

NO. 23-516

FILED

SEP 01 2023

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

IN THE  
SUPREME COURT OF THE UNITED STATES

MICHAEL D. SMITH,

Petitioner, (pro se)

v.

DEREK GORDON, ET AL.

Respondent.

On Petition for Writ of Certiorari to the  
Supreme Court of Kentucky

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**PETITION FOR WRIT OF CERTIORARI**

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MICHAEL D. SMITH  
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SUPREME COURT, U.S.

## QUESTIONS PRESENTED

- 1 Will this court let stand as Kentucky courts have ruled that lawyers in a criminal case, in essence have the same IMMUNITY as judges and prosecutors, and cannot be SUED no matter what they do?
- 2 Will this court allow a trial judge to deny a person the chance to PROVE his case before DISMISSING it.
- 3 Will this court allow a trial judge to deny a plaintiff the right to ask his subpoenaed witness, (former US ATTORNEY), questions at a motion to dismiss hearing? (Why was your name on the fake indictment not signed?) (Did the grand jury return a NO BILL of INDICTMENT on me as this FBI letter states?).
- 4 KRS 413.245 Legal Malpractice, "One (1) year from the date of the occurrence or from the date when the cause of action was, or reasonably should have been discovered by the party injured. Time shall not commence against a party under legal disability until removed of the disability."  
Does being in prison no longer a legal disability, and a prisoner has to sue his lawyer for malpractice while in prison.
- 5 Can the courts in Kentucky now rule a case is Time Barred when you didn't know for sure there was No Indictment, until after being released from prison?
- 6 Is it now allowed for all the other lawyers, even the

ones who were working for other defendants to commit crimes, being co-conspirators of a crime in railroading innocent people to prisons and they can not be sued.

7 Are news medias now allowed to write and broadcast to the world on TV, that innocent people are crooks and be immune from liability.

8 Will this court interpret the Kentucky case *Lawrence v. Bingham, Greenebaum, Doll, L.L.P.*, 567 S.W.3d 133 (Ky. 2018), for what it clearly reads, "...He or she need not prove actual innocence, but they also may not rely solely upon a claim of actual innocence in the absence of an exonerating court decision through appeal or post-conviction order. I can prove the lawyers, were the proximate cause of the conviction and prison sentence and don't need an exonerating order?

9 Is it a violation of my 5th and 14th Amendments, right to Due Process of Law and Equal Protection of the Law, to have all of the above done to me?

**LIST OF APPEALEES, (RESPONDENTS)  
and THEIR ATTORNEYS**

Estate of, Steve Milner; its attorney; Katherine T. Watts, Patricia C. Le Meur, 716 West Main Street, Suite 300, Louisville, KY 40202

Guthrie True, Guarnieri, Ayer, LLP; William Hayes, William Hayes Law Group; Willis Coffey and Coffey & Ford, PSC; Julie Roberts Gillum; and Jeff Hoover; their attorney; J. Hadden Dean, 114 South Fourth Street, Danville, KY 40422

Patrick Nash, Nash Marshall PLLC, their attorney; Matthew W. Breetz, 400 W. Market St. Ste. 1800 Louisville, Ky 40202

Derek Gordon, Rachel Yavelak, Anggelis & Gordon PLLC.; their attorney; Kyle M. Virgin, 2525 Harrodsburg Road, Suite 500, Lexington, KY 40504-3359

Lexington Herald Leader, The Courier Journal, WLEX Communications LLC, WKYT 27 News, WTVQ 36 News, WDKY Fox News; Jon L. Flishaker, Michael P. Abate; their attorney; William R. Adams, 500 West Jefferson Street. Suite 1400, Louisville, KY 40202

Joe Jarrell, 6260 Ware Road, Paris, KY 40361, (pro se)

Thomas Lyons, 201 West Short Street, Suite 800, Lexington, KY 40507, (pro se)

## TABLE OF CASES AND LAWS

Federal Rules of Criminal Procedure RULE 7,

*Lawrence v. Bingham, Greenbaum, Doll, S.W.3d 133(Ky, 2018).*

KRS 413.245 Legal Malpractice

*U.S. v. Richie, 15 F.3d 593, 598 (6th Cir. 1994)*

5th Amendment of the Bill of Rights

14th Amendment of the Bill of Rights

*Hainès v. Kernier, 404 U.S. 520 (1971),*

*Puckett v. Cox, 456 F.2d 233 (1972) 6th Cir.*

*Bullock v. U.S. 763 F.2d 1115, 1121 (10th Cir. 1985)*

*Kenner v. C.I.R., 387 F. 3d 689 (1968)*

*People v. Zajic, 88 Ill. App. 3d 477, 410 N.E. 2d 626 (1980)*

## CASES AND LAWS EXPLAINED

Federal Rules of Criminal Procedure Rule 7, -- indictment MUST be signed by an attorney for the government.

*Lawrence v. Bingham, Greenebaum. Doll, S.W.3d 133 (Ky. 2018).* Court ruled a prisoner cannot sue his lawyer for legal Malpractice no matter what he has done, the prisoners criminal activity is why he was locked in prison, not the lawyer mistakes. Also this case appears to say, "A convicted client must plead in his complaint that he has been exonerated of the underlying criminal conviction. He or she need not prove actual innocence, but they also may not rely solely upon a claim of actual innocence in the absence of an exonerating court decision through appeal or post-conviction order."

Note: This ruling states, "He or she need not prove actual innocence,--". I have enough proof to clearly show the court, my lawyers are why I was sent to prison and so are the proximate cause. I was sent to prison not for my crimes, but by the crimes of the court and my lawyers, using Fraud on the Court, so this case does not defeat my case.

Let me prove there was a NO BILL of INDICTMENT on me, let me call witnesses, members of the grand jury, the FBI agent who wrote the letter, the Prison officials who looked it up for me, that told me, a NO BILL of INDICTMENT is all they have on you. Also let me do discovery on the former US Attorney who's name is on

the fake indictment used at the trial. Let me ask the lawyers under oath, was there an indictment and many other questions about why they did nothing to bring out the TRUTH to the jury, and why they filed nothing to stop this injustice, and also allowed a MOCK trial. Just because of a Corrupted Eastern District Court of Kentucky and a 6th Circuit who keeps covering up wrong doing of the court does not justify the abomination that has been done to me. These lawyers are the proximate cause I was sent to prison and let a jury decide damages.

*KRS 413.245 Legal Malpractice, states, "--One (1) year from the date of the occurrence of from the date when the cause of action was, or reasonably should have been, discovered by the party injured. Time shall not commence against a party under legal disability until removed of the disability."*

Note: Defendants argue, being in prison is no longer a Legal Disability, but it is impossible to fight a lawsuit while in prison, the first hearing and the case would be dismissed, you have no way of subpoenaing witnesses, talking to witnesses and it is impossible to appear at a trial because prisons will not let you go to a trial, and everything you do is concentrated on filing to get out, it's everything you can do.

Note: All time bars are MOOT, because I did not know there was no indictment until I was released from prison and received the FBI letter stating they looked where an indictment should be and did not find one. So my case is NOT TIME BARRED.

*U.S. v. Richie, 15 F.3d 593, 598 (6th Cir. 1994).*

Because this case was dismissed without discovery, the court will consider the material allegations of fact set forth in the complaint as being true and construe them in a light most favorable to the non moving party.

Note: the lower court did not consider my facts as true, just dismissed it, without allowing me any discovery, that is NOT justice or the law.

#### 5th AMENDMENT OF THE BILL OF RIGHTS

No person shall be held to answer for an infamous crime, unless on a presentment or indictment of a Grand Jury;---due process of law and equal protection of the law.

#### 6th AMENDMENT OF THE BILL OF RIGHTS

Right to a jury trial and effective assistance of counsel, and confrontation clause.

#### 14th AMENDMENT OF THE BILL OF RIGHTS

States must provide Due Process of Law and Equal Protection of the Law.

*Haines v. Kerner, 404 U.S. 520 (1971), Puckett v. Cox, 456 F.2d 233 (1972) 6th Cir.;* Pro se filer not held to the same standards as a lawyer.

*Bullock v. U.S. 763 F.2d 1115, 1121 (10th Cir. 1985),* the court stated "Fraud upon the court is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury.. It is where the court or a

member is corrupted or influence or influence is attempted or where the judge has not performed his judicial function--thus where the impartial functions of the court have been directly corrupted."

*Kenner v. C.I.R.*, 387 F.3d 689 (1968) "Fraud on the court" has been defined by the 7th Cir. to "embrace that species of fraud which does, or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery can not perform in the usual manner its impartial task of adjudging cases that are presented for adjudication."

*People v. Zajic*, 88 Ill. App.3d 477, 410 N.E.2d 626 (1980). Fraud on the Court, the judge is not the court. Whenever any officer of the court commits fraud during a proceeding in the court, he/she is engaged in "fraud on the court".

7th Cir. further stated "a decision produced by fraud upon the court is not in essence a decision at all and never becomes final." Under Illinois and Federal law, when any officer of the court has committed "fraud upon the court, "the orders and judgment of that court are void, of no legal force or effect.



## PETITION FOR A WRIT OF CERTIORARI

Petitioner Michael Smith respectfully requests the issuance of a writ of certiorari to review the judgment of the Kentucky Appeals Court and denied Discretionary Review by the Supreme Court of Kentucky.

### OPINIONS OF LOWER COURT

Michael Smith v. Derek Gordon, et al., File No. 2022-SC-0458, Supreme Court of Kentucky Judgment entered June 7, 2023, Denying Discretionary Review.

Michael Smith v. Derek Gordon et al., No. 2021-CA-713-MR, Kentucky Appeals Court Judgment entered September 23, 2022 Opinion Affirming Garrard County Circuit, dismissal of his complaint.

Original case, Michael Smith v. Derek Gordon et al., Case No. 21-CI-00034, Garrard County, Order, entered April 1, 2021, Sustaining Motion to Dismiss pursuant to Ky. R. Civ. P. 12.02(f) failure to state a claim for which relief may be granted, Kentucky Circuit Court

### ALSO FILED IN COURT AT THIS TIME

I, Michael Smith, also filed in the Southern District of California, Rule 60 (d) 3, Fraud on the Court, Case No. 22cv0798 DMS (BGS), Order entered November 4, 2022, Grants Motion to dismiss.

That Judgment was then appealed to the 9th Circuit Court of Appeals, Case No. 23-55030 and I am waiting for a favorable Judgment, to VACATE my case.

This Petition was prepared pro se and hope this court will take into consideration that I have done the best I can and from past law, should not be held to the same standards as a lawyer, Haines v. Kerner, 404 U.S.

520 (1971). Puckett v. Cox, 456 F.2d 233 (1972) 6th.Cir. USCA.

### **JURISDICTION**

This Petition is being filed within the required 90 days of Supreme Court of Kentucky's denial of Discretionary Review. Also pursuant to U.S.C. 1257(a) and the *Supreme Court Rule 10(a)*, Kentucky Courts has decided an important question in a way that has so far departed from the accepted and usual course of judicial proceedings, as to call for an exercise of this Court's supervisory power, when it dismissed my lawsuite without being given a chance to get any DISCOVERY to prove my case or a chance to ask a witness I had subpoenaed to the hearing, a couple of questions to prove my case. Also these courts have ruled Lawyers can not be sued by a prisoner, no matter what they have done. Also pursuant to *Supreme Court Rule 10(c)*, Kentucky has decided an important question of Federal Law that has not been, but should be, settled by this Court.

### **What this case is about**

This is a legal malpractice case against a group of lawyers who lead me through a MOCK criminal trial and helped send me to prison for about 9 years without a crime, after the grand jury returned a NO BILL of INDICTMENT. They filed nothing to stop it and said nothing to me about it. Contained herein is proof they purposely sent me to prison, knowing there was no crime. Also the medias were sued for defamation. Original case was in the Eastern District of Kentucky 3:08-cr-31-JMH. I filed direct appeals to the Supreme Court, 2255 to the Supreme Court, Writ of Error, and

sued the court officials who did this to me to the Supreme Court and now have filed a 60(d)(3) Fraud on the Court in another Circuit away from the 6th Circuit, that just keeps coveringup wrong doing of the court. So as Fraud on the court allows, I filed it in California, that too was denied, but is now in the 9th Circuit on Appeal, Case No. 23-55030.

### STATEMENT OF THE CASE

June 2010 I was put on trial for securities fraud, June 2011, I was sentenced to 10 years in a Federal Prison Camp, Ashland, Kentucky, I was released Febuary 27, 2020, after serving over 8 1/2 years in prison. Less than one month later March 2020, I received a letter from the FBI, stating they "looked for an indictment but did not find one", Exhibit (1). I was told there was no indictment from the grand jury but my lawyer told me they had to take it before 3 grand juries before I was indicted, which I now know was a lie. The distict court sealed and would let anyone see it without the judge approving it, so this FBI letter is the first time I got PROOF there was no indictment. I have filed about 14 times to vacate this case and 14 times the district court and 6th Circuit have denied the Application, calling them a second 2255, never considering them on their merits. The district court has done fraud on the court and a crime, it had no authority or jurisdiction to touch me or anything I owned. Within one year of this getting out of prison and getting the FBI letter a Complaint was filed in Garrard Circuit Court, February 19, 2021. So my case is Not Time Barred.

Two weeks into this trial, the prosecutors asked the judge to dismiss the securities fraud charges, COUNTS 24 AND 25, after telling the jury all the details of the crimes, the judge said that because there had been no evidence of the crimes shown the court he would dismiss them and he did. Then the judge refuses to tell the jury these charges are dismissed, (Docket page 42 of 134, hearing held on 6/30/2010, R. 298. (Transcript of hearing held on 6/28/2010, R. 850, Page ID# 12286-12292)), and because the charges are dismissed they could not be mentioned again and so we were not allowed to say one word in our defense, Violation of the confrontation clause in the 6th Amendment. We were not allowed to prove to the jury, everything the prosecutors just told you was not true, in fact it was all lies. 06/30/2010 Doc 298 Page42 of 134.

Also this fake indictment used at the trial states in the MANNER AND MEANS, page 5, paragraph 6, *"that overwhelming majority of potential investor were not accredited investors, and salesmen told investors the programs were registered securities, salesmen made no effort to determine whether the investors qualified as accredited investors, etc"*. All lies, at the trial it was proven that every investor had to sign a contract that they were ACCREDITED, so none of this was true, and we did no crime.

Within the last year, I just learned that the record had another proof that our lawyers were working for the government, Doc#777, Gambrel trial transcript, filed 12/16/11, Page ID#9501-9502,: Defense atty, Lyons asked a witness, a surveyor (Gambrel) his last question, then prosecutor Catron asks the judge "may I have just a moment with Mr. Lyons, please"? "Court: Yes ma'am". Then Catron confers with Lyons. Then Lyons asks

Gambrel, "in 2001 did you have your surveyors license suspended?" Gambrel: "yes". --- Then Catron on Redirect, asks Gambrel, "and you learned your lesson from that, Mr. Gambrel?" Prosecutor was showing the jury this man should not be believed when he says nothing bad about me. Doc#777, Gambrel trial transcript, filed 12/16/11, Page ID#9501-9502.

Catron was not allowed to bring up a new subject on REDIRECT, that the opposing attorney had not brought up so she had the defense attorney to bring it up for her, PROOF THE DEFENSE ATTORNEYS WERE WORKING FOR THE PROSECUTORS. Also every defense lawyer knew there was no indictment but said nothing and filed nothing to stop the miscarriage of justice.

Our attorneys kept trying to force us to plead guilty, I told them, SHOW ME A CRIME WE DID, AND I WILL TALK TO YOU ABOUT PLEADING, WE DID NOT DO ANYTHING CRIMINAL. None of the lawyers could show us even (1) one crime, that is why we went to trial and why we have fought this case with everything we have, we didn't do anything. We will not plead guilty to a crime we did not do.

Doc#572-2, Bottoms trial transcript, filed 5/26/11, Page ID#4190-4198, when defense atty, Lyons was attempting to impeach this witness and question the validity of the so called 'indictment' by asking U.S. Postal Inspector, Roberta Bottoms about her grand jury testimony re: Target being unlicensed sales people. This resulted in an objection from prosecutor, Catron and a bench conference.

Defense atty, Gordon: "We challenge the proof here", judge Hood, Court: "Don't start. It's about to cost you money. Don't start." (Judge Hood did not want the

INDICTMENT brought up, he knew all the lawyers knew there was no indictment and agreed to go to trial without it, Hood did not want anyone else to know he was having a trial without an indictment, he was covering it up) he continued to make it clear that the securities charges had been dismissed and the jury wasn't notified, but the jury instructions would fix that. Judge Hood continued to agree with the prosecutor.

CATRON: "However, the basis of the U.S. objection is that Mr. Lyons seems to be attacking the validity of the indictment. (Continue to next page, Page ID# 4194), That is something not on trial here. That should have been addressed pretrial, whether or not there are deficiencies in this indictment, whether there is some problem with the investigation that resulted in ineffective or inefficient or illegal indictment. The indictment is not on trial here".

Line 23-5, MR LYONS: Your Honor please, at the time that I got into this case, there was no mechanism for me to challenge this indictment whatsoever. This case---(next page, Page ID# 4195), was already set for trial. I could not have filed a motion for --to dismiss this indictment".

THE COURT: "I can't dismiss the indictment sitting here. ----Because I have heard evidence of fraud." (Which was NOT TRUE.) This is proof there was NO indictment and all the lawyers KNEW it and were co-conspirators in this crime, and filed nothing to stop this trial.

Prison officials also told me there was nothing but a NO BILL of INDICTMENT on me, but they would not give me a copy of it, so I had NO proof of it. Prison officials said they were afraid they would have handcuffs put on them, if they let me go home, I have

seen too many people like you in prison. President Trump gave me a pardon while I was in prison, but it had to be OKed by the Judge Hood, who refused to let me go home, I was told you can go home any day I want, if I would sign a paper agreeing to TIME SERVED, I would not do it. I am too old to start over now, and my health has went down alot while in prison, they let my Oxygen get down into the 50's before getting me to a hospital. I have been told when the grand jury returned a No Bill of Indictment on me, the grand jury foreperson and prosecutor would go out before the judge and it would be entered into the record and no one can change it, it is there to stay.

Judge Hood stated on his order, Doc# 1046 Filed 03/29/21 Page 2 of 2, Page ID# 14139, "--CERTIFIES that the indictment was properly brought with the signature of the foreperson of the grand jury,--". If Hood had only a signature of the grand jury foreperson, he does not have an indictment, but a NO BILL OF INDICTMENT from the grand jury, Rule 7, (1)(B)(c)(1), *"the indictment MUST be signed by an attorney for the government"*.

I can go on and on and counter everything the government and judges have stated, it did not happen as they state, I am innocent of everything they accused me of, I told all my workers many times and many testified at trial that I told them, "don't be lying to these people, they are rich and very smart, you can not keep your lies straight so don't be doing it."

Someone told me a lawyer in Middlesboro, KY grew up with Judge Hood in Ashland, KY and prosecutor Catron was an old girlfriend, and that he can help get dad's money back, taken by the Postal Inspector Bottoms, about \$230,000 he had saved up. I met with

the lawyer, Bill Hayes, and he told me he could help me. Then a short time latter I was arraigned in federal court. (I am so sure Bill Hayes talked to prosecutor Catron and told her to go ahead and charge him I am his lawyer, I will force him to plead to something after I get all the money I can get from him, I will find out where he has all his money). After I paid Bill Hayes over \$100,000, he then flips on me and said he has talked to the prosecutors and they have enough evidence to send me to prison and that I need to plead guilty and the years in prison will not be much, if not I may get 80 years in prison if I go to trial. He talked very disrespectful and threatened me if I didn't plead guilty. I told him, SHOW ME A CRIME AND I WILL TALK TO YOU ABOUT A PLEA DEAL, I DIDN'T DO ANYTHING. He could not show me anything criminal, and I told him I will not plead to something I did not do.

So it was not because of any crime I did but a bunch of high up officials wanting to rob me, who got in so deep in corruption it had to be covered up.

The district court and the 6th Cir. did not address all the prosecutorial and judicial misconduct, holding a jury for 18 hours in a hot room and meeting with the jury a few minutes before the verdict, I take that as an admission that it DID happen, because I was there and IT DID happen. So the courts have considered all this and rules court can not find anything wrong with misleading, lying to and FORCING a jury to find guilty. It is an abomination that we have federal judges, guardians of our free country to do what they have done to me and my family.

On direct appeal 6th Cir. Judge Gilman wrote about 8 times about how we mislead investors about well production, justifiying his denial of my appeal. The

jury returned a NOT GUILTY on the Wire Fraud charges, anything said on the phone or internet, so the Court was NOT ALLOWED TO BRING IT BACK UP.

Also Gilman wrote the many well violations were a show of DISHONESTY. We had violations because the EQT and Columbia Transmission would not hook our wells up or would not let us run gas in their lines, trying to forcing us out of business, against Federal Law, I also think federal agents contacted them and threatened them to not run our gas.

Also another malpractice on our lawyers who did not show to the court the reason for the violations, it was plug good wells or get violations and may get them hooked up later. and by *KRS 353.550 Improper Abandoned Wells*--states. "--gas wells shut in due to market conditions are not included." So by Kentucky law we should have gotten NO VIOLATIONS for this. The Securities Fraud charges had already been dismissed, and without these two crimes, (frauds on the court), there was no crimes for the court to consider. This is another malpractice of our lawyers for not clearing it up.

After this law was used in a filing to the court, the state changed the number to another law, hiding this law. KRS Improper Abandoned does not appear in the laws now. I think it was changed to make it appear I am not telling the truth, if someone looks it up. MORE FRAUD ON THE COURT.

#### REASON TO GRANT THIS PETITION

Judges and prosecutors have absolute immunity and if this case is not reversed, lawyers also have absolute immunity. Meaning there is nothing they can't do. Everyone and our children can be robbed, and sent

to prison at a prosecutor and judges whim, no crime or Indictment from grand jury needed.

### CONCLUSION

I had no proof there was no Indictment until the FBI letter after getting out of prison and so am not TIME BARRED. Defendant medias say I did not serve the correct company name. I served the person listed at the Kentucky Secretary of State serving agent, but let me do discovery to find the correct owner they want served. Media say I did not say the exact words they used in their broadcast and so the case is dismissed. This is what discovery is for, I will get copies of what they said, but being in prison and seeing another news story on TV, about what crooks we were, should be good enough for now, all they had to do was check at the court house and see there was NO INDICTMENT, and the story should have been, "Why is there a trial on these people after the Grand Jury returned a NO BILL of INDICTMENT". It is impossible to sue a lawyer while in prison and KRS states the legal disability has to be removed, so I am not Time Barred here either. Also *Lawrence v. Bingham, Greenebaum, Doll*, states I don't have to prove innocence in the absence of an exoneration.

So given discovery I can prove that my lawyers malpractice allowed me to go through a 5 wk mock trial. On the day of deliberations the jurors were kept at the courthouse for about 18 hrs, sent to a hot room in July without air conditioning and was told by the judge that nobody was leaving without a verdict, with no objections from the lawyers. After 1:00AM, the judge met with the jurors minutes later there was a guilty verdict with no objections from the lawyers. Forced Guilty Verdict? My

family and I lost everything we had and I served almost 9 yrs in prison when there was no crime and the Grand Jury voted NO INDICTMENT.

*"Injustice anywhere is a threat to justice everywhere."* by Martin Luther King Jr.

*"Justice will not be served until those who are unaffected are as outraged as those who are."*  
by Benjamin Franklin

I respectfully ask this court to grant this Writ and send this case back to lower court for discovery and jury trial. Also everything in this Writ is true and accurate to the best of my knowledge.

---

Michael Smith (pro se)  
486 Delbar Lane  
Lancaster, KY 40444  
(859) 304-2136

**AFFIDAVIT of MICHAEL SMITH  
and CERTIFICATE OF SERVICE**

I affirm, under penalty of perjury, that everything in this Writ is true and accurate to the best of my knowledge, the estimated number of words are about 5,010, which is below the 9,000 allowed by the court and all of the following defendants will be served in the mails, postage prepaid.



Michael Smith  
486 Delbar Lane  
Lancaster, Kentucky 40444  
859-304-2136

NOV - 6 - 23

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Notary

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Date Commission expires:

**LIST OF APPEALEES, (RESPONDENTS)  
and THEIR ATTORNEYS**

Estate of, Steve Milner; it's attorney; Katherine T. Watts, Patricia C. Le Meur, 716 West Main Street, Suite 300, Louisville, KY 40202

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