

SUPREME COURT OF KENTUCKY

MINUTES

JANUARY 24, 2008

RELEASED: 2:00 P.M.

1. BENNY LEE HODGE, ET AL. V. [2007-SC-000073-OA](#) LETCHER
HON. EDDY COLEMAN, **TO BE PUBLISHED**
SPECIAL JUDGE,
LETCHER CIRCUIT COURT, ET AL.
OPINION OF THE COURT BY
JUSTICE MINTON –
ORDER GRANTING PETITION
FOR WRIT OF MANDAMUS
NOBLE, J., NOT SITTING.
CUNNINGHAM, J., CONCURS
BY SEPARATE OPINION.

2. JOHN GREGORY GRANT V. [2005-SC-000853-MR](#) GRAYSON
COMMONWEALTH OF KENTUCKY **TO BE PUBLISHED**
OPINION OF THE COURT BY
CHIEF JUSTICE LAMBERT –
VACATING AND REMANDING

3. KEITH A. OWENS V. [2006-SC-000037-MR](#) TAYLOR
COMMONWEALTH OF KENTUCKY **TO BE PUBLISHED**
OPINION OF THE COURT BY
JUSTICE MINTON – AFFIRMING
NOBLE AND SCHRODER, J.J., CONCUR
BUT WOULD EMPHASIZE THAT THERE
MUST BE A LAWFUL STOP, LAWFUL
ARREST, AND LAWFUL EXPULSION OF
OCCUPANTS FROM THE VEHICLE IN
ORDER TO AVOID SUPPRESSION OF
THE EVIDENCE AS FRUIT OF THE
POISONOUS TREE.

4. JERRY RANDALL WATSON V. [2006-SC-000393-DG](#) TAYLOR
BEST FINANCIAL SERVICES, INC. **TO BE PUBLISHED**
OPINION OF THE COURT BY
JUSTICE MINTON – AFFIRMING
SCHRODER, J., NOT SITTING.
ABRAMSON, J., CONCURS IN
RESULT ONLY.

SUPREME COURT OF KENTUCKY

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5. SONIA BARTEE V. UNIVERSITY MEDICAL CENTER, ET AL. [2007-SC-000094-WC](#) FROM COURT OF APPEALS
TO BE PUBLISHED
 6. COMMONWEALTH OF KENTUCKY, TRANSPORTATION CABINET, DEPARTMENT OF HIGHWAYS V. AMANDA GUFFEY (NOW MELTON), IN HER CAPACITY AS ADMINISTRATRIX OF THE ESTATE OF JEREMIAH GUFFEY, DECEASED, ET AL. [2006-SC-000436-DG](#) WAYNE
TO BE PUBLISHED
 7. GRANT HATFIELD, JR. V. COMMONWEALTH OF KENTUCKY [2006-SC-000333-MR](#) CLAY
TO BE PUBLISHED
 8. ERIC MITCHELL, ET AL. V. ALLSTATE INSURANCE COMPANY [2005-SC-000571-DG](#) HARRISON
TO BE PUBLISHED
- OPINION OF THE COURT – AFFIRMING**
- OPINION OF THE COURT BY JUSTICE CUNNINGHAM – AFFIRMING IN PART, REVERSING IN PART, AND REMANDING**
- OPINION OF THE COURT BY JUSTICE SCOTT – AFFIRMING IN PART AND REVERSING IN PART**
- REVERSING AND REMANDING**
MINTON, J., CONCURS IN RESULT ONLY BY SEPARATE OPINION, WITH ABRAMSON, J., JOINING THIS OPINION.

SUPREME COURT OF KENTUCKY

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9. COMMONWEALTH OF KENTUCKY V. S.K.; M.M.F.; AND B.D.T. [2006-SC-000449-DG](#) DAVIESS
TO BE PUBLISHED
OPINION OF THE COURT BY
JUSTICE SCHRODER –
REVERSING AND REMANDING
ABRAMSON, J., CONCURS IN PART
AND DISSENTS IN PART BY
SEPARATE OPINION IN WHICH
MINTON AND NOBLE, J.J., JOIN.
10. ERIC CHANEY, DECEASED, ET AL. V. DAGS BRANCH COAL COMPANY, ET AL. [2007-SC-000093-WC](#) FROM COURT
TO BE PUBLISHED OF APPEALS
OPINION OF THE COURT –
REVERSING AND REMANDING
11. VICKI MONROE V. COMMONWEALTH OF KENTUCKY [2005-SC-000312-MR](#) JEFFERSON
[2005-SC-000745-TG](#)
TO BE PUBLISHED
OPINION OF THE COURT BY
JUSTICE NOBLE – REVERSING
SCOTT, J., CONCURS IN PART
AND DISSENTS IN PART BY
SEPARATE OPINION IN WHICH
MINTON, J., JOINS.
12. PAPA JOHN'S INTERNATIONAL INC, ET AL. V. GARY MCCOY [2005-SC-000614-DG](#) FLOYD
TO BE PUBLISHED
OPINION OF THE COURT BY
JUSTICE MINTON – REVERSING
SCOTT, J., CONCURS IN PART
AND DISSENTS IN PART BY
SEPARATE OPINION.
LAMBERT, C.J., DISSENTS BY
SEPARATE OPINION AND JOINS
SCOTT, J., AS TO DISSENT
REGARDING RWT'S LIABILITY.

SUPREME COURT OF KENTUCKY

MINUTES

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RELEASED: 2:00 P.M.

13. COMMONWEALTH OF KENTUCKY V. [2005-SC-000702-DG](#) HART
CHRISTY MORGAN **TO BE PUBLISHED**
OPINION OF THE COURT BY
JUSTICE ABRAMSON – REVERSING
NOBLE, J., CONCURS BUT WOULD
STRESS THAT MERELY LEAVING
ONE’S HOME AFTER A POLICE CAR
DRIVES BY, WOULD NEVER,
STANDING ALONE, CONSTITUTE
REASONABLE SUSPICION TO MAKE
AN INVESTIGATORY STOP.
SCHRODER, J., DISSENTS BECAUSE
THE ANONYMOUS TIP WAS NOT
SUFFICIENTLY CORROBORATED
UNDER FLORIDA V. J.L., 529 U.S. 266,
120 S.CT. 1375, 146 L.ED.2D 254 (2000)
TO JUSTIFY THE STOP.
14. COMMONWEALTH OF KENTUCKY V. [2006-SC-000321-DG](#) HARDIN
JOSE R. PADILLA **TO BE PUBLISHED**
OPINION OF THE COURT BY
CHIEF JUSTICE LAMBERT –
REVERSING
CUNNINGHAM, J., DISSENTS BY
SEPARATE OPINION IN WHICH
SCHRODER, J., JOINS
15. VICKI LYNN CARRIER V. [2005-SC-000440-MR](#) WASHINGTON
COMMONWEALTH OF KENTUCKY **NOT TO BE PUBLISHED**
MEMORANDUM OPINION OF
THE COURT – AFFIRMING
NOBLE, J., DISSENTS BY SEPARATE
OPINION. SCHRODER, J., DISSENTS
AND STATES THAT HE BELIEVES
THE EVIDENCE SUPPORTS ONLY A
CONVICTION UP TO SECOND-DEGREE
MANSLAUGHTER. FURTHER, THE
APPELLANT WAS A VICTIM OF
DOMESTIC VIOLENCE; THEREFORE,
KRS 439.3401(5) APPLIES.

SUPREME COURT OF KENTUCKY

MINUTES

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| 16. | BARRY EVANS V.
COMMONWEALTH OF KENTUCKY
MEMORANDUM OPINION OF
THE COURT – <u>AFFIRMING</u> | 2006-SC-000494-MR
2006-SC-000497-MR
2006-SC-000533-TG
NOT TO BE PUBLISHED | LOGAN |
| 17. | JOHN LEE SCHELL V.
COMMONWEALTH OF KENTUCKY
MEMORANDUM OPINION OF
THE COURT – <u>AFFIRMING</u> | 2006-SC-000662-MR
NOT TO BE PUBLISHED | LAUREL |
| 18. | JASPER POLLINI V.
COMMONWEALTH OF KENTUCKY
MEMORANDUM OPINION OF
THE COURT – <u>AFFIRMING</u>
NOBLE, J., CONCURS, BUT WOULD
AGREE WITH THE TRIAL COURT
THAT THIS EVIDENCE HAVING BEEN
ADMITTED IN THE FIRST TRIAL AND
NOT HELD TO BE ERROR ON APPEAL,
MAKES IT ADMISSIBLE IN THE
RE-SENTENCING AS NO MORE THAN
THE ORIGINAL JURY WOULD HAVE
HEARD, AND NOT BECAUSE IT GIVES
“A MORE COMPREHENSIVE
UNDERSTANDING OF THE AFTERMATH
OF THE SHOOTING.” | 2006-SC-000835-MR
NOT TO BE PUBLISHED | JEFFERSON |
| 19. | ERVIN THOMAS JENKINS, JR. V.
COMMONWEALTH OF KENTUCKY
MEMORANDUM OPINION OF
THE COURT – <u>AFFIRMING</u> | 2007-SC-000047-MR
NOT TO BE PUBLISHED | HARDIN |
| 20. | BOYD FELTNER V.
RICHARD D. VANDUZER, ET AL.
MEMORANDUM OPINION OF
THE COURT – <u>AFFIRMING</u> | 2007-SC-000115-WC
NOT TO BE PUBLISHED | FROM COURT
OF APPEALS |

SUPREME COURT OF KENTUCKY

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| 21. | MARY HUTCHINS V.
GENERAL ELECTRIC, ET AL.
MEMORANDUM OPINION OF
THE COURT – <u>AFFIRMING</u> | 2007-SC-000161-WC
NOT TO BE PUBLISHED | FROM COURT
OF APPEALS |
| 22. | S.H. V.
HON. TIMOTHY E. FEELEY,
OLDHAM CIRCUIT JUDGE, ET AL.
MEMORANDUM OPINION OF
THE COURT – <u>AFFIRMING</u> | 2007-SC-000339-MR
NOT TO BE PUBLISHED | OLDHAM |
| 23. | RUBEN RIOS SALINAS V.
COMMONWEALTH OF KENTUCKY
AND
RUBEN RIOS SALINAS V.
TOM SIMPSON
AND
RUBEN RIOS SALINAS V.
COMMONWEALTH OF KENTUCKY
MEMORANDUM OPINION OF
THE COURT – <u>AFFIRMING IN PART
AND VACATING IN PART</u>
CUNNINGHAM, J., NOT SITTING. | 2005-SC-000782-MR
NOT TO BE PUBLISHED

2006-SC-000482-TG
NOT TO BE PUBLISHED

2006-SC-000483-TG
NOT TO BE PUBLISHED | FAYETTE

FAYETTE

FAYETTE |

OPINIONS AND ORDERS – JANUARY 24, 2008

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| KENTUCKY BAR ASSOCIATION V.
STEVEN F. CLAYPOOLE
ORDER SUSPENDED RESPONDENT
FROM THE PRACTICE OF LAW. | 2006-SC-000242-KB
TO BE PUBLISHED | IN SUPREME
COURT |
| KENTUCKY BAR ASSOCIATION V.
LAWRENCE R. CARMICHAEL
ORDER PERMANENTLY DISBARRED
RESPONDENT FROM THE PRACTICE
OF LAW.
LAMBERT, C.J., NOT SITTING | 2007-SC-000528-KB
TO BE PUBLISHED | IN SUPREME
COURT |

SUPREME COURT OF KENTUCKY

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OPINIONS AND ORDERS – JANUARY 24, 2008

KENTUCKY BAR ASSOCIATION V. DONALD A. MAZE ORDER CONFIRMED RESPONDENT'S AUTOMATIC TEMPORARY SUSPENSION. CUNNINGHAM, J., NOT SITTING	2007-SC-000820-KB TO BE PUBLISHED	IN SUPREME COURT
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KENTUCKY BAR ASSOCIATION V. ZACHARY GOTTESMAN ORDER PUBLICLY REPRIMANDED RESPONDENT.	2007-SC-000880-KB TO BE PUBLISHED	IN SUPREME COURT
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**COURT ORDERS GRANTING MOTION FOR DISCRETIONARY REVIEW –
JANUARY 16, 2008**

LES BROWNLEE, ACTING SECRETARY, U.S. DEPARTMENT OF THE ARMY; AND THE UNITED STATES OF AMERICA V. COMMONWEALTH OF KENTUCKY, KENTUCKY UNEMPLOYMENT INSURANCE COMMISSION, ET AL.	2007-SC-000126-DG	HARDIN
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WILLIAM MATTINGLY, ET AL. V. WILLIAM E. STINSON, ET AL.	2007-SC-000221-DG	HARDIN
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KENTUCKY FARM BUREAU MUTUAL INSURANCE COMPANY V. WILLIAM E. STINSON, ET AL.	2007-SC-000222-DG	HARDIN
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IRA E. BRANHAM, ET AL. V. ELIZABETH STEWART, GUARDIAN OF THE ESTATE AND THE PERSON OF GARY RYAN STEWART, AN INCOMPETENT ADULT	2007-SC-000250-DG	PIKE
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SUPREME COURT OF KENTUCKY

MINUTES

JANUARY 24, 2008

RELEASED: 2:00 P.M.

**COURT ORDERS GRANTING MOTION FOR DISCRETIONARY REVIEW –
JANUARY 16, 2008**

DIRECTV, INC., ET AL. V. MARK TREESH, IN HIS OFFICIAL CAPACITY AS COMMISSIONER OF THE DEPARTMENT OF REVENUE AND FRANKFORT INDEPENDENT SCHOOL DISTRICT	2007-SC-000714-DG	FRANKLIN
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**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW –
JANUARY 16, 2008**

DURAND EDWARD MURRELL-BEY V. COMMONWEALTH OF KENTUCKY	2006-SC-000277-D	JEFFERSON
KENTUCKY UNEMPLOYMENT INSURANCE COMMISSION V. JAMES P. COUCH, ET AL. COURT OF APPEALS' OPINION ORDERED NOT TO BE PUBLISHED.	2006-SC-000618-D	BREATHITT
UNITED SERVICES AUTOMOBILE ASSOCIATION (USAA), ET AL. V. ADT SECURITY SERVICES, INC., ET AL.	2006-SC-000747-D	FAYETTE
ROBREYLL L. WATKINS V. COMMONWEALTH OF KENTUCKY	2007-SC-000045-D	FAYETTE
JIMMY "BO" BUSH V. COMMONWEALTH OF KENTUCKY	2007-SC-000209-D	MENIFEE
SHERIDAN TRAIL-LIKOY V. SAINT JOSEPH HEALTHCARE, INC., ET AL.	2007-SC-000261-D	FAYETTE
DR. BRENT HAEBERLE V. DRS. MCCALL, CURRENS, TOPOR & THOMPSON, P.S.C.	2007-SC-000356-D	JEFFERSON

SUPREME COURT OF KENTUCKY

MINUTES

JANUARY 24, 2008

RELEASED: 2:00 P.M.

**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW –
JANUARY 16, 2008**

JERRY LAYTON V. COMMONWEALTH OF KENTUCKY COURT OF APPEALS' OPINION ORDERED NOT TO BE PUBLISHED.	2007-SC-000385-D	BALLARD
KENTUCKY RETIREMENT SYSTEMS V. JOAN WILSON	2007-SC-000422-D	FRANKLIN
RODNEY SMITH V. COMMONWEALTH OF KENTUCKY	2007-SC-000439-D	JEFFERSON
TERRY KALER V. HOPKINSVILLE CHRISTIAN COUNTY BOARD OF EDUCATION, ET AL.	2007-SC-000500-D	CHRISTIAN
COMMONWEALTH OF KENTUCKY V. ROBERT L. DOBSON	2007-SC-000621-D	FAYETTE
TERRY MONTGOMERY V. BOARD OF TRUSTEES OF THE KENTUCKY RETIREMENT SYSTEMS	2007-SC-000665-D	FRANKLIN
KENNETH "PETE" GALLOWAY, ET AL. V. ERNIE FLETCHER, GOVERNOR, ET AL.	2007-SC-000701-D	FRANKLIN
THOMAS NEAL JACKSON V. COMMONWEALTH OF KENTUCKY	2007-SC-000705-D	LAUREL
EMANUAL ANTHONY ELLIOTT V. COMMONWEALTH OF KENTUCKY	2007-SC-000709-D	JEFFERSON
JOYCE CRABTREE V. COMMONWEALTH OF KENTUCKY	2007-SC-000798-D	BREATHITT

SUPREME COURT OF KENTUCKY

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JANUARY 24, 2008

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**COURT ORDERS DENYING MOTION FOR DISCRETIONARY REVIEW –
JANUARY 16, 2008**

A.G. AND K.G. V. COMMONWEALTH OF KENTUCKY, CABINET FOR HEALTH AND FAMILY SERVICES, DEPARTMENT FOR COMMUNITY BASED SERVICES	2007-SC-000807-DE	FRANKLIN
CHRISTOPHER A. WILLIAMS V. RACHEL A. CUNNINGHAM	2007-SC-000855-DE	JEFFERSON

**COURT ORDERS DENYING BELATED MOTION FOR ENLARGEMENT OF TIME TO FILE
MOTION FOR DISCRETIONARY REVIEW – JANUARY 15, 2008**

LARRY D. BRUNER V. COMMONWEALTH OF KENTUCKY	2007-SC-000747-D	JEFFERSON
LEONARD GROVES JR. V. COMMONWEALTH OF KENTUCKY	2007-SC-000859-D	HARDIN
LEWIS BISHOP V. COMMONWEALTH OF KENTUCKY	2007-SC-000909-D	MADISON

COURT ORDERS DENYING MOTION TO TRANSFER – JANUARY 24, 2008

SHIRLEY A. CUNNINGHAM JR., ET AL. V. MILDRED ABBOT (AND OTHERS AS LISTED IN THE NOTICE OF APPEAL) AND CHARLOTTE BAKER, ET AL. V. STANLEY M. CHESLEY, ET AL.	2007-SC-00712-T	BOONE
AND MILDRED ABBOT (AND OTHERS AS LISTED IN THE NOTICE OF APPEAL) V. STANLEY M. CHESLEY, ET AL.	2007-SC-00805-T	BOONE
	2007-SC-00806-T	BOONE

SUPREME COURT OF KENTUCKY

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JANUARY 24, 2008

RELEASED: 2:00 P.M.

COURT ORDERS DENYING PETITION FOR REHEARING – JANUARY 24, 2008

GREGORY IRVIN GOETZ V. 2004-SC-001002-MR CAMPBELL
COMMONWEALTH OF KENTUCKY

BITUMINOUS CASUALTY CORPORATION V. [2005-SC-000013-DG](#) WARREN
KENWAY CONTRACTING, INC., ET AL.
**ORDER MODIFIED OPINION
RENDERED JUNE 21, 2007 AND
MODIFIED DECEMBER 21, 2007, BY
SUBSTITUTION OF PAGES 1 AND 12.**

DEBORAH L. HUIETT V. [2005-SC-000643-MR](#) BOONE
COMMONWEALTH OF KENTUCKY
**ORDER MODIFIED OPINION
RENDERED JUNE 21, 2007, BY
SUBSTITUTION OF NEW OPINION.**

COMMONWEALTH OF KENTUCKY V. 2005-SC-000981-DG FRANKLIN
RONNIE LEE COKER

COURT ORDERS DISMISSING – JANUARY 17, 2008

BURGESS HARRISON YONTS V. 2007-SC-000266-MR CALLOWAY
COMMONWEALTH OF KENTUCKY 2007-SC-000710-TG

BETTY PELGEN, 2007-SC-000506-D CAMPBELL
ADMINISTRATRIX OF THE ESTATE OF
CHARLES R. SWOPE, DECEASED V.
NATIONWIDE MUTUAL FIRE COMPANY

CLIFFORD WARFIELD V. 2007-SC-000728-OA IN SUPREME
HON. STEPHEN P. RYAN, JUDGE, COURT
JEFFERSON CIRCUIT COURT, ET AL.

SUPREME COURT OF KENTUCKY

MINUTES

JANUARY 24, 2008

RELEASED: 2:00 P.M.

COURT ORDERS DISMISSING –

WILLIAM WALKER V.
HON. JOHN GRISE, JUDGE,
WARREN CIRCUIT COURT, ET AL.
ENTERED: JANUARY 15, 2008

2007-SC-000772-MR

WARREN

BOBBY SMITH, INDIVIDUALLY, ET AL. V.
KENTUCKY LEATHER COMPANY, ET AL.
ENTERED: JANUARY 3, 2008

2007-SC-000911-D

BELL

KENTUCKY BAR ASSOCIATION.,
CLE COMMISSION V.
TODD WILLIAM MINOR
ENTERED: JANUARY 11, 2008

2008-SC-000027-KB

IN SUPREME
COURT

COURT ORDERS

BITUMINOUS CASUALTY CORPORATION V.
KENWAY CONTRACTING, INC., ET AL.
**ORDER CORRECTED OPINION
RENDERED JUNE 21, 2007, BY
SUBSTITUTION OF PAGES 1, 8, AND 12.
ENTERED: DECEMBER 21, 2007**

[2005-SC-000013-DG](#)

WARREN

MARCO ALLEN CHAPMAN V.
COMMONWEALTH OF KENTUCKY
**ORDER MODIFIED OPINION
RENDERED AUGUST 23, 2007, BY
SUBSTITUTION OF PAGE 1 AND
THE CONCURRING OPINION OF
CHIEF JUSTICE LAMBERT.
ENTERED: DECEMBER 27, 2007**

[2005-SC-000070-MR](#)

BOONE

SUPREME COURT OF KENTUCKY

MINUTES

JANUARY 24, 2008

RELEASED: 2:00 P.M.

COURT ORDERS

CONOPCO, INC., A NEW YORK CORPORATION DOING BUSINESS UNDER THE ASSUMED NAME OF RAGU FOODS CO. /LIPTON CO. AND ITS EMPLOYEES AND AGENTS (WHOSE NAMES ARE NOT KNOWN) V. STEVEN L. BRATCHER
ORDER GRANTED DISCRETIONARY REVIEW AND REMANDED TO THE COURT OF APPEALS.
ENTERED: JANUARY 16, 2008

2005-SC-000897-DG

DAVISS

VANESSA MOST DURHAM V. KENTUCKY BAR ASSOCIATION
ORDER MODIFIED OPINION AND ORDER RENDERED DECEMBER 20, 2007, BY SUBSTITUTION OF PAGE 2.
ENTERED: JANUARY 7, 2008

[2005-SC-001006-KB](#)

IN SUPREME COURT

ROBERT YELL V. COMMONWEALTH OF KENTUCKY
ORDER CORRECTED OPINION RENDERED DECEMBER 20, 2007, BY SUBSTITUTION OF A NEW PAGE 1.
ENTERED: DECEMBER 21, 2007

[2006-SC-000327-MR](#)

LOGAN

COMMONWEALTH OF KENTUCKY V. CAROLYN HUFFINES
ORDER AFFIRMED.
ENTERED: JANUARY 22, 2008

2006-SC-000460-DG

JEFFERSON

SUPREME COURT OF KENTUCKY

MINUTES

JANUARY 24, 2008

RELEASED: 2:00 P.M.

COURT ORDERS

JO ANDREW WAKEFIELD V. 2007-SC-000187-DG JEFFERSON
MANNING EQUIPMENT, INC.
**ORDER GRANTED DISCRETIONARY
REVIEW AND REMANDED TO THE
COURT OF APPEALS FOR
RE-CONSIDERATION UNDER
GE V. CAIN, 2004-SC-000043-DG AND
REHM V. NAVISTAR, 2005-SC-000242-DGE.**
ENTERED: JANUARY 16, 2008

DAVID CAPERTON TEATER V. [2007-SC-000863-KB](#) IN SUPREME
KENTUCKY BAR ASSOCIATION **TO BE PUBLISHED** COURT
**ORDER PUBLICLY REPRIMANDED
MOVANT.**
ENTERED: JANUARY 24, 2008

PAUL HURT V. 2007-SC-000332-DG JEFFERSON
COMMONWEALTH OF KENTUCKY
ORDER DENIED MOTION TO RECONSIDER.
ENTERED: JANUARY 24, 2008

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

WILLIAM B. CLEMMENS JR. V. 2007-SC-000942-KB IN SUPREME
KENTUCKY BAR ASSOCIATION COURT
ENTERED: DECEMBER 21, 2007

CARLOTTA LUCY PALMER V. 2008-SC-000014-KB IN SUPREME
KENTUCKY BAR ASSOCIATION COURT
ENTERED: JANUARY 8, 2008