

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

FILED

AUG 06 1997

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' RESPONSE IN OPPOSITION TO
APPELLEE GUILER'S MOTION FOR LEAVE TO
FILE SUPPLEMENTAL EVIDENCE IN SUPPORT
OF 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 Guiler's Motion for Leave to File Supplemental Evidence in support of
his Motion to Recuse should be denied for three reasons:

1) Any evidence regarding Special Justice Thomas Conway's fitness to serve
as a Special Justice could have been and should have been filed with Appellee Guiler's Motion to
Recuse. Appellee Guiler failed to provide any proof in support of his Motion to Recuse and has
given this Court no valid procedural reason to allow him to do so now.

2) If Special Justice Conway is such a "prominent" member of the Plaintiff's
bar in Kentucky, "proof" of this was readily available at the time Appellee made his Motion to
Recuse, not to mention at the time Special Justice Conway was assigned to this case in January,
1997.

3) Appellee Guiler's Motion for Leave to File Supplemental Evidence, is, in effect, supplemental argument and is therefore inappropriate. Appellee Guiler does not just present "proof" in support of his motion, but also makes substantive arguments (repetitive though they may be) regarding recusal. He continues to blur the line between a litigant's right to claim parental consortium and an alternative method of fee calculation (contingent v. hourly) and to illogically contend that a Special Justice who has represented plaintiffs can only serve on the court if he rules the way the defense bar wants him to. Such supplemental argument is not allowed under the Civil Rules.

For these reasons, Appellee's Motion for Leave to File Supplemental Evidence should be denied.

Respectfully submitted,

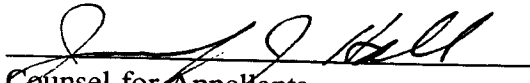


ANN B. OLDFATHER
JENNIFER JORDAN HALL
OLDFATHER & MORRIS
1330 South Third Street
Louisville, Kentucky 40208
(502) 637-7200

CERTIFICATE OF SERVICE

It is hereby certified that a copy hereof was this 5th day of August, 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, Esq., 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.


Counsel for Appellants