



Supreme Court of Kentucky

M. Katherine Bing
Clerk

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Supreme Court of Kentucky

CLERK'S CERTIFICATION

I, M. Katherine Bing, Clerk of the Supreme Court of Kentucky, hereby certify that the Order of Disqualification, entered in ***In Re: Kenneth B. Ain, M.D. v. University of Kentucky, et al.***, Fayette Circuit Court, Div. 4, Case No. 23-CI-03018, on February 14, 2025, consisting of 10 pages, and that is attached to this Certification is a full, true, and correct copy of the Order of Disqualification as it appears on file in the Office of the Supreme Court Clerk.

So signed this 14th day of February 2025.

A handwritten signature in blue ink, appearing to read "M. Katherine Bing".

M. KATHERINE BING
CLERK, SUPREME COURT OF KENTUCKY

Supreme Court of Kentucky

FROM THE 22ND JUDICIAL CIRCUIT
FAYETTE CIRCUIT COURT, DIVISION 4
CASE NO. 23-CI-03018

IN RE:

KENNETH B. AIN, M.D.

PLAINTIFF

V.

UNIVERSITY OF KENTUCKY, ET AL.

DEFENDANTS

ORDER OF DISQUALIFICATION

This matter is before the Deputy Chief Justice¹ upon the certification of the Clerk of the Fayette Circuit Court of the motions and affidavits filed separately on behalf of Defendant, University of Kentucky (“University”); Defendants, William Eugene Thro, Catherine Lynn Allison, Margaret Mary Pisacano, and Paula Jane Holbrook (sometimes collectively “House Counsel”); and Defendant Belinda Blair, APRN, seeking to disqualify the Honorable Julie Muth Goodman, Circuit Judge for the 22nd Judicial Circuit, 4th Division, from presiding in the above-styled action.

The present case involves an employment dispute between the Plaintiff, Dr. Kenneth Ain, and several defendants after allegations of discrimination in the course of his medical practice as a physician at the University. Litigation began in this case upon the Plaintiff’s suit being filed in Fayette Circuit Court

¹ Because Chief Justice Lambert is recused from this matter, the defendant’s motion is before Deputy Chief Justice Conley for review.

on September 20, 2023,² solely against the University. Over the span of the next nine to ten months, litigation was on-going between the parties. While various people were discussed in the context of Plaintiff's employment, not until July 2024 did Plaintiff amend his Complaint to include the named parties currently before this Court, i.e., House Counsel and Blair, in addition to the University."³

Following inclusion as a named party to the complaint, Blair filed a Motion to Disqualify with the trial court on August 6, 2024. Subsequently, House Counsel filed a Motion for Recusal on August 20, 2024. These matters were jointly addressed in hearings on August 30 and September 6, 2024. At the time, the University had not filed for recusal. After arguments from the parties were heard on the record, Judge Goodman issued an order on October 16, 2024, denying both motions to disqualify. Prior to the issuance of this order, the University filed its own motion for recusal on September 25, 2024. This motion was not addressed in the trial court's October 16, 2024, order.

Upon denial of their motions for recusal by the trial court, counsel for Blair and House Counsel filed affidavits with the Chief Justice seeking to disqualify Judge Goodman pursuant to KRS⁴ 26A.020. Because the University had not received a ruling on its motion, the matter was remanded back to the

² See Plaintiff's Verified Complaint for Injunctive Relief (Sept. 20, 2023).

³ See Plaintiff's Second Amended Complaint to Include Additional Parties and Supplemental Claims . . ." (July 24, 2024).

⁴ Kentucky Revised Statutes.

trial court with direction for it to review the University’s recusal motion and make a ruling thereon.⁵ Upon remand, Judge Goodman issued an order denying the motion for recusal under KRS 26A.015 on November 22, 2024. At that time, this matter became ripe for consideration of each of the KRS 26A.020 affidavits.

KRS 26A.020 authorizes the Chief Justice, when prompted by an affidavit properly certified by the circuit clerk, to “determine whether to designate a regular or retired justice or judge of the Court of Justice as special judge” in a particular case.⁶ As to guidance for the Deputy Chief Justice in making such a determination, KRS 26A.020(1) is vague, merely requiring a party’s “affidavit that the judge will not afford . . . a fair and impartial trial,” and a paucity of case law exists to guide the Deputy Chief Justice’s decision. However, KRS 26A.015 offers guidance regarding as to when disqualification is appropriate. That statute provides, among other things, that a judge “shall disqualify himself in any proceeding . . . “[w]here he has knowledge of any other circumstances in which his impartiality might reasonably be questioned.”⁷ Similarly, Rule 2.11 of the Kentucky Code of Judicial Conduct provides that “a judge shall disqualify . . . herself in any proceeding in which the judge’s

⁵ See Supreme Court Order Remanding (Nov. 7, 2024).

⁶ KRS 26A.020(1).

⁷ KRS 26A.015(2)(e).

impartiality might reasonably be questioned[.]”⁸ On appellate review of a trial court’s determination under KRS 26A.015 and 26A.020, “consistent with . . . Rule 2.11, a judge’s bias or partiality is determined under an objective standard from the perspective of a reasonable observer who is informed of all the surrounding facts and circumstances.”⁹ The goal of these recusal provisions is to “avoid even the appearance of partiality so as to promote public confidence in the integrity of the judicial process.”¹⁰ While the Deputy Chief Justice’s determination under KRS 26A.020 is not a full review of a trial court’s decision, applying the objective standard to determine whether a judge’s impartiality might reasonably be questioned is similarly appropriate.

With the standard for disqualification defined, the question turns to whether Defendants have demonstrated a disqualifying situation that requires the appointment of a special judge. Each set of Defendants asserts a basis for why Judge Goodman should be disqualified from presiding over the case. Their arguments are taken in turn:

- The House Counsel Defendants argue disqualification is necessary for the criticisms expressed in statements and opinions by Judge Goodman towards these individuals acting in their roles as counsel.

⁸ Supreme Court Rule (SCR) 4.300, Rule 2.11(A).

⁹ *Phillip v. Rosquist*, 628 S.W.3d 41, 54 (Ky. 2021) (footnote omitted); *see also Abbott, Inc. v. Guirguis*, 626 S.W.3d 475, 484 (Ky. 2021) (“[A]n objective standard is appropriate for measuring whether a judge’s impartiality might reasonably be questioned from the perspective of a reasonable observer who is informed of all the surrounding facts and circumstances . . .”).

¹⁰ *Alred v. Commonwealth, Jud. Conduct Comm’n*, 395 S.W.3d 417, 430 (Ky. 2012) (citing *Petzold v. Kessler Homes, Inc.*, 303 S.W.3d 467, 472 (Ky. 2010)).

These comments include accusing them of acting in bad faith, violating the law, tampering with witnesses, and interfering in this litigation. In their motion, House Counsel cite to the record of April 6, 2024, to buttress their claim of partiality shown towards the Plaintiff after the Judge concluded she must be “sole protector” of the doctor.^{11,12}

- Defendant Blair argues Judge Goodman’s comments during a June 4, 2024, hearing are opinions born out of *ex parte* emails with Plaintiff.¹³ She argues, as an extrajudicial source, opinions formed therein are forbidden. Further, opinions expressed prior to Blair’s inclusion as a named party to the case raise the question of lack of impartiality.¹⁴
- Through retained counsel, Defendant University’s argument centers on the August 30 and September 6 hearings whereby disqualification motions of the co-defendants under KRS 26A.015 were handled. In those hearings, Judge Goodman opined that the University’s retained counsel had undertaken to individually represent each of the co-defendants throughout the course of the litigation. Therefore, in the mind of the trial court, the co-defendants’ recusal motions were untimely and waived. In this same vein, the Judge raised *sua sponte* concerns a conflict of interest arose upon filing of the Amended Complaint where defendants were individually named. With this expressed concern, Plaintiff’s counsel offered to dismiss the individually named parties if the University would stipulate to be bound by the actions of everyone named. The trial court discussed whether disqualification of retained counsel was necessary if stipulation did not occur.¹⁵ After the University chose to forgo stipulation, the recusal motions of co-defendants were denied. The trial court continued to express a belief, raised *sua sponte*, that conflicts existed in the case due in part to retained counsel’s own behavior.¹⁶

¹¹ See House Counsel 26A.015 Motion to Disqualify (Aug. 20, 2024)

¹² Transcript of Apr. 5, 2024, Hearing at 22-23.

¹³ The Deputy Chief Justice notes that email communications did include copies (cc’d) to all parties listed at that time within the case.

¹⁴ See Blair 26A.015 Motion to Disqualify (Aug. 6, 2024).

¹⁵ Transcript of Aug. 30, 2024, Hearing at 17-18, 37-39.

¹⁶ Transcript of Sept. 6, 2024, Hearing at 40-42.

In the trial court's orders of October 16 and November 22, 2024 denying the motions for recusal under KRS 26A.015, Judge Goodman addressed the parties' claims separately. As to House Counsel's and Blair's claims of improper *ex parte* email wherein substantive issues regarding parties and the temporary restraining order were handled, Judge Goodman stated "all decisions in this case concerning the TRO [Temporary Restraining Order], its continued enforcement, and potential findings of contempt were deferred to special on-the-record hearings wherein all parties were given the opportunity to brief the matter in writing, and to argue their positions on the record."¹⁷ Continuing, Judge Goodman addressed the claim that comments made on the record raise the specter of bias towards one party over another, stating "[t]he Court's statements regarding the actions of UK employees who violated the Court's TRO should be expected, and do not establish 'such a high degree of favoritism or antagonism as to make fair judgement impossible.'"¹⁸

In the order denying the motion for recusal by the University, Judge Goodman expressed a disagreement with the recitation of events during the hearings of August 30 and September 6 including the trial court's conflict concern:

As noted above, it is a clear misrepresentation of the facts by UK's counsel to state that this Court "threatened" UK in any way. There is no authority this Court is aware of which would allow it to force an attorney to withdraw, and likewise no authority allowing the

¹⁷ See Order at 15 (Oct. 16, 2024) (denying recusal motions).

¹⁸ *Id.* at 20

Court to order UK's counsel to engage in representation of Ms. Blair. To the extent this Court engaged in "threatening behavior" by asking UK's counsel if there was a potential obligation to withdraw if they had engaged in representing Ms. Blair and gained knowledge adverse to her in the process, these threats were merely imagined as the Court has no authority to force UK to take such action.¹⁹

The Judge noted she has heard at least nineteen cases with the University of Kentucky as a party during her time on the Circuit bench, none of which raised a potential claim of bias against the entity or its attorneys.

In the three affidavits under KRS 26A.020 before this Court, a litany of issues is raised and grounds stated as a basis for redress. Arguably, any one of these facts taken on its own may not be sufficient to justify disqualification. But looking at the totality of the circumstances, the Deputy Chief Justice finds a basis for concluding in this matter that Judge Goodman's impartiality might reasonably be questioned. Under SCR 4.300, Terminology, "impartial," "impartiality," and "impartiality" are defined as "absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind in considering issues that may come before a judge."

Most concerning are the statements of Judge Goodman during the hearing of April 5, 2024, where a lay observer could reasonably question partiality towards the Plaintiff and lack of impartiality against the Defendants in this case. The transcript reads:

¹⁹ See Order at 12 (Nov. 22, 2024) (denying recusal motions).

COUNSEL: (Inaudible)... Your Honor. The law says an injunction will not be granted on the ground merely of an anticipated danger –

JUDGE GOODMAN: --Oh, I think there is a danger.--**There is a continuing danger on a daily basis that this court, unfortunately, feels like it has to be the sole protector of this doctor,** based on the continued attacks on Dr. Ain's character, on his reputation, on his patients, and trying to send them letters that would imply that they've got this great staff that can care for him when in reality I heard the doctors themselves say not a single one of them can do what Dr. Ain did. I think everyone has acknowledged is he exceptional in his practice, and that he -- there isn't anybody more qualified nationally than Dr. Ain. And so I know you keep trying to say where is it, but I keep not figuring out how you don't see where it is. -- Because it's -- it's like in the court's face on a daily basis, practically.²⁰

Judge Goodman’s statements, having been made on the record, are impossible to ignore. Again, the applicable standard is that “a judge’s bias or partiality is determined under an objective standard from the perspective of a reasonable observer who is informed of all the surrounding facts and circumstances.”²¹ Accordingly, under KRS 26A.015 and Rule 2.11 of the Code of Judicial Conduct, disqualification is required.

The Deputy Chief Justice reaffirms, importantly, that the record does not indicate that Judge Goodman is actually biased or partial. The trial court maintains a docket with many cases involving the University of Kentucky, as noted in her own orders, wherein prejudice nor bias are in question. But the standard for disqualification under KRS 26A.015 and Rule 2.11 does not

²⁰ Transcript of Apr. 5, 2024, Hearing at 22-23.

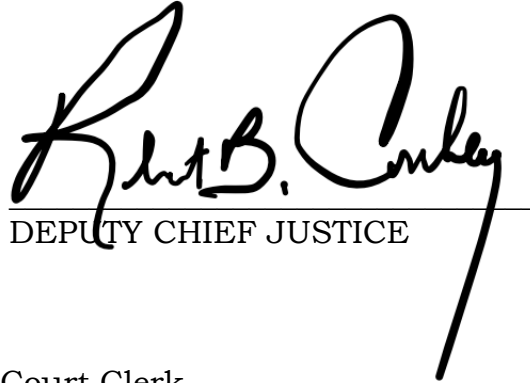
²¹ *Rosquist*, 628 S.W.3d at 54; *Abbott, Inc.*, 626 S.W.3d at 484.

require proof of actual bias. Instead, the standard simply requires disqualification whenever a circumstance arises that, viewed from the perspective of a reasonable observer who is informed of all the surrounding facts and circumstances, causes the impartiality of a judge to be reasonably questioned. Given Judge Goodman’s comments regarding her perceived role as the “sole protector” of the Plaintiff in this matter going forward, such a circumstance has arisen here. Accordingly, Judge Goodman is disqualified from further presiding over this case.

For these reasons, the Deputy Chief Justice orders as follows:

- (1) The request to disqualify the Honorable Julie Muth Goodman from presiding over the above-referenced case (23-CI-03018) is GRANTED without prejudice to any party to seek appellate review after entry of a final judgment; and
- (2) The Honorable Kimberly Nell Bunnell, Chief Regional Circuit Judge for the Fayette Region, shall reassign the case to another division of Fayette Circuit Court for further proceedings; and
- (3) The Fayette Circuit Clerk shall place a copy of this order in the record of the above-styled matter and serve copies of this order on all counsel of record in the present case and on all parties not represented by counsel.

ENTERED: February 14, 2025


DEPUTY CHIEF JUSTICE

Copies To:

Vince Riggs, Fayette County Circuit Court Clerk
Julie Muth Goodman, Circuit Judge, 22nd Judicial Circuit, 4th Division
Kimberly Nell Bunnell, Chief Regional Circuit Judge, Fayette Region