

FILED

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

JUL 08 1997

J. DENIS GIULIANI, ET AL.

CLERK
APPELLANTS
SUPREME COURT

V.

MICHAEL GULER, M.D., ET AL.

APPELLEES

ON APPEAL FROM THE COURT OF APPEALS OF KENTUCKY
NO. 94-CA-0021

MOTION TO RECUSE

Appellee, Michael Guiler, M.D., by counsel, hereby Moves the Court to recuse Special Justice Thomas Conway from any further consideration of this appeal. As grounds for this Motion, Appellee states as follows:

Since the entry of the Court's Opinion in this case, information has been brought to the attention of the undersigned counsel which raises substantial questions about the propriety of the appointment of Hon. F. Thomas Conway to sit as a Special Justice in this case. This information includes the following points:

1. That Special Justice Conway in his private practice regularly represents plaintiffs in medical malpractice and other types of action as well, where both he and his clients in present and/or future cases stand to obtain a financial benefit by recognition of a cause of action for a child's loss of consortium;
2. That Special Justice Conway is a member of ATLA and KATA, both of which have actively lobbied for recognition of a cause of action for a child's loss of consortium;
3. That Special Justice Conway has a professional relationship to one or more members

of Oldfather & Morris, counsel for Appellants, which relationship is believed to have included referrals of cases; and

4. That Special Justice Conway also has a longstanding social and friendship relationship to one or more of the members of Oldfather & Morris.

Canon 2 of the Code of Judicial Conduct, SCR 4.300, states that **“A Judge should avoid impropriety and the appearance of impropriety in all of his activities.”** This theme is carried throughout the entire Code - that those who accept the responsibility and honor of a seat on the bench of the Court of Justice shall, in all respects, act in a manner to uphold the integrity and independence of the courts. The mere appearance of impropriety in any form or fashion is in violation of the Code, and is prohibited.


The Opinion entered by this Court will provide a cause of action for an entire new class of plaintiffs, and which will necessarily thus provide a new and enlarged source of contingent fee income for the attorneys who will represent them. This expansion of tort liability is clearly a benefit to the Plaintiff's Bar, and the seating of a Special Justice who is an active participant in that group as well as one who represents individuals who might well benefit from this change in the law, and through which he stands to gain personally through contingent fees, clearly taints these proceedings with the appearance of impropriety. The existence of any personal relationship to any litigant or their counsel only increases the taint.

This issue is simultaneously being placed before the Court as part of the basis for Rehearing of this appeal; the arguments contained therein are adopted and incorporated by reference within this motion.

WHEREFORE, Appellee respectfully requests that Special Justice Conway be recused from any and all further proceedings in this case.

NEWBERRY, HARGROVE & RAMBICURE, PSC

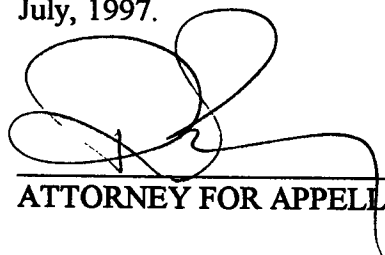
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ATTORNEY FOR APPELLEE
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This is to certify that a true copy of the foregoing Motion was served by first-class mail, postage prepaid to Ann Oldfather, Esq., Oldfather and Morris, 1330 South Third Street, Louisville, KY 40208; Kenneth W. Smith, Esq., Roberts & Smith, 167 West Main Street, Suite 200, Lexington, KY 40507; Gregory Jenkins, Esq., Boehl, Stoepher & Graves, 444 West Second Street, Lexington, KY 40507; William Gallion, Esq., Gallion, Baker & Bray, PNC Bank Plaza, Suite 710, 200 West Vine Street, Lexington, KY 40507; Hon. John R. Adams, Judge, Fayette Circuit Court, Fayette County Courthouse, 215 West Main Street, Lexington, KY 40507; and to Hon. George Fowler, Clerk, Kentucky Court of Appeals, 360 Democrat Drive, Frankfort, KY 40601; this 7 day of July, 1997.



ATTORNEY FOR APPELLEE MICHAEL GUILER, M.D.