

COMMONWEALTH OF KENTUCKY
SUPREME COURT
FILE NO. 95-SC-001004

FILED

JUL 22 1997

COURT OF APPEALS OF KENTUCKY NO. 94-CA-0021-MR

CLERK
SUPREME COURT

**J. DENIS GIULIANI, Administrator of the
Estate of Mary K. Giuliani, Deceased;
J. DENIS GIULIANI, Individually; J. DENIS GIULIANI,
FATHER AND NEXT FRIEND OF JAMES M. GIULIANI, an
infant, KATHERINE M. GIULIANI, an infant, MARY K.
GIULIANI, an infant, and DAVID M. GIULIANI, an infant**

APPELLANTS

-v-

**APPELLANTS' MEMORANDUM IN
OPPOSITION TO APPELLEE'S
MOTION TO RECUSE**

**MICHAEL GUILER, M.D.; RICHARD BENNETT, M.D.;
VELMA TAORMINA, M.D.; UNIVERSITY OF KENTUCKY
MEDICAL CENTER RESIDENTS TRAINING PROGRAM;
and BAPTIST HEALTH CARE SYSTEMS, INC., D/B/A
CENTRAL BAPTIST HOSPITAL**

APPELLEES

Appellee Michael Guiler, M.D., filed a Motion to Recuse Special Justice Thomas Conway *after* this Court rendered an Opinion in favor of Appellants recognizing a child's right to loss of parental consortium.¹ Appellee had more than adequate pre-opinion opportunities to object to Special Justice Conway hearing this case. But Appellee never objected -- not when Conway was assigned, not when Conway was appointed and not when oral arguments were heard. Appellee only now objects after an unfavorable ruling has been rendered against him. Appellee's Motion should be denied for any one of the following four reasons: 1) by filing the Motion after the Opinion was

¹ Other Appellees have also filed Motions to Recuse Special Justice Conway, but their Motions are contained in their Petitions for Rehearing to which Appellant will be filing a separate Response. Appellee Guiler has also included a Motion to Recuse Special Justice Conway from hearing the case in the first instance in his Petitioner for Rehearing.

rendered, Appellee has waived any right to make such a motion under *Kentucky Utilities Company v. Southeast Coal Company*, Ky., 836 S.W.2d 407 (1992), *cert denied*, 506 U.S. 1090 (1993); 2) Appellee has made factual allegations against Special Justice Conway that are incorrect and unsupported by the record; 3) Appellee has presented no allegations or objections that warrant recusal; and 4) Appellee has followed the wrong procedure in seeking recusal because a) he failed to file any affidavit in support of his Motion and b) he improperly seeks to have Special Justice Conway recused from ruling on Appellee's Petition for Rehearing which are based primarily on the requested recusal of the Special Justice, which Special Justice Conway should decide himself. *Commonwealth Revenue Cabinet v. Smith*, Ky., 875 S.W.2d 873, 879 (1994), *cert denied*, 513 U.S. 1000 (1994).

Kentucky Utilities v. Southeast Coal, *supra*, requires this Court to overrule Appellee's Motion to Recuse on the merits. Appellants are also entitled to have the Motion to Recuse overruled because the Appellee's motion was not supported by affidavits and the reasons in support of Appellee's motion do not warrant recusal. If the Court overrules the motion on any of these grounds, the requested recusal should play no further part in this case and should not be considered in Appellee's Petition for Rehearing. At worst, Appellee's Motion to Recuse should be passed for consideration with Appellee's Petition for Rehearing because Special Justice Conway has a right to participate in that rehearing.

I. Appellee Has Waived Any Right To Move For Recusal.

Appellee's Motion to Recuse is untimely and therefore has been waived. *Kentucky Utilities v. Southeast Coal*, Ky., 836 S.W.2d at 409. All Appellees were notified of the assignment on January 2, 1997, of Special Justice Conway well in advance of oral argument held on March 21, 1997. (See January 2, 1997 Order attached at Tab 1). No Appellee objected to his assignment. No

Appellee objected to Special Justice Conway's actual appointment. (See March 21, 1997 Order attached at Tab 2). When Appellees appeared at oral argument in front of the Supreme Court, with Special Justice Conway sitting, no Appellee objected.

It was only after this Court entered its Opinion on June 19, 1997, in favor of Appellants that Appellee decided to move for recusal of Special Justice Conway. Appellee has had several opportunities and plenty of time (four months) to object to the appointment of Special Justice Conway but he elected not to until now. In *Kentucky Utilities v. Southeast Coal*, Ky., 836 S.W.2d 407 (1992), this Court specifically held that:

Fairness and good faith towards this Court require any issue regarding the appointment of a Special Justice to be raised at the earliest opportunity and certainly before rendition of an opinion by this Court. Southeast Coal Company's *voluntary participation, without objection, forecloses it from any retroactive complaint now.*

Kentucky Utilities v. Southeast Coal, Ky., 836 S.W.2d at 409 (emphasis added). This ruling is dispositive of Appellee's recusal motion. All Appellees were notified of the Special Justice assignment and appointment and did not object. Appellee participated in oral argument and did not object. Appellee only now objects after this Court has rendered an opinion which Appellee does not like. Parties cannot be allowed to pick and choose who hears their cases, particularly after the outcome is known. Waiting until an opinion has been rendered and then deciding, because the result is unfavorable, to request a new justice is forum shopping, a practice not condoned in any form by this Court. In *Kentucky Utilities v. Southeast Coal*, this Court was unequivocal in holding that if a party fails to make a recusal motion before the rendition of an opinion by the Supreme Court, that any retroactive motion for recusal is foreclosed. On these grounds alone, Appellee's Motion for Recusal should be denied.

II. Appellee's Factual Allegations Are Wrong

Appellee makes three basic allegations against Special Justice Conway: 1) that he has a close professional relationship with Oldfather & Morris attorneys; 2) that he has a social relationship with Oldfather & Morris attorneys; and 3) he is a member of the "plaintiffs' bar." While none of these objections provide valid reasons for recusal, at least two of them are factually incorrect. Further, the factual allegations are based on hearsay which is not a valid basis for recusal. *Schmidt v. Mitchell*, Ky., 41 S.W.2d 929, 934 (1897).

Lacking any supporting affidavits, Appellee baldly asserts that Special Justice Conway "has a longstanding social and friendship relationship to one or more of the members of Oldfather & Morris." That allegation is not true. The firm of Oldfather & Morris has four attorneys: Ann B. Oldfather, Douglas H. Morris, James O. Barrett and Jennifer Jordan Hall. No member of Oldfather & Morris has socialized with Special Justice Conway or has a personal relationship with Special Justice Conway. (See Affidavits of Ms. Oldfather, Mr. Morris, Mr. Barrett and Ms. Hall attached at Tabs 3-6). No personal or social relationships exist between any member of Oldfather & Morris and Special Justice Conway from which one could infer that Special Justice Conway had a bias or interest in Oldfather & Morris winning this case. (See Oldfather & Morris affidavits at Tabs 3-6).

Appellee also accuses Special Justice Conway of having a "professional relationship" with members of Oldfather & Morris, including the "referral of cases." No Oldfather & Morris attorney has had anything more than a limited professional relationship with Special Justice Conway. Special Justice Conway has been involved in only one case with Ann Oldfather and that was over thirteen years ago when he was on the opposite side of a case to Ms. Oldfather. Douglas Morris was on the opposite side from Special Justice Conway in one or more cases while Mr. Morris was with

the firm of Boehl, Stopher, Graves & Deindoerfer from 1976 to 1986. In 1994, Special Justice Conway withdrew from a case that was then taken over by Douglas Morris, a case which has since settled. (See Morris Affidavit at Tab 4). Special Justice Conway received no referral fees from Oldfather & Morris nor did he have any financial interest in the outcome of that case. Likewise, Oldfather and Morris has never received any referral fees from Special Justice Conway.

For Appellee to imply that a Special Justice is not fit to hear a case because of a limited professional relationship he or she may have with litigant's counsel is extreme and unsupported by KRS 26A.015 or Canon 3 of the Code of Judicial Conduct. All seven justices of the Supreme Court will know many lawyers from their district, from their activities in various bar association activities and from sitting on the bench. It is to be expected that justices would be actively involved in the bar and would have professional contact with many lawyers over the course of their careers. Special Justice Conway's relationship with Oldfather & Morris attorneys is no more involved than this and does not warrant recusal.

III. Appellees Present No Valid Reason For Recusal Under KRS 26A.015 Or Canon 3 Of The Code Of Judicial Conduct

Appellee's remaining allegation in his Motion to Recuse is that Special Justice Conway is a member of the "plaintiffs' bar." First, Appellants' counsel has never inquired of Special Justice Conway the nature of his practice. While he does represent plaintiffs, Special Justice Conway may also represent defendants who might not benefit from the Court's ruling. Appellants have no idea of the actual composition of Special Justice Conway's practice nor does this Court, as there are no affidavits to support Appellee's contentions. Further, this is not a valid reason for a Special Justice to be recused. "A party's mere belief that the judge will not afford a fair and impartial trial is not

sufficient grounds to require recusal.” *Webb v. Commonwealth, Ky.*, 904 S.W.2d 226, 230 (1995).

Under the Judicial Code of Judicial Conduct “a judge should disqualify himself” where:

(a) he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

(c) he knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

...

Canon 3C(1), Code of Judicial Conduct, SCR 4.300.

Appellee argues that Special Justice Conway is unfit to hear this case because he represents plaintiffs’ and may “stand to obtain a financial benefit by recognition of the cause of action for a child’s loss of consortium.” The code defines “financial interest” as “ownership of a legal or equitable interest, however small, or relationship as a director, advisor or other active participant in the affairs or a party.” Canon 3C(3)(c). Appellee’s allegations do not rise to that level of financial interest. Disqualification must be limited to tangible financial interests.

A general assertion that an attorney who represents plaintiffs might make money as a result of this ruling does not qualify as a financial interest warranting recusal. All attorneys are free to handle plaintiffs’ cases and any attorney sitting as Special Justice therefore could be recused on these grounds. Appellees argue for recusal on vague and currently non-existing financial interests. Such a broad recusal motion is no more valid than if Appellee moved to recuse any justice who has

children. For example, under Appellee's argument, no justice could ever have heard *Hilen v. Hays*, because anyone who might be involved in an automobile accident would benefit from the shift from contributory to comparative negligence. By its nature the Supreme Court makes rulings that change the law. Under Appellee's argument, no Supreme Court Justice could ever leave the bench and return to private practice because they have decided claims that affect the development of Kentucky law. Any larger societal benefits of a ruling do not destroy the ability of judges to be judicious and impartial. Lawyers who are appointed Special Justices must take an oath to uphold those standards of judicial impartiality.

In effect, Appellee seems to be attacking the propriety of any lawyer sitting as a Special Justice. Lawyers who sit as Special Justices could always be accused of having a financial interest in any case they hear. They could be retained to work on a similar case or be paid by the hour to give consulting advice. But, the Supreme Court has decided that lawyers are able and capable of sitting as Special Justices. The Supreme Court has developed a "Procedure For Appointment of a Special Justice of the Supreme Court of Kentucky" whereby this Court set up a procedure for selecting *lawyers* to serve as Special Justices. See *Kentucky Utilities v. Southeast Coal, Ky.*, 836 S.W.2d at 410. Merely because Special Justice Conway is a member of the plaintiff's bar does not make him an unqualified lawyer to sit on the Supreme Court as a Special Justice. If Appellee had his way, the only justices on the Supreme Court would be defense attorneys, who presumably would irrevocably commit to maintain solely a defense practice thereafter. The Supreme Court is composed of justices with a variety of professional backgrounds. This diversity can only bolster the intellectual integrity of this Court's Opinions.

Appellee also implies that because this case creates a new cause of action, that the case

should be treated differently from other cases and that there should be a different standard for recusal. In *Carter v. Commonwealth*, Ky. App., 641 S.W.2d 758, 760 (1982), the Court held that KRS 26A.015 does not condition a judge's disqualification on the type of ruling involved. In terms of recusal, this case is different from no other. Appellee has not alleged that Special Justice Thomas Conway has any personal interest in this case nor any specific financial interest in the litigants or litigation in this case as is required by Canon 3 of the Code of Judicial Conduct or KRS 26A.015. Appellee has presented no valid reason why Special Justice Conway should be recused and Appellee's Motion should be denied.

IV. Appellee's Motion for Recusal Is Procedurally Improper.

A. Appellee Failed To File An Affidavit In Support Of His Motion.

Appellee filed his Motion to Recuse without filing any affidavit in support of that motion. Two statutes govern motions for recusal, KRS 26A.015 (which mirrors Canon 3 of the Code of Judicial Conduct, SCR 4.300) and KRS 26A.020. Only one, KRS 26A.020, sets forth the procedure a party should follow in filing a recusal motion and it specifically requires that a party must file an affidavit in support of such motion. However, KRS 26A.020 is limited to recusal of district and circuit court judges by the Chief Justice in "cases where a judge has declined to disqualify himself or herself." *Foster v. Overstreet*, Ky., 905 S.W.2d 504, 505 (1995). On the other hand, KRS 26A.015, does encompass recusal of Supreme Court Justices and Special Justices, but it does not provide specific procedures for the recusal process. It only provides that the judge or justice himself shall make the recusal decision and provides the factors on which that decision shall be made. Since KRS 26A.015 does not specify any procedure for recusal, the Civil Rules of Procedure apply. (*See*

Foster v. Overstreet, supra, it is the power of judiciary to make its own rules of procedure unless the Court grants legislative comity, which it did with KRS 26A.020). CR 43.12 provides that “When a motion is based on facts not appearing of record the court may hear the matters on affidavits presented by the respective parties, but the Court may direct the matter to be heard wholly or partly on oral testimony or depositions.” CR 43.12. Appellee has made several allegations in his Motion to Recuse regarding Special Justice Conway’s personal financial interests in this case and his professional and personal relations with Appellants’ counsel. Those are all facts not in the record in this case and in order for Appellee to present them to this Court he should have submitted an affidavit to support his allegations. No such affidavit was submitted and Appellee failed to provide this Court with any proof in support of his allegations of impropriety. In fact, Appellee’s allegations are factually incorrect. *See* Arguments II and III, *supra*. Appellee’s Motion for Recusal is procedurally deficient and should be denied.

B. Special Justice Conway Should Rule
On Appellee’s Recusal Motions

Appellee Guiler has divided his Motion to Recuse into two parts. In his separate Motion to Recuse, he requests that Special Justice Conway be recused from further proceedings in this case. In his Petition for Rehearing (to which Appellants will be filing a separate response), Appellee also moves for recusal, arguing that Special Justice Conway was improperly impaneled, never should have heard the case and should be recused, and then requests a new hearing before a new panel.² The only apparent reason Appellee Guiler has separated his Motion for Recusal into two

² As Appellants will more fully address in their Opposition to Appellees’ Petitions for Rehearing, Appellees’ request for a new hearing is not proper relief allowable under a recusal motion. *See* SCR 1.020(1)(a). Appellee cites no authority whereby this Court could grant him a new hearing.

parts is to prevent Special Justice Conway from ruling on the Petition for a Rehearing (which is based in part on the requested recusal). This is antithetical to this Court's rules regarding recusal.

This Court has specifically ruled that "recusal is a personal matter to be decided by each individual justice in the absence of any so-called *per se* disqualification or statutory prohibition. *Commonwealth Revenue Cabinet v. Smith*, Ky., 875 S.W.2d at 879. Here, Appellees have cited no *per se* disqualification or statutory prohibition against Special Justice Conway hearing this case. KRS 26A.015 sets forth the situations in which a judge should be disqualified and specifically states that that disqualification is done by the judge himself:

Any justice or judge of the Court of Justice or master commissioner
shall disqualify himself in any proceeding:

...

KRS 26A.015(2).

That is exactly the procedure followed by this Court in *Kentucky Utilities v. Southeast Coal* when the Court was asked to recuse a Special Justice and was then asked to have the entire Court recuse itself from considering the motion to recuse the Special Justice. This Court, *with the Special Justice sitting*, ruled that the Court as a whole and the Special Justice were the proper persons to rule on the motions for recusal:

A Justice is not disqualified from consideration of a case by participation in the promulgation of procedure regarding the administration of the Court of Justice any more than a Justice who has voted on a case, thereby expressing an opinion on the merits, is barred from considering a petition for rehearing.

Kentucky Utilities v. Southeast Coal, Ky., 836 S.W.2d at 408.

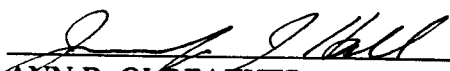
Appellee's Motion to Recuse -- which would prohibit Special Justice Conway from hearing any further motions -- should be denied since Special Justice Conway is the appropriate

Justice to determine whether or not to recuse himself and therefore should be able to rule on Appellees' Petitions for Rehearing (which contain recusal motions).

CONCLUSION

Appellee Guiler's Motion to Recuse Special Justice Conway from hearing any further proceedings in this case should be denied. Appellee's Motion for Recusal was filed after this Court had rendered its Opinion and therefore is waived under *Kentucky Utilities v. Southeast Coal, supra*. Further, the factual allegations that form the basis of Appellee's Motion to Recuse are incorrect, are hearsay, and are not supported by affidavit. Additionally, Appellee has presented no valid reason under the Code of Judicial Conduct for Special Justice Conway to be recused. Finally, a Special Justice should be able to rule on a motion to recuse himself and Appellee Guiler's Motion to Recuse the Special Justice from hearing all further motions in this case would improperly prohibit Special Justice Conway from doing that, as Appellees' Petitions for Rehearing are based primarily on the requested recusal of the Special Justice. On any one or all of these grounds, the Court should deny Appellee's Motion to Recuse.

Respectfully submitted,


ANN B. OLDFATHER
JENNIFER JORDAN HALL
OLDFATHER & MORRIS
1330 South Third Street
Louisville, Kentucky 40208
(502) 637-7200

CERTIFICATE OF SERVICE

It is hereby certified that a copy hereof was this 21st day of July, 1997, mailed to Hon. John R. Adams, Judge, Fayette Circuit Court, Division 4, Fayette County Courthouse, 215 W. Main St., Lexington, KY 40507; Hon. George Fowler, Clerk, Kentucky Court of Appeals, 360 Democrat Boulevard, Frankfort, KY 40601; David C. Trimble, Esq., 2800 Lexington Financial Center, Lexington, KY 40507, Kenneth W. Smith, Esq., Ste. 200, 167 W. Main St., Lexington, KY 40507; William T. Adkins, Ronald L. Greene, Esq., 444 W. Second St., Lexington, KY 40507; and William J. Gallion, Esq., 200 W. Vine St., Ste. 710, Lexington, KY 40507-1620, Counsel for Appellees.



JENNIFER JORDAN HALL

RECEIVED

Supreme Court of Kentucky

95-SC-001004-DG

J. DENIS GIULIANI, Administrator
of the Estate of Mary K. Giuliani,
Deceased; J. DENIS GIULIANI, Individually;
J. DENIS GIULIANI, FATHER AND NEXT FRIEND
OF JAMES M. GIULIANI, an infant; KATHERINE
M. GIULIANI, an infant; MARY K. GIULIANI,
an infant and DAVID M. GIULIANI, an infant

APPELLANTS

V. ON REVIEW FROM COURT OF APPEALS
NO. 95-CA-000021
(Fayette Circuit Court No. 93-CI-000223)

MICHAEL GUILER, M.D.; BAPTIST HEALTH CARE
SYSTEMS, INC., D/B/A CENTRAL BAPTIST HOSPITAL;
VELMA TAORIMINA, M.D.; UNIVERSITY OF KENTUCKY
MEDICAL CENTER RESIDENTS TRAINING PROGRAM

APPELLEES

ORDER ASSIGNING SPECIAL JUSTICE

The Honorable Martin E. Johnstone, Justice, 4th Supreme Court District, having declined to sit in this matter, it is ordered that Honorable F. Thomas Conway, a practicing attorney in Louisville, Kentucky, and a member of the Kentucky Bar, is temporarily assigned as a Special Justice of the Supreme Court of Kentucky, in order to preside over this matter until final determination.

ENTERED January 2, 1997.

Robert F. Stephens

Chief Justice

Supreme Court of Kentucky

95-SC-1004-DG

J. DENIS GIULIANI, Administrator
of the Estate of Mary K. Giuliani,
Deceased; J. DENIS GIULIANI, Individually;
J. DENIS GIULIANI, FATHER AND NEXT FRIEND
OF JAMES M. GIULIANI, an infant; KATHERINE
M. GIULIANI, an infant; MARY K. GIULIANI,
an infant and DAVID M. GIULIANI, an infant

MOVANTS

V. ON REVIEW FROM COURT OF APPEALS
95-CA-021
FAYETTE CIRCUIT COURT NO. 93-CI-223

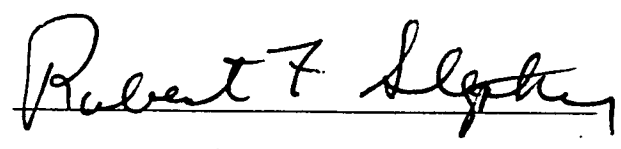
MICHAEL GUILER, M.D.; BAPTIST HEALTH CARE
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VELMA TAORIMINA, M.D.; UNIVERSITY OF KENTUCKY
MEDICAL CENTER RESIDENTS TRAINING PROGRAM

RESPONDENTS

ORDER

The Honorable F. Thomas Conway, a practicing attorney in
Louisville, Kentucky, and a member of the Kentucky Bar, who was
appointed by Chief Justice Robert F. Stephens to sit as a Special
Justice of the Kentucky Supreme Court in the determination of
this cause by the disqualification of Justice Martin B.
Johnstone, was on this date, prior to the oral argument and prior
to any consideration of this cause, administered the
Constitutional Oath by the undersigned.

ENTERED March 21, 1997.



Chief Justice

COMMONWEALTH OF KENTUCKY
SUPREME COURT
FILE NO. 95-SC-001004

COURT OF APPEALS OF KENTUCKY NO. 94-CA-0021-MR

J. DENIS GIULIANI, etc.

APPELLANTS

-v-

AFFIDAVIT OF ANN B. OLDFATHER

MICHAEL GUILER, M.D., et al

APPELLEES

Comes the affiant, Ann B. Oldfather, Esq., after first being duly sworn, and states as follows to the best of her knowledge and belief:

1. My name is Ann B. Oldfather. I am an attorney authorized and admitted to practice law in the Commonwealth of Kentucky and I am one of the attorneys of record for the Appellants. I am a partner at Oldfather & Morris, 1330 South Third Street, Louisville, Jefferson County, Kentucky, 40208.

2. My professional relationship with Special Justice Thomas Conway is limited in nature. I have never worked with Special Justice Conway on a case. Special Justice Conway has never referred me any cases. Oldfather & Morris has never received any referral fee from Special Justice Conway.

3. The only professional contact I have had with Special Justice Conway was over thirteen years ago when he and I represented opposing parties in a case. To the best of my recollection we have not been involved in any other cases together.

4. I have no personal or social relationship with Special Justice Conway. I have never socialized with him in any manner. For example, we have never served on any boards together,

done any recreational activities together or gone to any private parties together.

5. My relationship with Special Justice Conway is limited to our knowing each other as members of the Louisville legal community. We have no special personal or professional ties or connections.

6. I am physically unable to attest before an officer to sign this affidavit because I am away on vacation outside of the continental United States. I have asked and authorized Jennifer Jordan Hall, my co-counsel in this case, to sign on my behalf pursuant to CR 43.13(1).

Further, Affiant sayeth naught.

Ann B. Oldfather
Ann B. Oldfather
by Jennifer Jordan Hall

Subscribed and sworn to and acknowledged before me by Jennifer Jordan Hall this
18th day of July, 1997.

My commission expires: July 9, 2001

Merrita Warrick
NOTARY PUBLIC, KENTUCKY STATE AT LARGE

**COMMONWEALTH OF KENTUCKY
SUPREME COURT
FILE NO. 95-SC-001004**

COURT OF APPEALS OF KENTUCKY NO. 94-CA-0021-MR

J. DENIS GIULIANI, etc.

APPELLANTS

-v-

AFFIDAVIT OF DOUGLAS H. MORRIS

MICHAEL GUILER, M.D., et al

APPELLEES

*** * * * ***

Comes the affiant, Douglas H. Morris, Esq., after first being duly sworn, and states as follows to the best of his knowledge and belief:

1. My name is Douglas H. Morris. I am an attorney authorized and admitted to practice law in the Commonwealth of Kentucky. I am a partner at Oldfather & Morris, 1330 South Third Street, Louisville, Jefferson County, Kentucky, 40208.

2. My professional relationship with Special Justice Conway is of a limited nature.

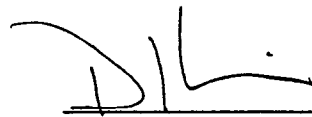
3. I first met Special Justice Conway while I was with the law firm of Boehl, Stopher, Graves & Deindoerfer in Louisville, Kentucky. I was with that firm from 1976 to 1986. That firm did primarily insurance defense work. While an attorney there, I am sure I worked on cases as defense counsel in which Special Justice Conway was plaintiff's counsel. However, I can only remember one such case in which I had significant participation. That case went to trial and was resolved by jury verdict. I remember very few of the details except that it was an automobile accident case. To the best of my knowledge, I had no other significant professional contact with Special Justice Conway during that time.

4. I have been a partner in the law firm of Oldfather & Morris since 1986., To the best of my knowledge I have been involved in only one case that has had any connection to Special Justice Conway. In 1994, I was employed as Kentucky counsel and primary trial counsel on behalf of Kassandra and Tom Gannon in the case of *Kassandra Gannon and Tom Gannon v. Home Supply Company, d/b/a Galt House East*, Case No. 92-CI-01259 in the Jefferson Circuit Court. Kassandra and Tom Gannon were Texas residents. While in Louisville for a business meeting, Kassandra Gannon was sexually assaulted at the Galt House hotel. The Gannons employed an attorney located in Corpus Christi, Texas by the name of William R. Edwards who then employed Special Justice Conway to serve as Kentucky counsel and to be primary trial counsel. In August of 1994, Thomas Conway withdrew from the case. I was substituted for Thomas Conway to serve as Kentucky counsel and primary trial counsel for Kassandra and Tom Gannon. I had, prior to that time, handled and settled a case against the Galt House involving similar allegations. I eventually settled the Gannon case in August 1995. Oldfather & Morris made no payments, including any referral fee, to Special Justice Conway as a result of our settling or handling that case.

5. I have not socialized with Special Justice Thomas Conway. I have never played golf with him, gone sailing with him, nor participated in any other recreational activities with him. I have not been to his home nor has he been to mine.

6. My personal relationship with Thomas Conway is limited to our knowing each other as members of the Louisville legal community. We have no special personal ties or relationships.

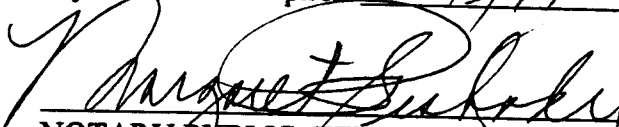
Further, Affiant sayeth naught.



Douglas H. Morris

Subscribed and sworn to and acknowledged before me by Douglas H. Morris this 21st
day of July, 1997.

My commission expires: 11/5/99



NOTARY PUBLIC, KENTUCKY STATE AT LARGE

COMMONWEALTH OF KENTUCKY
SUPREME COURT
FILE NO. 95-SC-001004

COURT OF APPEALS OF KENTUCKY NO. 94-CA-0021-MR

J. DENIS GIULIANI, etc.

APPELLANTS

-v-

AFFIDAVIT OF JAMES O. BARRETT

MICHAEL GUILER, M.D., et al

APPELLEES

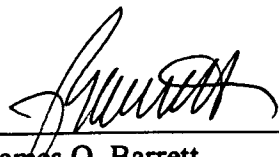
Comes the affiant, James O. Barrett, Esq., after first being duly sworn, and states as follows to the best of his knowledge and belief:

1. My name is James O. Barrett. I am an attorney authorized and admitted to practice law in the Commonwealth of Kentucky. I am an associate at Oldfather & Morris, 1330 South Third Street, Louisville, Jefferson County, Kentucky, 40208.

2. I have a limited professional relationship with Special Justice Conway. He has never referred any cases to me nor have we been involved in any cases together. I know him by name, sight and reputation.

3. I do not socialize with or have any personal relationship with Special Justice Conway.

Further, Affiant sayeth naught.




James O. Barrett

Subscribed and sworn to and acknowledged before me by James O. Barrett this

21st day of July, 1997.

My commission expires: 11/15/99


NOTARY PUBLIC, KENTUCKY STATE AT LARGE

COMMONWEALTH OF KENTUCKY
SUPREME COURT
FILE NO. 95-SC-001004

COURT OF APPEALS OF KENTUCKY NO. 94-CA-0021-MR

J. DENIS GIULIANI, etc.

APPELLANTS

-v-

AFFIDAVIT OF JENNIFER JORDAN HALL

MICHAEL GUILER, M.D., et al

APPELLEES

Comes the affiant, Jennifer Jordan Hall, Esq., after first being duly sworn, and states as follows to the best of her knowledge and belief:

1. My name is Jennifer Jordan Hall. I am an attorney authorized and admitted to practice law in the Commonwealth of Kentucky and am one of the attorneys of record for Appellants. I am an associate at Oldfather & Morris, 1330 South Third Street, Louisville, Jefferson County, Kentucky, 40208.

2. My professional relationship with Special Justice Thomas Conway is very limited in nature. I know him only by sight and reputation. I never been involved in a case with him. Special Justice Conway has never referred any cases to me.

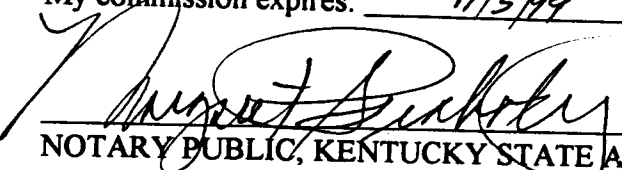
3. I do not socialize with or have a personal relationship with Special Justice Conway.

Further, Affiant sayeth naught.


Jennifer Jordan Hall

Subscribed and sworn to and acknowledged before me by Jennifer Jordan Hall this
21st day of July, 1997.

My commission expires: 11/5/99


NOTARY PUBLIC, KENTUCKY STATE AT LARGE