

COMMONWEALTH OF KENTUCKY  
SUPREME COURT  
CASE NO. \_\_\_\_\_

FRANKLIN CIRCUIT COURT NO. 07-CI-01523

COMMONWEALTH OF KENTUCKY  
by and through  
JACK CONWAY, ATTORNEY GENERAL

PETITIONER

V.

**MOTION FOR LEAVE TO FILE PETITION FOR WRIT  
AND REQUEST FOR EMERGENCY RELIEF**

HONORABLE ROGER L. CRITTENDEN, SPECIAL JUDGE,  
FRANKLIN CIRCUIT COURT

RESPONDENT

and

MARCO ALLEN CHAPMAN;  
KENTUCKY DEPARTMENT OF PUBLIC ADVOCACY;  
ERNIE LEWIS, PUBLIC ADVOCATE;  
JOHN PALOMBI, ASST. PUBLIC ADVOCATE; AND,  
ALL OTHER EMPLOYEES AND AGENTS THEREOF

RESPONDENTS/  
REAL PARTIES IN INTEREST

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Comes the Commonwealth, by and through Jack Conway, Attorney General, and hereby requests leave to file its Petition for a Writ and Motion for Emergency Relief in the above-styled case. In support, the Commonwealth states the following:

On October 17, 2008, the Commonwealth moved to intervene in Marco Allen Chapman v. Kentucky Department of Public Advocacy, et. al., Franklin Circuit Court No. 07-CI-1523. Chapman filed a petition for declaration of rights asking that the Department of Public

Advocacy refrain from further legal representation. The Department of Public Advocacy responded, arguing that Chapman is incompetent to discharge counsel. In its Intervening Complaint, the Commonwealth argued that the issue of Chapman's competency to discharge his counsel had been finally settled by this Court in Chapman v. Commonwealth, \_\_\_ S.W.3d \_\_\_ (Ky. 2008). The Commonwealth also filed a motion to reconsider Franklin Circuit Court's order granting the parties' "agreed motion" for competency testing.

On October 23, 2008, at the request of the Commonwealth, Franklin Circuit Court held an emergency hearing on the motion to intervene. The Department of Public Advocacy argued that they had not had sufficient time to prepare a response. Franklin Circuit Court agreed and continued the hearing until November 7, 2008. And, most importantly, Judge Crittenden expressly refused to stay the order for further competency testing

The Commonwealth understands the unusual nature of its request for leave to file a Petition for a Writ in this Court. Also, it knows it is not a "real party in interest" under the specific rules regarding original actions in appellate courts, CR76.36(8). However, the Commonwealth is a party in Chapman v. Commonwealth, *supra*. By delaying its ruling on the motion to intervene, the lower court has interfered with the Commonwealth's ability to protect its interest in Chapman itself. Further, the Commonwealth does believe that Section 110(2)(a) of the Kentucky Constitution vests this Court with inherent power to review such unusual original actions. That section states that the Supreme Court "shall have the power to issue *all writs necessary in aid of its appellate jurisdiction*, or the complete determination of any cause, *or as may be required to exercise control of the Court of Justice*." (Emphasis added).

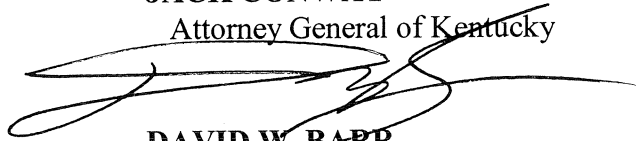
In the above-styled matter, the Circuit Court is reviewing and considering *de novo* an issue

which this Court has finally and fully decided. Marco Chapman was competent to dismiss counsel at the time he did so. He has repeatedly reiterated his request that they not represent him. A further competency evaluation is in no way proper, since he is not required to prove himself competent merely to discharge attorneys he has already discharged.


Finally, although not a named party, the Commonwealth does have an interest in the proceedings below: ultimately, what is being attacked is the people's right, including Mr. Chapman's right, to see a valid and final criminal sentence carried out. The Attorney General, pursuant to KRS 15.020, has a duty to appear on behalf of the Commonwealth. The lower court's delay effectively precludes such appropriate representation. Whether or not a "real party in interest" according to rule, the Commonwealth certainly has a direct interest in the action.

Wherefore, the Commonwealth respectfully requests that this Court grant leave to file the attached Petition for a Writ and Motion for Emergency Relief.

Respectfully submitted,  
**JACK CONWAY**  
Attorney General of Kentucky




**DAVID W. BARR**  
Assistant Attorney General



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Counsel for Commonwealth


**NOTICE**

NOTICE is hereby given that the Commonwealth of Kentucky by and through Jack Conway, Attorney General will file the foregoing Motion for Leave to File this 29<sup>th</sup> day of October, 2008, to be considered at the pleasure of the Court.

  
Hon. David W. Barr

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Motion For Leave to File was this 29th day of October, 2008, mailed to Hon. Roger L. Crittenden, Special Judge, Franklin Circuit Court, P.O. Box 678, Frankfort, Kentucky 40601-0678; to Hon. John Palombi, 201 Monroe Street, Suite 407, Montgomery, Alabama 36117; and to Marco Allen Chapman, #137809, Kentucky State Penitentiary, PO Box 5128, Eddyville, Kentucky 42038; and via messenger mail to Hon. Mary Ann Palmer, General Counsel, Department of Public Advocacy, 100 Fair Oaks Lane, Suite 302, Frankfort, Kentucky 40601

  
Hon. David W. Barr