 (Ky. 1994).

Kentucky's driving under the influence (DUI) statutes provide for different criminal and civil penalties based on whether the offender has prior offenses. In this case, I was sole counsel for the Commonwealth of Kentucky, Transportation Cabinet and the Circuit Court Clerk of Clinton County in an action filed by Mr. Butler, a DUI offender who, despite several prior offenses, succeeded in having the local district court judge classify his offense as a first-offense DUI, entitling him to obtain a restricted driver's license known as a hardship license. After determining that Butler had several prior DUI convictions, the clerk contacted the Transportation Cabinet (the state agency responsible for statewide administration of drivers' licensing matters) to report the matter and refused to issue the hardship license. At that time, this issue was a high priority for the Transportation Cabinet because numerous judges throughout the state were ignoring the mandatory statutory language regarding DUI offenses and ordering the issuance of hardship licenses to repeat DUI offenders. Although Butler obtained an ex parte temporary restraining order against the clerk, I appeared in Clinton Circuit Court three days later before Judge Eddie Lovelace and succeeded in having the restraining order

dissolved. The circuit court subsequently ruled in favor of the Transportation Cabinet and clerk, holding that the district judge was bound by the Cabinet's drivers' records and could not characterize a DUI offense as a first-offense if it was in fact a subsequent offense. I handled the matter, without assistance, in the circuit court and the court of appeals (before Judges Wilfrid Schroder, R.W. Dyche and John P. Hayes), where the circuit court was affirmed. I also prepared the brief and argued the case in the Kentucky Supreme Court. In a six-to-one published opinion, authored by Justice Donald Wintersheimer, the court rejected Butler's argument that the district courts were vested with discretion in DUI matters and affirmed the trial court and court of appeals.

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6. *Womack, M.D., P.S.C. v. City of Flemingsburg*, No. 96-CI-00010, 2001-CA-0366 (Fleming Circuit Court 2001), *rev'd and remanded*, *Womack v. City of Flemingsburg*, 102 S.W.3d 513 (Ky. Ct. App. 2002).

I was initial trial counsel in this action brought by Dr. Womack challenging the constitutionality of a city ordinance imposing an occupational license tax. Prior to filing the complaint, I prepared an extensive memorandum outlining the state constitutional issues presented by the disparate tax treatment required by the ordinance. Specifically, "professionals," a group defined to include physicians, attorneys, architects, public accountants and similar professionals, were taxed at a significantly higher rate than other businesses. As the court of appeals later found, a professional with gross income of \$400,000 would pay the same occupational tax as a business with gross receipts of \$5 million. I prepared the complaint and then represented Dr. Womack in several pretrial proceedings in Fleming Circuit Court before Judge Robert Gallenstein. I withdrew as counsel in February 1997 when I assumed my judicial position. The bench trial and subsequent appeals were handled by Ridley M. Sandidge, Jr., a partner in my firm. Although the city prevailed in the circuit court, our arguments were successful in the court of appeals, which found that the occupational license tax was arbitrary and violated the uniformity principles of § 171 of the Kentucky Constitution. The Kentucky Supreme Court denied discretionary review and ordered publication of the court of appeals opinion (authored by Judge Joseph Huddleston).

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7. *Callahan v. Hutsell, Callahan & Buchino P.S.C.*, 813 F. Supp. 541 (W.D. Ky. 1992) *vacated and remanded*, 14 F.3d 600 (6th Cir. 1993).

Mrs. Callahan and Dr. Callahan entered into an antenuptial agreement that required her to execute forms waiving her interests in his retirement and profit-sharing plans in favor of his mother and children from a prior marriage. The agreement also waived Mrs. Callahan's interest in any continuing compensation owed to Dr. Callahan as a result of his employment agreement with his professional service corporation (PSC). Two months after the parties married, Dr. Callahan died. The waivers for the pension and profit sharing plan benefits, if executed, could not be found. Mrs. Callahan brought suit in the United States District Court for the Western District of Kentucky seeking to recover pension and profit sharing benefits, as well as under Dr. Callahan's employment agreement. I represented the PSC as well as the PSC's Revised Profit Sharing and Revised Money Purchase Pension Plan (the Plans) and was sole litigation counsel in both the district court and the United States Court of Appeals for the Sixth Circuit. The other principal party to the case was First Kentucky Trust Company, the trustee of a trust created by Dr. Callahan for the benefit of his mother and children and the executor of his estate. In February 1992, on cross-motions for summary judgment, U.S. District Judge Edward H. Johnstone held that the antenuptial agreement precluded Mrs. Callahan's recovery under the employment agreement but that she was entitled to the pension and profit sharing benefits because the waiver in the antenuptial agreement did not meet the requirements of 29 U.S.C. § 1055. I appealed on behalf of my clients and prepared the brief and presented oral arguments in the Sixth Circuit, which vacated the district court's judgment as to the pension and profit sharing plan benefits and remanded for further discovery (Circuit Judges Herbert Milburn and David Nelson and Senior District Judge Horace Gilmore, sitting by designation). The court held that if Dr. Callahan was prevented from filing a fully executed beneficiary form with the plans due to Mrs. Callahan's refusal to sign the necessary waiver, that breach of the antenuptial agreement by Mrs. Callahan would preclude her recovery of any benefits owed under the plans. On remand, the parties settled the matter.

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Callahan & Buchino Revised Profit Sharing Plan

8. *Owners-Operators Independent Drivers Ass'n v. Commonwealth*, 848 S.W.2d 451
(Ky. Ct. App. 1993).

The Owners-Operators Independent Drivers Association of America, Inc. (OOIDA) challenged the constitutionality of a state statute that provided for higher permit fees for carriers not regulated by the Interstate Commerce Commission (ICC) than for those carriers that were ICC-regulated. I was co-counsel with James R. Cox for the Commonwealth of Kentucky, Transportation Cabinet throughout the case, which originated in Franklin Circuit Court before Judge William Graham and finally concluded in the Kentucky Court of Appeals. I was the primary author of all filings in the circuit and appellate courts. The Cabinet prevailed in the circuit court on OOIDA's federal constitutional claims that the statute placed an unreasonable burden on interstate commerce and violated the Equal Protection Clause. Affirming in part and reversing in part, the Kentucky Court of Appeals (Judges John Gardner, John Hayes, and J. William Howerton) concluded that there was no Commerce Clause violation but that genuine issues of material fact as to the equal protection claim required remand for further proceedings in the circuit court. The statute was amended shortly after the court of appeals rendered its decision. On remand, the parties settled the matter and refunds were made.

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James R. Cox (retired)

Co-counsel for Commonwealth of Kentucky, Transportation Cabinet

9. *Baptist Hospital, Inc. v. Humana of Kentucky, Inc.*, 672 S.W.2d 669 (Ky. Ct. App. 1984).

Suburban Hospital, operated by Humana, was successful in obtaining a certificate of need from the state's certificate of need and licensure board to add certain ancillary services, including an expanded intensive care unit, additional surgical suites and other medical procedure rooms. I represented Suburban, as primary counsel, in the certificate of need (CON) proceedings and in a later declaratory judgment action brought by a competitor, Baptist Hospital. Although Baptist and Suburban, along with Jewish Hospital, had been adverse to each other on earlier CON applications and Baptist was aware of Suburban's ancillary services application, it chose not to participate in the administrative proceedings. Baptist subsequently sought declaratory and injunctive relief preventing issuance of the CON in Franklin Circuit Court before Judge Henry Meigs, who ruled in favor of Suburban on the grounds that Baptist had failed to exhaust its administrative remedies. I handled the matter in the circuit court, prepared the appellate brief and argued the case before the Kentucky Court of Appeals. The appellate court affirmed, rejecting Baptist's argument that it had raised issues of law that could not be decided in an administrative proceeding. The court of appeals (Judges Boyce G. Clayton, Charles Lester, and John D. White) held that the issue of consistency with the State Health Plan was an issue of fact that the General Assembly had committed to the CON board in the first instance and that Baptist's complaint should be dismissed for failure to exhaust its administrative remedies.

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Marvin J. Hirn (retired)

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10. *USACO Coal Co. v. Carbomin Energy, Inc.*, 550 F. Supp. 19 (W.D. Ky. 1982) & 539 F. Supp. 807 (W.D. Ky. 1982), *aff'd*, 689 F.2d 94 (6th Cir. 1982).

A number of German investors invested over \$8 million in a Kentucky coal company, USACO, which had been used by a fellow German citizen, Mr. Schierack, to advance his own interests. USACO and a principal investor brought suit in the United States District Court for the Western District of Kentucky, alleging a conspiracy to defraud in violation

of the Racketeer Influenced and Corrupt Organizations Act, breach of fiduciary duties, fraud and breach of contract. I was involved as a principal drafter of many of the motions and memoranda filed with the court as well as the brief to the Sixth Circuit. I also assisted at a 17-day hearing that resulted in a preliminary injunction issued by Judge Charles Allen, freezing the U.S. assets owned by Schierack through Carbomin Energy, Inc. and Columbia Coal Co. to secure recovery of damages incurred by the German investors. The ruling was subsequently affirmed by the Sixth Circuit (before Judges John Peck, George Edwards, and Nathaniel Jones). In addition to the court filings, I was involved in preparing and responding to the written discovery requests including extensive document productions.

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18. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

As a member of the Kentucky Supreme Court, I share responsibility for the adoption of the governing civil, criminal and Supreme Court rules. Each year at the Kentucky Bar Association Convention, the Supreme Court holds a rules hearing in which bar members

are allowed to comment on all proposed rule amendments. Since becoming chair of the Civil Rules Committee in 2011, my role at those hearings has also included presentation of any proposed amendments that the Civil Rules Committee has recommended for consideration. Following the annual hearings, the court considers the comments from the bar and then votes on whether to adopt each rule proposal. I have participated in all Supreme Court Rules Hearings from 2008 through 2016 with the exception of the 2011 and 2015 hearings.

I was also a member of the Education Committee of the Kentucky Circuit Judges Association during my trial court tenure, and I have remained involved in judicial education for fifteen years. From 2000 to 2013, I presented the recent Kentucky Supreme Court cases at the annual Circuit Judges' Judicial College. I presented the cases in an interactive format that allows the trial judges to consider a scenario and then vote on the proper legal rulings. After the audience votes, I presented the case from which the scenario was drawn and discuss the Supreme Court's opinion. I also discussed any noteworthy rule changes and other matters that circuit judges should be aware of in handling their dockets.

I have never performed lobbying activities of any type.

19. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I have never taught a course.

20. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

I am vested as a member of the Kentucky Judicial Retirement System and will be entitled to draw a monthly pension benefit at age 62. The pension is funded by my personal mandatory monthly contributions, contributions from the Commonwealth of Kentucky for each month of my judicial service and interest derived on investments by the Kentucky Judicial Retirement Board of Trustees.

21. **Outside Commitments During Court Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

If confirmed, I have no plans, commitments or agreements regarding outside employment during my service with the court.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

Please see attached Financial Disclosure Report.

23. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

Please see attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

My middle son, Shelton Lawrence Abramson, is a member of the Kentucky bar. He was an associate with Covington & Burling LLP in the Washington, D.C. office until September 2014 but he was not involved in litigation matters. He and his soon-to-be wife, Jane E.T. Farrington, are both currently attorneys at the United States Department of State, Office of Legal Adviser. I would disclose their employment in any case in which they may have had some involvement and recuse, if appropriate.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

If confirmed, I will carefully follow 28 U.S.C. § 455 and the Code of Conduct for United States Judges. I would also engage in prompt and immediate review of the parties, their affiliates, and the issues in any matter to come before me so that I could make a prompt, informed decision regarding the propriety of my participation in the matter.

25. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

As a judge, my pro bono activities have been restricted from 1997 to the present. Since 2008, however, I have served on the Kentucky Interest on Lawyers Trust Accounts

(IOLTA) Board of Trustees, an organization under the auspices of the Kentucky Bar Foundation. The Board annually considers grant applications from the four regional organizations in Kentucky that provide civil legal services to indigent and low-income individuals who cannot afford legal representation. The IOLTA grants that the Board awards each year are a significant part of the budget for each of the four legal services providers. During my legal career, I accepted three pro bono cases from the Legal Aid Society, our local provider of civil legal services for those who cannot afford legal representation. I devoted approximately 40 to 50 hours to resolving those matters.

26. Selection Process:

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

On September 20, 2013, I met with the state Director for Senator Rand Paul in Louisville to express my interest in the Sixth Circuit opening. In late October 2013, I saw Governor Steven Beshear at a luncheon at the Capitol and he inquired about my interest in the position. On November 15, 2013, I interviewed with Governor Beshear in Frankfort. Since January 15, 2014, I have been in contact with officials from the White House Counsel's Office, and with officials from the Office of Legal Policy at the Department of Justice since January 17, 2014. On March 20, 2014, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On March 17, 2016, the President submitted my nomination to the Senate.

- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.