

February 23, 2026

VIA EMAIL AND HAND DELIVERY

Chairman Jason M. Nemes
Kentucky House of Representatives
2026 Impeachment Committee
702 Capitol Avenue, Room 307
Frankfort, Kentucky 406001

Re: Judge Julie M. Goodman

Dear Chairman Nemes:

Enclosed please find Judge Goodman's response to the petition to impeach Judge Goodman.

We appreciate the opportunity to respond to the allegations in the petition. We believe that our response will meaningfully assist the committee in disposing of the meritless petition with no further action.

Please do not hesitate to reach out, should you or the committee have any questions or need supplemental materials.

Respectfully submitted,



Robert K. McBride
Counsel for Judge Julie M. Goodman

Encl: Judge Goodman's response to the petition for impeachment.

cc: Roberta Kiser

James Frazier, Esq.
Mitchell Denham, Esq.
Counsel for Judge Julie M. Goodman

KENTUCKY GENERAL ASSEMBLY
In the HOUSE OF REPRESENTATIVES

IN RE: IMPEACHMENT PETITION

**RESPONSE of JUDGE JULIE MUTH GOODMAN
and REQUEST FOR DISMISSAL**

As requested by the 2026 Regular Session Impeachment Committee of the House of Representatives (“the Committee”), Judge Julie Muth Goodman (through counsel) hereby responds to the “Petition for the Impeachment of Judge Julie Goodman, Circuit Court Judge, 22nd Judicial District” (“the Petition”), dated 1/28/26 and signed by Killian Timoney.

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INTRODUCTION

Impeachment of a duly elected civil officer is for extraordinary circumstances, not to be lightly invoked or deployed. It overturns the will of the People expressed in voting and risks damage to judicial independence and constitutional separation of powers. The Kentucky Constitution and statutes establish, and Impeachment Committee Reports recognize, strict limits on the use of impeachment so that it supports the public good rather than subverts democracy.

The Petitioner demands impeachment and removal of Judge Goodman simply because he disagrees with her rulings. He thus asks the House to ignore the rights of the actual party litigants to have their disputes adjudicated by Circuit Courts and their appeals by the Court of Appeals and the Supreme Court, as provided in §§ 110–112 & 115 of the Kentucky Constitution.

Judge Goodman respectfully requests that the Petition be dismissed and that the Committee report and recommend that the House of Representatives take no further action. If such request is not granted, Judge Goodman respectfully requests that the Committee require submission of necessary affidavits of the Petitioner and others with personal knowledge of the facts, as mandated by KRS 63.030, and then grant her additional time to respond to those affidavits.

SUMMARY

The Petition has at least five deficiencies, any one of which justifies dismissal. *First*, it contains no affidavit of the Petitioner in violation of KRS 63.030(1). Petitions for impeachment are creatures of statute, and have no validity or effect if not in compliance with the enactment.

Second, the Petition is unsupported by any sworn statement by a person with knowledge of the facts. Unsupported, conclusory allegations provide Judge Goodman with no meaningful opportunity to be heard, in violation of due process rights under Section 2 of the Kentucky Constitution and the 14th Amendment to the United States Constitution.

Third, the Petition fails to allege a “misdemeanor in office” as required by Section 68 of the Kentucky Constitution. Impeachments are to address only serious abuses, not mere disagreements over exercises in discretion.

Fourth, the Petition effectively seeks to interfere with proceedings of the Kentucky Circuit Courts, Court of Appeals, and Supreme Court, and with the rights of the parties in those proceedings. It is for the party litigants to challenge their trial court decisions, by asking the trial court judge to change his or her ruling or by filing an appeal — not for outsiders to attempt to remove the judge or influence the ultimate result by filing an impeachment petition.

Fifth, the Petition presents an unprecedented threat to judicial independence. The House has never impeached a judge based on disagreement over an opinion or other decision in a court case. To so impeach on that basis would encroach on the function and independence of the judiciary in Kentucky’s tripartite system of government, and would violate Kentucky’s strict separation of powers provisions.

Over and above these deficiencies, the Petition wholly lacks merit, as the relevant public court records prove the Petitioner’s claims are inaccurate. Additionally, those records make it clear that he misunderstands the procedure and the opinions. They plainly establish that Judge Goodman’s opinions were within her authority as a Circuit Court Judge, where she applied the facts and the applicable law. There can be no legitimate argument that Judge Goodman was committing a “misdemeanor in office” as required by Section 68 for impeachment.

REASONS TO DENY THE PETITION AND RECOMMEND NO FURTHER ACTION

I. The Petitioner seeks to overturn the will of the People of Fayette County that Judge Goodman serve as their judge.

Through the ballot box, since 2008, the People of Fayette County have repeatedly chosen Julie Muth Goodman to be their judge and make decisions in disputes brought before her. They know her as a life-long member of their community, have appeared before her and relied on her experience and character in adjudicating their disputes and matters of public interest, and have had the opportunity and interest to assess whether she serves them well. **The unsworn Petition in the name of someone who is not a resident or voter in Fayette County, who does not claim personal knowledge or interest in any matter before Judge Goodman, cannot be the basis for overturning the democratically-expressed choice of Fayette County voters about who their judges should be and that Judge Goodman be one of them.**

Judge Goodman was born and raised in Fayette County on a farm, and her education and degrees have all been received from schools and universities located in Fayette County. She is married to her college sweetheart (also born and raised in Fayette County), and after a brief time in New York for his career, they returned to Fayette County to raise their son. In the 28 years between receiving her UK law degree and becoming a judge, Julie Goodman acquired a great range and depth of legal experience, in the public, private, and corporate sectors. Highlights include:

- She was recruited by the late Ray Larson in the 1980s to prosecute felony crimes throughout the Commonwealth as part of the Attorney General's Special Prosecutions Unit, and again in the 1990s as an Assistant Commonwealth Attorney in the Fayette County Commonwealth Attorney's office.

- From the mid-1980s through 2008, Judge Goodman was a partner in well-respected Lexington and regional Kentucky law firms. During that time, she litigated complex civil cases nationwide as lead counsel for general contractors and practiced in 24 states due to her qualifications, skills, and good standing as a licensed attorney in Kentucky.
- She has been in-house counsel for a New York insurance company, supervising defense of legal malpractice cases in multiple states, and served as General Counsel for the United States Equestrian Federation, the national governing body for equestrian sport (headquartered at the Kentucky Horse Park).
- In addition, Judge Goodman has drafted rules and regulations for state agencies and manuals for Kentucky Commonwealth Attorneys, instituted dispute resolution alternatives, and served as a volunteer drug court judge for a decade.

From an early age, she has been involved in the community — as a volunteer, member and officer of various charitable and religious organizations. For a fuller description of Judge Goodman’s Fayette County ties, community involvement, and legal experience, please see attached Exhibit A.

Her background and experience made Julie Goodman a well-qualified candidate for election as a Fayette County judge. She was among eight candidates who sought election in 2008 to an unexpired term of the 22nd Judicial District, Fourth Division, and prevailed, with over one-fifth of the votes cast (21,800).¹ She was elected to full four-year terms in 2010, 2014, and 2018 — as the Fayette County electorate had an increasing opportunity to assess her — each time in an uncontested race² and with an ever-higher vote count.³

Judge Goodman then was one of five candidates who sought election in 2019 to an unexpired term of the 22nd Judicial Circuit, Fourth Division. In the primary, she won an

outright majority — 54.7% (28,430) — of the votes cast; in the two-candidate general election, 60.8% of the votes cast (57,481) were for her.⁴ Judge Goodman was re-elected to a full eight-year term (1/1/2023-12/31/30) in an uncontested race in 2022. In the 2022 general elections for the 14 District and Circuit judges for Fayette County,⁵ Judge Goodman had the third highest vote count (53,748).

Fayette County voters have shown at the ballot box that they want Judge Goodman to serve as one of their judges. In 2022, they considered more than 14 years of actual experience with her as a decision-maker, and they again democratically chose her. Since 2008, the People of Fayette County have not passively voted to keep or re-elect whoever was the sitting judge at the time. If there was dissatisfaction with a judge or a possibility of someone else doing a better job, there has been a contested election and several incumbent Fayette County judges have been removed by the ballot box. Judge Goodman is the democratically selected Circuit Judge for the 22nd Judicial Circuit, Fourth Division, and there are not grounds to justify overturning the People’s will that she continue as their judge.

II. The Petition is fatally flawed because it does not comply with KRS 63.030.

A. There is no affidavit.

The Kentucky Constitution gives the House of Representatives the power to impeach “for any misdemeanor in office.” KY. CONST. § 68. The General Assembly has enacted the statutes in KRS chapter 63 to govern resignations, vacancies, and removals, including the impeachment process. KRS 63.030(1) establishes the content and form requirements for a petition for impeachment:

Any person may, by written petition to the House of Representatives, signed by himself, verified by his own affidavit and the affidavits of such others as he deems necessary, and setting forth the facts, pray the impeachment of any officer.

This Committee has made it abundantly clear in its prior rulings that “an affidavit that sets forth the facts that justify impeachment” is essential to an impeachment petition, such that a petition lacking a proper affidavit may be summarily dismissed.⁶

A “Killian Timoney” signed and dated the Petition in this case, but failed to include a sworn or verified affidavit. An affidavit is “[a] voluntary declaration of facts written down and sworn to by the declarant before an officer authorized to administer oaths.”⁷ **Although his written statement makes allegations, it cannot be considered a valid petition for impeachment because it is neither sworn to nor certified by a notary public or other officer.**

In the impeachment context, the requirement of an affidavit discourages unfounded accusations. An individual who files such an affidavit exposes himself not only to paying the costs of the accused under KRS 63.070(1), but also to penalties for contempt, perjury, or false swearing for making statements that are untrue or for which he has no factual basis.⁸ There is a solemnity to swearing or affirming statements that makes a declarant careful and hesitant to repeat what may be unfounded allegations by others.

The lack of an affidavit also means that there is no one truly vouching for the accusations against Judge Goodman. Furthermore, the unwillingness of “Killian Timoney” to swear to the allegations in the document leads one to believe he has no personal knowledge of the facts and is just signing his name to allegations by someone else who is unwilling to disclose even their identity. Not only does such action deny Judge Goodman the right to know who her actual accusers are; it also denies this Committee the ability to adequately assess the credibility of those who wrote the allegations and of the allegations made. Without an affidavit from the petitioner, this Petition is effectively anonymous and does not meet the requirement for being “signed by the person submitting it.” KRS 63.030(1).

Such complete disregard of the affidavit requirement requires dismissal. In a 2/23/21 Impeachment Report, the 2021 R.S. Impeachment Committee found significant procedural deficiencies in a petition to impeach the Attorney General.⁹ That petition was in the form of a “Verified Affidavit and Petition for Impeachment” signed by a lawyer on behalf of three (3) anonymous former grand jurors and by a named fellow grand juror, Jennifer Smith; each signature was followed by a notary certificate, but no declaration was made except a cryptic “ARTICLE I” and “ARTICLE I and II” respectively.¹⁰ As the AG’s Response pointed out,¹¹ “details and form matter,” and these notarized signings did not constitute affidavits because they did not claim personal knowledge, set forth facts, or show competence to testify to those facts. The Committee agreed that the Petition could be dismissed for failing to meet KRS 63.030(1) requirements and recognized the troubling due-process implications of anonymous petitioners.¹² That same year, the Committee summarily dismissed impeachment petitions filed against the Governor with no affidavits.¹³

B. There is no sworn declaration of facts.

Nothing in the Petition appears to be supported by personal knowledge of facts about the accusations. *See, e.g.*, CR 56 (requiring affidavit be made on personal knowledge and set forth facts that would be admissible in evidence.) If the Petitioner is indeed Killian Timoney, then the relevant court records establish that he was not a party to or other participant in any of those six cases, and there is no indication that he has ever been a party, witness, or other participant in any of the almost 72,000 cases that Judge Goodman has handled over the past 18 years.¹⁴

“The essential requirements of due process ... are notice and an opportunity to be heard.” *Dep’t of Revenue, Fin. & Admin. Cabinet v. Wade*, 379 S.W.3d 134, 138 (Ky. 2021) (cleaned up).¹⁵ A meaningful opportunity to be heard generally requires that the accused know the identity of the accuser and a right to cross-examine witnesses.¹⁶ These due process rights apply

to determinations that affect the term in office and perquisites of Kentucky's elected Circuit Court judges.¹⁷ They also are recognized as important to impeachment proceedings. The 2021 R.S. Impeachment Committee declared: "The target of an impeachment has a fundamental right to notice and an opportunity to be heard. Meaningful notice must include the identity of the accuser and the facts of which that accuser has personal knowledge."¹⁸

Without an affidavit identifying the Petitioner or any affidavits declaring facts based on personal knowledge, the Petition cannot meet the threshold for due process rights under Section 2 of the Kentucky Constitution (or the 14th Amendment to the U.S. Constitution), and must be summarily dismissed.

C. No "misdemeanor in office" is alleged.

In addition to not providing any affidavits, the Petitioner does not allege anything which could meet the Constitutional requirement of "any misdemeanors in office." KY. CONST. §68. Instead, he merely states a conclusory allegation that Judge Goodman's actions "constitute 'misdemeanors in office'" (Petition pp. 2, 4). As the Supreme Court declared in *Clark vs. Commonwealth*:¹⁹ "Ultimate fairness mandates that an accused be tried only for the particular crime for which he is charged." No individuals accused in either an indictment or impeachment petition should be required to guess what crime they are being asked to defend against — which is exactly what the Petitioner does by not providing facts or describing any actions or conduct that would be a basis for further inquiry, impeachment, or removal. This is fundamentally unfair to Judge Goodman. For that reason alone, the Petition should be dismissed, or the petitioner be required to state specifically, via affidavit(s) with personal knowledge, what "misdemeanor in office" is alleged.

For an impeachment to proceed under Kentucky's Constitution, the Petitioner must identify an impeachable "misdemeanor in office." KY. CONST. § 68; *see also* KRS 63.065(1)

(articles of impeachment “shall state with reasonable certainty the misdemeanor in office for which impeachment is sought”). Citing to debates surrounding the Impeachment Clause of the U.S. Constitution,²⁰ the 2021 R.S. Impeachment Committee analyzed the “misdemeanors in office” as having a narrow scope, rejecting any “subjectivity and breadth” that could allow impeachment “to become a tool [for removal] based on mere policy or political disagreements....”²¹ Thus, impeachments are “intended to address only serious abuses by public officials — not disagreement about exercises in discretion.”²² The 2021 R.S. Impeachment Committee pointed out that at least some of its members disagreed with actions taken and choices made by the accused executive officer, but that “this Committee does not believe the proper response is impeachment, but rather for the legislature to enact policies to address its disagreements and for the people to weigh in by voting during the next election.”²³

In other words, for an impeachable misdemeanor, the Petition must allege conduct amounting to “true perfidy—far outside the bounds of decency or sound government.”²⁴ Impeachment “is, and must remain a very high hurdle.”²⁵ Disagreement with a judge’s opinions does not qualify. Issuing a disputed judgment or ruling is not a crime²⁶; it is also not a violation of the Judicial Code of Conduct. Peter L. Ostermiller, an expert on legal and judicial ethics, has concluded that Judge Goodman’s conduct complained of in the Petition “was within the applicable standard of conduct for a judicial officer subject to the Judicial Code regarding the civil cases and criminal cases which are the subject of the Petition.” 2/23/26 Opinion Letter (attached as Exhibit C), p.11. Mr. Ostermiller specifically points out that the Code “is not designed to police judicial philosophy or to sanction Judges for legal conclusions that may be controversial to some people.” 2/23/26 Opinion Letter p.10. The Judicial Code of Conduct enforces ethical and responsible conduct, a stricter standard than the criminal code generally-

applicable to everyone throughout Kentucky,²⁷ and treats as sanctionable misconduct a wide array of actions, attitudes, and appearances that rise nowhere near to the level of criminal and perfidious actions constituting “misdemeanors in office.” Therefore, since the complained-of conduct of Judge Goodman does not rise to the level of a breach of the Judicial Code of Conduct, the Petition necessarily fails to allege any impeachable offense against her.

There is also no precedent for impeaching a member of the judiciary for anything less than serious offenses. Only two judges have been impeached or recommended for impeachment, and the last instance was over a century ago.²⁸ In 1806, appellate judge Benjamin Sebastian was impeached for receiving a foreign pension and involvement in conspiracies to split Kentucky from the United States.²⁹ In 1916, McCreary County Judge J.E. Williams, who exercised mainly executive powers but had judicial functions as well, was impeached on a petition filed by McCreary County residents; after an extensive investigation, the House approved 20 articles of impeachment against him, including for unlawful acts related to the public funds of the County.³⁰ The Sebastian impeachment was not about his decisions or conduct in judicial proceedings and, after the amendments to the Judicial Department provisions of the Kentucky Constitution were ratified by the People in 1975 and became effective January 1, 1976, a County Judge-Executive like Mr. Williams would have no judicial functions.³¹ The only impeachments after 1975 have been of a Commissioner of Agriculture (1991 – Burnette) and a Commonwealth Attorney (2023 – Goldy). Commissioner Burnette’s impeachment was only after (and relied on) his criminal conviction on the felony of complicity to theft by deception.³² Commonwealth Attorney Goldy’s impeachment was only after the suspension of his law license for abuse of his prosecutorial powers in exchange for sex acts and sexually explicit depictions; his conviction, removal, and

disqualification by the Senate preceded his conviction in February 2024 on federal felony charges based on the same misconduct.³³

The Petition's author apparently disagrees with some of Judge Goodman's opinions and judgments, but that is no basis for alleging misconduct or "misdemeanor in office. Since there is no impeachable "misdemeanor in office" charged in the Petition, a dismissal is mandated.

III. The Petitioner seeks to unconstitutionally interfere with the justice system.

Impeachment on the allegations of this Petition is untenable. In Kentucky's 234-year history, the House has never impeached a sitting judge based on a petition disagreeing with her judicial decisions. Doing so would violate separation of powers principles and judicial independence.

Issuing decisions, particularly in difficult cases, is one of the core responsibilities of a judge.³⁴ A Circuit Court judge must adjudicate the higher-dollar civil disputes and the more serious criminal cases;³⁵ Civil Rules 12 and 56 require a judge to dismiss or enter summary judgment in a case if the undisputed facts under the law lead to only one possible result. Judge Goodman has been issuing final judgments and intermediate decisions on a near-daily basis for 18 years in thousands of cases.³⁶ The People of Fayette County have elected Judge Goodman twice at the Circuit level and four times at the District level to make these decisions in both easy and difficult cases. Without trial court decisions, most private and public matters would be left unresolved.³⁷

Judicial independence in deciding cases³⁸ is an essential part of the constitutional structure for the judiciary in Kentucky. It is protected by Constitutional provisions that, *e.g.*,

- vest the judicial power exclusively in a unified Court of Justice³⁹ and separate the powers held by the three branches,⁴⁰

- prohibit a judge from running for a non-judicial elective office or holding office in a political party/organization,⁴¹
- set appellate and Circuit Court judges' terms at eight years,⁴² and
- establish a commission authorized to retire a judge for disability, suspend without pay, or remove for good cause, subject to judicial review by the Supreme Court.⁴³

Other protections include the principle that the Rules of the Code of Judicial Conduct “not be interpreted to impinge upon the essential independence of judges in making judicial decisions”⁴⁴ and the doctrine of judicial immunity, which is “to protect their office against the deterrent effect of a threat of suit alleging improper motives where there has been no more than a mistake or a disagreement on the part of the complaining party with the decision made.”⁴⁵

Parties to all cases, civil and criminal, are “allowed as a matter of right at least one appeal to another court,” KY. CONST. § 115,⁴⁶ and the power of appellate review is given exclusively to the Court of Appeals and the Supreme Court, KY. CONST. §§ 110, 111. Appellate court reversal or modification of what a lower court has done is not a rare occurrence. The Kentucky Court of Appeals issued 702 opinions in 2025 and 794 opinions in 2024,⁴⁷ averaging over 63 opinions per month. Many of those opinions are designated as not for publication; however, the Court’s own summary of to-be-published opinions issued in November 2025⁴⁸ provides some insight about the proportion of affirmances and reversals. The summary shows that the Court of Appeals found some error in 50% of the appeals on which it issued opinions designated for publication in November 2025.⁴⁹

Parties dissatisfied by a judge’s decision may exercise their constitutional right by appealing, and then it is up to the appellate courts to decide whether the decisions should be affirmed, reversed, or have some other disposition. The Petition, however, essentially asks the

General Assembly to review Judge Goodman’s decisions and agree (with the Petition) that they are not correct. However, such authority is assigned exclusively to the appellate courts by the Kentucky Constitution, and cannot be exercised by the legislature.

Kentucky Constitution §§ 27 and 28 set forth the separation of powers doctrine that is fundamental to the Commonwealth’s tripartite system of government: no branch of government may encroach upon the inherent powers granted to any other branch. Under this doctrine “the legislative function cannot be so exercised as to interfere unreasonably with the functioning of the courts, ...”

Arkk Props., LLC v. Cameron, 681 S.W.3d 133, 140 (Ky. 2023) (cleaned up; citations omitted; emphasis added).

Similarly, the power to investigate and discipline Kentucky judges for misconduct has been given to the Judicial Conduct Commission. Nonetheless, it abides by a jurisdictional limitation to keep it from encroaching on judicial independence and the decision-making and appellate-review powers granted to the courts:

The purpose of [subsection (2) to SCR 4.020] was to make explicit that which we recognized to be implicit in our constitution and the rule. In a state which has an elected judiciary, incompetence which is not gross and persistent can be safely left to elimination at the ballot box. Error can be adequately corrected by the appellate courts. Any other approach to the problem would destroy judicial independence by causing judges to keep one eye on their reversal rate and the other on the Commission. Both judicial eyes should be trained on the just disposition of the case at hand and not on the welfare of the sitting judge.

Nicholson v. Judicial Retirement & Removal Commission, 562 S.W.2d 306, 310 (Ky. 1978).⁵⁰

Furthermore, because the judicial branch enforces a Code of Judicial Conduct that encompasses any serious abuses or “misdemeanors in office,” impeachment by the legislature on a petition alleging misconduct would necessarily encroach on powers granted to the judiciary. Judge Goodman has never been found in violation of the Code by the Judicial Conduct Commission. Nor would she, because a review of her opinions shows that she did not violate the Code. See 2/23/26 Opinion Letter of Peter L. Ostermiller, and his c.v., attached as Exhibit C.

The Petition also creates and invites a chilling effect on judicial independence. Requiring a trial judge to respond to an impeachment petition because a bystander disagrees with an opinion, judgment, or other decision made in a case, sends a warning to all trial judges to avoid adjudicating difficult cases and controversies they have been assigned or to make decisions based on which outcome is least likely to invoke an impeachment petition.⁵¹ All litigants and the Public deserve judges who keep both eyes “trained on the just disposition of the case,” rather than nervously assessing whether applying the law fairly to the particular case in front of them may burden them with needing to respond to an impeachment petition and the threat of being removed from office. In 2021 Impeachment reports, the Committee recognized such chilling effects from impeachment petitions and cited them as one of the reasons to recommend that the House take no further action.⁵² It should do likewise in this matter.

IV. The record of the six cases shows that the Petitioner’s accusations have no merit.

The sine qua non of “misdemeanor in office” is the abuse of official authority by criminal means for personal gain or advantage. The historical record indicates that personal gain of some sort is almost always the objective. Here, there is no hint Judge Goodman abused the authority of her office in a criminal manner for personal gain or advantage of any kind. On the contrary, the record reflects that Judge Goodman acted well within the scope of her authority, followed established procedures, and applied the law to the facts in evidence.⁵³ **Yet Petitioner culls six of the almost 72,000 cases Judge Goodman presided over during her eighteen years on the bench as “proof” of her “misdemeanors in office.”** In the hope this panel will ignore the fatal flaws in his Petition, he recounts only the most lurid aspects of each case, misstates the law and the facts, mischaracterizes Judge Goodman’s rulings, **and fails to note that five of the six cases remain**

in active litigation. Consequently, a discussion of each matter is appropriate here. The cases are addressed below in the order presented in the Petition.

1. Commonwealth v. Cornell Denmark Thomas (21-CR-0336)

The Petitioner claims that Judge Goodman should be impeached because the Court of Appeals reversed her order dismissing the *Thomas* indictment. According to Petitioner, this is evidence she “engaged in behavior in office that breached the public trust” warranting impeachment. The court record shows his allegations are false and based on a superficial understanding of the law and the courts. **Judge Goodman followed established procedure and applied the law to the facts in evidence when she dismissed the *Thomas* indictment.** The *Thomas* case is simply not evidence that Judge Goodman committed a misdemeanor in office.

The Petitioner ignores the record in *Thomas*. He states that “Judge Goodman took the highly unusual and totally improper step of dismissing the indictment over the objections of the prosecutor.” On its face, this claim is disingenuous. Judges in both the federal and state court systems routinely dismiss indictments on defense motions before a case goes to the jury over the objection of the prosecutor.⁵⁴ Moreover, the Kentucky Supreme Court described the nature and limits of the authority to dismiss a case pre-trial in *Commonwealth v. Bishop*, 245 S.W.3d 733, 735 (Ky. 2008).

Judge Goodman exercised her authority to dismiss the *Thomas* indictment after two hearings, extended continuances due to COVID, and provided the Commonwealth with ample opportunity to correct the flaws in its case. Her order is well-reasoned and based on an analysis of the law and facts in evidence. Judge Goodman dismissed the *Thomas* indictment based on (1) “prosecutorial misconduct that prejudices the defendant,” and (2) “a defect in the grand jury proceeding,” *Partin v. Commonwealth*, 168 S.W.3d 23, 30–31 (Ky. 2005).

The facts of the case are not in dispute. On or about July 2, 2020, Thomas passed through a traffic intersection at a high rate of speed and struck the victim's vehicle resulting in her death. The investigating officer, Sergeant Bold testified, in part, before the grand jury that Thomas "appeared to be in some state of delirium" at the time of the incident, and that the investigation then turned to "finding evidence the Defendant used drugs before the accident." Sergeant Boyd also testified that witnesses observed Thomas run a red light and crash into the victim's vehicle while she was turning left. Thomas was driving 96 mph in a 45-mph zone.

Thomas filed a notice saying he was going to introduce mental health evidence. The Commonwealth, in turn, filed a motion to have Thomas evaluated by a Commonwealth mental health expert. Judge Goodman granted that motion. Dr. Timothy Allen conducted the examination of Thomas at the Kentucky Correctional Psychiatric Center (KCPC) for the Commonwealth. In his report, Dr. Allen opines that Thomas "suffered from an episode of psychosis at the time of the accident. He also stated that the psychosis was "likely substance-induced" from consumption of synthetic cannabis products.

After Dr. Allen filed his report, Thomas moved to dismiss the indictment. Judge Goodman presided over two hearings on the motion. The first hearing was on May 4, 2023; the second, on May 8, 2023. At that hearing, Dr. Allen initially testified that the likelihood of Thomas' psychosis being triggered by the presence of THC was extremely low. He further testified, he believed, that ingestion of a synthetic cannabis was the likely cause of his psychosis even though several rounds of testing disclosed no trace of synthetic cannabis in Thomas' blood. He based this belief on the fact that synthetic cannabis could not be detected in normal blood tests, but only when tested by specialty labs. **Importantly, and unbeknownst to him, the final test of Thomas's blood was performed, at a specialty lab,** and it was established that there was no

synthetic cannabis in his blood. Dr. Allen did not learn of this until defense counsel's cross-examination, as the Commonwealth had not given him the report. Based on this new information Dr. Allen admitted under oath that he had speculated in his report that the psychosis Thomas experienced at the time of the incident was drug-induced. With this admission, the Commonwealth had no evidence Thomas was voluntarily intoxicated, but only the undisputed evidence that he was in a psychotic episode at the time of the crash. When asked by Judge Goodman, the Commonwealth admitted it had no other evidence that Thomas was voluntarily intoxicated. Instead, it demanded Judge Goodman rule on the Defendant's motion.

Judge Goodman ruled based on the facts before her and the law. Under KRS 504.020(1) "[a] person is not responsible for criminal conduct if at the time of such conduct, as a result of mental illness or intellectual disability, if he lacks substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law." The uncontested testimony of Dr. Allen was that Thomas experienced a psychotic episode at the time of the accident, and there was no evidence that episode was caused by voluntary intoxication. Moreover, the prosecution admitted on the record there was no other evidence to show Thomas was voluntarily intoxicated when the crash occurred. Based on the state of the evidence, Judge Goodman found "given that the Defendant was suffering from a psychotic break, his guilt depends entirely on there being evidence that he was voluntarily intoxicated." Without such evidence, Judge Goodman found there was no basis to proceed with the charges.

Judge Goodman also compared Thomas' case to a similar case pending before her where the defendant's police report indicated that he "made statements about drug and alcohol use" and was arrested for DUI. *Id.* at 20. In that case, the passenger in his vehicle died from her injuries, yet the defendant was indicted for only Second-Degree Manslaughter, not Wanton Murder. The

defendant in that case is white, while Thomas is black. While Judge Goodman eventually ruled that the Commonwealth's disparate charging decision was additional evidence of prosecutorial misconduct, the opinion was based primarily on the issues raised by Dr. Allen's KCPC report and the defendant's mental state.

Judge Goodman's dismissal of the Thomas indictment was well reasoned and based on the law and the facts. Despite this, the Commonwealth appealed Judge Goodman's order, and the Court of Appeals vacated and remanded the case with instructions. The Petitioner cites some of the derogatory language used by the Court of Appeals in its opinion overruling Judge Goodman. That language, however, is merely gratuitous, serving no legitimate analytical purpose. That the Court of Appeals vacated Judge Goodman's order also holds no particular significance. Appellate courts reverse trial courts routinely. Indeed, our system of justice provides for three tiers of courts to review decisions made by lower courts. In fact, this case continues to matriculate through the Courts.

Thomas has filed a petition with the Kentucky Supreme Court for discretionary review of the Court of Appeal opinion. Thomas points to the appellate court's apparent belief (shown in its pejorative language), that Judge Goodman harbored animus of an unknown origin toward the prosecutor and this motivated her decisions. This belief, according to Thomas, influenced the Court of Appeals to overturn her rulings, resulting in reversible error. The Commonwealth has yet to respond to Thomas' petition, but the point is that this matter is not final.

2. *Commonwealth v. Domanick Dante Jones (23-CR-0394)*

The Petitioner accuses Judge Goodman of sentencing Jones to probation after he was convicted of trafficking fentanyl and cocaine over the objection of the prosecution in violation of the law. **His claim is not true. The Commonwealth did not object. The Judge, the Drug**

Court assessments, probation, the defense attorney, and various prosecutors all missed the 50% requirement.

The record is lengthy. On April 25, 2023, a Fayette County Grand Jury indicted Jones on charges of Trafficking in Controlled Substances Greater than 28 GMS Fentanyl (F)(B), Possession of a Controlled Substance 1st Degree, 1st Offense Cocaine (F)(D). On May 12, the Court arraigned Jones who entered a plea of “Not Guilty.” Throughout the proceedings, Jones was represented by able counsel from the Public Defender’s Office.

On October 5, 2023, Jones entered a plea of “Guilty” pursuant to a plea agreement. The agreement required the Commonwealth accept a plea to a lesser trafficking charge and that it dismissed the remaining charges. Jones upheld his end of the bargain when he pleaded guilty to the lesser charge of Trafficking in Controlled Substance, 1st Offense (Carfentanil or Fentanyl Derivatives(F)(C)). After Judge Goodman accepted the Defendant’s plea of guilt, Jones’ attorney requested that he be referred to drug court. The Commonwealth did not object. Judge Goodman set the sentencing hearing for November 30, 2023.

Fayette County operates, then and now, four Drug Courts. Jones was admitted to two: the Drug Court presided over by District Court Judge Thurston and Chief Circuit Court Judge Bunnell, respectively. In general, defendants are assessed by each Drug Court for eligibility before they may enter the program. Eligibility is based on several factors, including the availability of probation upon sentencing. Both Drug Courts found Jones eligible for the program before his sentencing date. Both Drug Court assessments failed to recognize that Jones was not eligible for the program because it was under the applicable statute that he must serve at least 50% of his five-year sentence.

Unless waived by a defendant, the Department of Corrections, Division of Probation and Parole issues a Presentence/Post Sentence Investigation Report. These reports are generated to assist the court when sentencing a defendant. Typically, they set out the possible sentences for which the defendant is eligible, including probation. Judge Goodman received the Jones report on November 27, 2023. The probation office also failed to catch that Jones was ineligible for probation.

After several short continuances, Jones was sentenced by Judge Goodman on December 7, 2023. The record is clear that the Petitioner's claim that Judge Goodman sentenced Jones to probation over the prosecution's objection is false. At Jones' sentencing hearing, Judge Goodman imposed a sentence of five (5) years of incarceration on Count I and suspended the judgment for two (2) years of probation to successfully complete Drug Court. Judge Goodman, on the record, inquired, **"Does the Commonwealth take any position with respect to sentencing?"** **The Commonwealth replied: "No your honor."** As such, the Petitioner's claim that the Commonwealth objected to probation at sentencing is patently untrue. In addition, Jones' defense counsel did not object.

The Drug Courts, Probation and Parole, the various prosecutors, the defense attorney, and, initially, Judge Goodman overlooked the fact that Jones was ineligible for probation. On or about December 13, 2023, Judge Goodman became aware that an error was made. Immediately after discovering this issue, she instructed JSS Steve Robinson to contact both parties as to their position. Neither party responded to Mr. Robinson. Instead, on December 18, 2023, Assistant Commonwealth's Attorney Lindsey Studebaker (now the fourth prosecutor to appear in the case) filed a motion for resentencing having been alerted to the issue by Judge Goodman's staff.

Judge Goodman set a hearing on January 11, 2024, to address the sentencing problem. However, the defendant had filed a pro se civil suit naming Judge Goodman, the prosecutors, his own defense attorneys, and others involved in the case. At the convened hearing, Judge Goodman learned of the lawsuit and used the hearing time to discuss, on the record, how to proceed considering the lawsuit. After the lengthy discussion on the record with the parties, Judge Goodman continued the sentencing and recused herself and the other named individuals from Jones' case. Judge Goodman's decision here was entirely appropriate and in accord with the Judicial Code of Ethics.

The case was then assigned to Circuit Judge VanMeter, who held a hearing on April 12, 2024, on Jones' motion. At the hearing, Jones argued that the sentencing of probation was valid and must be carried out because the Commonwealth never objected at any point during his plea or sentencing. The Commonwealth acknowledged that fact on the record. But, by that time, the Commonwealth had appealed Judge Goodman's Judgment to the Court of Appeals.

Judge VanMeter rejected Jones' arguments. On May 6, 2024, Judge VanMeter entered an order that Jones was not eligible for probation regardless of the error, and that she was in agreement with Judge Goodman. Lastly, Judge VanMeter denied the Commonwealth's motion for resentencing for lack of jurisdiction. The appeal taken by the Commonwealth vested jurisdiction in the Court of Appeals. Nonetheless, Judge Van Meter "maintained the status quo" requiring the Defendant to stay in custody until after the Court of Appeals ruled. At the time of this filing, the Court of Appeals has yet to issue its ruling. **However, as a consequence of Judge Goodman's work to resolve the inadvertent sentencing error, Jones was not probated to Drug Court.** Instead, Jones has served approximately 50% of his five-year sentence of incarceration.

3. *Commonwealth v. James Harvey Hendron (18-CR-1084)*

The Petitioner next argues Judge Goodman should be impeached because the Court of Appeals reversed her opinion in *Hendron*. This claim is another oversimplification of a complex legal matter that remains in active litigation. **Judge Goodman insured Hendron that he gets a fair trial. Fair trials protected individual constitutional rights and prevents government overreach.**

In 2018, a Fayette County grand jury indicted Hendron for murdering his son on Father's Day. Subsequently, Hendron was arraigned and entered a plea of "Not Guilty." The case proceeded slowly due to the COVID pandemic and robust motion practice.

On September 26, 2023, the Court heard Defendant's Motion to Dismiss the indictment under KRS 503.085 on the grounds that Defendant was justified in his use of force in self-defense and, therefore, immune from prosecution. After hearing evidence and oral arguments, Judge Goodman denied his motion because the evidence failed to establish the elements necessary to justify the finding of immunity pursuant to KRS 503.085. In other words, Judge Goodman ruled for the Commonwealth. Hendron went to trial.

On February 7, 2024, Hendron was convicted of murder by verdict of the jury after three days of trial. He was sentenced to life imprisonment. On February 12, 2024, Hendron filed a motion to dismiss the indictment notwithstanding the verdict and, alternatively, for a new trial. After a hearing in which the parties presented evidence and argued the law, Judge Goodman denied Hendron's motion for acquittal. However, she granted his motion for a new trial. **Judge Goodman's thirty-page order details three crucial errors made by the prosecution that deprived Hendron of a fair trial.** In closing argument, the prosecutor improperly shifted the burden of proof to the defendant, repeatedly articulating her personal opinions about the credibility of the defendant and witnesses, repeatedly made impermissible "Golden Rule" arguments,

and misrepresentations about the evidence. These pervasive errors made by the Commonwealth rendered the trial fundamentally unfair.

Judge Goodman understood the gravity of her decision. This was the first and only time she overturned a jury verdict in eighteen years on the bench. She carefully describes her analytical framework. “A palpable error which affects the substantial rights of a party may be considered by the court on motion for a new trial or by an appellate court on appeal, even though insufficiently raised or preserved for review, and appropriate relief may be granted upon a determination that manifest injustice has resulted from the error.” RCr 10.26. She continues that “[t]o discover manifest injustice, a reviewing court must plumb the depths render the trial fundamentally unfair.” In other words, when a trial court rules on a motion for a new trial, it is explicitly authorized to conduct a deep, independent review of both the law and facts of a case and may even consider grounds for a new trial not apparent from the record. Judge Goodman conducted just such an analysis.

Judge Goodman ruled that the Commonwealth improperly shifted the burden of proof to Hendron. A cornerstone of criminal jurisprudence is the constitutional imperative that the Commonwealth always bears the burden to prove every element of an offense charged beyond a reasonable doubt. This dovetails with the constitutional presumption of innocent. That is, a defendant at trial is innocent as a matter of law until the jury decides during its deliberations that the Commonwealth has met its burden.

As noted above, Hendron primarily argued he was immune from criminal liability because he acted in self-defense. Under Kentucky law, Hendron must produce some evidence in support of this defense. However, the burden of proof remains always with the Commonwealth. The prosecution always carries the burden of proof beyond a reasonable doubt because due pro-

cess requires it and as a protection against government overreach. Despite this, the Commonwealth told the jury that in order to acquit Hendron or convict him of a lesser offense than murder, they “must believe beyond a reasonable doubt that when he committed this offense, he truly believed, in his heart of hearts, that this amount of force was necessary in order to protect himself from death or serious physical injury”, “You have to believe beyond a reasonable doubt the Defendant believed he had to use deadly force to protect himself...” and “You can’t believe beyond a reasonable doubt that this Defendant thought it was appropriate to use [sic] on this child.” This improper burden shifting alone is sufficient basis to grant a new trial.

Kentucky law prohibits lawyers from giving their personal, subjective opinions about the credibility or character of witnesses or the guilt or innocence of the defendant during a trial. Such comments are irrelevant and improper. This, too, is a basic rule that every trial lawyer must observe. But in Hendron, the prosecution freely shared personal opinions about the credibility and culpability of the defendant, and the credibility of the witnesses during its closing argument. Typical of the prosecution’s opinions were statements, such as, “I dispute their assertion of that. I don’t believe that he did,” and “If you believe that he had a right to shoot his own child as he was fleeing, after he was pushed, that’s a not guilty. I don’t know how one could believe that” and “I think we should question the credibility of someone who has given four different stories which get more hopeful for him every time that he makes one.” The Commonwealth made similar comments about witnesses, such as, “I kind of suspected, I don’t think this guy’s gonna remember what happened, and as a matter of fact he did not remember what happened.” These are only some of the statements of opinion in the record. But these statements made the trial unfair. So, the only remedy is for the defendant to get a new trial.

A “Golden Rule” argument is one in which the prosecutor asks jurors to put themselves in the place of the victim. These arguments are prohibited because they are emotionally powerful, tending to cajole a jury into rendering a guilty verdict instead of objectively considering the evidence to evaluate whether the Commonwealth met its burden of proof. Here, the prosecutor’s closing argument includes Golden Rule arguments, such as “So I don’t want you to base your decision not only on the facts of this case but your common sense, everything you know, and is this an appropriate amount of force to use on your own child,” and “I know that we can all think of different ways as a parent, as a child, as a sibling, that this situation could have been de-escalated, for a family member you love.”

Lastly, Judge Goodman made a detailed review of the evidence presented by the Commonwealth. In some instances, she found the Commonwealth mischaracterized the evidence or presented false testimony.

Her order and its detailed analysis of the facts and law reflect the gravity of her decision. Judge Goodman carefully sets out on what authority she acted. “Upon motion of a defendant, the court may grant a new trial for any cause which prevented the defendant from having a fair trial, or if required in the interest of justice.” RCr 10.02(1). “Under this rule a trial judge might well have discretion to grant a new trial for causes which might not warrant reversal by this court, especially when such cause would not appear from the record of the trial.” *Jackson v. Commonwealth*, 445 S.W.2d 835, 838 (Ky. 1969). Where argument of a prosecutor is improper and calculated to prejudice the accused, a new trial is appropriate. *Taylor v. Commonwealth* (Ky. 1942) 165 S.W.2d 169.

Petitioner, of course, noted that the Court of Appeals vacated Judge Goodman’s decision. **However, he failed to note that the case is not final because the Kentucky Supreme Court**

has granted judicial review. This is significant because approximately eighteen percent of all appellate cases are taken up on discretionary review. See Miller, *Discretionary Review Practice in the Kentucky Supreme Court*, pages 16-18, Bench & Bar (January 2012), attached as Exhibit E. First, it requires at least four of the seven justices to agree to discretionary review.

Discretionary review is granted for “special reasons.” CR 76.20(1). While there is no precise definition of special reasons, they seem to include whether there is a novel issue of law with statewide significance, a legal proposition that is ripe for reevaluation, or a conflict of law arising on an issue across the state. And, statistically, it is more likely that the Court of Appeals ruling will be overruled in whole or in part on discretionary review.

Furthermore, it is not unheard of that murder convictions are overturned. In *Brown v. Commonwealth of Kentucky* (2024-CR-01056), the Supreme Court recently overturned the jury’s verdict convicting Brown on charges of murder, receiving stolen property, felon in possession of a handgun, and being a second-degree felony offender. The Court reversed the conviction because the Commonwealth failed to disclose before trial jail calls in which the defendant discussed his defense strategy with his sister; opining during voir dire whether Brown would testify invading his rights not to testify; and violated the Confrontation Clause by concealing the author of a prejudicial Post-It note until the author testified at trial. The prosecutors face these issues in every criminal trial, and the errors were easy to avoid. It is noteworthy that Brown was tried by the same prosecutor who tried Hendron.

The Kentucky Supreme Court may yet grant Hendron a new trial.

4. ***Gregory Simpson v. Abigail Caudill, Warden (23-CI-2878)***

Petitioner also seeks impeachment for Judge Goodman’s ruling in *Simpson*, but once again, he conveniently omits the material facts and law from the petition. **Judge Goodman made the right decision under the law at that time.**

The case involves the application of the complex law of sentencing. Gregory Simpson was a prisoner, held at Blackburn Correctional Facility in Fayette County, Kentucky. He petitioned the Court for a Writ of Habeas Corpus, alleging that his aggregate sentence of forty-two years for consecutively sentenced Class D felonies violated Kentucky's law capping consecutive sentences for Class D felonies to twenty years. KRS 532.110(1)(c). At the time of his petition in September of 2023, the petitioner had already served twenty-one years of his sentence.

Shortly before he filed his writ, the Kentucky Supreme Court handed down *Kimmel v. Commonwealth*, 671 S.W.3d 230 (Ky. 2023). *Kimmel* holds that a defendant who commits a crime while out on bond, cannot have a total aggregate sentence greater than the aggregate cap his total provided for in KRS 532.110(1)(c), even though KRS 533.060(3) mandates that offenses committed while out on bond be served consecutively to sentences for previous offenses. In *Kimmel*, the Supreme Court went on to say that “[t]reating subsequent crimes under KRS 533.060(2) and (3) differently would lead to illogical and inconsistent results.” *Kimmel*, 671 S.W.3d at 237. Simpson’s sentence was justified by the mandatory consecutive sentence regime described by KRS 533.060(2), applicable to offenses committed while on parole. Applying the holding of *Kimmel v. Commonwealth* to Simpson’s case, Judge Goodman ruled that his aggregate sentence of forty-two years in prison violated KRS 532.110(1)(c), and that his aggregate sentence exceeding twenty years was therefore illegal.

The Commonwealth appealed and Kentucky Court of Appeals reversed. Its opinion illustrates the complexities of sentencing law. The court stated that Simpson’s case is “distinguishable from *Kimmel* because it involves KRS 533.060(2) whereas *Kimmel* involved KRS 533.060(3) and, therefore, this Court is not required to follow *Kimmel* but rather *Blackburn*

controls.” Although in *Blackburn v. Commonwealth*, 394 S.W.3d 395 (Ky. 2011), the Kentucky Supreme Court held that “KRS 533.060(2) does not modify KRS 532.110(1) so that subsequent offenses run consecutively may exceed the maximum aggregate duration allowed by KRS 532.110(1)(c),” the Court also stated that “the court may not run ... subsequent convictions concurrent with the paroled offense.” *Id.* at 401. The Court of Appeals therefore held that the *Blackburn* court’s latter statement controlled in Simpson’s case, interpreting it to mean that, even though *Blackburn* explicitly forbids consecutive offenses from exceeding 532.110(1)(c)’s sentencing cap, *Blackburn*’s additional holding—that paroled offenses cannot be sentenced concurrently with subsequent convictions—meant that 532.110(1)(c)’s sentencing cap can be violated if the subsequent offense is committed while out on parole.

Judge Goodman’s handling of this matter was proper in every way. Her straightforward interpretation of the case law was reasonable given there was no binding precedent at that time. Subsequently, the Kentucky General Assembly resolved the inconsistent rulings in Kimmel and Blackburn by revising the relevant statute, thereby resolving the conflict. However, at the time Judge Goodman’s decision was reasonable given the statutes and the two conflicting Supreme Court decisions.

In its order reversing and remanding, the Court of Appeals stated that “[h]aving considered the Warden’s motion to set aside the appeal bond, the Court ORDERS the motion be, and it is hereby, DENIED.” Unfortunately, the court did not address whether Simpson could remain on bond pending a date to report to prison. Simpson moved Judge Goodman to enter an order clarifying that Simpson could, in fact, remain out on bond until he reported. The issue was eventually clarified by the Court of Appeals stating that Simpson could *not* remain out on bond pending finality.

The Petitioner wrongfully implies that Judge Goodman allowed Simpson to run free, placing citizens in danger. The facts are that during the entire pendency of the appeal, the Court of Appeals allowed Judge Goodman's appeal bond to stand. Additionally, Simpson was subject to the strictest form of electronically monitored home incarceration while on bond. Typically, defendants on home incarceration may leave home for work or doctor appointments. Simpson's terms of release contained none of these exceptions. And, of course, the record reflects that Simpson never violated his bond.

Based on the foregoing, it is obvious that Judge Goodman's application of *Kimmel*, the prevailing precedent at the time, to the facts in *Simpson* was well-reasoned, based on the facts in evidence before her. The fact that the Court of Appeals disagreed and reversed is not grounds for impeachment.

5. ***Kenneth Ain, MD v. University of Kentucky (23-CI-3018)***

Petitioner seems to believe that Judge Goodman should have recused herself from this civil case, and because she did not, impeachment is the solution. He essentially claims that Judge Goodman "took" Ain's "side." **Justice Conley ruled that Judge Goodman was not biased. He recused her out of abundance of caution because someone may think she was biased.**

In *Ain*, the University of Kentucky and associated defendants filed an affidavit seeking Judge Goodman's disqualification. They pointed to remarks she made on the bench during nine separate hearings spanning over ten hours, during which Judge Goodman said that she felt she was being forced into the role of the Plaintiff's "sole protector" of Ain.

The Petitioner recites one quote from nine hearing over ten days as evidence that Judge Goodman as her declaration she would not follow precedent. Nothing could be further from the truth. Judge Goodman was merely ruminating about how the law evolves over time, in part,

because precedent is not always applicable. Her statement was not improper, and it is not evidence of a misdemeanor in office.

The Petitioner parrots the affidavit of the attorney seeking Judge Goodman's recusal to bolster his claim for impeachment. The Petitioner's claims are gross mischaracterizations of what Judge Goodman did and said. In fact, Justice Conley, who ruled on the recusal motion, expressly disregarded all the claims of bias except for one. As to the "sole protector" comment, Justice Conley stated that he did not believe Judge Goodman was biased. Rather, he was concerned, only that "a lay observer could reasonably question partiality towards the Plaintiff and lack of impartiality against the Defendants," concluding that "Judge Goodman's impartiality might reasonably be questioned" given the "totality of circumstances" of the case.

Justice Conley went to great lengths to ensure that Judge Goodman was not actually biased. He wrote, "The Deputy Chief Justice reaffirms, importantly, that the record does not indicate that Judge Goodman is biased or partial." The trial court maintains a docket with many cases involving the University of Kentucky, as noted in her own orders, wherein prejudice nor bias are in question. As Justice Conley also wrote, "[Judge Goodman] has heard at least nineteen cases with the University of Kentucky as a party during her time on the Circuit bench, none of which raised a potential claim of bias against the entity or its attorneys." Perhaps most telling is that Justice Conley left the door open for his decision to be appealed. The final sentence in his order states, in part, "GRANTED without prejudice to any party to seek judicial review after entry of a final judgment[.]"

Recusal based on a single comment made over the course of nine hearings totaling ten hours to avoid the appearance of bias is evidence that Justice Conley was alert to the importance of perceptions. It is no evidence of a misdemeanor in office.

6. *Caitlin Huff et al. v. University of Kentucky (23-CI-1423)*

Lastly, the Petitioner says that Judge Goodman should be impeached because her order was reversed by the Court of Appeals for failing to rigidly follow precedent. This assertion is meritless. Many landmark cases decided by the United States Supreme Court or the Kentucky Supreme Court happened because a court did not follow precedent. *Citizens United*, *Dobbs*, *Loper-Bright*, and *Bruen* come to mind. **The Petition’s argument ignores the fact that the law evolves.**

The issue in *Huff* was whether the University of Kentucky Medical Center (UKMC) enjoys sovereign immunity considering several changes in UKMC’s funding sources and its evolving character as a privately operated and controlled entity. UKMC sought dismissal because it protected by sovereign immunity. Judge Goodman ruled that UKMC was not entitled to the protection of sovereign immunity based on the facts of this case. Here, the Petitioner misunderstands the caselaw cited in Judge Goodman’s opinion, giving rise to this claim,

For the last 29 years, the University of Kentucky and its instrumentalities have enjoyed sovereign immunity based on *Withers v. University of Kentucky*, 939 S.W.2d 340 (Ky. 1997). The medical system has grown exponentially, and as it evolves, university run medical facilities increasingly operate like private businesses. In fact, 12 years ago, the Kentucky Supreme Court recognized that “[i]n light of the ever-changing landscape in the provision of medical care, with hospitals becoming monolithic and monopolistic, and with funding for all medical care providers coming from both the private and public sectors, there may come a time for us to revisit *Withers*. *Branham v. Rock*, 449 S.W.3d 741, 752 (Ky. 2014).

The University of Kentucky’s immunity, especially regarding UKMC, is frequently challenged in Fayette Circuit Court, particularly in recent years, in lawsuits. In past cases, Judge Goodman has ruled in favor of UK on the question of immunity, granting dispositive motions

and dismissing claims based on immunity. However, Judge Goodman found that the facts in *Huff* did not support the application of sovereign immunity based on the reasoning in *Branham*. Importantly, the plaintiffs cited other cases where trial courts denied a state university blanket sovereign immunity.

Finally, *Huff* is another case that is not yet final. The Supreme Court granted discretionary review of the appellate decision as it is a prime example of a legal proposition that is ripe for re-evaluation. The case has been briefed and designated for oral arguments. Interestingly, however, several amicus curiae briefs have been filed. Amicus briefs were filed by Justice Rice, the Kentucky Justice Association, the Kentucky Hospital Association, the House Speaker and Senate President, and the Commonwealth of Kentucky, among others. These *amici*, like the parties and their able counsel, take various sides of the immunity question.

CONCLUSION

The Committee should dismiss the Petition or, alternatively, recommend that no action be taken on it. The Petition is legally deficient and frivolous.

Petitions for impeachment are creatures of statute. When an impeachment petition does not satisfy the requirements of KRS 63.030(1), it is void. The instant Petition fails to satisfy the statute and should not be considered by this Committee. There are two statutory requirements. First, the petitioner must submit an affidavit in support of the petition. This ensures that the petitioner is, in fact, the complaining person, as opposed to someone who filed the petition on behalf of another person or organization. The second requires submission of affidavits from person(s) with knowledge of the complained activities within the Petition. The Petition fails both these threshold requirements of KRS 63.030(1).

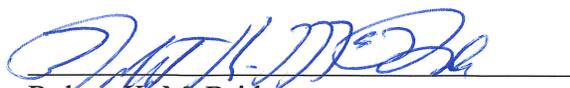
A valid petition must also set out allegations that articulate a misdemeanor in office was committed. This requirement is based on the constitutional standard for impeachment — that the

office holder committed a misdemeanor in office. The Petitioner fails to state or describe any facts supporting a conclusion that Judge Goodman committed a misdemeanor in office. This, too, is a fatal flaw.

Petitions for impeachment making bare allegations about a judge's rulings and orders without meeting the threshold requirements of KRS 63.030(1) or reasonably articulating a misdemeanor in office have a chilling effect on the independence of the judiciary. Such petitions also function to undermine the will of the electorate who chose the accused judge or justice. The Committee should recognize the danger that frivolous petitions pose to our system of justice and the constitutional structure of our government. This Petition is frivolous.

Based on the above, Judge Julie Muth Goodman, 22nd Circuit, Fourth Division, respectfully requests that the Committee dismiss the Petition and recommend that the House of Representatives take no further action. If the request to dismiss is not granted, Judge Goodman requests that the Committee (a) require the Petitioner to submit an affidavit and any necessary affidavits of other persons with personal knowledge of the facts, and then grant Judge Goodman (b) additional time to respond to those affidavits and (c) an opportunity to be heard.

Respectfully submitted,



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ENDNOTES

¹ Fayette County election results data for the respective years are available online through the State Board of Elections website: <https://elect.ky.gov/results/Pages/default.aspx>. It is noteworthy that:

(a) the 2nd-place vote-getter (John Tackett) had excellent judicial name recognition, since his mother (Julia Tackett) had been a long-time Court of Appeals judge for the area; and (b) the 5th-place vote-getter (Kimberly Henderson Baird) subsequently was elected as, and is currently, the Fayette County Commonwealth Attorney.

² There were District Court races that were contested in those years and, for example, in 2010 a challenger prevailed over the incumbent judge.

³ 44,297 votes in 2010; 50,353 votes in 2014, and 68,096 votes in 2018.

⁴ The other general-election candidate (John Reynolds) was sitting as the appointed interim Circuit Judge for the Fourth Division.

⁵ In 2022, there were several contested Circuit Court and District Court elections.

⁶ Impeachment Committee's 2/23/21 Report and Recommendation that no further action be taken concerning the Impeachment of Attorney General Daniel Cameron ("2021 AG Impeachment Report"), p.3

⁷ *Jeter v. Commonwealth*, 531 S.W.3d 488, 496 (Ky. 2017) (quoting BLACK'S LAW DICTIONARY (9th ed. 2009)). *See also* CR 43.13(2) (requiring an affidavit to be subscribed by affiant and certified by officer or person before whom made).

⁸ *See, e.g.*, KRS 6.070 (allowing the houses of the General Assembly to sanction contempt); KRS 523.020 (perjury in the first degree); KRS 523.040 (false swearing).

⁹ 2021 AG Impeachment Report pp. 3-4.

¹⁰ This Verified Affidavit and Petition for Impeachment, stamped as received in the House Clerk's Office on January 22, 2021, is available online at a website maintained by the LRC at the following URL: <https://apps.legislature.ky.gov/CommitteeDocuments/343/13212/Impeachment%20Petition--AG%20Daniel%20Cameron.pdf>

¹¹ The Response of the Attorney General and Request for Dismissal, stamped as received in the House Clerk's Office on January 29, 2021 ("1/29/21 AG Response"), is available online at the following URL: <https://apps.legislature.ky.gov/CommitteeDocuments/343/13212/AG%20Impeachment%20Response.pdf>.

¹² 2021 AG Report pp. 3-4. That Report went on to address the merits ("due to the seriousness of these allegations and because summary dismissal would likely invite a subsequent petition, thereby merely delaying resolution of this important matter, *id.* p.4) and found "that no allegation rises to the level of impeachable conduct," *id.* p.7.

¹³ *See* 2/5/21 Orders dismissing petitions to impeach the Governor from Take Back Kentucky (Amy Cottrell) and Kentucky Liberty PAC (Micah Pelfrey); 3/12/21 Order Dismissing G. Young Petition to Impeach the Governor.

¹⁴ Administrative Office of the Courts statistics show a total of 17,862 cases assigned to Judge Goodman, including all cases filed through February 16, 2026. *See* AOC Research and Statistics report attached as Exhibit B.

ENDNOTES (continued)

¹⁵ Section 2 of the Kentucky Constitution provides for due process similar to that of the U.S. Constitution's Fourteenth Amendment. *Transp. Cabinet v. Cassity*, 912 S.W.2d 48, 51 (Ky. 1995) (applying standard set forth by *Mathews v. Eldridge*, 424 U.S. 319 (1976)), to procedural due process claims under Section 2); *see also* John David Dyche, *Section 2 of the Kentucky Constitution - Where Did It Come From And What Does It Mean*, 18 N. KY. L. REV. 503 (1991) (detailing the historical and legal development of Section 2 of the Kentucky Constitution).

¹⁶ *See Goldberg v. Kelly*, 397 U.S. 254, 269 (1970) (“In almost every setting where important decision turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses.”).

¹⁷ *See, e.g.*, SCR 4.210(1) (governing Judicial Conduct Commission cases; “a judge shall have the right and reasonable opportunity to defend against the charges”); *Alred v. Com., Judicial Conduct Comm’n*, 395 S.W.3d 417, 423-26, 427-29 (Ky. 2012) (assessing removal decision against substantive and procedural due process standards).

¹⁸ 2021 AG Impeachment Report p.3; *see also State ex rel. Workman v. Carmichael*, 819 S.E.2d 251, 289 (W.Va. 2018) (“This right to due process is heightened when the Legislature attempts to impeach a public official.”).

¹⁹ *Clark v. Commonwealth*, 223 S.W.3d 90, 96 (Ky. 2007).

²⁰ *See* Impeachment Committee’s 2/23/21 Report and Recommendation that no further action be taken concerning the Impeachment of Governor Andrew Beshear (“2021 GOV Impeachment Report”), pp. 3-6.

²¹ 2021 GOV Impeachment Report pp. 4-5.

²² 2021 GOV Impeachment Report p.7 (emphases added).

²³ 2021 AG Impeachment Report p.7; *see also* 2021 GOV Impeachment Report p.14 (Committee does “not necessarily agree with the broad (perhaps overly-broad) prohibition of eviction, but each member does find that this does not rise to the level of an impeachable offense”).

²⁴ 2021 GOV Impeachment Report pp. 18-19; 2021 AG Impeachment Report p.7; Impeachment Committee’s 2/23/21 Order Dismissing Petition to Impeach Rep. Robert Goforth p.5.

²⁵ 2021 GOV Impeachment Report p.19; 2021 AG Impeachment Report p.7. Thus, impeachment by the House has occurred only when the elected official has been found to have engage in seriously criminal conduct: treason (1806 – Sebastian), stealing or misappropriating public funds (1803-Duff; 1888 – Tate; 1916 – Williams; 1991-Burdette), extorting money or *quid pro quo* actions of a sexual nature (respectively, 1803 – Duff; 2023 – Goldy), or granting favors through authority over criminal process and proceedings (1916 – Williams; 2023 – Goldy). *See, generally*, LRC Informational Bulletin No. 176, *Impeachment in Kentucky* (Sept. 1991) pp. 13-14 (attached as Exhibit D).

²⁶ After all, the very need for a ruling is that there is a disputed question; at least one of the parties is likely to disagree.

²⁷ *See Thomas v. Judicial Conduct Comm’n*, 77 S.W.3d 478, 580 (Ky. 2002) (“All judges are held to a higher standard [than an ordinary citizen] by virtue of the Code of Judicial Conduct.”); *Gordon v. Judicial Conduct Comm’n*, 655 S.W.3d 167, 182 (Ky. 2022) (quoting *Thomas*); *Alred v. Com., Judicial Conduct Comm’n*, 395 S.W.3d 417, 424 (Ky. 2012) (distinguishing the Code from “a general criminal or civil stat-

ENDNOTES (continued)

ute”); *Nicholson v. Judicial Retirement & Removal Comm’n*, 562 S.W.2d 306, 308 (Ky. 1978) (“A proceeding before the Commission is not a criminal matter.”).

²⁸ Kentucky’s constitutional impeachment provisions have remained unchanged since its first Constitution. Compare 1792 Const., Art. IV, §§ 1-3; 1799 Const., Art. V §§ 1-3; 1850 Const. Art. V §§ 1-3; with 1891 Const. §§ 66-68.

²⁹ See Thomas D. Clark, A HISTORY OF KENTUCKY (1960), pp. 86-90, 285-87.

³⁰ See LRC Bulletin No. 176, pp. 7-8 & 13; *McCreary County v. Bryant*, 173 Ky. 363, 191 S.W. 119 (1917) (describing disputes over county funds and their expenditure); *McCreary County v. J.C. Mayer & Co.*, 178 Ky. 366, 198 S.W. 909 (1917) (same).

³¹ The 1976 revisions repealed KY. CONST. § 141 (providing “county courts” jurisdiction), vested judicial power exclusively in a unified Court of Justice (KY. CONST. § 109), and simultaneously repealed all existing sections of the Constitution to the extent in conflict with §§ 110-125 and preserved the parts of §§ 140 and 142 “conferring nonjudicial powers and duties upon county judges” (KY. CONST. § 124).

³² See LRC Bulletin No. 176, pp. 7, 14.

³³ See Kentucky Senate – Court of Impeachment, *In re Articles of Impeachment Against Ronnie Lee Goldy, Jr.*, 3/29/23 Proposed Findings of Fact, Conclusions of Law, and Judgment, available at: <https://apps.legislature.ky.gov/CommitteeDocuments/365/26478/2023%20SCOI%20Proposed%20Findings%20of%20Fact%20Conclusions%20of%20Law%20and%20Judgment.pdf>; *United States v. Goldy*, 164 F.4th 493 (6th Cir. 2026).

³⁴ See *Bradshaw v. Ball*, 487 S.W.2d 294, 299 (Ky. 1972) (“The judiciary’s reason for existence is to adjudicate.”); SCR 4.300(2.7) (“A judge shall hear and decide matters assigned to the judge....”); SCR 4.300(2.5(A) and comments [3]-[4] referring to “prompt disposition” and “disposing of matters promptly and efficiently”). A writ from a superior court may lie to enforce the duty to make a decision, e.g., “if the trial judge does not act promptly to exercise his discretion and make a determination.” *Shelton v. Simpson*, 441 S.W.2d 421, 424 (Ky. 1969). “If his discretion is abused, the erroneous determination resulting therefrom is correctable by appeal.” *Id.*

³⁵ “The Circuit Court shall have original jurisdiction of all justiciable causes not vested in some other court.” KY. CONST. § 112(5). Thus, “all cases, not expressly designated by a rule of law to be heard by another court, must appear before the circuit court, the trial court of general jurisdiction.” *Comm. Cab. for Health and Family Services, Dep’t of Medicaid Services v. Sexton*, 566 S.W.3d 185, 196 (Ky. 2018).

³⁶ For the five general-jurisdiction Circuit Judges in Fayette County, in calendar year 2025, there were 1346 criminal (felony) cases filed and 920 closed and 4018 civil cases filed and 2584 closed. Case statistics are available from the AOC-maintained website, at <https://www.kycourts.gov/AOC/Information-and-Technology/Analytics/Pages/Caseload-Yearly-by-Category.aspx>.

³⁷ Thus, even the minimalist “night-watchman” state described in Robert Nozick’s ANARCHY, STATE, AND UTOPIA (1974), would have courts to enforce contracts, adjudicate criminal responsibility, etc.

³⁸ The Circuit Courts’ “‘inherent’ authority to administer justice” in the cases before them includes procedural decisions like whether to grant recusal or a venue transfer. *Arkk Props., LLC v. Cameron*, 681 S.W.3d 133, 141 (Ky. 2023).

³⁹ KY. CONST. § 109 (saving only the judicial power given to the General Assembly for impeachment).

ENDNOTES (continued)

⁴⁰ KY. CONST. § 27 (powers of government divided among departments), and § 28 (one department not to exercise power belonging to another).

⁴¹ KY. CONST. § 123 (prohibited activities).

⁴² KY. CONST. § 119. The length of the term allows a fuller picture of a judge’s competence and character to be gained by the electorate before making a decision to retain that individual and reduces the chance that ballot-box decisions are made on the basis of a sensationalized or controversial case that is assigned to a judge for decision.

⁴³ KY. CONST. § 121 (retirement and removal).

⁴⁴ SCR 4.300 Scope [5].

⁴⁵ *Yanero v. Davis*, 65 S.W.3d 510, 518 (Ky. 2001). The absolute immunity afforded to judges is “for any judicial act, which is defined as any act that is of the nature normally performed by a judge and one in which the parties dealt with the judge in his official capacity. Such judicial immunity applies even if ‘the action he took was in error, was done maliciously, or was in excess of his authority’ so long as the judge did not act in the ‘clear absence of all jurisdiction.’” *Baker v. Fletcher*, 204 S.W.3d 589, 595 & n.16 (Ky. 2006) (quoting *Stump v. Sparkman*, 435 U.S. 349, 362 (1978)).

⁴⁶ “Our present Kentucky Constitution, Section 115, recognizes that a judge may err by providing most judgments are subject to at least one appeal.” *Jameson v. Judicial Conduct Comm’n*, 701 S.W.3d 236, 269 (Ky. 2024) (internal quotation marks omitted).

⁴⁷ These numbers are not official, they are from a website with links to each of the opinions issued, <https://law.justia.com/cases/kentucky/court-of-appeals/>. Review of the list of opinions for 2025 — <https://law.justia.com/cases/kentucky/court-of-appeals/2025/> — shows that most of the appeals involved were filed (started) in 2023 or 2024, with a handful filed in 2021.

⁴⁸ The November 2025 report is the most recently available through the [kycourts.gov](https://apps.kycourts.gov) website; *see* <https://apps.kycourts.net/Appeals/Opinions/November2025.pdf>.

⁴⁹ Of the 10 to-be-published opinions issued that month, five (5) affirmed, one (1) affirmed in part and reversed in part, two (2) reversed, and two (2) vacated the lower court decisions. Of the 14 such opinions issued in October 2025, six either reversed (3), vacated (2), or affirmed in part and reversed in part (1). *See* <https://apps.kycourts.net/Appeals/Opinions/October2025.pdf>.

⁵⁰ *See also Jameson v. Judicial Conduct Comm’n*, 701 S.W.3d 236, 267-70 (Ky. 2024) (applying SCR 4.020(2) jurisdictional limitation regarding erroneous decisions).

⁵¹ And appellate judges will be deterred from affirming a trial court decision that has been attacked by an impeachment petition, and worry that reversing a decision that has not been attacked may lead to an impeachment petition disputing the reversal.

⁵² *See* 2021 AG Impeachment Report p.5 (“[I]mpeachment for holding a press conference in a manner disapproved of by Petitioners would stifle the public’s interest in transparency and it would discourage officials from similarly relaying information to the public.”); 2021 GOV Impeachment Report p.12 (“As a practical matter, if a constitutional officer is impeached every time he or she loses in court, impeachment will lead to paralysis.”).

⁵³ The record filings referred to in this Response are publicly available. Copies can be provided upon request to counsel.

⁵⁴ For instance, U.S. District Judge Aileen Cannon dismissed the indictment against President Trump on a pre-trial motion finding Prosecutor Jack Smith was not properly appointed and thus had no authority to bring the indictment. *United States v. Trump*, 21-8101-CR-Cannon (S.D. Fla. July 15, 2024).

INDEX OF EXHIBITS

- A. Julie Muth Goodman Biographical Summary
- B. AOC Research and Statistics Report, run date 2/16/26
- C. 2/23/26 Opinion Letter of Peter L. Ostermiller, and his c.v
- D. Legislative Research Comm'n Informational Bulletin No. 176 (Sep. 1991)
Impeachment in Kentucky
- E. Miller, *Discretionary Review Practice in the Kentucky Supreme Court*, Bench & Bar
(January 2012)

Julie Muth Goodman
Biographical Summary

Personal Background:

Julie Muth Goodman is a native of Lexington, Kentucky. She is one of five children of John Luigart Muth and Betty Matlack Muth. She grew up on Athens-Boonesboro Road on a 3rd generation horse/tobacco farm and still resides there with her husband, Philip, who is a LCSW with the VA hospital. They have one son, Clay Goodman, who is 32 and the Director of Commercial Leasing for Anderson Communities.

Julie Goodman attended Christ the King elementary school, Tates Creek High School, Transylvania University (graduated summa cum laude with a BA in English) and the University of Kentucky College of Law.

She graduated from Law School in 1980 and is licensed to practice, and is in good standing, in both Kentucky and New York.

SUMMARY of a 46-year legal career:

Practicing Attorney

Staff Attorney with the Kentucky Department of Financial Institutions

(formerly the Department of Banking and Securities).

Her primary duties were to prosecute violations of the Kentucky Blue Sky Laws (Securities Fraud) and to draft the state regulations for the “one bank holding companies’ newly created by the General Assembly.

**Assistant Attorney General with the Kentucky Attorney General’s
Special Prosecutions Unit.**

Julie Goodman was recruited in 1981 by the Hon Ray Larson, who helped to create the Department and who was the first Director of the unit. During her four years with Special Prosecutions, she successfully prosecuted felony crimes in over 20 counties, including capital murder cases, rape cases, thefts, child abuse and white-collar crime. One double-homicide case she handled in Manchester Ky., *Commonwealth v. Stevie Sizemore*, was featured in the Wall Street Journal.

She was also tasked along with Laurel County Commonwealth Attorney Tom Handy with drafting the Kentucky Prosecutor’s manual addressing the procedures necessary to follow when prosecuting a capital murder.

Partner with Miller, Griffin and Marks, a Lexington, Kentucky litigation firm.

During her six years with the Firm, Julie Goodman’s practice was focused on civil litigation, including contract issues, divorces, and equine law. However, she did handle some criminal cases as well. She, along with Tom Miller, defended a black nurse, Ms. Ford, on a murder charge and were the first attorneys in Fayette County to be allowed to use the “battered spouse syndrome” as a defense.

Staff Attorney with The Home Insurance Company, in New York.

1990, Judge Goodman and her husband moved to Manhattan, where he was employed by Sloan Kettering Cancer Center as a LCSW. She was employed by The Home Insurance Company, supervising legal malpractice cases in multiple states. With the assistance of a

retired NY Federal Prosecutor, she also established the first Alternative Dispute Resolution (ADR) program for the department and conducted mediations throughout the United States for The Home's insured attorneys.

Julie Goodman and her husband returned to Lexington three years later when their son Clay was born, to raise him in Lexington.

Assistant Fayette County Commonwealth Attorney.

Julie Goodman was again recruited by the Hon. Ray Larson, to work as an Assistant Commonwealth Attorney prosecuting felony crimes, as she did as a Special Prosecutor. This time, she only prosecuted in Fayette County.

Partner with Brown, Todd & Heyburn (then Frost Brown Todd), now FBT Gibbons).

Again in private practice, Julie Goodman worked as a national litigator, successfully handling cases in over 24 states as the lead attorney defending general contractors in class action, construction defect, and product liability cases in state and federal courts at both the trial and appellate levels.

Partner with Dinsmore & Shohl.

She continued her practice as a national litigator defending general contractors in class action, construction defect, and product liability cases, and she remained a national litigator for 9 years until leaving private practice to serve as USEF's first general counsel.

General Counsel with the United States Equestrian Federation.

As general counsel, Julie Goodman worked with all members of the organization and with the United States Olympic Committee, as USEF is the national governing body for equestrian sport.

She directed all litigation brought against the federation. During her tenure, with local Florida counsel, USEF successfully defended against an anti-trust lawsuit, which resulted in USEF being given qualified immunity from such attacks.

Judge

Judge of the Fayette District Court, 22nd District, 4th Division (2008-2019)

Julie Goodman was elected to the bench by the citizens of Fayette County in 2008.

As a District Judge, she presided over criminal misdemeanor cases; felony cases, until the preliminary hearing stage; probate matters, guardianship matters and involuntary commitments; juvenile adjudications; civil cases under \$5,000; and small claims court matters. During her tenure in District Court, she also served as a Drug Court Judge for over a decade and along with Judge Kim Wilkie began the first Fayette County mental health court in conjunction with the Lexington Fayette Urban County Government and the Lexington branch of National Alliance on Mental Illness (NAMI).

Judge of the Fayette Circuit Court, 22nd Circuit, 4th Division (2019 – present).

Judge Goodman was elected to the Circuit Court bench by the citizens of Fayette County in 2019.

As a Circuit Judge, she presides over felony criminal cases and civil cases with \$5,000 or more in damages. The civil cases include class actions, medical malpractice claims, contract disputes, receiverships, just to name a few.

Judge Goodman is now in her 18th year on the bench and has been elected by the citizens of Fayette County six times. During those 18 years, it is estimated that she has presided over 71,862 matters.

Long History of Community Involvement:

While in high school, Julie Goodman was a St. Joseph Hospital volunteer “candy striper.

While in college, she volunteered at the Rape Crisis Center on the telephone hotline and taught the 5-year-old Sunday school class at Christ the King Church.

Julie Goodman has served on:

- the Newman Foundation Board as a member and as its President.
- the Old Richmond Road Neighborhood association as its Treasurer.
- the Shriner’s Hospital Corporate Council Board.
- the Transylvania Board of Regents and the Transylvania Board of Trustees.

While residing in NYC, Julie Goodman volunteered at the Metropolitan Museum of Art membership desk and at the New York Philharmonic

Julie Goodman was a member of both the Lexington Junior League and the NYC Junior League.

When an LFUCG police officer killed a black suspect of a crime, the Mayor and the Fayette County Commonwealth Attorney (Hon. Ray Larson) appointed Julie Goodman (who at that time was in private practice), along with Hon. John Famularo (then also in private practice), to conduct an independent investigation to determine whether there was any misconduct on the part of the police officer. After a thorough investigation, the joint report found no violations of the law or misconduct on the part of the officer.

Community Recognition:

Honored in 2013 by the Take Down the Wall committee of the Lexington branch of NAMI *for her industrial strength leadership in decriminalizing Mental Illness.*

Named the Salvation Army Boys and Girl’s Club of the Bluegrass 2015 *Role Model of the Year.*

Honored by Women Leading Kentucky as the 2020 Recipient of The Martha Layne Collins *Leadership Award.*

Honored by the Kentucky Association of Criminal Defense Lawyers as the recipient of the 2025 Fair Administration of Justice Award *for fairly applying Constitutional principles and impartially presiding in criminal proceedings.*



ADMINISTRATIVE OFFICE OF THE COURTS
Research and Statistics

26_RS9001

Cases Assigned to Hon. Julie Muth Goodman STATEWIDE

Case Filing Year	Case Category						Grand Total
	Circuit Civil	Circuit Criminal	Appeals from District Court	District Criminal	Juvenile	District Civil	
Before 2008	22	95		665	47	885	1,714
2008	11	30		2,097	87	1,588	3,813
2009	9	22		4,256	125	2,517	6,929
2010	6	36		3,991	124	2,685	6,842
2011	7	26		3,510	87	2,597	6,227
2012	10	27		3,541	102	2,280	5,960
2013	16	41		3,191	98	2,237	5,583
2014	28	36		3,081	69	2,191	5,405
2015	21	40	1	2,597	66	2,105	4,830
2016	44	62		2,334	82	2,046	4,568
2017	99	101		2,672	57	2,276	5,205
2018	223	151		2,800	59	2,081	5,314
2019	454	310		2,090	49	1,377	4,280
2020	504	236		12	6	8	766
2021	460	309		10			779
2022	438	274	8	1			721
2023	521	300	8				829
2024	639	243	6	1			889
2025	788	275	7				1,070
2026*	106	31	1				138
Grand Total	4,406	2,645	31	36,849	1,058	26,873	71,862

Statistical Analysis Considerations

* Data provided from the CourtNet Database.

* Counts of Criminal cases in this report reflect distinct cases. A single defendant may be involved in one or more cases over time. A single case may include one or more charges.

* Cases filed before 2008 included in this report reflect cases in which Hon. Goodman became involved after the case was originally filed. This report is limited to cases filed or disposed on or after 7/1/2002.

* Cases filed in 2026 include cases filed from 1/1/2026 to 2/16/2026.

Run Date:
2/16/2026
Page 1 of 1

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February 23, 2026

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Re: Hon. Julie Muth Goodman, Judge, Fayette Circuit, Impeachment proceeding

Dear Mr. Denham:

You have asked me to review certain information and documentation regarding the above-referenced case and provide you an opinion concerning certain action taken by Judge Goodman in her capacity as a judicial officer in six cases which came before the Fayette Circuit Court.

By brief background, I am an attorney at law licensed to practice law in Kentucky, and my practice is concentrated in matters relating to legal ethics and professional responsibility. My practice also includes on occasion conferring and counseling with Judges regarding judicial ethics matters and representing Judges before the Judicial Conduct Commission. There have also been occasions when I have been asked to assist and counsel lawyers who want to file a Complaint concerning a Judge with the Judicial

Conduct Commission. The number of Judges I have represented over the years and up to the present time is small compared to my counseling and representation of attorneys for the simple fact there are only a small fraction of judicial officers in Kentucky who are subject to the jurisdiction of the Judicial Conduct Commission compared to the number of attorneys subject to the jurisdiction of the Kentucky Bar Association.

I have been licensed for 45 years and my practice of legal ethics began about 38 years ago, and has been the concentration of my practice for at least the last 30 years. That practice includes representing attorneys in disciplinary proceedings before the Kentucky Bar Association, representing parties in attorney's fee disputes, and counseling and conferring with attorneys and law firms regarding their legal ethics and standard of conduct as attorneys in dealings with clients, opposing counsel, the Courts, and associate and partner relationships within law firms. I have also participated as a presenter at legal ethics CLE programs of numerous seminars in Kentucky and outside of Kentucky. I have also participated as counsel and as an expert in attorney disqualification Motions in litigation and in transactional matters. Since the early 2000's, for about 25 years or so, I have also counseled and represented Judges concerning judicial ethics and proceedings before the Judicial Conduct Commission. A copy of my CV is attached.

You have provided me a number of documents including the Impeachment Petition, your Response on behalf of Judge Goodman, and certain documents concerning a number of the Circuit Court cases referred to in the Impeachment Petition.

In forming the opinions set out in this letter, I have reviewed and relied on applicable Kentucky law, the Judicial Code adopted by the Supreme Court, and research outside of

Kentucky relevant to the issues raised in the Petition and in the Response on behalf of Judge Goodman. I have also relied on my training and experience in judicial and legal ethics and professional responsibility matters.

It is not the purpose of my letter to resolve any disputed issue of fact between the parties. I have assumed as true the factual matters and the legal review of the underlying civil cases and criminal cases which came before Judge Goodman and any subsequent appellate activity, including pending appellate activity, set out in the Response. This report is confined to the conduct and circumstances described in the Petition and the Response and does not rely upon independent factual investigation.

In the event additional information and documentation is provided to me, I reserve the right to review and amend, as appropriate, this report letter.

Review of the Impeachment Petition and the Response

The six cases identified in the Petition concern rulings made by Judge Goodman in the course of contested judicial proceedings, and certain appellate proceedings, some of which remain pending as of the time of this letter. This review is not intended to be a comprehensive review of each and every point raised in the Petition and in the Response. The purpose of the review set out below is to identify the nature of the issues raised in those documents in forming the opinions set out in this report.

The allegations center on judicial decision making and the legal correctness of certain rulings made by Judge Goodman. The Petition speaks in broad terms but the particular allegations, to the extent there is particularity, do not show financial impropriety, corruption, ex parte communications, personal benefit, dishonesty, or criminal conduct.

Also, some of the language in the Petition contains a certain degree of hyperbole. I view such hyperbole as subjective characterization by the Petitioner.

I. Commonwealth v. Cornell Denmark Thomas

The Petition characterizes the dismissal of an indictment as improper interference with prosecutorial authority and a violation of separation of powers principles. The Response states that the dismissal was entered pursuant to Judge Goodman's authority and was grounded in findings concerning prosecutorial misconduct and deficiencies in the Grand Jury process. The Response also states the ruling was supported by reference to existing case law and is subject to appellate review. There is presently pending before the Supreme Court a Motion for Discretionary Review. The documents I was provided concerning this case supports the statements made in the Response.

The dispute centers on whether the dismissal was legally justified under governing standards and whether it reflected permissible judicial discretion or improper encroachment upon executive authority. The case remains in the appellate pipeline at the time of this letter report.

This case reflects a legal disagreement regarding the scope of trial court authority. Judicial rulings that are subject to appellate review, including those that may be reversed, do not in themselves constitute ethical misconduct.

II. Commonwealth v. Domonick Dante Jones

The Petition asserts that probation was imposed by Judge Goodman in a fentanyl trafficking case where probation was allegedly statutorily prohibited. The Response indicates that the Commonwealth did not object at sentencing, that the statutory issue was

later recognized, that the Judgment was withheld, and that subsequent procedural developments complicated the case. There is presently pending before the Supreme Court a Motion for Discretionary Review. The documents I was provided concerning this case supports the statements made in the Response.

The factual dispute concerns whether the sentence was knowingly imposed by Judge Goodman contrary to statute or was the product of inadvertence, whether corrective steps were taken appropriately, and whether responsibility for procedural irregularities was shared among the parties.

Sentencing errors, if any, are subject to correction through established appellate mechanisms. An alleged error in statutory interpretation, absent evidence of knowing violation or bad faith, does not constitute a breach of judicial ethics. The Petition does not allege evidence of such a knowing violation or bad faith on the part of Judge Goodman.

III. Commonwealth v. James Harvey Hendron

The Petition characterizes Judge Goodman granting of a new trial following a jury trial murder conviction as an alleged improper interference with a jury verdict. The Response states that the ruling of Judge Goodman was based upon findings of prosecutorial misconduct, including alleged burden shifting in a self-defense context, improper closing argument, and cumulative error. Therefore, Judge Goodman exercised authority under applicable criminal procedural rules. There is presently pending before the Supreme Court a Motion for Discretionary Review. The documents I was provided concerning this case supports the statements made in the Response.

The dispute before Judge Goodman was whether prosecutorial misconduct

occurred, whether it was prejudicial, and whether cumulative error justified a new trial. In general, Trial Courts possess authority to grant new trials when constitutional or procedural violations are found. Whether such a ruling is upheld or reversed on appeal is a matter of legal review. The exercise of that authority, even if controversial, does not constitute ethical misconduct when grounded in legal reasoning.

IV. Simpson v. Caudill

The Petition asserts that Judge Goodman improperly ordered the release of an inmate serving a lengthy sentence, allegedly in defiance of appellate authority. The Response states that the decision was based on recent Supreme Court precedent and reflected an interpretation of an evolving sentencing framework. The Court of Appeals reversed the ruling. The documents I was provided concerning this case supports the statements made in the Response.

The dispute centers on whether precedent clearly controlled the outcome and whether Judge Goodman's interpretation was reasonable. Appellate disagreement does not equate to ethical violation. Courts frequently confront developing areas of law where reasonable jurists may differ. An appellate reversal does not to equate to a judicial ethics breach by Judge Goodman, and the Petition does not allege any other than the reversal by the Court of Appeals.

V. Ain v. University of Kentucky

The Petition suggests bias and notes a Motion to disqualify. The Response states that the Deputy Chief Justice ordered the disqualification of Judge Goodman based upon an appearance of impropriety standard and did not find actual bias or ethical misconduct.

The Response notes Judge Goodman has presided over numerous other cases involving the same institution without issue. The case remains subject to an Appeal on the recusal issue once the case is resolved at the Circuit Court level. The documents I was provided concerning this case supports the statements made in the Response.

Disqualification based on an appearance does not necessarily constitute a finding of an ethical breach. The Judicial Code in Rule 1.2 states that a Judge should avoid impropriety and the appearance of propriety. However, Comment 3 notes that the Rule must be cast in general terms because a listing of all conduct which could run afoul of that Rule is not practicable. Judicial ethics standards recognize the distinction between recusal to avoid appearance concerns and a determination of misconduct. The record reflects no finding of actual bias or improper motive.

VI. Huff v. University of Kentucky

The Petition alleges that the denial of Judge Goodman to hold sovereign immunity applied in this case constituted a refusal to follow binding precedent. The Response states that the decision was based upon an interpretation of an evolving doctrine and a good faith effort to distinguish existing precedent. The documents I was provided concerning this case supports the statements made in the Response.

The Court of Appeals reversed and Discretionary Review was granted by the Supreme Court, which remains pending before the Supreme Court.

The dispute concerns whether precedent clearly compelled dismissal or whether the ruling represented a permissible extension or distinction within a developing legal framework. Judicial interpretation of precedent, even where later reversed, falls within the

ordinary function of Trial Courts and does not, absent bad faith, constitute misconduct.

Discussion

Pursuant to the Kentucky Constitution, Sections 66 and 68, the impeachment of the Governor and “all civil officers” is within the jurisdiction of the House of Representatives. Section 68 indicates the basis for impeachment is “any misdemeanors in office,” a generally undefined term. However, it appears that an offense to support Impeachment would be greater than the disciplinary provisions of the Judicial Code. For the purposes of this report letter, I have reviewed this from the terms of the Judicial Code even though it appears the standard to pursue impeachment is greater than that required under the Judicial Code. However, from analysis standpoint, if the conduct does not rise to the level of a breach of the Judicial Code, it would correspondingly not rise to the apparent higher level of a “misdemeanor in office.”

The Kentucky Code of Judicial Conduct, SCR 4.300 et seq, is designed to safeguard the independence, integrity, and impartiality of the judiciary. Canon 1 generally concerns upholding and promoting independence, integrity and impartiality including the avoidance of impropriety in the prison propriety. And, Canon 2 generally concerns a Judge performing duties impartially, competently and diligently. Although the allegations of the Petition would appear to seek to apply those Canons regarding Judge Goodman, as a matter of factual and legal analysis, specifically based on the analysis contained in the Response, the allegations of the Petition do not establish conduct violative of those Canons and the Rules in each such Canon.

Judicial discipline is reserved for conduct involving bad faith, bias, corruption,

abuse of authority, dishonesty, or conduct prejudicial to the administration of justice. It is a basic principle of judicial ethics that legal error, even serious legal error, does not by itself constitute judicial misconduct. Nor does appellate reversal, disagreement with legal reasoning, or controversial interpretation of statutes amount to an ethical violation. The issue is not whether a Judge's ruling was correct, but whether the Court acted in knowing disregard of the law, with improper motive, or outside the bounds of judicial authority.

The allegations in the Petition and as described in the Response concern a series of judicial rulings involving dismissals of indictments, sentencing decisions, grants of new trials, questions of sovereign immunity, and recusal determinations. Each of these actions falls squarely within the subject matter jurisdiction of a Circuit Court. The Response reflects that the rulings were issued as part of the ordinary exercise of judicial authority by Judge Goodman, and that several of the cases are subject to ongoing or available appellate review. There is no indication in the Petition and in the Response that any ruling was issued for personal benefit, political motive, or corrupt purpose. Rather, the challenged actions appear to involve legal interpretation and discretionary judgment.

From an ethics perspective, that is a material distinction. The Judicial Code does not punish Judges for legal reasoning that others may dispute, especially if the dispute is coming from a citizen with no involvement in any of the cases as set out in the Petition. The appellate process through the Court of Justice exists to review alleged legal error. Absent evidence of intentional disregard of binding authority or bad faith defiance of controlling law, disagreement with a Judge's interpretation does not rise to the level of ethical misconduct. The Response does not describe facts suggesting that Judge Goodman

knowingly violated established precedent or acted with improper purpose.

The allegations of bias set out in the Petition similarly appear to arise from adverse rulings rather than from extrajudicial statements, personal interests, or demonstrated animus. It is well established that adverse rulings against a litigant or category of litigants do not constitute evidence of bias. The Response indicates that Judge Goodman recused herself in at least one matter based on appearance considerations, which reflects adherence to ethical standards rather than disregard of them. There is no description of extrajudicial conduct, personal hostility, or favoritism that would implicate the impartiality provisions of the Code.

The Petition's assertion that certain rulings exceeded judicial authority or violated separation of powers principles likewise concerns the correctness of legal decisions, not necessarily ethical impropriety. Judges are routinely required to interpret constitutional provisions, statutory limits, and procedural rules. Whether such interpretations are ultimately upheld or reversed is a matter for appellate Courts. The Code of Judicial Conduct is not designed to police judicial philosophy or to sanction Judges for legal conclusions that may be controversial to some people. There is no indication in the Response that Judge Goodman acted outside her jurisdiction or exercised authority she did not possess.

The competence and diligence provisions of the Judicial Code require Judges to perform their duties responsibly. The matters described in the Response involve substantive rulings, not neglect, absence, administrative breakdown, or repeated failure to perform judicial duties. Even if some rulings were later determined to be erroneous in an appellate setting, that circumstance alone would not establish ethical incompetence.

Judicial independence requires that Judges be free to render decisions based on their understanding of the law without fear that controversial or unpopular rulings will result in disciplinary sanction by another branch of government such as the General Assembly. If disagreement with legal reasoning were sufficient to support impeachment, the impeachment process through the General Assembly would effectively replace judicial appellate review and compromise separation of powers. The ethical framework is intentionally designed to distinguish between legal error and misconduct.

Based on the conduct described in the Response, Judge Goodman's actions appear to consist of rulings made within the scope of her judicial authority, supported by legal reasoning, and subject to appellate review. There is no description of bad faith, corruption, improper motive, or knowing violation of binding law.

Based on the foregoing, in my opinion, within reasonable probability, the conduct of Judge Goodman at issue was within the applicable standard of conduct for judicial officer subject to the Judicial Code regarding the civil cases and criminal cases which are the subject of the Impeachment Petition, and addressed in the Response on behalf of Judge Goodman.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Peter L. Ostermiller".

Peter L. Ostermiller

Peter L. Ostermiller

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Admitted Commonwealth of Kentucky 1980

Admitted United States District Courts for the Western and Eastern Districts of Kentucky, and Sixth Circuit Court of Appeals

Education

University of Louisville, College of Arts and Sciences, B.A., Political Science, 1977

University of Louisville School of Law, J.D., 1980
Managing Editor, Journal of Family Law 1979-1980

Professional Associations

Kentucky Bar Association

Louisville Bar Association

Association of Professional Responsibility Lawyers

Law Practice

Mr. Ostermiller's law practice is concentrated in the following areas:

- Representation of lawyers in attorney disciplinary proceedings.
- Counseling and conferring with lawyers regarding professional responsibility and legal ethics matters.
- Representation of parties in attorney's fee disputes.
- Counseling and conferring with the attorneys in representing attorneys and other parties in attorney disqualification matters.

- Representation of applicants seeking admission and attorneys seeking readmission before the Kentucky Office of Bar Admissions, Character and Fitness Committee.
- Counseling and representation regarding Unauthorized Practice of Law matters and Attorney Advertising Commission matters.
- Representation of Judges regarding judicial ethics and Judicial Conduct Commission matters.

Other Professional Activities

Since the late 1980's, Mr. Ostermiller has taught numerous continuing legal education seminars on legal ethics and professional responsibility matters. He has also given judicial ethics seminars on behalf of the Kentucky Administrative Office of the Courts to Judges, Master Commissioners, Trial Commissioners and judicial staff attorneys.

Mr. Ostermiller has also taught a professional responsibility course at the University of Louisville, Brandeis School of Law.

Mr. Ostermiller has also qualified and testified as an expert witness regarding Kentucky's Rules of Professional Conduct governing the practice of law in Kentucky, and the areas of legal ethics and professional responsibility matters.

Mr. Ostermiller's legal ethics and professional responsibility law practice has been the subject of the following newspapers articles:

"When Lawyers Need a Lawyer: Attorneys, Judges Call Louisville Man When Trouble Arises," Courier-Journal, January 11, 2004

"Kentucky Solo Builds Practice Representing Lawyers," Lawyers Weekly USA, May 24, 2004

Kentucky Bar Association Ethics 2000 Committee regarding Rules of Professional Conduct, member (2003-2006)

Kentucky Supreme Court Task Force on Kentucky Attorney Disciplinary Procedure Rules member (1999-2000)

AV rating through Martindale-Hubbell

Personal Information

Mr. Ostermiller has been married to Kathy Ostermiller since 1976, and their one child, Beth Whitsel, lives and works in Baltimore, Maryland, and is married to Austin Whitsel. They have a son, Finn. Mr. Ostermiller and his wife moved to Baltimore in July 2025 to be close to their grandson and to help their daughter and son-in-law. Mr. Ostermiller continues to maintain a full-time practice of Kentucky law.

IMPEACHMENT IN KENTUCKY

Informational Bulletin No. 176

**LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky**

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IMPEACHMENT IN KENTUCKY

Prepared by
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Informational Bulletin No. 176

LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky
September, 1991

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FOREWORD

In 1991, the General Assembly met in one of the longest extraordinary sessions in Kentucky history. Among other issues, the legislature faced a task which had not been necessary for nearly a century — the impeachment of a constitutional officer.

Although the General Assembly had conducted impeachments in the past, few records had been maintained, other than entries in the House and Senate Journals. As a result, staff spent months preparing procedural rules, forms, and other materials to assist the General Assembly in determining how to proceed.

This informational bulletin is designed to assist future legislatures in conducting impeachments, and to provide the public with a look into the process itself.

The procedural rules and many of the documents utilized during the 1991 impeachment have been included as Appendices, as a guide for those who may, in the future, find themselves faced with this responsibility.

Vic Hellard, Jr.
Director

The Capitol
Frankfort, Kentucky
September, 1991

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CHAPTER I

THE NATURE OF IMPEACHMENT

The removal of a public official from office through the process of impeachment is a grave matter, as it represents a repeal of the will of the people who have elected an individual to an office of public trust. Because it is a reversal of the inherent power of the people in a democratic society to choose those who govern, it is a power rarely exercised, and one which has fortunately been required in few instances in Kentucky's history.

Because impeachment has been such a rare occurrence in Kentucky, a shroud of mystery envelopes the process itself. There are many procedural questions for which answers are difficult to ascertain, and many constitutional issues which have been the subject of debate among those in government, academia, and the courts. Two of the major questions involved in impeachment relate to the types of conduct which are to be considered "impeachable" and whether the decisions reached by an impeachment tribunal are subject to judicial review.

Kentucky's 1891 Constitution closely mirrors the federal constitution in terms of its impeachment provisions. According to Section 68, the "Governor and all civil officers" are liable to impeachment by the House of Representatives and trial by the Senate. Although statutory provisions have been enacted to establish a mechanism for removing certain officers (See KRS 61.010 and 61.040) it is generally held that if a specific method of removal of a particular officer is prescribed by the Constitution, such as impeachment, that is the sole method of removal which may be utilized.¹

While it is fairly clear who is subject to impeachment, the question of what is impeachable conduct is more complex. Because impeachment is a power vested solely in the legislature, the general rule is that the definition of impeachable conduct is exclusively a matter to be determined by the legislature. The Kentucky Constitution prescribes impeachment as the remedy when a public officer has committed "misdemeanors in office," but that term does not have the same connotation as in the judicial sense. Rather "misdemeanor" in this context has been defined as any activity involving a breach of the public trust, or any act which can be construed as misfeasance or malfeasance.

Usually an officer is impeached as a result of criminal conduct, generally after an indictment has been lodged against the individual. It can be inferred from the language in Section 68 of Kentucky's Constitution that the framers envisioned that impeachment would be associated with some form of criminal conduct, as it provides that "the party convicted [in an impeachment trial] shall, nevertheless, be subject and liable to indictment, trial and punishment by law." (Ky. Const. §68). Thus, it is not necessary that an official charged with impeachable conduct must previously have been convicted or even indicted on a criminal charge.

The issue of whether decisions adjudicated by an impeachment tribunal are subject to judicial review has been one of great debate. It is clear from a review of various treatises and case law from other jurisdictions that the issue continues to resurface at both the state and federal levels. Some argue that the framers of the federal constitution surely did not envision the delegation of the impeachment power to the legislative branch as an absolute exception to the doctrine of judicial review, especially since any impeachment may involve political undercurrents as well as concern for the public good.

One of the more persuasive arguments for judicial review appears in Raoul Berger's *Impeachment: The Constitutional Problems*. In part, his arguments center around the theory that the grant of the impeachment power to the legislative branch does not authorize the expansion of its powers beyond those explicitly provided in the Constitution. Because of the evolving concept of what might constitute impeachable conduct, he argues that the legislative branch has the potential for expanding what the framers intended by determining what types of acts may fall within the realm of an impeachable offense. He also argues that the interests of the public in preserving the integrity of the separation of powers doctrine are best served by strictly observing the "strong American bias in favor of a judicial determination of constitutional and legal issues."²

However, the greater weight of authority appears to hold that there is no basis for judicial review of impeachment proceedings. In *Ritter v. United States*, the Court held that not only should there be no judicial review of the ultimate judgment of the Senate, but also that no judicial determination should be made as to whether particular offenses were "impeachable offenses."³

This issue was most recently considered in connection with the Arizona case of Governor Edwin Mecham. At the time of his impeachment, Mecham had not been tried in the courts. During the impeachment proceedings, Mecham made clear his intention to seek judicial relief, not only in the Arizona Supreme Court, but also in federal court. In *Mecham v. Gordon*,⁴ the Arizona Supreme Court ruled that the Arizona Senate had the power to determine the rules of procedure it would follow during the proceedings, a power emanating from the separation of powers clause of the Arizona Constitution. However, the court did appear to leave open the possibility that if the Senate had violated some constitutional requirement regarding the impeachment process, such as trying Mecham without Articles having been approved by the House of Representatives, the court would have the power to require the body to follow the provisions of the Constitution.

Another possible obstruction to judicial review of impeachment is the political question doctrine, which could preclude judicial determination of whether the legislature had correctly defined the scope of an impeachable offense due to lack of judicial standards. The political question doctrine basically holds that a question which is purely political in nature is nonjusticiable, or a question which courts will refuse to recognize.⁵ The major authority in the area of the political question doctrine appears to be *The Federalist No. 65*, by Alexander Hamilton.

Lastly, an *Arizona Law Review* article indicates that there has been no reported case in American history in which a court has actually reviewed and reversed either a House impeachment or a Senate conviction. In *Ferguson v. Maddox*, the Texas Supreme Court did review an impeachment decision, but it observed that the judgment of a court of impeachment can only be questioned insofar as it might exceed constitutional authority. The Court held that

[s]o long as the Senate acts within its constitutional jurisdiction, its decisions are final. As to impeachment, it is a court of original, exclusive, and final jurisdiction.⁶

CHAPTER II
IMPEACHMENT IN KENTUCKY

Constitutional Provisions

§66 Power of impeachment vested in House.

The House of Representatives shall have the sole power of impeachment.

§67 Trial of impeachments by Senate.

All impeachments shall be tried by the Senate. When sitting for that purpose, the Senators shall be upon oath or affirmation. No person shall be convicted without the concurrence of two-thirds of the Senators present.

§68 Civil officers liable to impeachment; judgment; criminal liability.

The Governor and all civil officers shall be liable to impeachment for any misdemeanors in office; but judgment in such cases shall not extend further than removal from office, and disqualification to hold any office of honor, trust or profit under this Commonwealth; but the party convicted shall, nevertheless, be subject and liable to indictment, trial and punishment by law.

§77 Power of Governor to remit fines and forfeitures, grant reprieves and pardons; no power to remit fees.

He shall have power to remit fines and forfeitures, commute sentences, grant reprieves and pardons, except in case of impeachment, and he shall file with each application therefor a statement of the reasons for his decision thereon, which application and statement shall always be open to public inspection. In cases of treason, he shall have power to grant reprieves until the end of the next session of the General Assembly, in which the power of pardoning shall be vested; but he shall have no power to remit the fees of the Clerk, Sheriff or Commonwealth's Attorney in penal or criminal cases.

§84 When Lieutenant Governor to act as Governor; not to preside at impeachment of Governor.

Should the Governor be impeached and removed from office, die, refuse to qualify, resign, be absent from the State, or be, from any cause, unable to discharge the duties of his office, the Lieutenant Governor shall exercise all the power and authority appertaining to the office of Governor until another be duly elected and qualified, or the Governor shall return or be able to discharge the duties of his office. On the trial

of the Governor, the Lieutenant Governor shall not act as President of the Senate or take part in the proceedings, but the Chief Justice of the Court of Appeals shall preside during the trial.

The Kentucky Constitution delegates to the General Assembly the authority to remove certain officers from office through impeachment by the House and subsequent conviction by the Senate. According to Section 66, the sole power of impeachment is vested in the House of Representatives, while the power to try impeachments is given to the Senate by Section 67. When sitting as triers of fact in an impeachment case, the Senators are to be upon oath or affirmation, and no person shall be convicted without the concurrence of two-thirds of the Senators present (Ky. Const. §67).

Section 68 provides that the Governor and all civil officers shall be liable to impeachment for any misdemeanor in office. However, a judgment in an impeachment extends only to removal from office and disqualification from holding any office of honor, trust or profit under the Commonwealth. An individual removed from office through impeachment may still be subject to indictment, trial, and punishment in a court of law as a result of the conduct resulting in his impeachment. Section 77 of the Constitution prohibits the Governor from issuing a pardon to an impeached officer.

While the authority for the General Assembly to remove public officers from office by means of impeachment is found in the Kentucky Constitution, the more specific guidelines to govern the impeachment process are statutory. As previously discussed, impeachment is a two-part process, and the role of each chamber of the legislature is spelled out in Chapter 63 of the Kentucky Revised Statutes. The following is a procedural guide for conducting impeachments in Kentucky according to current provisions of the Kentucky Revised Statutes.

House of Representatives

KRS 63.020 Impeachment and removal by address.

Proceedings for impeachment or removal by address may be instituted by the House of Representatives without a petition from any person.

KRS 63.030 Petition for impeachment.

(1) Any person may, by written petition to the House of Representatives, signed by himself, verified by his own affidavit and the affidavits of such others as he deems necessary, and setting forth the facts, pray the impeachment of any officer.

(2) The House shall refer the petition to a committee, with power to send for persons and papers, to report thereon.

The House of Representatives has the responsibility for initiating the impeachment process, which may be done either upon receipt of a petition or on its own initiative (KRS 63.020). Any person may, by written petition, request the impeachment of any officer. The petition must be signed by the petitioner, verified by his own affidavit and the affidavits of others if he deems it necessary, and must set out the facts alleging that an impeachable offense has been committed by a public officer (KRS 63.030(1)). If such a petition is received by the House, it is then referred to a committee, which is then considered to have subpoena power, and which is to investigate the matter and report back to the full House (KRS 63.030(2)).

The House Impeachment Committee

The impeachment committee is to review the evidence to determine whether there is sufficient cause to institute formal impeachment proceedings. There are no statutory or constitutional requirements relative to number of members, political party affiliation, or other requirements. In the 1916 impeachment of McCreary County Judge J.E. Williams, a seven-member panel was appointed, and that arrangement was followed in the 1991 proceedings against Agriculture Commissioner Ward "Butch" Burnette.

There are no statutory or constitutional requirements that the proceedings of an impeachment committee be open to the public. While meetings of standing committees of the General Assembly and most other public bodies are required to be held in open session, under the provisions of the Open Meetings Law, there is an express exception allowed for committees of the General Assembly other than standing committees, which permits them to conduct their business in private (KRS 61.810(9)). During the Burnette impeachment, the role of the House Impeachment Committee was viewed as comparable to the function of a grand jury in the court system, and the meetings of that committee were not open to the public. However, the rules of procedure adopted by that committee did allow for the proceedings of the committee to be opened upon a majority vote of the members (See Appendix D). As provided in KRS 63.030(2), the impeachment committee is to have the power to compel witnesses and the production of papers.

The question as to whether the accused is to be allowed to appear before the impeachment committee turns on the case involved and the course the committee determines to follow. There is no statutory or constitutional provision governing this issue, although the statutes governing the Senate trial of an impeachment case require that the accused be summoned to appear by precept, so that he might have the opportunity to confront his accusers. During the 1916 Williams impeachment, the impeachment committee spent several sessions hearing testimony from some 33 witnesses, including the accused. However, in the Burnette case, the impeachment committee did not take testimony from any witnesses, relying instead upon the complete record of Burnette's trial in Franklin Circuit Court. It is important to note that in the Williams case, the impeachment had been initiated by a petition from residents in McCreary County, and he had not been indicted on criminal charges in the courts, so the needs of the impeachment committees in the two situations were somewhat different.

Report of Committee

Once the impeachment committee has completed its investigation, it then issues a report to the full House of Representatives, including a recommendation as to whether Articles of Impeachment should be returned and voted upon by the House. Approval of the report requires a majority vote of committee members, although majority and minority reports may be issued under House Rule 47. The report in the Williams case included a summary of the evidence, and also was in the form of a Majority and Minority Report. Each report was voted on separately by the House, with the majority report recommending impeachment ultimately being approved by the House. Approval of the report requires a majority vote of the House membership.

Preparation of the Articles of Impeachment

KRS 63.035 Articles of impeachment.

(1) If an impeachment is recommended by the committee of the House of Representatives to which it is referred, the committee shall draw up the articles of impeachment in accusation of the officer and submit the articles to the House with the recommendation for impeachment.

(2) The articles of impeachment shall state with reasonable certainty the misdemeanor in office for which impeachment is sought; and if there be more than one (1) misdemeanor, each shall be stated separately and distinctly.

KRS 63.035 governs the preparation of Articles of Impeachment. If the full House votes to adopt a committee report which recommends impeachment, Articles must be drafted. The Burnette impeachment committee offered with its final report House Resolution 40, which contained an Article of Impeachment as an attachment. However, in the Williams case, the Articles were prepared subsequent to the House vote on the committee report, by a group of five. It is interesting to note that in that case, the drafting committee included only two of the seven members of the original impeachment committee.

As required by KRS 63.030(2), the Articles must state with reasonable certainty the misdemeanor for which impeachment is sought, and if there are multiple misdemeanors, each is to be stated separately and distinctly.

Committee to Prosecute

KRS 63.040 Prosecution — Witnesses.

(1) If an impeachment is ordered by the House of Representatives a committee shall be appointed to prosecute it, and the committee chairman shall, within five (5) days, lay the impeachment before the Senate.

(2) The Senate shall appoint a day for hearing the impeachment. The accused shall be summoned by precept, issued by the clerk of the Senate, to appear on that day. The precept shall be served in person, or a copy left at his residence with a member of his family over the age of sixteen (16) years, together with a copy of the impeachment.

(3) The clerk of the Senate shall, at the instance of the chairman of the committee, or of the accused, issue process for the summoning of witnesses, and the production of books, papers, documents or tangible things. Process so issued shall be executed by peace officers or officers specially appointed by the Senate for that purpose in the same manner as similar process of courts. Upon disobedience to the process, the Senate may order the clerk to issue process for arresting the witnesses and seizing the books, papers, documents or tangible things. Disobedience may be punished in the manner provided for other witnesses before the General Assembly.

(4) A witness so summoned shall receive the same compensation, and have the same privilege in going, remaining and returning, as a witness in Circuit Court.

Once the House of Representatives has adopted Articles of Impeachment, the accused stands "impeached." However, that action alone does not remove the person from office, since the vote by the House is merely tantamount to an indictment. While the proceedings move to the Senate for trial, the role of the House is not over. KRS 63.040(1) requires that a committee of Representatives be appointed to go before the Senate to prosecute the Articles on behalf of the House. There is no statutory requirement that the prosecutors be the same individuals who served on the original impeachment committee appointed to conduct the initial investigation. Within five days of appointment of this new committee, the Chairman of the committee is required to lay the Articles of Impeachment before the Senate (KRS 63.040(1)).

The Senate

After the Articles of Impeachment have been laid before the Senate, that body adopts Rules of Procedure to govern the impeachment proceedings. The rules are adopted in the form of a resolution (SR 41 in the Burnette case), requiring approval by a majority of Senators voting. KRS 63.055 requires that the rules specify the amount of time a Senator may be absent before being disqualified from casting a final vote on guilt or innocence of the accused. Also, the Senate sets a date certain for beginning the proceedings, and sends a message to the House to that effect.

KRS 63.040 requires that the accused be summoned by precept, issued by the Clerk of the Senate, to appear on the day designated for the trial to begin. While similar to a summons, a precept is

an order of direction, emanating from authority, to an officer or body of officers, commanding him or them to do some act within the scope of their powers.⁷

The precept is to be served in person, or a copy left at the residence of the accused with a member of his family over the age of 16, along with a copy of the impeachment (KRS 63.040(2)).

Issuance and Service of Process

The Senate Clerk is charged with the duty to issue summons on direction of the chairman of the prosecuting committee or upon request of the accused. Process is to be served by peace officers specially appointed by the Senate for that purpose, in a manner similar to that used by the courts. Upon disobedience of the process, the Senate may order the Clerk to issue process for the arrest of the witness or seizure of the books or papers requested in the subpoena. Disobedience is punishable in the manner provided for other witnesses before the General Assembly (KRS 63.040(3)).

According to KRS 63.030(4), a witness summoned to appear before the Senate shall receive the same compensation, and have the same privileges in going, remaining, and returning as a witness in Circuit Court.

Senate Trial

When the Senate convenes to begin its deliberations, the presiding officer and every Senator present is required by KRS 63.050 to take the following oath or affirmation:

I do solemnly swear (or affirm) that I will faithfully and impartially try the impeachment against _____ and give my decision according to the law and evidence.

The President of the Senate sits as the presiding officer. According to Section 84 of the Kentucky Constitution, the Chief Justice of the Supreme Court presides if the Governor is being impeached.

Upon convening and administration of the oath, the accused is given the opportunity to enter his plea to the Articles of Impeachment, and the parties announce ready for trial. The witnesses for the Commonwealth are sworn, either individually or collectively. The House presents its case by examining each witness, who is then subject to cross-examination by the defense. The defense then presents its case, followed by closing arguments. The details as to time allowed for each phase of the proceedings, as well as other procedural matters may be spelled out in the Rules adopted to govern the impeachment trial.

At the conclusion of the trial, the Senate votes on each Article of Impeachment

separately in a roll call vote. No person shall be convicted absent the concurrence of two-thirds of the Senators present (Ky. *Const.* §67).

Judgment

If the accused is found guilty on any or all Articles, a judgment is entered to that effect. The judgment declares that the officer is removed from office, and may include a declaration that he also be disqualified from holding any office of honor, trust, or profit under the Commonwealth of Kentucky. Costs of the proceedings may be charged to the parties, as provided in KRS 63.070 and 63.075.

CHAPTER III

HISTORICAL OVERVIEW OF KENTUCKY IMPEACHMENTS

1803 — Thomas Jones, Surveyor of Bourbon County

While most historical accounts cite only two impeachments in Kentucky prior to 1991, research has unearthed another impeachment of which little is known. In 1803, Thomas Jones, Surveyor of Bourbon County, was impeached for overcharging the state for work done, for failure to perform his duties, and for surveying the wrong tracts of land.

Although Jones resigned during the Senate trial, the members of the tribunal determined that his resignation did not terminate their authority, and continued the case. Jones was eventually found guilty of five of twenty-two charges and was ordered perpetually excluded from office. He was also ordered to pay the costs of the proceedings. Probably the most significant thing about the Jones impeachment was that the Senate actually empaneled a jury to determine the facts for the Senate. This is the only state impeachment case in which such a jury was summoned.⁸

1888 — "Honest Dick" Tate, State Treasurer

Probably one of the most infamous characters in Kentucky's history is "Honest Dick" Tate, a man who was elected to nine terms as Kentucky's State Treasurer before absconding with most of the funds in the State Treasury in March, 1888. Although he and the money were never found, he was impeached and tried in absentia in 1888 for his actions.

Among other offenses, Tate was charged with leaving and abandoning his office without providing for its administration, refusing to perform his duties, and the theft of more than \$197,964.66 of the state's money. In all, six Articles of Impeachment were returned against him, although two were eventually dropped. Tate was found guilty.

1916 — Judge J.E. Williams

Kentucky's third impeachment, in 1916, was conducted against McCreary County Judge J. E. Williams. The impeachment was instituted against Williams on the basis of a petition from several residents of McCreary County, who charged that he had committed numerous acts of misfeasance and malfeasance as county judge. Some twenty Articles of Impeachment were placed before the Senate, although several were eventually dismissed. Williams was tried on the remaining Articles, but was not removed from office, because the Senate failed to achieve the two-thirds vote required to convict on a single article.

1991 — Commissioner of Agriculture Ward “Butch” Burnette

During the 1991 Extraordinary Session, the House of Representatives initiated impeachment proceedings against Commissioner of Agriculture Ward “Butch” Burnette. While serving as Commissioner, Burnette had been convicted by a Franklin Circuit Court jury of complicity to theft by deception, a felony offense. The charge resulted from Burnette’s having signed time sheets for a department employee reflecting that she had worked for the entire month of June, 1988, when, in the opinion of the jurors, she had not worked during that period. He was sentenced to a one-year prison term and fined \$1,500.

A single Article of Impeachment was adopted by the House of Representatives, charging that

the conduct reflected by his conviction resulted in a theft of funds belonging to the Commonwealth of Kentucky and thereby constituted a willful disregard of his oath of office; and pursuant to Section 68 of the Constitution of Kentucky, such conduct is a misdemeanor in office and constitutes an impeachable offense under the Constitution of the Commonwealth of Kentucky.

Just hours before the Senate trial was to begin, Burnette resigned, and the Senate, sitting as a Court of Impeachment, voted to terminate the impeachment proceedings. The Senate subsequently ratified that action with the passage of SR 55. However, the charges against Burnette were not dismissed. The following day, the House passed a resolution (HR 87) concurring in the termination, bringing the fourth impeachment in Kentucky’s history to a close.

FOOTNOTES

1. *Commonwealth ex rel. Attorney General v. Howard*, 297 Ky. 488, 180 S.W.2d 415 (1944); *Lowe v. Commonwealth*, 60 Ky. 237 (1860).
2. Raoul Berger, *Impeachment: The Constitutional Problems* (Cambridge: Harvard U. Press, 1973) p. 121, quoting Louis L. Jaffe, "Standing to Secure Judicial Review: Public Actions," 74 *Harvard Law Review* 1265, (1961), p. 1302.
3. *Ritter v. United States*, 84 Ct.Cl. 293-300 (1936).
4. *Mecham v. Gordon*, 156 Ariz. 297, 751 P.2d 957 (1988).
5. Henry Campbell Black, *Black's Law Dictionary* (5th Edition, St. Paul: West Publishing Co., 1979), p. 1043.
6. *Ferguson v. Maddox*, 114 Tex. 85, 263 S.W. 888 (1924).
7. Black, p. 1059.
8. Professor John Rogers of the U.K. College of Law, who acted as Special Advisor to the House Impeachment Committee in the Burnette case, uncovered the account of the Jones Impeachment in P. Hoffer and N. Hull's *Impeachment in America, 1635-1805*, 72 (1984). Hoffer and Hull supported their account of the case by citing the Kentucky Senate Journal 23, 52-53, 58, 59, 60, 62 (Nov. 22, Dec. 5, 6, 7, 1803) and the [Frankfort] *Palladium*, Dec. 10, 1803: Hoffer and Hull, at 304.

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Cases

Commonwealth ex rel. Attorney General v. Howard, 297 Ky. 488, 180 S.W.2d 415 (1944).

Ferguson v. Maddox, 114 Tex. 85, 263 S.W. 888 (1924).

Lowe v. Commonwealth, 60 Ky. 237 (1860).

Mecham v. Gordon, 156 Ariz. 297, 751 P.2d 957 (1988).

Ritter v. United States, 84 Ct.Cl. 293 (1936).

APPENDICES*

- Appendix I. House Impeachment Committee Rules.
- Appendix II. House Committee on Impeachment - Final Report.
- Appendix III. House Resolution 40 With Article of Impeachment.
- Appendix IV. House Message to Senate.
- Appendix V. Transmittal of Impeachment Committee Records.
- Appendix VI. Receipt for Impeachment Committee Records.
- Appendix VII. Senate Message to House.
- Appendix VIII. Senate Resolution 41 - Rules.
- Appendix IX. Precept.
- Appendix X. Senate Resolution 55 - Termination.
- Appendix XI. House Resolution 87 - Concurrence in Termination.

*All materials included herein are taken from the record of the Burnette Impeachment.

Appendix I

IMPEACHMENT COMMITTEE RULES

1. MEETINGS

All meetings of the committee shall be held in executive session unless the committee determines to proceed upon particular matters in open session.

2. MEDIA COVERAGE

Any portion of the hearings open to the public may be covered by television broadcast, radio broadcast, still photography, or by any of such methods of coverage allowed by the Rules of the House.

3. COUNSEL

The Impeachment Committee may retain special counsel to advise it in all matters pertaining to the performance of its duties.

4. CLERK OF THE IMPEACHMENT COMMITTEE

The Impeachment Committee may appoint a Clerk who shall be the official custodian of all records, evidence, and other materials pertaining to the work of the committee. The Clerk shall maintain one complete set of original documents which shall constitute the record of the committee. The Clerk shall perform such other duties as the committee may direct.

5. SUBPOENAS

The Chair shall direct the issuance of subpoenas upon his own initiative or upon motion of a majority of the committee members.

6. QUORUM

For purposes of hearings held by the committee, a quorum shall consist of four (4) members of the committee.

7. RULES OF CHAIR

The Chair shall, when he deems appropriate, make rulings necessary for the fair and efficient conduct of committee proceedings. Such rulings shall control, unless overruled by a vote of a majority of the members present.

8. OATH OF WITNESSES

Witnesses called to testify before the committee shall, before giving their testimony, swear the following oath or affirmation:

"Do you solemnly swear (or affirm) that the testimony you are about to give in the matter of the impeachment of Ward "Butch" Burnette, shall be the truth, the whole truth, and nothing but the truth."

9. QUESTIONING OF WITNESSES

The Chair or his designee shall commence the questioning of each witness and may question a witness at any point during the appearance of the witness. Any member of the committee may also question a witness at any point during the appearance of the witness.

10. ANNOUNCEMENT OF OPEN MEETINGS

The Chair shall make public announcement of the date, time, place, and subject matter of any committee meeting open to the public as soon as practicable. Announcement on the floor of the House while in session shall constitute sufficient notice.

11. COMMUNICATIONS WITH COMMITTEE

There shall be no contact by the accused or his counsel with the committee members except through written communication directed to the Chair. Any such written communication shall become part of the record. This shall not preclude answers by the accused or his counsel to inquiries of the committee, which shall also be in writing.

12. PROCEDURES FOR HANDLING IMPEACHMENT INQUIRY MATERIALS

a. The Clerk of the committee shall at all times have access to and be responsible for all papers and things received from any source by subpoena or otherwise. Other members of the committee and committee counsel shall have access in accordance with the procedures hereafter set forth.

b. Certified copies of all records of judicial proceedings before the courts of the Commonwealth in the matter of Commonwealth v. Ward "Butch" Burnette, 89 CR 0126-2 and Burnette v. Commonwealth, 90 SC 204, including, but not limited to, pleadings, depositions, orders, video tapes, items of evidence deemed relevant, and documentation of evidence and

transcripts, appeals, orders, motions, and other evidence appropriate for consideration by the committee shall become subject to committee review upon being filed with the committee.

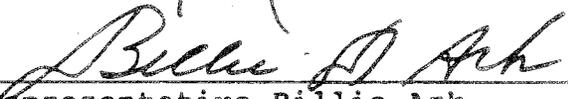
c. All items of evidence requested by the committee or submitted and accepted for review by the committee and any public records may be reviewed at any time by individual members of the committee when not meeting in session, unless the committee has, by majority vote, ruled otherwise with regard to a particular item.

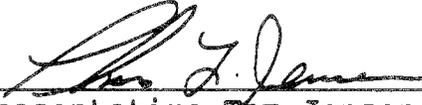
d. All items of evidence shall be directed to the Clerk of the Impeachment Committee or its counsel.

e. Before the committee is called upon to make any disposition with respect to the testimony or papers and things presented to it, the committee members shall have a reasonable opportunity to examine all testimony, papers, and things that have been obtained by the committee staff.

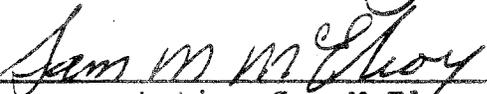
f. Only testimony, papers, or things that are included in the record will be reported to the House.


Representative Gregory D. Stumbo, Chair


Representative Billie Ark


Representative Tom Jensen


Representative Albert Jones


Representative Sam McElroy


Representative Anne Northup


Representative Ernesto Scorsone

January 17, 1991

Appendix II

HOUSE COMMITTEE ON IMPEACHMENT

FINAL REPORT

On January 15, 1991, the Speaker of the House of Representatives of the General Assembly of the Commonwealth of Kentucky, in Extraordinary Session, appointed a committee of seven to investigate the matter of Commissioner of Agriculture, Ward "Butch" Burnette, and upon completion of its investigation to report its findings and recommendations to the House. The members included: the Gentleman from Larue 26, the Gentleman from McCracken 3, the Gentleman from Laurel 85, the Gentleman from Union 7, the Lady from Jefferson 32, the Gentleman from Fayette 75, and the Gentleman from Floyd 95 who served as Chairman. Upon their appointment, the members stood before the House of Representatives to take the oath of office, swearing to fulfill their duties as charged.

The committee has met from time to time in executive session. The committee adopted Rules of Procedure to govern its proceedings, appointed Professor John M. Rogers, University of Kentucky College of Law, Special Legal Advisor, W. Stephen Wilborn, Counsel, and Anita Taylor, Clerk of the Impeachment Committee, with responsibility of maintaining a record of the committee's actions, the security of evidence received and assisting counsel.

The committee issued subpoenas to Secretary of State Bremer Ehrler and George Russell, Executive Director of the State Board of Elections; John C. Scott, Clerk of the Supreme Court of Kentucky; and Janice Marshall, Franklin Circuit Clerk requesting the following documents:

A copy of the Certificate of Election of Ward "Butch" Burnette to the office of Commissioner of Agriculture and any other relevant information concerning his current status in that office;

A copy of all proceedings before any court of the Commonwealth, including, but not limited to, pleadings, depositions, orders, videotapes, items of evidence, and briefs as would relate to the case of Commonwealth of Kentucky v. Ward Burnette, 90 CR 0126-2 and Burnette v. Commonwealth, 90 SC 204.

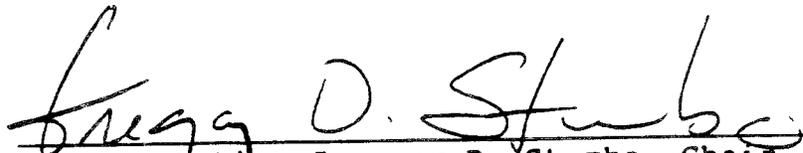
The subpoenas were continuing in nature, applicable to all items becoming available subsequent thereto.

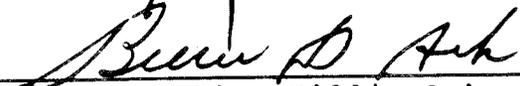
The Committee chose to accept the judicial proceedings and resulting conviction as a valid basis upon which to believe that the conduct alleged did take place and the Committee found that such conduct is a sufficient basis on which to recommend that he be impeached.

Two complete records of the Impeachment Committee's actions, including copies of all evidence received are lodged in the office of the Committee Chairman, Room 304, State Capitol, for review by any member of the House.

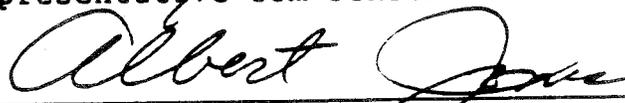
The committee hereby recommends that the House of Representatives of the General Assembly of the Commonwealth of Kentucky, in Extraordinary Session, accept this Final Report of the House Committee on Impeachment, that the Resolution and

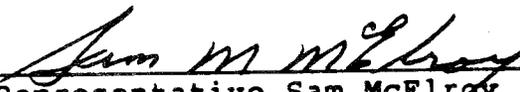
Article of Impeachment attached hereto be adopted, and that the Article of Impeachment, accompanied with the original record of the Committee's actions, including the certified copies of all documents received by the Committee be laid before the Senate of the General Assembly of the Commonwealth of Kentucky as provided by law.

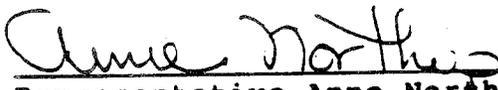

Representative Gregory D. Stumbo, Chair


Representative Billie Ark


Representative Tom Jensen


Representative Albert Jones


Representative Sam McElroy


Representative Anne Northrup


Representative Ernesto Scorsone

January 23rd, 1991

Appendix III

IN HOUSE

SPECIAL SESSION 1991

HOUSE RESOLUTION NO. 40

WEDNESDAY, JANUARY 23, 1991

Representatives Gregory D. Stumbo, Tom Jensen, Billie D. Ark, Albert Jones, Sam M. McElroy, Anne Meagher Northup, and Ernesto Scorsone introduced the following resolution which was ordered to be printed.

A RESOLUTION laying before the House of Representatives an Article of Impeachment against Agriculture Commissioner Ward "Butch" Burnette.

WHEREAS, Commissioner Ward "Butch" Burnette was tried and convicted by the Franklin Circuit Court for a crime committed during his term as Commissioner, to wit:

Complicity to Theft by Deception over \$100, a felony in contravention of KRS 514.040 and KRS 502.020, in that he in the County of Franklin, Commonwealth of Kentucky, on or about June 20, 1988, and on or about July 16, 1988, with the intention of promoting or facilitating the commission of theft by deception, aided one Linda Campbell in committing the offense of theft by deception when he signed and approved time sheets submitted by Linda Campbell reflecting she had worked with the Department of Agriculture full time for the entire month of June, 1988, when he knew she had not been so employed and the time sheets reflecting such employment were false;

WHEREAS, Commissioner Burnette's conviction has been upheld by the Supreme Court of Kentucky, thereby exhausting his appeals in the Courts of the Commonwealth; and

WHEREAS, Commissioner Burnette's Motion for New Trial has not been granted and he has now begun serving his one-year sentence; and

WHEREAS, the House of Representatives chose not to

institute this impeachment inquiry until after
Commissioner Burnette had exhausted his appeals in the
Courts of the Commonwealth; and

WHEREAS, the duty of the House Impeachment Committee
is to conduct an investigation to determine whether there
is reason to believe Commissioner Burnette committed,
during his term of office as Commissioner, an act that
would warrant recommending that he be impeached; and

WHEREAS, the Committee believes commission of the
crime of Complicity to Theft by Deception Over \$100, in
contravention of KRS 514.040 and KRS 502.020 during
Commissioner Burnette's term of office, is a reasonable
basis upon which to recommend that Commissioner Burnette
be impeached; and

WHEREAS, the Committee chose to accept the judicial
proceedings and the resulting conviction of Commissioner
Burnette as a valid basis upon which to believe the
conduct alleged did take place;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the
General Assembly of the Commonwealth of Kentucky:

1 Section 1. The Article of Impeachment attached
2 hereto is approved as adopted.

3 Section 2. A committee, with appropriate staff,

1 shall be appointed by the Speaker of the House to
2 prosecute this Article before the Senate.

3 Section 3. The Chairman of the committee appointed
4 to prosecute the Article shall lay it before the Senate
5 within five (5) days as required by law, and shall
6 transmit a complete record of the Impeachment Committee
7 proceedings, including the original certified copies of
8 all documents received by the Committee pursuant to the
9 subpoenas issued.

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1 affirmed by the Supreme Court of Kentucky; the conduct
2 reflected by his conviction resulted in a theft of funds
3 belonging to the Commonwealth of Kentucky and thereby
4 constituted a wilful disregard of his oath of office; and
5 pursuant to Section 68 of the Constitution of Kentucky,
6 such conduct is a misdemeanor in office and constitutes an
7 impeachable offense under the Constitution of the
8 Commonwealth of Kentucky.

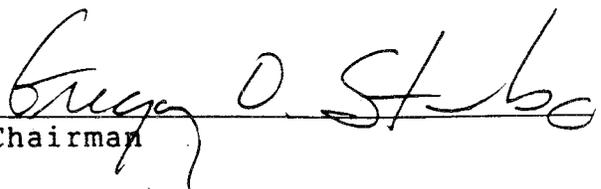
Appendix IV

HOUSE MESSAGE TO SENATE

January 28, 1991

To the Senate of Kentucky, Mister President:

In obedience to House Resolution 40, adopted by the House of Representatives on January 25, 1991, by a vote of 97/0, I appear before you, and in the name of the House of Representatives, and in the name of the Commonwealth of Kentucky, do impeach Ward "Butch" Burnette, Commissioner of Agriculture, of a misdemeanor in office, pursuant to Section 68 of the Kentucky Constitution, and do now present the Article of Impeachment, as approved by the House of Representatives, and in their name we demand that the Senate take order for the appearance of the said Commissioner of Agriculture, Ward "Butch" Burnette to answer said impeachment, and fix a day for the trial thereof. A complete record of the House Impeachment Committee proceedings, including the original certified copies of all documents received by the Committee pursuant to the subpoenas issued, is hereby transmitted to the Clerk of the Senate. The following members of the House of Representatives have been appointed to prosecute this Article before the Senate: Representatives Gregory D. Stumbo, Tom Jensen, Billie D. Ark, Albert Jones, Sam M. McElroy, Anne Meagher Northup, and Ernesto Scorsone.


Chairman

The said Article of Impeachment, as adopted by the House of Representatives, reported and presented on this date to the Senate is in words and figures as follows:

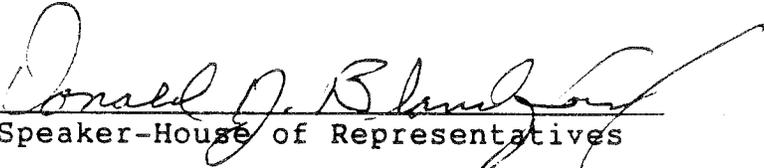
ARTICLE OF IMPEACHMENT

The Commonwealth of Kentucky, by the House of Representatives of the General Assembly, by virtue of the authority vested in it by Section 66 of the Kentucky Constitution and the laws of the Commonwealth, hereby charges Agriculture Commissioner Ward "Butch" Burnette through the following Article of Impeachment, to wit:

ARTICLE I

Ward "Butch" Burnette, was duly elected and qualified as Commissioner of Agriculture for the Commonwealth of Kentucky and continues to serve in that capacity; during his term of office, he engaged in conduct which resulted in his being charged with and convicted by a Franklin Circuit Court jury of Complicity to Theft by Deception over \$100, a felony in contravention of KRS 514.040 and KRS 502.020, in that he in the County of Franklin, Commonwealth of Kentucky, on or about June 20, 1988, and on or about July 16, 1988, with the intention of promoting or facilitating the commission of theft by deception, aided one Linda Campbell in committing the offense of theft by deception when he signed and approved time sheets submitted by Linda Campbell reflecting she had worked with the Department of Agriculture full time for the entire month of June, 1988, when he knew she had not been so employed and the time sheets reflecting such employment were false; thereafter, his

conviction was affirmed by the Supreme Court of Kentucky; the conduct reflected by his conviction resulted in a theft of funds belonging to the Commonwealth of Kentucky and thereby constituted a wilful disregard of his oath of office; and pursuant to Section 68 of the Constitution of Kentucky, such conduct is a misdemeanor in office and constitutes an impeachable offense under the Constitution of the Commonwealth of Kentucky.


Speaker-House of Representatives

Attest: 
Chief Clerk
House of Representatives

Appendix V

I, Anita Taylor, Clerk of the House Impeachment Committee, have, on this the 28th day of January, 1991, transmitted to the Clerk of the Senate a complete record of proceedings of the Impeachment Committee, including the original certified copies of all documents received pursuant to subpoenas issued by the Committee. These items include: Impeachment Outline; House Impeachment Committee Rules; Appointment of Impeachment Committee Clerk; Subpoena to Secretary of State Bremer Ehrler and George Russell, Executive Director of the State Board of Elections; Subpoena to John C. Scott, Clerk of the Kentucky Supreme Court; Subpoena to Janice Marshall, Franklin Circuit Court Clerk; original certified copies of the Supreme Court records in the matter of Commonwealth v. Burnette, 90 CR 0126-2 with videotapes, and Burnette v. Commonwealth, 90 SC 204; original certified copies of the Franklin Circuit Court records in the matter of Commonwealth of Kentucky v. Burnette, 89 CR 0126-2; original certified copies of documents relating to Ward "Butch" Burnette's election to and current status in the office of Commissioner of Agriculture; correspondence between the Honorable Gail Robinson and the Impeachment Committee; House Impeachment Committee Minutes; Final Report of Committee; materials distributed to the House of Representatives; House Resolution 40 ("B" Copy), with Article of Impeachment attached; and copy of roll call vote on HR 40.


Anita Taylor, Clerk
House Impeachment Committee

Appendix VI

I, Julie Haviland, Clerk of the Senate, have received on this the 28th day of January, 1991, a complete record of proceedings of the Impeachment Committee, including the original certified copies of all documents received pursuant to subpoenas issued by the Committee. These items include: Impeachment Outline; House Impeachment Committee Rules; Appointment of Impeachment Committee Clerk; Subpoena to Secretary of State Bremer Ehrler and George Russell, Executive Director of the State Board of Elections; Subpoena to John C. Scott, Clerk of the Kentucky Supreme Court; Subpoena to Janice Marshall, Franklin Circuit Court Clerk; original certified copies of the Supreme Court records in the matter of Commonwealth v. Burnette, 90 CR 0126-2 with videotapes, and Burnette v. Commonwealth, 90 SC 204; original certified copies of the Franklin Circuit Court records in the matter of Commonwealth of Kentucky v. Burnette, 89 CR 0126-2; original certified copies of documents relating to Ward "Butch" Burnette's election to and current status in the office of Commissioner of Agriculture; correspondence between the Honorable Gail Robinson and the Impeachment Committee; House Impeachment Committee Minutes; Final Report of Committee; materials distributed to the House of Representatives; House Resolution 40 ("B" Copy), with Article of Impeachment attached; and copy of roll call vote on HR 40.


Julie Haviland, Clerk of the Senate



COMMONWEALTH OF KENTUCKY
STATE SENATE

January 29, 1991

The Honorable Donald J. Blandford
Speaker of the House of Representatives
Capitol
Frankfort, Kentucky 40601

Dear Mr. Speaker:

Pursuant to the Rules of the Senate, the Senate has resolved itself into a Court of Impeachment, and I hereby notify this honorable body that Ward "Butch" Burnette has been summoned by precept to appear on Wednesday, February 6, 1991, at 10 a.m. (EST) in the Senate Chamber for a trial of impeachment. I shall, at the instance of the House Committee Chair and at the instance of the Respondent, issue process for the summoning of witnesses and the production of such books, papers, documents, or tangible things as may be desired by the House Committee or the Respondent.

In accordance with the Rules adopted in Senate Resolution 41, floor privileges will be extended to senators, members of the House Committee and its counsel and staff, personnel of the Court of Impeachment, the Presiding Officer and counsel, the Respondent and counsel, and those with proper identification as issued by the Clerk of the Court of Impeachment.

With regards,

A handwritten signature in cursive script that reads "Julie Haviland".

Julie Haviland
Chief Clerk of the Senate
and Clerk of the Court of
Impeachment

cc: Rep. Greg Stumbo
Rep. Billie Ark
Rep. Tom Jensen
Rep. Albert Jones
Rep. Sam McElroy
Rep. Anne Northrup
Rep. Ernesto Scorsone

STATE CAPITOL

FRANKFORT 40601

Appendix VIII

IN SENATE

SPECIAL SESSION 1991

SENATE RESOLUTION NO. 41

TUESDAY, JANUARY 29, 1991

Senators Michael Moloney and Walter A. Baker introduced the following resolution which was ordered to be printed.

A RESOLUTION resolving the Senate as a Court of Impeachment and providing for the adoption of Rules of Procedure therefor.

WHEREAS, the House of Representatives has, during the present Extraordinary Session of the General Assembly of the Commonwealth of Kentucky, issued an Article of Impeachment against Ward "Butch" Burnette, Commissioner of Agriculture, which determined that he engaged in conduct which resulted in his being charged with and convicted of a felony, and appointed a committee to prosecute the Article of Impeachment before the Senate, the chairman of which did, within five days next after the impeachment was ordered, lay the Article before the Senate; and

WHEREAS, the Senate does now designate the day and hour to commence hearing the impeachment, and the Respondent, Ward "Butch" Burnette, shall be summoned by precept issued by the Clerk of the Senate to appear before the Senate on that date;

NOW, THEREFORE,

Be it resolved by the Senate of the General Assembly of the Commonwealth of Kentucky:

1 Section 1. The Senate now resolves itself into a
2 Court of Impeachment for the purpose of hearing the
3 impeachment and designates Wednesday, February 6, 1991, at

1 the hour of 10:00 a.m. (EST) as the day and hour for the
2 hearing, and that the President of the Senate and the
3 members of the Senate shall take the oath prescribed by
4 KRS 63.050, and that the Clerk of the Senate shall make
5 proper record in the Journal of the names of all Senators
6 who take the oath.

7 Section 2. The Clerk of the Senate shall inform the
8 House of Representatives and the committee thereof
9 appointed to prosecute the impeachment, that the Senate
10 has resolved itself into a Court of Impeachment, that the
11 Clerk shall summon the Respondent by precept to appear on
12 that day and hour for the hearing, and that the Clerk
13 shall, at the instance of the committee chair and at the
14 instance of the accused, issue process for the summoning
15 of witnesses and the production of such books, papers,
16 documents, or tangible things as may be desired by the
17 committee or the Respondent.

18 Section 3. For the purpose of governing the
19 procedures at the impeachment hearing, there are hereby
20 adopted by the Senate the following rules:

21 RULES GOVERNING THE SENATE OF THE

22 COMMONWEALTH OF KENTUCKY

23 SITTING AS A COURT OF IMPEACHMENT

24 (1) Rules of Procedure

25 Except as otherwise provided, and when not in
26 conflict with these Rules, the Standing Rules of the

1 Senate shall apply, and the presiding officer shall retain
2 the authority to invoke the Rules of the Senate.

3 (2) Rules of Evidence

4 When not in conflict with these Rules or the Rules of
5 the Senate, the rules of evidence used in courts of
6 general jurisdiction in the Commonwealth shall serve as a
7 guide. However, variation from the rules of evidence may
8 be permitted, and reliable evidence admitted, subject to
9 the same being determined relevant, whenever the interests
10 of justice require.

11 (3) Floor Privileges

12 Senators; members of the House Committee and its
13 counsel and staff; personnel of the Court of Impeachment;
14 the Presiding Officer and counsel; and the Respondent and
15 counsel, and those with proper identification as issued by
16 the Clerk of the Court of Impeachment shall be permitted
17 within the Senate Chambers during the trial.

18 (4) Marshal of Court of Impeachment

19 The Court of Impeachment shall appoint a Marshal, who
20 shall be the Sergeant at Arms of the Senate, and an
21 Assistant Marshal.

22 (5) Clerk of Court of Impeachment

23 The Clerk of the Senate shall serve and be referred
24 to as the Clerk of the Court of Impeachment and shall
25 administer the oath to all witnesses, keep the Journal of
26 the Senate sitting as a Court of Impeachment, and perform

1 all other duties usually performed by the clerk of a court
2 of record in this Commonwealth. An Assistant Clerk may
3 also be appointed.

4 (6) Presiding Officer

5 When the Senate sits as a Court of Impeachment, the
6 President of the Senate shall preside, unless another
7 presiding officer is appointed.

8 (7) Eligibility of Senators

9 Each Senator shall, by virtue of his office, be
10 eligible to participate in the impeachment proceedings,
11 and no Senator shall be subject to disqualification except
12 as provided in Rule 8.

13 (8) Attendance

14 No member shall cast a final vote on the Article of
15 Impeachment on which the member has not heard a
16 substantial portion of the testimony and evidence or
17 reviewed the video tapes of those portions of the
18 testimony and evidence which the member did not hear.

19 (9) General Powers

20 The Senate shall have the power to compel the
21 attendance of witnesses; to enforce obedience to its
22 orders, precepts, summons, and judgments; to preserve
23 order; to punish in the manner prescribed by law contempt
24 of or disobedience of its orders, precepts, summons, or
25 judgments; and to make all lawful orders and rules as it
26 may deem necessary for the performance of its duties as a

1 Court of Impeachment.

2 (10) Immunity

3 The parties, which include the House Committee and
4 Respondent, shall not call Senators, members of the House
5 Committee, its counsel and staff, the Presiding Officer,
6 counsel, or staff of the Court of Impeachment or
7 Legislative Research Commission as witnesses, nor subpoena
8 their personal records or work papers.

9 (11) Representation

10 The House of Representatives shall be represented by
11 an appointed Committee and its counsel and staff. The
12 Respondent shall appear in person or by counsel.

13 (12) Pre-Trial Conference

14 Counsel for the parties may meet with the Presiding
15 Officer on his order or on motion by any party, at a time
16 set by him, to rule on preliminary motions, stipulate to
17 facts and exhibits, and address issues that will expedite
18 trial.

19 (13) Communications From Respondent

20 There shall be no communication, either directly or
21 indirectly, from the Respondent to any Senator unless it
22 is submitted, in writing, by counsel for the Respondent,
23 directly to the Clerk of the Court of Impeachment.
24 Communications shall be restricted to information which
25 would be admissible in a court of law. The Presiding
26 Officer shall rule on the admissibility of the

1 communication.

2 (14) Communications From Individuals

3 At the time the Senate resolves itself into a Court
4 of Impeachment, no individual, except another Senator,
5 shall communicate any information relating to the
6 impeachment to a Senator within the Senate Chambers.
7 Senators shall immediately report any communication
8 prohibited by this Rule to the Presiding Officer.
9 Violation of this Rule may be subject to punishment as
10 provided in Rule 9 and Rule 27.

11 (15) Appearance

12 (a) The Senate shall appoint a day for hearing the
13 impeachment. The day for hearing shall not be less than
14 seven days after the impeachment is received in the
15 Senate. The Respondent shall be summoned by precept,
16 issued by the Clerk of the Court of Impeachment, to appear
17 on that day. The precept shall be served in person along
18 with a copy of the impeachment and a copy of the Senate
19 Resolution adopting these Rules by the Marshal of the
20 Court of Impeachment, the Assistant Marshal, or an officer
21 of the Kentucky State Police. Return of service shall be
22 noted on the precept.

23 (b) The precept shall be issued at least seven days
24 before the day appointed for trial.

25 (16) Subpoenas

26 (a) Subpoenas shall be issued by the Clerk of the

1 Court of Impeachment for the summoning of witnesses and
2 the production of books, papers, documents, or tangible
3 things, on written application of the parties or their
4 counsel. The Clerk may issue subpoenas in blank. A Senator
5 may request a subpoena through the Clerk, which shall
6 issue if either party concurs. If neither party concurs
7 with the request, a subpoena shall be issued on a motion
8 by the Senator, a second to the motion, and a vote of a
9 majority of the Senators present. The Senator may explain
10 the reasons for his request and the vote shall be taken
11 without debate. All requests for subpoenas shall be made
12 and issued at least three days before the witness is
13 scheduled to testify or produce books, papers, documents,
14 or tangible things at the hearing.

15 (b) Service of process for subpoenas shall be by
16 personal service executed by officers appointed by the
17 Court of Impeachment or other officers authorized by law
18 to serve process in the Courts of Justice of the
19 Commonwealth. Return of service shall be noted on the
20 subpoena.

21 (c) Upon disobedience to any process, the Senate may
22 order the Clerk of the Court of Impeachment to issue
23 process for arresting the witness and seizing the books,
24 papers, documents, or tangible things which have been
25 subpoenaed. Disobedience may be punished in the manner
26 provided for other witnesses before the General Assembly.

1 (d) A witnesses shall receive the same compensation,
2 and have the same privileges in going, remaining, and
3 returning, as a witness in circuit court.

4 (17) Initial Appearance by Respondent

5 On the day appointed for the trial of the
6 impeachment, the legislative business of the Senate shall
7 be suspended except as otherwise ordered by the Senate. At
8 the time fixed in the precept for the appearance of the
9 Respondent and on proof of service, the Respondent shall
10 be called to appear and answer the Article of Impeachment.
11 If he appears or counsel appears on his behalf, the
12 appearance shall be recorded. If he does not appear either
13 personally or by counsel, the same shall be recorded and
14 the impeachment proceedings conducted as though he were
15 present and had entered a plea of not guilty.

16 (18) Answer

17 The Respondent shall answer, in writing, the Article
18 of Impeachment prior to the opening of the trial of the
19 impeachment. The answer shall be filed with the Clerk of
20 the Court of Impeachment.

21 (19) Order of Proof

22 After preliminary motions are heard and decided, the
23 House Committee or its counsel may make an opening
24 statement not to exceed thirty minutes. The Respondent or
25 his counsel may then make an opening statement not to
26 exceed thirty minutes. The Presiding Officer shall

1 determine the order of the presentation of evidence.
2 Closing arguments shall follow the presentation of all
3 evidence to the Court of Impeachment and shall not exceed
4 one hour. On motion of either party before closing
5 argument, the time for closing argument may be extended by
6 a vote of a majority of the Senators present. The argument
7 shall be opened and closed by or on behalf of the House
8 Committee.

9 The Senate shall hear all evidence related to the
10 Article of Impeachment before casting the final vote on
11 the Article of Impeachment.

12 (20) Oaths

13 (a) The following oath or affirmation shall be
14 administered to each Senator and the Presiding Officer by
15 the Chief Justice of the Commonwealth or an Associate
16 Justice:

17 "I do solemnly swear or affirm that I will faithfully
18 and impartially try the impeachment against [Insert the
19 name of the Respondent], and give my decision according to
20 the law and the evidence."

21 (b) Before any witness shall give his testimony, the
22 Clerk of the Court of Impeachment shall administer to the
23 witness the following oath or affirmation:

24 "Do you solemnly swear or affirm that the testimony
25 you shall give in the matter of the impeachment of [Insert
26 the name of the Respondent and his or her title], shall be

1 the truth, the whole truth, and nothing but the truth, so
2 help you God?"

3 (21) Witnesses

4 All witnesses shall be examined by the party
5 producing them or its counsel, and then cross-examined by
6 the opposite party or its counsel. Only one attorney for
7 each party may examine each witness. The Presiding Officer
8 may permit re-direct examination and may permit re-cross
9 examination. After completion of questioning by counsel,
10 any Senator desiring to question the witness shall be
11 permitted to do so. If objection to a Senator's question
12 is raised by counsel for either party or by a Senator, the
13 Senator desiring to question the witness may request a
14 vote on the objection by a majority of the Senators
15 present.

16 (22) Motions

17 (a) The Presiding Officer may rule on all
18 objections, motions, pleas, and procedural questions made
19 by the parties or their counsel. The ruling of the
20 Presiding Officer shall be the judgment of the Senate
21 unless any Senator requests the Presiding Officer to
22 submit the question to be decided by a vote of a majority
23 of the Senators present.

24 (b) On motion of any Senator and a vote of a
25 majority of the Senators present, or at the request of the
26 Presiding Officer, the party shall commit the motion,

1 plea, or procedural question to writing.

2 (c) Except as otherwise provided, arguments by
3 parties or their counsel on motions shall be permitted
4 only with a vote of a majority of the Senators present and
5 shall not exceed fifteen minutes, unless further extended
6 by a majority vote.

7 (d) Roll call votes may be requested by a Senator
8 and shall be taken if five additional Senators concur in
9 the request by standing.

10 (23) Verdict, Judgment, and Costs

11 (a) After closing arguments, all qualified Senators
12 shall be required to vote on the question of whether to
13 sustain the Article of Impeachment. A vote to sustain the
14 Article shall be based on clear and convincing evidence
15 that the Article is true and that the Article constitutes
16 an impeachable offense. The vote on whether to sustain
17 shall be taken as a roll call vote.

18 (b) If the Respondent is acquitted on the Article of
19 Impeachment, a judgment of acquittal shall be pronounced
20 and entered on the Journal on the Court of Impeachment.

21 (c) If two-thirds of the Senators present vote to
22 sustain the Article of Impeachment the Court of
23 Impeachment shall, by resolution, pronounce judgment of
24 conviction and removal from office, and disqualifications
25 to hold any office of honor, trust, or profit under the
26 Constitution. The resolution shall be entered upon the

1 Journal of the Court of Impeachment.

2 (d) A copy of the judgment shall be filed in the
3 office of the Secretary of State.

4 (e) In an impeachment proceeding prosecuted before
5 the Senate, if the Respondent is acquitted, the
6 Commonwealth shall pay the costs of the Respondent. If the
7 Respondent is found guilty, he shall pay the Commonwealth
8 the costs incurred in behalf of the prosecution. Costs
9 shall be taxed by the Clerk of the Court of Impeachment.
10 In no event shall costs include attorneys' fees incurred
11 by the Commonwealth or the Respondent.

12 (24) Official Record

13 The transcript of the proceedings of the Senate
14 sitting as a Court of Impeachment shall be the videotapes
15 produced by Kentucky Educational Television.

16 (25) Instruction

17 At any time, on his own motion or on request of a
18 Senator, the Presiding Officer may instruct the Senators
19 on procedural matters.

20 (26) Conferences

21 At any point during the proceedings and on the
22 request of any Senator, there shall be an immediate
23 conference of all the Senators present. Conferences
24 provided for under this Rule may be closed on a vote of a
25 majority of the Senators present.

26 (27) Prohibited Conduct

1 Threats against and interference with the Court of
2 Impeachment may be prosecuted as provided by law.

3 (28) Amendments to Rules

4 These Rules may be suspended or amended by a vote of
5 two-thirds of the Senators present.

Appendix IX

SENATE OF THE
COMMONWEALTH OF KENTUCKY
SITTING AS A
COURT OF IMPEACHMENT

PRECEPT

The Senate of the Commonwealth of Kentucky, sitting as a Court of Impeachment, to Ward "Butch" Burnette:

Whereas, the House of Representatives of the Commonwealth of Kentucky did on the 28th day of January, 1991, deliver to the Senate an Article of Impeachment against you, in the following words:

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky:

Section 1. The Article of Impeachment attached hereto is approved as adopted.

Section 2. A committee, with appropriate staff,

shall be appointed by the Speaker of the House to prosecute this Article before the Senate.

Section 3. The Chairman of the committee appointed to prosecute the Article shall lay it before the Senate within five (5) days as required by law, and shall transmit a complete record of the Impeachment Committee proceedings, including the original certified copies of all documents received by the Committee pursuant to the subpoenas issued.

ARTICLE OF IMPEACHMENT

The Commonwealth of Kentucky, by the House of Representatives of the General Assembly, by virtue of the authority vested in it by Section 66 of the Kentucky Constitution and the laws of the Commonwealth, hereby charges Agriculture Commissioner Ward "Butch" Burnette through the following Article of Impeachment, to wit:

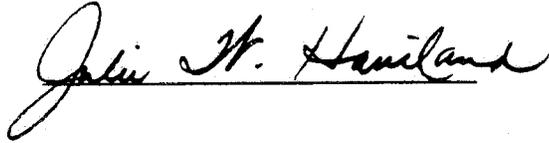
ARTICLE I

Ward "Butch" Burnette, was duly elected and qualified as Commissioner of Agriculture for the Commonwealth of Kentucky and continues to serve in that capacity; during his term of office, he engaged in conduct which resulted in his being charged with and convicted by a Franklin Circuit Court jury of Complicity to Theft by Deception over \$100, a felony in contravention of KRS 514.040 and KRS 502.020, in that he in the County of Franklin, Commonwealth of Kentucky, on or about June 20, 1988, and on or

about July 16, 1988, with the intention of promoting or facilitating the commission of theft by deception, aided one Linda Campbell in committing the offense of theft by deception when he signed and approved time sheets submitted by Linda Campbell reflecting she had worked with the Department of Agriculture full time for the entire month of June, 1988, when he knew she had not been so employed and the time sheets reflecting such employment were false; thereafter, his conviction was affirmed by the Supreme Court of Kentucky; the conduct reflected by his conviction resulted in a theft of funds belonging to the Commonwealth of Kentucky and thereby constituted a wilful disregard of his oath of office; and pursuant to Section 68 of the Constitution of Kentucky, such conduct is a misdemeanor in office and constitutes an impeachable offense under the Constitution of the Commonwealth of Kentucky.

Therefore, you, Ward "Butch" Burnette, are hereby summoned to appear before the Senate of the Commonwealth of Kentucky sitting as a Court of Impeachment, in its Chamber in the City of Frankfort, Kentucky, on Wednesday, the 6th day of February, 1991, at 10:00 a.m. (EST), then and there to abide by, obey, and perform such orders, directions, and judgments as the Senate of the Commonwealth of Kentucky, sitting as a Court of Impeachment, shall make in the premises according to the Constitution of Kentucky, the laws of the Commonwealth of Kentucky, and the Rules of the Court of Impeachment.

Witness, Julie W. Haviland, Chief Clerk of the Senate and Clerk of the Court of Impeachment of the Commonwealth of Kentucky, at Frankfort, this the 29th day of January, 1991.

A handwritten signature in cursive script that reads "Julie W. Haviland". The signature is written in black ink and is positioned above the typed name.

Chief Clerk of the
Senate and Clerk of the
Court of Impeachment

**SENATE OF THE
COMMONWEALTH OF KENTUCKY
SITTING AS A
COURT OF IMPEACHMENT**

RETURN OF SERVICE

This is to certify that I have personally served a true and correct copy of this Precept upon the Respondent, Ward "Butch" Burnette, along with a copy of the Senate Resolution adopting Rules of Procedure for the Court of Impeachment, at the hour of 4:30 P.M., this 29th day of January, 1991, pursuant to KRS 63.040(2).

For the Court of Impeachment

By:


Marshall

RECEIPT OF RETURN OF SERVICE

This is to certify that this Precept has been returned to the Clerk of the Court of Impeachment this 29th day of January, 1991.


Chief Clerk of the Senate
and Clerk of the Court of
Impeachment

IN SENATE

SPECIAL SESSION 1991

SENATE RESOLUTION NO. 55

THURSDAY, FEBRUARY 7, 1991

Senator Joe Wright introduced the following resolution which was ordered to be printed.

A RESOLUTION recognizing and ratifying the proceedings of the Court of Impeachment of the Senate.

WHEREAS, on January 15, 1991, the Speaker of the House of Representatives of the General Assembly of the Commonwealth of Kentucky, in Extraordinary Session, appointed a committee of seven to investigate the matter of Commissioner of Agriculture, Ward "Butch" Burnette, and upon completion of its investigation to report its findings and recommendations to the House; and

WHEREAS, the committee met from time to time after being appointed to conduct its investigation, chose to accept the judicial proceedings and resulting conviction as a valid basis upon which to believe that the conduct alleged did take place, found that this conduct is a sufficient basis on which to recommend that he be impeached, and recommended to the House that a Resolution and Article of Impeachment be adopted and laid before the Senate of the General Assembly of the Commonwealth of Kentucky; and

WHEREAS, the House of Representatives adopted an Article of Impeachment in House Resolution No. 40 on January 25, 1991, by a vote of 97-0; and

WHEREAS, a committee of the House of Representatives was appointed to prosecute the Article of Impeachment and did lay the Article of Impeachment before the Senate on January 28, 1991, and demanded that the Senate take order

for the appearance of Ward "Butch" Burnette to answer the Article of Impeachment and fix a day for the Trial of Impeachment; and

WHEREAS, the Senate adopted Senate Resolution No. 41 on January 29, 1991, designating the Senate as a Court of Impeachment, adopted rules of procedure for the Trial of Impeachment, and designated Wednesday, February 6, 1991, at the hour of 10:00 a.m. (EST) as the day and hour for the trial; and

WHEREAS, the Clerk of the Court of Impeachment informed the House of Representatives and the committee appointed to prosecute the impeachment on January 29, 1991, that the Senate resolved itself into a Court of Impeachment and summoned the Respondent, Ward "Butch" Burnette, by precept on January 29, 1991, to appear before the Court of Impeachment on Wednesday, February 6, 1991, at the hour of 10:00 a.m. (EST) for a Trial of Impeachment; and

WHEREAS, the Court of Impeachment convened on Wednesday, February 6, 1991, to conduct a Trial of Impeachment of the Respondent Ward "Butch" Burnette; and

WHEREAS, the Court of Impeachment was informed that the Respondent, Ward "Butch" Burnette, tendered his resignation as Commissioner of Agriculture, effective February 5, 1991, to Governor Wallace G. Wilkinson; that Governor Wilkinson accepted the Respondent's resignation

as tendered on February 6, 1991; and that the Respondent's letter of resignation and Governor Wilkinson's acceptance of the resignation were received and filed in the office of the Secretary of State on February 6, 1991, at 10:44 a.m. (EST); and

WHEREAS, the Court of Impeachment approved a motion that it take no further action to proceed in the matter of the impeachment of the Respondent, Ward "Butch" Burnette; and

WHEREAS, counsel for the House Committee, acting on behalf of the House Committee, had no objection to the motion of the Court of Impeachment and will recommend concurrence by the full House of Representatives; and

WHEREAS, the Court of Impeachment then did rise;

NOW, THEREFORE,

Be it resolved by the Senate of the General Assembly of the Commonwealth of Kentucky:

1 Section 1. The Senate hereby recognizes and ratifies
2 the proceedings of the Court of Impeachment.

3 Section 2. The Clerk of the Senate is directed to
4 deliver a copy of this resolution to the House of
5 Representatives.

6 Section 3. The Clerk of the Senate is directed to
7 spread the proceedings of the Court of Impeachment upon

1 the Journal at length.

IN HOUSE

SPECIAL SESSION 1991

HOUSE RESOLUTION NO. 87

THURSDAY, FEBRUARY 7, 1991

Representatives Gregory D. Stumbo, Tom Jensen, Billie D. Ark, Albert Jones, Sam M. McElroy, Anne Meagher Northup, and Ernesto Scorsone introduced the following resolution which was ordered to be printed.

A RESOLUTION concurring in the termination by the Senate of the impeachment proceedings against Ward "Butch" Burnette.

WHEREAS, on January 15, 1991, the Speaker of the House appointed a committee to investigate the matter of Agriculture Commissioner Ward "Butch" Burnette; and

WHEREAS, on January 23, 1991, the Impeachment Committee issued its final report and recommended to the House of Representatives that Burnette be impeached; and

WHEREAS, on January 25, 1991, the House of Representatives passed House Resolution 40 and the Article of Impeachment attached thereto by a vote of ninety-seven yeas and no nays; and

WHEREAS, the Chairman of the House Impeachment Committee laid the Article of impeachment before the Senate on January 28, 1991 as required by law; and

WHEREAS, the Senate scheduled the impeachment trial for Wednesday, February 6, 1991; and

WHEREAS, just before the Senate convened as a Court of Impeachment, Burnette tendered his resignation to the Governor, the resignation was accepted, and the Senate was notified that Burnette had resigned; and

WHEREAS, the Senate, sitting as a Court of Impeachment, voted by thirty-four yeas and no nays that the impeachment proceedings against Burnette should be terminated, although such termination did not constitute

dismissal of the Article of Impeachment lodged against him; and

WHEREAS, the House Impeachment Committee had no objection to the action of the Senate in terminating the proceedings;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky:

1 That the House does concur with the termination by the
2 Senate of the impeachment proceedings against Ward "Butch"
3 Burnette as being in the interests of the General Assembly
4 and the people of the Commonwealth of Kentucky.





DISCRETIONARY REVIEW PRACTICE IN THE KENTUCKY SUPREME COURT

By C. Theodore Miller

In an effort to enhance the understanding of the discretionary review process in the Kentucky Supreme Court, I have been asked to share some observations and practical pointers based upon my experience in serving the Court in central staff for over 28 years. In doing so, my comments of course are my own and not those of the Court.

The Decision Whether to Seek Discretionary Review

Several factors should be considered before filing a motion for discretionary review, which rarely succeeds as a mere “knee jerk” reaction to having lost an appellate decision in the Court of Appeals. To begin, a prospective movant must make sure that the Court of Appeals has rendered a final decision as envisioned by CR 76.20(2)(b).¹ Further, although cases imposing sanctions for failure to seek discretionary review in “good faith” have not been cited in recent years, the provisions of CR 73.02(4) apply to motions for discretionary review and bear consideration.²

The most common questions involving discretionary review are, not surprisingly, what constitute CR 76.20(1) “special reasons”³ and what are the statistical chances of not only procuring review but also ultimately prevailing. In attempting to describe the Court’s case-by-case exercise of discretion in continuing education seminars and otherwise over the years, my best response regarding what constitutes “special reasons” has been as follows in § 10:1 of *Baldwin’s Kentucky Lawyer’s Handbook, Appellate Practice*:

Although “special reasons” escapes precise definition, generally if a novel question of statewide significance, a legal proposition that requires reexamination, or a matter in which lower courts have conflicted is raised, the granting of review is more likely. A contention that the appellate court has clearly erred is not necessarily persuasive.⁴

The percentages tell more of the story. Since 1983, when the Kentucky Supreme Court began requiring four votes (rather than three) to grant discretionary review, only 15 percent of nearly 17,000 motions for discretionary

review have been granted.⁵ In the three years since the most recent change on the Court, 18 percent of over 1,600 motions for discretionary review have been granted. Although the decision to grant review involves far more than assessment of whether the Court agrees with the Court of Appeals decision in question, reversal statistically is more likely than is affirmance after review has been granted. Still, the statistical chance of procuring discretionary review and ultimately prevailing is approximately 10 percent.

Over the years, some justices in opinions and in publications or seminars have offered their individual opinions regarding their concepts of “special reasons.” The best evidence of the Court’s collective consideration, however, comes from reviewing which motions have been granted. In that regard, an indication concerning current trends may be gleaned from reviewing the regularly updated synopses of pending granted motions on the Supreme Court’s website at www.kycourts.net, under the “Discretionary Review” resource heading.

Highlights Concerning Contents of Motions and Responses

CR 76.20(2)(b) requires the filing of a motion for discretionary review within 30 days after a final Court of Appeals decision. If a timely petition for rehearing of an opinion or motion for reconsideration of a final order (or opinion and order) has been filed in the Court of Appeals, the 30-day period runs from the disposition of such a petition or motion. CR 76.20(2)(c) mandates dismissal of an untimely motion for discretionary review. Extensions of time requested prior to expiration of the pertinent period are not precluded.

With regard to the contents of the motion, many motions continue to contain narratives not complying with the CR 76.20(3)(d) requirement of a “clear and concise statement of (i) the material facts, (ii) the questions of law involved, and (iii) the specific reason or reasons why the judgment should be reviewed.” Such a statement should be included even for relatively short motions. As with all other considerations concerning

motions for discretionary review, case-by-case circumstances control. As a general rule, though, a page or two rarely will suffice to provide the Court with sufficient information regarding a request for review. Neither, however, should a movant feel compelled to write to the full extent of the CR 76.20(3) 15-page limit when five pages suffices to accomplish the task.

CR 76.20(4) specifies the minimum attachments to be appended to the motion. Although the decisions of the lower courts (including final post-decision rulings) and any administrative agency decisions are required, inclusion of a pertinent pretrial ruling or for example a particular contract or will at issue also should be considered. In that regard, although the Court can and does frequently request the record for review in considering whether to grant discretionary review, the record otherwise remains at the Court of Appeals unless the motion is granted. If a “not to be published” opinion rendered since 2003 is “cited for consideration” as permitted by CR 76.28(4)(c) when “there is no published opinion that would adequately address the issue,” a copy of the opinion must be included with the motion.

Although responses to motions for discretionary review are permissive rather than mandatory under CR 76.20(5), respondents always should take the opportunity to tell the Court concisely why review should not be granted under all the circumstances of the case. A one-sentence “no special reasons” response, though, is not helpful.

The Decision-Making Process

The Kentucky Supreme Court’s decision-making process regarding motions for discretionary review has remained essentially unchanged from that documented in 1985 in the *Kentucky Appellate Handbook* published by the Kentucky Bar Foundation and Banks-Baldwin Publishing Company.⁶ Specifically, upon submission motions generally are assigned randomly to one of the Court’s several (currently four) central staff counsel for preparation of a written recommendation regarding disposition. Such recommendations are circulated, together with the motion and any response(s), for initial consideration

by each justice individually prior to collective consideration by all seven justices during the next Court conference week. Each motion is called on the docket and discussed during conference to the extent that any justice desires to address any aspect of the case. A minimum of four votes are necessary in order to grant discretionary review. Similarly, four votes are necessary in order to modify the publication status of a Court of Appeals opinion upon denial of discretionary review.

What Happens After Review is Granted

If the motion is granted, unless the order indicates otherwise the case will proceed to briefing pursuant to CR 76.12 and subsequently to oral argument pursuant to CR 76.16 prior to assignment to a justice in the majority for preparation of a draft opinion. If, however, the Court is convinced that oral argument seems unnecessary in order to decide the case, the order granting discretionary review will indicate that briefing will proceed pursuant to

CR 76.12 but that no oral argument will be scheduled. When a recent opinion of the Court potentially impacts a pending motion for discretionary review, the pending motion may be granted in an order summarily vacating and remanding for reconsideration by the appropriate lower court.

Briefing time is suspended if the respondent files a CR 76.21 cross-motion.⁷ The respective time requirements for a cross-motion and cross-response are only 10 days. The standard for a cross-motion is not “special reasons” but a much more easily satisfied standard specified in CR 76.21(1) as “designating issues raised in the original appeal which are not included in the motion for discretionary review but which should be considered in reviewing the appeal in order to properly dispose of the case.” Although the 1986 adoption of CR 76.21 solved problems relating to whether parties needed to file “protective” motions for discretionary review which were frequent in the first decade after the passage of the Judicial Article creating an intermediate

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appellate court in Kentucky beginning in 1976, the failure to file cross-motions also occasionally created traps for the unwary. In the recent case of *Fischer v. Fischer*, 348 S.W.3d 582 (Ky. 2011), the Court sought to eliminate such traps by stressing the permissive language of CR 76.21 and the need to file such motions only when the Court of Appeals resolves an issue against a respondent in a decision regarding which the movant's motion for discretionary review has been granted.⁸

Summary

As is apparent, motions for discretionary review are resolved by individual and careful case-by-case consideration. Although the number of such motions has gone down in recent years, as has the number of Court of Appeals decisions, motions for discretionary review still account for over half of the filings in the Supreme Court and the primary area in which the Court can control the content of a crowded docket.⁹

ENDNOTES

1. CR 76.20(2)(b) provides as follows: "A motion for discretionary review by the Supreme Court of a Court of Appeals decision shall be filed within 30 days after the date of the order or opinion sought to be reviewed unless (i) a timely petition under Rule 76.32 or (ii) a timely motion for reconsideration under Rule 76.38(2) has been filed or an extension of time has been granted for that purpose, in which event a motion for discretionary review shall be filed within 30 days after the date of the order denying the petition or motion for reconsideration or, if it was granted, within 30 days after the date of the opinion or order finally disposing of the case in the Court of Appeals." CR 76.20(3)(b) also provides in pertinent part that a motion for discretionary review "shall contain . . . the date of final disposition by the Court of Appeals."
2. In *Freeman v. Commonwealth*, 697 S.W.2d 133 (Ky. 1985) and *Walker v. Commonwealth*, 714 S.W.2d 155 (Ky. 1986), attorneys for movants were sanctioned for filing "frivo-

lous" motions for discretionary review. In *Prater Creek Processing Company v. McClanahan*, 741 S.W.2d 278 (Ky. 1987), the Court dismissed a motion for discretionary review requesting further review only of an order denying a motion not to publish a Court of Appeals opinion.

3. In pertinent part, CR 76.20(1) provides as follows: "A motion for discretionary review by the Supreme Court of a decision of the Court of Appeals . . . shall be prosecuted as provided by this CR 76.20 and in accordance with the Rules generally applicable to other motions. Such review is a matter of judicial discretion and will be granted only when there are special reasons for it."
4. *Baldwin's Kentucky Lawyer's Handbook with Forms, 2011 Edition* (Thomson Reuters). The author has updated "Appellate Practice" Chapters 9 and 10 of that publication, entitled "Pleadings and Practice in the Supreme Court," since 1984. The quoted statement regarding "special reasons" has been included in that material since 1984.
5. From 1983 until the present, the percentage of motions for discretionary review granted has varied only several percentage points from the 15 percent average. This has been the case even though 30 justices have served on the Court in that time and even though the number of such motions filed has varied over the years from less than 500 to over 900.
6. The *Kentucky Appellate Handbook*, updated with cumulative services in 1989 and 1993, was the precursor of the current *Kentucky Practice, Appellate Practice*, Volume 19, which also addresses the Kentucky Supreme Court's deliberative process in Chapter 1:2.
7. The full time for briefing the previously granted discretionary review starts again upon entry of an order granting or denying the cross-motion. See CR 76.21(3).
8. If a cross-motion is granted, CR 76.21(4) provides that briefing pur-

suant to CR 76.12 is expanded to permit the cross-motion issues to be addressed in the combined appellee/cross-appellant's brief, with the response to those issues being addressed in the combined cross-appellee/reply brief.

9. Although far fewer in number, CR 74.02 motions to transfer from the Court of Appeals and CR 76.37 motions for certification of questions of law also are matters within the Kentucky Supreme Court's discretion, as are CR 65.09 injunction proceedings. The majority of opinions rendered by the Court, however, involve appeals as a matter of right in (1) RCr 12.02 appeals in criminal cases from judgments imposing sentences of death, life or 20 years or more, or (2) CR 76.36(7) appeals in cases filed as original actions in the Court of Appeals, including workers' compensation cases and original actions in the nature of petitions for writs of prohibition or mandamus sought against circuit judges. In addition, the Kentucky Supreme Court has original jurisdiction over cases commenced in the Kentucky Bar Association and the Judicial Conduct Commission.



C. Theodore Miller, staff counsel for the Kentucky Supreme Court since 1983, received his A.B. in economics from the

College of William & Mary in 1975 and his J.D. from William & Mary's Marshall-Wythe School of Law in 1978. Prior to joining the Supreme Court staff, Miller spent two years in the private practice of law and three years as a central staff attorney for the Kentucky Court of Appeals. During the past decade, he also has served for two years each on the national executive boards of both the Council of Appellate Staff Attorneys and the National Association of Appellate Court Attorneys.