**IN THE SUPREME COURT OF OHIO**

**Jeffrey C. Keith #334-054**
**Trumbull Correctional Institution**
**5701 Burnett Road**
**Leavittsburg, Ohio 44430**
**Petitioner – Appellant,**

**v.**

**David Bobby, Warden**
**Trumbull Correctional Institution**
**5701 Burnett Road**
**Leavittsburg, Ohio 44430**
**Respondent – Appellee.**

**Case No.: 07-1982**

**On Appeal from the Portage County Court of Appeals Eleventh Appellate District**

**Habeas Corpus**
**Case No. 07PA27**

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**MOTION FOR SUMMARY JUDGMENT**

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## SUMMARY JUDGMENT

Appellant requests Summary Judgment in his favor pursuant to Civ.R. 56 as there is "no genuine issue as to any material fact" that the trial courts patently lacked subject matter jurisdiction. Petitioner/Appellant is entitled to judgment as a matter of law and a writ of habeas corpus issued. The State has failed to produce any evidence rebutting the relevant facts supported by affidavits, and documents showing that:

1) the underlying cases **never** had an **assigned** judge;

2) **no judge** was constitutionally or statutorily assigned as required by law;

3) the courts **failed to acquire subject matter jurisdiction**, thus any decisions emanating from those courts are **void** as a matter of law;

4) the State's actions, through its representatives, constitute a continuous **"fraud-upon-the-court"**;

5) a private citizen **selected judges** in the underlying criminal cases;

6) retired Lorain County Judge Joseph Cirigliano sat **without authority** from the Chief Justice of the Supreme Court over the underlying cases from 1996 to 2002 and;

7) that Judge John L. Angelotta was to be the **properly assigned** judge until Frank Gasper acted to steer the case to Judge Gaul;

8) that Judge Gaul presided **without authority** over CR 316724 until 1996 when it was discovered that former Assistant Prosecutor Frank Gasper had bypassed Sup.R. 36(B) to select a judge for his personal agenda. Frank Gasper was fired for his actions;

9) that Appellant has no legally assigned judge, thus has **no remedy** at law.

Former Assistant Cuyahoga County Prosecutor Frank Gasper[1] selected the judges in Appellant's cases by "case steering" and "personal agreement." Gasper's actions deprived the courts of subject matter jurisdiction and the Appellant of his minimal constitutional guarantees of a fair trial and fundamental due process rights. Appx. 25-28. "Jurisdiction" means "the court's statutory or constitutional power to adjudicate the case." [2-3] It is well settled, that whatever is prescribed by the constitution and the laws of the state to be done in prosecution for crimes, is essential to the jurisdiction and power of the court to be correct and can neither be omitted nor waived.[4-5]; Section 5(A)(3), Article IV, Ohio Constitution, and Sup.R. 36(B). Appx. 24, 25.

It is a fundamental rule that parties to an action cannot agree to confer subject matter jurisdiction upon a court, which occurred in Appellant's cases. Appx. 27, 28. Judgments rendered without jurisdiction are absolutely **void**. Such judgments can be attacked collaterally by an independent proceeding in the court...[6]. Gasper's activities deprived the court of **subject matter jurisdiction**; resulted in any judgments by his selections being **void**; and Gasper being fired. All these consequences occurred. Appx. 1-8, 14 ¶3; 26-28, 36 ¶1. Frank Gasper chose to manipulate the system to select judges to carry out his personal agenda because Appellant was actually innocent of all the charges in the underlying cases. Appx. 12, 13, 14, 31, 32-34, 35-36.

The Eighth District Court of Appeals found that Judge Joseph Cirigliano's unexplained appearance in the proceedings (he was never assigned) lacked an essential ingredient that would make any of his rulings valid in CR 316724, 350831, and 333972. The court found that as a visiting judge in Cuyahoga County from Lorain County, **Cirigliano had never been properly**

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[1] Former Assistant Cuyahoga County Prosecutor Frank Gasper [hereinafter Gasper]
[2] *Steel Co. v. Citizens for a Better Environment* (1998), 523 U.S. 83, 89, 118 S.Ct. 1003, 140 L.Ed.2d 210
[3] *Morrison v. Steiner* (1972), 32 Ohio St.2d 86, 87, 61 O.O.2d 335, 290 N.E.2d 841, ¶1 of the syllabus
[4] *Doyle v. State* (1848), 17 Ohio 225
[5] *Williams and Haynes v. State* (1861), 12 Ohio 622
[6] *Newland v. Ellingsworth*, not reported in N.E.2d, 1988 WL 17193 Ohio App. 1988 Feb. 22, 1988

**assigned** to any of the underlying cases **by the Chief Justice of the Supreme Court** as required by Section 5(A)(3), Article IV of the Ohio Constitution. Appx. 1-8, 24. During the same period, the **Sixth District** Court of Appeals discovered the **same conduct** by Judge Cirigliano. Cirigliano acted without authority in the Eire County Court of Common Pleas. On appeal, the Sixth District reviewed the record of a new trial motion; similar to Petitioner's appeal from a delayed new trial motion in CR 316724, and found Judge Cirigliano was not assigned to the case. Judge Cirigliano came into the courtroom and took over the case without any authority. The Sixth District, like the Eighth District, declared Cirigliano's proclamations void[7]. Appx. 1-8.

The alleged assignment of Judge Cirigliano to Appellant's cases was not an **improper** assignment – it was a complete **lack** of legal assignment all together, identical to his actions in Eire County. The State incorrectly characterizes the legal result of an **unassigned** judge as being the same as a **reassigned** judge. The Eighth District Court in *Seaford*[8] described Judge Cirigliano's lack of legal assignment to Appellant's cases as follows:

> "The railroad also relies on *State v. Keith*... In *Keith*, however the court's ruling was held to be invalid because while the Ohio Constitution and the Rules of Superintendence allow for the temporary assignment of visiting judges, no such assignment is evident from the record in this case. The allegedly assigned judge was, therefore without authority to enter the order..." Appx. 21.

In a similar fashion, the alleged assignment of Judge Daniel Gaul **failed** to meet an essential requirement mandated by Sup.R. 36(B) in CR 316724. **Frank Gasper selected Judge Gaul**. Gaul was **not** selected by lot, as mandated by Sup.R. 36(B). Appx. 25. This rule was promulgated to prevent the exact type of "judge shopping" orchestrated by Frank Gasper in this case. Appx. 25. On April 26, and May 10, 1996 Gasper's actions were reviewed in proceedings conducted by Cuyahoga County Presiding Judge James J. Sweeney. Presiding Judge Sweeney

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[7] *Reynolds v. Hazelburg*, not reported in N.E.2d, 1999 WL 587627 Ohio App. 6 Dist. Aug. 6, 1999 (NOE-98-082)
[8] *Seaford v. Norfolk S. Ry. Co.*, 624 N.E.2d 94 (Ohio App. 8 Dist. 2004) [hereinafter *Seaford*]

conducted hearings in case CR 316724, one of the underlying cases, and CR 331729, a government agent's case that also involved Judge Gaul and Frank Gasper. Appx. 9-11; 13 ¶7; 14 ¶3.

The Judge Sweeney found that Judge Gaul lacked subject matter jurisdiction over both cases because the essential requirement that he be selected by lot had been by-passed by Gasper. Gasper's activities constituted **fraud-on-the-court**, making any decision by Judge Gaul as applied to CR 316724 **void** as neither he nor any other judge was ever properly assigned to the case. The Court **failed** to meet the minimum statutory and constitutional requirements to give the court **subject matter jurisdiction** in a criminal case. Appx. 25.

The State asserts that there is a crucial distinction between "**void**" and "voidable." The Appellant agrees. The judges in the underlying cases lacked authority and subject matter jurisdiction to enter any decision in these cases, which is why the term "**void**" was used both by the Eighth District Court of Appeals in its decision of December 26, 2002 and in the Appellant's subject matter jurisdiction challenge of January 6, 2003. Appx. 2 ¶7-8; 3, 4 ¶3.

The term "**void**" was used as applied to Judge Daniel Gaul's removal from CR 316724 and 331729. The term "case steering" was also used in the proceedings. Appx 12 ¶7. This is **fraud-on-the-court** by definition. Appx. 12 ¶7; 14 ¶3. Fraud sufficient to deprive or divest a court of jurisdiction **voids** the judgment[9].

The **State concedes** that **void** judgments, as in Petitioner's cases, are a nullity and may be attacked collaterally. See Appellee Merit Brief p.10 ¶2. A void judgment is a mere nullity[10]:

a) Which is not respected as the act of a court[11];

b) It is the same, as though the proceedings had never occurred[12];

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[9] *Harrison v. Webb* (1951), 45 Ohio Op. 141, 62 Ohio L.Abs. 273, 100 N.E.2d 728 (C.P. 1951)
[10] *Straka v. Cleveland Ry. Co.* (1929), 34 Ohio App. 252, 170 N.E.2d 611 (8th Dist. Cuyahoga County 1929)
[11] *Tari v. State (*1927), 117 Ohio St. 481 [hereinafter *Tari*]

c) or as if there were no judgment

d) and can be disregarded entirely[13];

e) in any other court[14].

f) The judgment has no legal[15];

g) or binding force[16];

h) or efficacy[17].

i) Such a judgment cannot be ratified and cannot be made valid by anything that the defendant might do or fail to do[18].

j) Proper jurisdiction of a case is a condition precedent to the court's ability to hear a case. If a court acts without it, then any proclamation by that court is void[19].

k) There is no appeal from a void judgment[20].

**Lack of subject matter jurisdiction** renders the trial court's judgment **void *ab initio*** and **is subject to collateral attack in habeas corpus[21].**

**The issue in the underlying cases is subject matter jurisdiction in a criminal case.** The requirement that jurisdiction be established as a threshold matter springs from nature and the limits of judicial power of the United States, and is inflexible and without exception. U.S.C.A.

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[12] *Romito v. Maxwell* (1967), 10 Ohio St.2d 1066, 227 N.E.2d 223
[13] *Tari*, supra
[14] *Sav. Bank and Trust Co. v. Western Union Tel. Co.* (1908), 79 Ohio St. 89, 86 N.E. 478
[15] *Heflebower v. Heflebower* (1921), 102 Ohio St. 674, 133 N.E. 455
[16] *Tari*, supra at 481
[17] *Haley v. Hanna* (1915), 93 Ohio St. 49, 112 N.E. 149
[18] *Slaven v. Slaven* (1941), 22 Ohio Op. 230, 35 L. Abs. 268, 8 Ohio Supp. 70 (C.P. 1941)
[19] *Patton v. Diemer* (1988), 35 Ohio St.3d 68, 518 N.E.2d 941, ¶3
[20] *Farralli Custom Kitchen and Bath, Inc. v. Bailey* (1995), 107 Ohio St.3d 598, 600; see also *Short v. Onwelles*, 6th Dist. No. F-020005, 2002-Ohio-2290
[21] *Pratts v. Hurley*, 102 Ohio St.3d 81, 2004-Ohio-1980

Art. 3, Sec.2d, cl. 1;[22]. Without proper jurisdiction, a court cannot proceed at all, but only note the jurisdictional defect and dismiss the suit...[23]

This is the exact remedy applied by the Eighth District Court of Appeals when it declared Judge Joseph Cirigliano's rulings void as applied to CR 316724, 333972, and 350831. Appx. 1-8. In CR 333972 and 350831 the Court not only granted the Appellant's subject matter jurisdiction challenges, it also *sua sponte* dismissed the cases citing the granting of Appellant's motion as its rationale for doing so. Appx. 7-8. The court and Appellant both used the word "**void**" when referencing the subject matter jurisdictional challenges. **The State did not refute this on appeal.**

In the "case steering" hearings in April and May of 1996 involving CR 316724, the court found fraudulent activity had been utilized by Frank Gasper to steer the case to Judge Gaul and away from the proper judge, Judge John Angelotta, a long time critic of the improper activities of the Cuyahoga County prosecutor's office. Appx. 22-23, specifically 23. Judge Angelotta was one of the first to take action concerning the "case steering" and subject matter jurisdiction problems in Petitioner's case. From his courtroom, Judge Angelotta ordered all three of the cases to Presiding Judge James J. Sweeney for an investigation. Appx. 27, 28.

Frank Gasper convinced Presiding Judge Sweeney that he would motion the Chief Justice of the Supreme Court to assign a visiting judge to all the cases to fix the problem. Appx. 26-28. Frank Gasper never contacted, or intended to contact, the Chief Justice of the Supreme Court in any way. Appx. 1 ¶3. Instead, Gasper contacted retired Lorain County Judge Joseph Cirigliano at his home in Elyria. Frank Gasper requested Cirigliano come to Cuyahoga County to preside over Appellant's proceedings. Judge Cirigliano agreed (as he had done in other cases, see *Reynolds* supra) and began sitting without authority over Appellant's cases on May 8, 1996.

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[22] *Steel Co. v. Citizens For a Better Environment*, 523 U.S. 84, 118 S.Ct. 1003, 1007 (1998)
[23] *Steel Co. supra* at 118

Appx. 28. Thus, even before the **case steering** hearings began it was clear that Judge Daniel Gaul did **not** have subject matter jurisdiction over CR 316724. Appx. 26.

By May 20, 1996, Judge Sweeney reinforced the decision that Judge Gaul was **not** assigned to Appellant's case. The State had an opportunity to appeal this decision and did not. Appx. 26. In December of 2002, the Eighth District found there were subject matter jurisdiction problems in CR 316724. Appx. 1, 2. On January 7, 2003, the Appellant filed motions challenging the subject matter jurisdiction involving his other cases, which were granted by the Eighth District. Appx. 3-8. The State has had at least three opportunities to present evidence and object or appeal the findings that neither Judge Cirigliano nor Judge Gaul had subject matter jurisdiction over Appellant's cases. At **no** time, in front of **no** court has there ever been **any** evidence produced by the State that Judge Cirigliano or Judge Gaul was ever properly assigned to Appellant's cases. The State is now barred by the doctrine of *res judicata* of retrying the same issues.

The State made a strategic decision **not** to appeal the decisions of the Eighth District, and Presiding Judge James J. Sweeney and decided to cover-up the case steering activities. Appx. 14 ¶3. The cover-up began in 1995 and continued until 2002, when it was revealed during oral argument in CR 316724 that the State appeared with two dismissals of the same new trial motion. One of the dismissals by Judge Cirigliano was on the record, who had ruled on motions concerning CR 316724 by "agreement" beginning in 1996. The other dismissal was in the State's pocket, signed by Judge Daniel Gaul and was not on the record. Appx. 37-38. Judge Gaul had continued signing motions even though it was found he lacked jurisdiction over the proceedings in CR 316724. The State was party to the removal process of Judge Gaul and the

"case steering" hearings. Thus, the State had actual knowledge of the proceedings that Judge Gaul lacked authority before they appeared at oral argument. Appx. 1 ¶4; 2 ¶7.

The State erroneously cites the **invalid** entry of November 1, 1996 by Judge Sweeney stating, "CR 316724 was heard and disposed of by Judge Daniel Gaul. This case should have not have been assigned to Judge Joseph E. Cirigliano." This quote is dictum, **not** part of the Court's decision. This invalid entry resulted from an *ex parte* proceeding some six months after Judge Sweeney **removed** Gaul from the case for "case steering." Appx. 9, 10, 11, 12 ¶7; 14 ¶3. The invalid entry was created when Frank Gasper deceived Judge Sweeney in an attempt to **retroactively** assign Judge Gaul to CR 316724. Gasper was attempting to cover-up the fact that he placed Cirigliano on the case and had steered the case to Gaul. Appx. 9, 10, 20.

During this period of time, Ron James of the Cuyahoga County Prosecutor's Office was appointed to investigate Frank Gasper. Appx. 32 ¶6. Frank Gasper's actions were an unsuccessful attempt to protect himself and his co-conspirators from further investigation and prosecution. After penning this **invalid** entry, Judge Sweeney recused himself from any proceedings involving Appellant's case. Appx. 1, 29. The Eighth District points to this entry as dictum in its decision of December 26, 2002, but never investigates the cause for it. Appx. 1 ¶3.

Frank Gasper was forced out of the prosecutor's office, but was never indicted for his illegal activities surrounding CR 316724, 333972, or 350831. Gasper's cover-up strategy included placing fraudulent entries on the record that began in the indictment room in 1995 and continued until he was fired. Appx. 1-8; 14 ¶3. Thus, portions of the record are **facially invalid** and **cannot** be relied upon. The invalid entries were placed there by Gasper to protect himself and his agents from prosecution by Ron James, the Internal Affairs Department of the Cleveland Police, and Ohio Attorney General's Office. Appx. 9, 12 ¶7-8; 13 ¶11; 14 ¶3; 20, 32 ¶6; 33 ¶12.

When the State or an attorney places bogus entries on the record, the defendant [Appellant] is entitled to relief from judgment[24]. The State has **not** refuted Gasper's actions as being fraudulent. The Supreme Court has recognized "a court's inherent power to grant relief, for 'after-discovered fraud,' from an earlier judgment, regardless of the term of [its] entry."[25]

The State and the Eleventh District Court of Appeals relied on the invalid entry of November 1, 1996 **retroactively** attempting to appoint Judge Gaul to CR 316724. Presiding Judge James J. Sweeney previously officiated over the proceedings that removed Judge Gaul for "case steering" and lack of subject matter jurisdiction. Appx. 9-11. 12 ¶7, 14 ¶3. **No one has the authority to retroactively assign a judge to a case after that judge was removed when it was determined the case was improperly steered to him.**

In addition, **if** the Chief Justice of the Ohio Supreme Court had properly assigned Judge Joseph Cirigliano, Judge Sweeney would be overruling the Chief Justice. Appx. 9. **This order is invalid on its face.** Appx. 20. This entry is a **legal impossibility** and **cannot** be relied upon by anyone. The judges involved in the entry ignored it because they knew it was **invalid**. Judge Cirigliano **ignored** the entry and continued to preside over proceedings in CR 316724 from May 20, 1996 until 2002, six years after the entry stating he should **not** have been assigned the case. Appx. 1 ¶4; 2 ¶7; 26, 38. Judge Gaul **ignored** the entry because he had actual knowledge he had **not** been properly assigned to the case and allowed Judge Cirigliano to sit over the proceedings without interference. Appx. 1 ¶4; 38. The **State also ignored** the entry because it was party to the proceedings and helped fashion the invalid entry. Appx. 2 ¶7; 37, 38.

If the State wished to object to the Eighth District's decisions as applied to the subject matter jurisdictional challenges in CR 316724, 350831, or 333972, or to the decision of Judge

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[24] *Oxxford Clothes XX v. Expeditors Intern of Wash.* (7th Cir. 1997), 127 F.3d 574.
[25] *Hazel-Atlas Glass co. v. Hartford Co.*, 322 U.S. 238, 244, 64 S.Ct. 997, 1000, 88 L.Ed. 1250 (1944)

James J. Sweeney, in the "case steering" hearings, the proper method would have been by appeal. By not appealing the orders, the State is now barred from relitigating the same issues[26].

Once a decree is **void** *ab initio,* it **cannot** be made valid by anything that an appellant might do or fail to do, **before or after** the matter was called to the attention of the court[27]. Any retroactive attempt to assign a judge after he has heard proceedings is a legal and factual **impossibility**.

The Eleventh District Court of Appeals' and the Appellant address the question of subject matter jurisdiction and void judgments. The State, completely off point, discusses discuses procedural error from reassignment. **The issue in the underlying cases is subject matter jurisdiction from lack of assignment**. Subject matter jurisdiction goes to the power of the court to adjudicate a case. It can never be waived and **can be challenged at any time[28]. Subject matter jurisdiction** is **not** a procedural error, it is a **fundamental flaw** that cannot be corrected by appeal as the State asserts. Proper jurisdiction is a "**condition precedent**" to a court's ability to hear a case. If a court acts without jurisdiction, then any proclamation by that court is **void[29]**.

The State bizarrely claims a writ of procedendo will correct the **lack of subject matter jurisdiction, void judgments,** or **lack** of legal assignment of any judge in the three underlying cases. The State selectively picked one of many outstanding motions before the court, a new trial motion on remand in CR 316724. The State neglected to mention numerous other motions that are also pending. A writ of procedendo is **not** the proper legal remedy to correct structural flaws created by two unassigned judges and cannot correct the multitude of motions erroneously ruled

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[26] *Special Prosecutors v. Judges, Court of Common Pleas*, (1978) 55 Ohio St. 94, 900 3d 88, 378 N.E.2d 162; also *Wigton v. Lavender*, Ohio (1984) 9 Ohio St.3d 40, 457 N.E.2d 1172, 9 O.B.R. 129.

[27] *Slaven v. Slaven*, supra, at ¶3 of slip opinion

[28] *United States v. Cotton* (2002), 535 U.S. 625, 630, 122 S.Ct. 1781, 152 L.Ed.2d 800; *State ex rel Tubbs Jones v. Suster* (1998), 84 Ohio St.3d 70, 75 N.E.2d 1002 (Emphasis added)

[29] *Patton v. Deimer* (1988), 35 Ohio St.3d 68, 518 N.E.2d 941 ¶3 of the syllabus. (Emphasis added)

upon by them when they patently lacked authority. Appx. 1 ¶4. A writ of procedendo is an inadequate remedy as it is not complete in its nature, beneficial, and speedy[30]. The State does not dispute the fact that two judges have simultaneously ruled on motions in the same case. Appx. 1 ¶4, 2 ¶7; 37-38. This act strikes to the heart of **subject matter jurisdiction**. There was **no** judge!

The **State incorrectly** asserts that *Bozsik v. Hudson* was similar to Appellant's case because a new trial motion had not been ruled upon. However, the State not only misquoted the **headnote** in *Bozsik*, the State failed to note *Bozsik* was a case about ineffectiveness of council and **not** about **void judgments** in habeas corpus actions. *Bozsik* had a judge, the Appellant has **no** judge.

The **fact Appellant has no judge was conceded** by Cuyahoga County Presiding Judge Nancy R. McDonnell, who contacted the Ohio Supreme Court on March 8, 2006 to assign a judge in all three of the underlying cases. Appx. 19. Until the Supreme Court assigns a judge, the Cuyahoga County Court of Common Pleas lacks jurisdiction and no order can be carried out. The **State has no answer or explanation for the fact there is no judge presently assigned** to any of the underlying cases. As a result, there is **no legal remedy at law**, because there is **no** judge to carry out any order from any court, including through a writ of procedendo.

NBC did a documentary entitled *Agent Provocateurs Fixing Cases in Cuyahoga County* featuring the cases in this action on April 25, 2001. Investigative reporter Dave Summers reviewed records and interviewed agent provocateurs. Appx. 14 ¶1; 33 ¶12. One irrefutable conclusion emerged, Frank Gasper and his government agents knowingly and purposely placed fraudulent entries on the records of all the underlying cases involving subject matter jurisdiction to protect them from prosecution. Appx. 9, 12 ¶10; 14 ¶1-3, 30, 31, 32 ¶6, 33 ¶13; 35-36, 43 ¶10.

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[30] *State ex rel. Willacy v. Smith*, 78 Ohio St.3d 47, 50, 676 N.E.2d 109 (1977)

The Appellant has attempted the normal remedies and the courts have been unable to fashion a remedy. The State is patently incorrect in its assertion that Appellant has any remedies at law from **void** judgments. It is simply **not** true – **no** appeal, **no** post conviction, **no** new trial motions, and **no** writ of procedendo can be heard from **void judgments**, due to lack of subject matter jurisdiction. This is the reason stated by the Eighth District in dismissing Appellant's new trial motions on December 26, 2002 and January 7, 2003. The court has no authority to do anything but dismiss the action[31]. Without proper jurisdiction, a court cannot proceed at all, but only note the jurisdictional defect and dismiss the suit...[32].

The Eighth District Court of Appeals attempted to give the Appellant appealable rights over the underlying **void** judgments in a mandamus action brought by the Appellant that State enjoys quoting. The State however, never quotes the Supreme Court's response to the Eighth District's May 18, 2003 retroactive attempt to assign judges to the underlying cases. The court attempted to set up a law school hypothetical to give the Appellant appealable rights over the void judgments, which the Appellant appealed to the Supreme Court..

The Supreme Court wrote:

> "The May 18, 2004 entry appealed by Keith is not a final appealable order. This entry does not determine Keith's mandamus claim or prevent a judgment. A judgment that leaves issues unresolved and contemplates further action is not a final appealable order.
>
> Moreover, the court of appeals order was not made in a special proceeding, because mandamus claims were recognized at common law.
>
> Finally in its May 18th entry the court of appeals agreed that Judge McMonagle was not a proper respondent it did not dismiss him from the case and make an express determination that there was no just reason for delay." Appx. 17 ¶4, 5, 6.

---

[31] *Steel Co,* supra
[32] *Steel Co. supra* at 118

The Eighth District never cured its flawed order of May 18th 2004 per the instructions of the Ohio Supreme Court. However, it did not matter as Judge Gaul refused to participate in the retroactive assignment hypothetical in CR 316724. Gaul refused to sign any orders involving this case after the Eighth District's decision of December 26, 2002. Appx. 1, 2. Judge Gaul has actual knowledge that he was **not** properly assigned to CR 316724 **prior** to trial. Judge Gaul was represented by counsel at the April 26th and May 20th 1996 subject matter jurisdiction – case steering hearings. Appx. 9-10; 12 ¶7; 14 ¶3. Judge Gaul's defense to allegations of wrongdoing was that Frank Gasper and the Prosecutor's Office were responsible. Appx. 12 ¶7 & ¶10; 14 ¶3; 31, 32, 35, 36, specifically 36 top of page.

The State has had the opportunity to prove that Judge Joseph Cirigliano was assigned by the Ohio Supreme Court in CR 316724, 333972, and 350831 and has **failed** to do so because **no proof** exists. As the record contains no entry assigning Judge Joseph Cirigliano to these cases, the judgments are **void**. Appx. 1-8. The State should either produce the records in rebuttal or stipulate to the fact.

The State has had ample opportunity to produce documents refuting affidavits and findings that CR 316724 was covertly and fraudulently steered to Judge Gaul's courtroom by former (fired) Assistant County Prosecutor Frank Gasper, away from Judge Angelotta, a judge considered hostile by Cuyahoga County Prosecutors. Appx. 22, 23. The State has also **failed** to do that. The State should either produce the records in rebuttal or stipulate to the fact.

The State does **not deny** that Judge Gaul was **removed** from CR 316724 and there is no judge currently assigned to the case. The Eleventh District's opinion also notes that Judge Gaul is no longer involved with CR 316724. See Eleventh District Opinion p.9, footnote 1. The confusion in the underlying cases was created by the cover-up phase initiated by former (fired)

Assistant County Prosecutor Frank Gasper. Rather than produce a record on appeal that would have public scrutiny, Gasper threatened his own agent provocateurs that they needed to protect Judge Gaul, when in fact Gasper needed the protection. Appx 12 ¶6; 13 ¶11; 14, 31, 33 ¶11.

It is **undisputed** by the State that **Frank Gasper bypassed** Sup.R. 36(B) to select and steer CR 316724 to Judge Daniel Gaul. It is also **undisputed** by the State that Frank Gasper selected, **by agreement**, out-of-county retired Judge Joseph Cirigliano to officiate over proceedings involving CR 316724, 333972, and 350831. Appx. 26-28. In addition, the State has offered **no evidence** to dispute the facts that former prosecutor Gasper was **guilty** of these illegal activities. The Eighth District Court of Appeals and Judge James J. Sweeney both found Gasper had by-passed the Ohio Constitution and Sup.R. 36(B) to select his own personal forum rather than an unbiased public tribunal. Appx. 24, 25. Prosecutor Gasper created a prima facia case that the judgments against the Appellant are **void** as a matter of law. A sentence is considered "**void**" under Ohio law if it does not conform to appropriate statutory requirements[33]. Appx. 24-25.

The State has been unable to provide even a scintilla of evidence to refute the overwhelming conclusive evidence of the lack of subject matter jurisdiction, "case steering," and "fraud-upon-the-court" by state actors in Appellant's cases. All these acts apply to the issue of subject matter jurisdiction of the underlying cases.

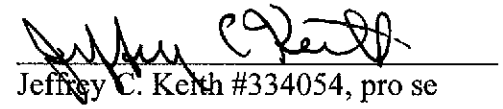
**In Conclusion**

The State cannot fashion an appropriate response in rebuttal to the facts set forth. The State would now like the Supreme Court of Ohio to ratify former Prosecutor Frank Gasper's fraudulent entries on the record and his own criminal activities in violation of the Appellant's due process rights, the Constitution of Ohio, and the statutory rules put forward by Sup.R. 36(B).

---

[33] *Floyd v. Alexander*, 148 F.3d 615, 1998 Fed.App. 0193P

Summary judgment is properly granted when: (1) there is no genuine issue as to any material fact; (2) the moving party is entitled to judgment as a matter of law; and (3) reasonable minds can come to but one conclusion, and that conclusion is adverse to the party against whom the motion for summary judgment is made[34]. The State has the responsibility of rebuttal and must supply evidentiary materials supporting its position[35], or should stipulate to the relevant facts. The facts dictate that the Appellant is entitled to summary judgment, and a writ of habeas corpus issued for unlawful detainment.



Jeffrey C. Keith #334054, pro se

[34] *Harless v. Willis Day Warehouse Co.* (1976), 54 Ohio St.2d 64, 66, 375 N.E.2d 46; Civ.R. 56(C)
[35] *Maust v. Meyers Products, Inc.* (Cuyahoga 1989) 64 Ohio App.3d 310, 581 N.E.2d 589

## AFFIDAVIT OF VERITY

I, Jeffrey C. Keith, do swear under the penalty of perjury that the affidavits and documents attached to this Motion for Summary Judgment are true in fact and represent the statements of the individuals that signed them or the courts that issued them. All relevant affidavits are either notarized or certified as to their authenticity.

Jeffrey C. Keith 334-054
Trumbull Correctional Institution
P.O. Box 901
5701 Burnett Road
Leavittsburg, OH 44430

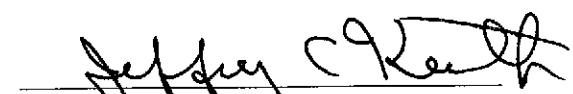
Sworn to and subscribed before me on this 22 day of February, 2008.

MARK STEVEN BURSON
Notary Public, State of Ohio
My Commission Expires 09-25-08

Notary Public

## CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Motion or Summary Judgment was sent via regular U.S. Mail, postage pre-paid, to Marc Dann and/or Diane Mallory, Attorney for Respondent, David Bobby, 150 E. Gay Street, 16th Floor, Columbus, Ohio 43215, on this 6 day of March 2008.



Jeffrey C. Keith #334-054, *pro se*

# APPENDIX

GASPER NEVER CONTACTED CHIEF JUSTICE

1.



CHECK OHIO SUPREME COURT RULES FOR REPORTING OF OPINIONS AND WEIGHT OF LEGAL AUTHORITY.

Court of Appeals of Ohio,
Eighth District, Cuyahoga County.

**STATE of Ohio, Plaintiff-Appellee,**
**v.**
**Jeffrey C. KEITH, Defendant-Appellant.**

**No. 81125.**

Decided Dec. 26, 2002.

Criminal Appeal from Common Pleas Court, Case No. CR-316724.

William D. Mason, Cuyahoga County Prosecutor, Lisa Reitz Williamson, Assistant, Cleveland, OH, for Plaintiff-Appellee.

Jeffrey C. Keith, Grafton, OH, for Defendant-Appellant.

TIMOTHY E. McMONAGLE, A.J.

*1 {¶ 1} Defendant-appellant, Jeffrey C. Keith, appeals the decision of the Cuyahoga County Common Pleas Court that granted the motion to dismiss filed by plaintiff-appellee, State of Ohio, on appellant's motion for a new trial. For the reasons that follow, we dismiss this appeal.

{¶ 2} During the September 1994 term, a grand jury indicted appellant for multiple counts of arson and a single count of grand theft of a motor vehicle. The case was assigned number CR-316724 and to the docket of Judge Daniel Gaul. In July 1995, a jury found appellant guilty of five of the seven arson charges as well as the charge for grand theft. The trial court sentenced appellant to an aggregate 15 to 25-year term of imprisonment. This court affirmed appellant's convictions and sentence on appeal. See *State v. Keith* (Mar. 13, 1997), Cuyahoga App. No. 69267, 1997 Ohio App. Lexis 914, discretionary appeal not allowed (1997), 79 Ohio St.3d 1460 (hereinafter referred to as "*Keith I* ").

{¶ 3} Nonetheless, while *Keith I* was still pending in this court, the trial court journalized an entry on May 20, 1996 that contained a statement that the Ohio Supreme Court had appointed Judge Joseph Cirigliano to preside over this case as well as several other cases then pending against the appellant in the trial court. The trial court thereafter journalized an entry on November 1, 1996 stating that the instant case had already been heard and disposed of by Judge Daniel Gaul and, further, that the case "should not have been assigned to Judge Joseph E. Cirigliano." Indeed, the record contains no entry from the Ohio Supreme Court appointing Judge Cirigliano to this case.

{¶ 4} In March 1998, appellant filed a document requesting a hearing under Crim.R. 33(B), which the state construed as a motion for a new trial and opposed in due course. In January 2002, appellant filed a motion for leave to file a motion for new trial, which the state opposed by filing a motion to dismiss. The trial court eventually granted the state's motion in an entry signed by Judge Cirigliano.

{¶ 5} Appellant is now before this court and challenges the trial court's decision granting the state's motion to dismiss that, in effect, denied his request for a new trial. We, however, find it unnecessary to address the merits of appellant's appeal because the trial judge was without authority to rule on the motions pending in the trial court as they pertain to this case.

{¶ 6} Under Sup.R. 36(B)(2), "each multi-judge general * * * division of the court of common pleas shall adopt the individual assignment system for the assignment of all cases to judges of the division." This assignment system provides that "upon the filing in or transfer to the court of a division of the court, a case immediately is assigned by lot to a judge of the division, who becomes primarily responsible for the determination of every issue and proceeding the case until its termination. Sup.R. 36(B)(1). The record in this case unequivocally supports that Judge Gaul was assigned to preside over this case. While the Ohio Constitution [FN1] and the Rules of Superintendence allow for the temporary assignment of visiting judges, no such assignment is evident from the record in this case. Judge Cirigliano was, therefore, without authority to enter the order granting the state's motion to dismiss.

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FN1. The Constitution provides, "the chief justice or acting chief justice, as necessity arises, shall assign any judge of a court of common pleas or a division thereof temporarily to sit or hold court on any other court of common pleas or division thereof * * *." Section 5(A)(3), Article IV, Ohio Constitution.

STATE USES BOTH JUDGES SEE APPX, 37-38.

*2 {¶ 7} The state counters rather reluctantly that Judge Gaul did enter an order on April 17, 2002 that similarly granted the state's motion as had Judge Cirigliano and this appeal, if anything, is premature under App.R. 4(C). [FN2] We see no such order contained in the record and, even if true, the trial court was without jurisdiction to enter such an order. See *Howard v. Catholic Soc. Serv. of Cuyahoga Cty., Inc.* (1994), 70 Ohio St.3d 141, 146 . Reiterating, Judge Cirigliano's order was journalized March 13, 2002 and appellant filed his notice of appeal on April 5, 2002. A trial court retains only that jurisdiction not inconsistent with that of an appellate court. *Id.;* see, also, *Ksiezyk v. Cleveland* (Dec. 6, 2001), Cuyahoga App. No. 78881 at 8-9.

FN2. App. R. 4(C) provides that "[a] notice of appeal filed after the announcement of a decision, order, or sentence but before entry of the judgment or order that begins the running of the appeal time period is treated as filed immediately after the entry." In this case, there was no "announcement" of decision prior to the alleged April 17th entry nor can we construe the entry signed by Judge Cirigliano as an announcement of decision.

{¶ 8} Since Judge Cirigliano had no authority to enter the order granting the state's motion to dismiss, the judgment is void. It necessarily follows that no appeal can be taken from a void judgment. See *Faralli Custom Kitchen and Bath, Inc. v. Bailey* (1995), 107 Ohio App.3d 598, 600; see, also, *Short v. Onweller,* 6th Dist. No. F-02-005, 2002-Ohio-2290, ¶ 11, citing *Reed v. Montgomery Cty. Bd. of Mental Retardation and Developmental Disabilities* (Apr. 27, 1995), 10th Dist. No. 94APE10-1490, 1995 Ohio App. Lexis 1755.

Appeal dismissed.

This appeal is dismissed.

It is, therefore, ordered that appellant recover from appellant costs herein taxed.

JUDGE GAUL'S RULING

It is ordered that a special mandate be sent to the Cuyahoga County Court of Common Pleas directing said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct.Prac.R. II, Section 2(A)(1).

MICHAEL J. CORRIGAN, J., and DIANE KARPINSKI, J., CONCUR.

2002 WL 31875968 (Ohio App. 8 Dist.), 2002-Ohio-7250

END OF DOCUMENT

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(3)

IN THE COURT OF APPEAL

EIGHTH APPELLATE DISTRICT

CUYAHOGA COUNTY, OHIO

| | | |
|---|---|---|
| STATE OF OHIO | C.O.A. NO. | LOWER COURT NO. |
| PLAINTIFF-APPELLEE | 81874 | CP CR 333972 |
| | 81875 | CP CR 350831 |
| V | CONSOLIDATED NOV. 19, 2002 | |
| | APPX. 9 | |
| JEFFREY C. KEITH | SUBJECT MATTER JURISDISTIONAL CHALLENGE BY APPELLANT | |
| DEFENDANT-APPELLANT | | |

MOTION TO DISMISS CONSOLIDATED APPEALS

Now comes appellant, Jeffrey C. Keith, pro se and requests the court to dismiss the above captioned consolidated appeals as the decisions they are based on are void for lack of jurisdiction by the Judge, Joseph Cirigliano.

Memorandum in support attached.

FILED
COURT OF APPEALS
JAN 6 2003
GERALD E. FUERST
CLERK OF COURTS
CUYAHOGA COUNTY, OHIO

Jeffrey C. Keith 334-054 pro se
LORCI
2075 South Avon Belden Rd.
Grafton, Ohio 44044

William Mason, Cuyahoga County Prosecutor for the Appellee
1200 Ontario St.
Cleveland, Ohio 44113

Service

A true copy of the foregoing motion sent to William Mason on this 4th day of January 2003 at 1200 Ontario, Cleveland, Ohio 44113 by ordinary US mail.

Jeffrey C. Keith

MEMORANDUM IN SUPPORT

THE FACTS

On December, 26, 2002, the Eighth District Court of Appeals ruled on a companion case to those above captioned. The case was C.O.A. 81125 from common pleas CR 316724 and the decision is attached at appendix 3-8. The judge involved was Joseph Cirigliano and the decision was by Administrative Judge Timothy McMonagle. Appx. 3-8.

Judge McMonagle wrote: "since Judge Cirigliano had no authority to enter the order granting the state's motion to dismiss, the judgment is void. It necessarily follows that no appeal can be taken from a void judgment." Appx. 7 paragraph 1.

Judge McMonagle's argument is straightforward. He pointed to the fact that Judge Joseph Cirigliano was never appointed to the case by the Supreme Court from the beginning. Appx. 5 top of page; 6 paragraph 1. Judge McMonagle wrote, "indeed, the record contains no entry from the Ohio Supreme Court appointing Judge Cirigliano to this case." Appx. 5 top of page.

Judge McMonagle discusses a May 20, 1996 statement and journalized entry of discussions between attorney Jay Milano and assistant county prosecutor Frank Gasper and signed by Judge James J. Sweeney. Appx. 1; 4 paragraph 3. That same document was the authority that was used by attorney Jay Milano to contact Judge Joseph Cirigliano at his home in Elyria and request that he conduct proceedings in CR 333972, C.O.A. 81874.

Cirigliano then arranged for court space. The same document was then used as the rational for Judge Cirigliano to conduct proceedings in CR 350831, C.O.A. 81875. The Supreme Court never entered anything assigning the cases to Judge Cirigliano because attorney Jay Milano or assistant county prosecutor Frank Jasper never motioned the Supreme Court to do so. In fact, the document of May 20, 1996 only memorializes in chambers conversations and proposals with Judge James J. Sweeney, no one ever followed through with the request to the Supreme Court. Judge James J. Sweeney has actual knowledge of these facts and disqualified himself in the proceedings of C.O.A. 81125. Appx. 1;2.

As a result of this situation, on December 26, 2002, Judge Timothy McMonagle voided and dismissed the companion case to the above captioned cases, C.O.A. 81125. Appx. 3-8.

The statement of May 20, 1996 involving CR 316724, CR 333972 (C.O.A. 81874) and the continued authority for CR 350831 (81875) was no more than a memorialization of a proposal that was never followed through on. Appx. 1. Judge McMonagle clearly figured the situation out and voided Judge Cirigliano's ruling in the companion case to the above captioned cases. Appx. 5 top; 6 paragraph 1. Certainly, attorney Jay Milano and /or assistant county prosecutor Frank Gasper do not have the authority to appoint a judge to a case, and neither of them ever motioned the Supreme Court to do so, which is why there is no entry by the Supreme Court to assign Judge Joseph Cirigliano to the above captioned cases or their companion

case CR 316724. As such the decisions of Judge Joseph Cirigliano are void for lack of jurisdiction and the appeal should be dismissed without reaching the merits as, in the words of Judge McMonagle, "no appeal can be taken from a void judgment". Appx, 7 paragraph 1.

It is respectfully requested that the above consolidated appeal be dismissed as Judge Cirigliano lacked jurisdiction to hear the cases in the first place as he was never assigned them by the Supreme Court.

SUBJECT MATTER
JURISDICTIONAL CHALLENGE
BY THE APPELLANT.

7

# Court of Appeals of Ohio, Eighth District

County of Cuyahoga
Gerald E. Fuerst, Clerk of Courts

STATE OF OHIO

Appellee

| COA NO. | LOWER COURT NO. |
|---|---|
| 81874 | CP CR-333972 |
| 81875 | CP CR-350831 |

COMMON PLEAS COURT

-vs-

JEFFREY C. KEITH

Appellant

MOTION NO. 344898

Date 01/07/03

Journal Entry

MOTION BY APPELLANT, PRO SE, TO DISMISS CONSOLIDATED APPEALS IS GRANTED.

JURISDICTIONAL CHALLENGE GRANTED.

RECEIVED FOR FILING

JAN - 7 2003

GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
BY _____ DEP.

Judge MICHAEL J. CORRIGAN, Concurs

Administrative Judge
KENNETH A. ROCCO

(8)

Case No: 81875

STATE OF OHIO VS. JEFFREY C. KEITH

SUA SPONTE, APPEAL IS DISMISSED PER ENTRY 344898.

CORRIGAN, M., J., CONCUR
ROCCO, K., P.J.

THE ENTRY IS APPELLANT'S MOTION APPX. 7.

FROM:
Court of Appeals of Ohio
Eighth Appellate District
One Lakeside Ave.
Cleveland, Ohio 44113
Date: 01/07/2003

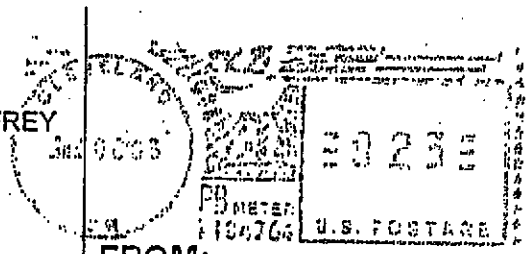
TO:
JEFFREY C. KEITH
INMATE NO. 334-054
LORAIN CORRECTIONAL INST.
2075 S. AVON-BELDEN ROAD
GRAFTON, OH 44044

Case No: 81874

STATE OF OHIO VS. JEFFREY C. KEITH

SUA SPONTE, APPEAL IS DISMISSED PER ENTRY 344898.

CORRIGAN, M., J., CONCUR
ROCCO, K., P.J.




FROM:
Court of Appeals of Ohio
Eighth Appellate District
One Lakeside Ave.
Cleveland, Ohio 44113
Date: 01/07/2003

TO:
JEFFREY C. KEITH
INMATE NO. 334-054
LORAIN CORRECTIONAL INST.
2075 S. AVON-BELDEN ROAD

STATE OF OHIO, CUYAHOGA COUNTY } SS. IN THE COURT OF COMMON PLEAS

TO-WIT: APRIL 26 MAY TERM, 19 96, 19 96

NO. CR-316724

STATE OF OHIO PLAINTIFF

VS.

JEFFREY KEITH DEFENDANT

INDICTMENT ARSON, GRAND THEFT M/V

JOURNAL ENTRY

CR 316724, CR 332934, CR 333972. ATTORNEY JAY MILANO. PROSECUTOR FRANK JASPER. THE SUPREME COURT HAS ASSIGNED JUDGE JOSEPH CIRIGLIANO TO HANDLE THE ABOVE CASES.

JUDGE SWEENEY HAS FULL HEARING IN TWO SEPARATE CASES - SEE APPX. 10-11, 12 par 7. 14 par 3.

FILED
MAY 20 1996
GERALD E. FUERST
CLERK OF COURTS
CUYAHOGA COUNTY, OHIO

JUDGE JAMES G. SWEENEY

CLF 05/14/96 09:18

COPIES SENT TO:

☐ Sheriff ☐ Other

☐ Defendant

THE STATE OF OHIO } SS. I, GERALD E. FUERST, CLERK OF
Cuyahoga County THE COURT OF COMMON PLEAS WITHIN AND FOR SAID COUNTY,
HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS TRULY TAKEN AND COPIED FROM THE ORIGINAL Criminal Journal Entry CR 316724
NOW ON FILE IN MY OFFICE.
WITNESS MY HAND AND SEAL OF SAID COURT THIS 1 DAY OF Nov A.D. 20 02
GERALD E. FUERST, Clerk
By Cheryl A Kurl Deputy

STATE OF OHIO, CUYAHOGA COUNTY } SS.

IN THE COURT OF COMMON PLEAS

MAY TERM, 19 96

TO-WIT: MAY 10 , 19 96

NO. CR-331729

STATE OF OHIO PLAINTIFF

VS.

GLENN DAMERON DEFENDANT

INDICTMENT AGG BURG W/AFS, THEFT (PC) W/VS

JOURNAL ENTRY

CAPTIONED CASE BEING ORIGINALLY ASSIGNED TO JUDGE DANIEL GAUL AND FOR GOOD CAUSE SHOWN, THIS MATTER IS HEREBY REASSIGNED AND TRANSFERRED TO THE DOCKET OF JUDGE ANTHONY O. CALABRESE, JR. FOR FURTHER PROCEEDINGS ACCORDING TO LAW.

Agent GLENN DAMERON A GOVERNMENT AGENT BEGINS TO COMPLAIN ABOUT PROSECUTOR GASPER'S ACTIVITIES IN HAVING CASES STEERED TO JUDGE GAUL.

See appx. 12 par 7; 14 par 3.

FILED

MAY 22 1996

GERALD E. FUERST
CLERK OF COURTS
CUYAHOGA COUNTY, OHIO

TRFR EDB 05/15/96 14:17 JAMES J SWEENEY

COPIES SENT TO:

☐ Sheriff ☐ Other

☐ Defendant

VOL PG 0710

THE STATE OF OHIO, Cuyahoga County } SS. I, GERALD E. FUERST, CLERK OF THE COURT OF COMMON PLEAS WITHIN AND FOR SAID COUNTY.

HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS TRULY TAKEN AND COPIED FROM THE ORIGINAL CRIMINAL JOURNAL ENTRY CR-331729 NOW ON FILE IN MY OFFICE.

WITNESS MY HAND AND SEAL OF SAID COURT THIS 5th DAY OF Dec. A.D. 2002

GERALD E. FUERST, Clerk

By Lisa A. Jones Deputy

CASE: 331729 ID.A DEF: 0021538-GLENN DAMERON

JUDGE: 313-KENNETH R CALLAHAN
DATE: 01-18-96 TIME: 10:10::24 DESCRIPTOR: ARGN-ARRAIGNMENT PGH: 02
TWENTY-FOUR HOUR SERVICE WAIVED.
DEFENDANT DECLARED INDIGENT.
COURT ASSIGNED PUBLIC DEFENDERS AS COUNSEL. GAUL 1/18/96 - 5/10/96
DEFN PLEAD NOT GUILTY TO INDICTMENT.
JUDGE DANIEL GAUL ASSIGNED TO CASE.
ORIG BOND CONT. AT 1,000 DOLLARS. BOND TYPE: CASH/SURETY/PROP.
ADDITIONAL AMOUNT OF BAIL AS SET FORTH IN ORC. 2743.70 AND ORC. 2949.091
..DXR 01/18/96 10:10

JUDGE: 303-DANIEL GAUL
DATE: 03-05-96 TIME: 11:28::21 DESCRIPTOR: CONT-CONTINUANCE PGH:
BOOK: 00 PAGE: 0000
PRE-TRIAL IS HELD. NEXT PRE-TRIAL IS SET FOR MARCH 26, 1996 AT 9:00 A.M.
DEFENDANT WAIVES SPEEDY TRIAL TO MAY 31, 1996 IN WRITING.
..PAK 03/06/96 11:28
CXNI 331729 0021538 NOTE CONTINUED FROM PREV PAGE B
CASE: 331729 ID.A DEF: 0021538-GLENN DAMERON

JUDGE: 303-DANIEL GAUL
DATE: 03-26-96 TIME: 10:23::41 DESCRIPTOR: - PGH:
BOOK: 00 PAGE: 0000
PRE-TRIAL HELD. PRE-TRIAL SET FOR APRIL 4, 1996 AT 9:00 A.M. AT THE DEFENDANT'S REQUEST.
..EDB 03/29/96 10:23

JUDGE: 303-DANIEL GAUL
DATE: 04-04-96 TIME: 11:03::33 DESCRIPTOR: - PGH:
BOOK: 00 PAGE: 0000
PRE-TRIAL HELD AND CONTINUED TO APRIL 16, 1996 AT 9:00 A.M. AT REQUEST OF DEFENDANT.
..RXC 04/05/96 11:03

JUDGE: 303-DANIEL GAUL
DATE: 04-16-96 TIME: 15:19::13 DESCRIPTOR: SCHD-SCHEDULE TRIAL PGH:
BOOK: 00 PAGE: 0000
PRETRIAL HELD. TRIAL SET FOR APRIL 29, 1996 AT 9:00 A.M.
..LMG 04/22/96 15:19
CXNI 331729 0021538 NOTE CONTINUED FROM PREV PAGE B
CASE: 331729 ID.A DEF: 0021538-GLENN DAMERON

JUDGE: 055-JAMES J SWEENEY
DATE: 05-10-96 TIME: 09:47::36 DESCRIPTOR: TRFR-TRANSFERRED PGH:
BOOK: 00 PAGE: 0000
CAPTIONED CASE BEING ORIGINALLY ASSIGNED TO JUDGE DANIEL GAUL AND FOR GOOD CAUSE SHOWN, THIS MATTER IS HEREBY REASSIGNED AND TRANSFERRED TO THE DOCKET OF JUDGE ANTHONY O. CALABRESE, JR. FOR FURTHER PROCEEDINGS ACCORDING TO LAW.
HEARD BY JUDGE SWEENEY
..EDB 05/15/96 14:17

JUDGE: 305-ANTHONY O CALABRESE JR.
DATE: 05-24-96 TIME: 09:39::53 DESCRIPTOR: - PGH:
BOOK: 00 PAGE: 0000
PRE-TRIAL HELD; FINAL PRE-TRIAL SET FOR JUNE 4, 1996 AT 9:00 A.M. AT REQUEST OF DEFENDANT.
..RXC 05/30/96 09:39
CXNI 331729 0021538 NOTE CONTINUED FROM PREV PAGE B
CASE: 331729 ID.A DEF: 0021538-GLENN DAMERON

THIS IS THE SWORN AFFIDAVIT OF GLENN DAMERON

THE FOLLOWING STATEMENT IS MADE BY GLENN DAMERON. ALL FACTS AND STATEMENTS CONTAINED IN THIS AFFIDAVIT ARE TRUE AND THE AFFIANT SO SWEARS.

1. That I, Glenn Dameron fabricated an organized crime report on December 19, 1995 against Jeff Keith under duress by Det. Brady and others of the Organized Crime Unit and the Cuyahoga County Prosecutor's office.

2. That Det. Brady knew my bail bondsman and threatened that he would have my bond pulled if I did not continue to work for them as an agent and get involved with entrapment scams and perjuring myself at grand juries against Keith.

4. I was forced to go to Cuyahoga County Jail wearing a wire to attempt to entrap Keith. Warden Wilcox of the jail helped in putting the entrapment scheme together with the Organized Crime Unit. This scheme backfired but they indicted Keith anyway.

5. Keith was indicted for the attempted murder of Steve Dever, a Cuyahoga County Prosecutor, and attempt crimes against Joe Sadie and Lt. Dan Kovocic. These individuals all were involved with Keith's complicity to arson case and had fabricated evidence against him. They were all afraid that he would get out so they decided to fabricate more crimes against him. They decided to invent a torch man that Keith supposedly hired to cover up the fact they never had one.

6. I had direct contact with Assistant Cuyahoga County Prosecutors Steven Dever and Carmen Marino over these issues they were completely aware that I was being threatened.

7. My original Judge was Daniel Gaul, who was Keith's judge in his phony arson case. My attorney Kathy Thomas got him disqualified because my case had been steered to him because he was prejudiced against Jeff Keith and Chris Lawrence, a reporter who had discovered this conspiracy and found out that witnesses, investigators, Cleveland Police and prosecutors from Keith's arson case had conspired to falsify testimony at trial.

8. I appeared before grand juries and was given prepared statements to say by Det. Brady. These statments were completely false but I had to say them or I would have had a great deal of trouble with Brady, Dever and Marino.

9. Det. Brady had acted as a rogue soldier following me, threatening me and telling me what to do. Brady went out to see my girlfriend Gretchen June in Westlake. I was beaten up by thugs that I believe Det. Brady had something to do with it. Brady had threatened me on numerous occasions.

10. Former assistant county prosecutor Frank Gasper gave out the

GLENN DAMERON

SWORN TO AND SUBSCRIBED BEFORE ME A NOTARY PUBLIC ON THIS 7 DAY

NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES MAY 10, 2004

fabricated organized crime reports to attorney Jay Milano that incriminated all of us which set off the cover up stage of this conspiracy which we all participated in. I had no choice in the matter. I have tapes of Det. Brady and others of the Orgainzed Crime Unit threatening me after they all started to get caught.

11. This conspiracy against Jeffrey Keith began in 1995 and continues today, because they are still hunting Chris Lawrence. Lawrence caught them falsifying documents in a case involving a senior citizen against Keith among other things. I went to Carmen Marino's office and the F.B.I. and tried to explain and ask for help, but Marino and others were involved so it didn't do any good.

I hope this does some good. I have other information, however, considering others have already explained the story I can only add my portion of it. I fabricated reports and testimony under duress and did not do so of my own free will. It was clear from the beginning that police had shadowed Keith for a long period of time and got involved in his personal life and then began fabricated evidence against him. Det. Brady told me about their efforts.

GLENN DAMERON

Sworn to and subscribed in my presence a notary public on this 1 day of May 2001.

Notary Public

NOTARIAL SEAL STATE OF OHIO

CATHERINE L. STINSON
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES MAY 10, 2004

THIS IS THE SWORN STATEMENT OF ROBERT WINLOCK

I, Robert Winlock, swear under penalty of perjury that the following statement is true:

1. On April 25, 2001 I appeared on N.B.C. news for an interview with investigative reporter Dave Summers in a program called "Agent Provocateurs Fixing Cases In Cuyahoga County". I appeared because I was used by former assistant Cuyahoga County prosecutor Frank Gasper for a number of years as an agent to fabricate evidence against a number of people who were innocent. One of the people I was used against was Jeff Keith.

2. I confessed on TV that I joined a conspiracy against Jeff Keith for money, favors and freedom from police and prosecutors who had serious problems involving an arson case Keith was wrongfully convicted of and a cover up scheme that included an attempted murder scam with me as the star who was supposed to be the alleged killer of assistant county prosecutor Steven Dever while others were supposed to kill Lt. Dan Kovacic and burn down his house. This entire thing was made up and orchestrated by Dever, Kovacic, Gasper and an Arab named Joe Sadie. They were all involved in Keith's arson case. They needed me to make up a torchman for them so I did. I said that Keith hired my wife's relative named McGill. It was a complete lie. Keith never met McGill.

CR 316 2004

3. I was brought in when one of their other agents. Glenn Dameron, went bad on them for awhile and told a reporter named Barbara Loeser what we were all doing and wanted out of the plot. She got her hands on organized crime reports that we all fabricated against Keith that incriminated all of us. All of this was discussed with me while I was in Bedford Hts. jail by prosecutors Dever and Gasper. In order to control Dameron they hunted him and brought him in and put him in front of Keith's judge during his arson case Judge Daniel Gaul. He was told if he continued with the conspiracy Gaul would take care of him and if he didn't he would sink him. Dameron told his attorney and they got Gaul off his case. Gasper considered Gaul one of his judges who would help. Gasper explained that Gaul didn't like Keith anyway. Dameron had already done too much talking to Loeser, who sometimes used the pen name Chris Lawerence. Gasper said to protect Gaul, us and others we had to indict Loeser for obstruction of justice thus knocking out her credibility. We did. Gasper was however eventually pushed out of the prosecutor's office over the entire business.

Robert Winlock

I Robert Winlock due solemnly swear that the above affidavit is true and that I did personally appear before this notary public on June 06 2004.

Allan S. Hlebovy
Notary Public
State of Ohio
NOTARY PUBLIC
My Commission Expires March 15, 2007

# The Supreme Court of Ohio

FILED
NOV 0 3 2004
MARCIA J. MENGEL, CLERK
SUPREME COURT OF OHIO

State ex rel. Jeffrey C. Keith,
Appellant,
v.
Judge Richard McMonagle,
Appellee.

Case No. 04-898

JUDGMENT ENTRY

APPEAL FROM THE
COURT OF APPEALS

This cause, here on appeal from the Court of Appeals for Cuyahoga County, was considered in the manner prescribed by law. On consideration thereof, this cause is dismissed for lack of final appealable order consistent with the opinion rendered herein.

It is further ordered that a mandate be sent to the Court of Appeals for Cuyahoga County to carry this judgment into execution; and that a copy of this entry be certified to the Clerk of the Court of Appeals for Cuyahoga County for entry.

(Cuyahoga County Court of Appeals; No. 83961)

THOMAS J. MOYER
Chief Justice

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THE STATE EX REL. KEITH, APPELLANT, *v.* MCMONAGLE, JUDGE, ET AL., APPELLEES.

[Cite as *State ex rel. Keith v. McMonagle,* 103 Ohio St.3d 430, 2004-Ohio-5580.]

*Final orders—Mandamus to compel judge to rule on motions—Order adding other judges as parties not appealable.*

(No. 2004-0898 — Submitted September 15, 2004 — Decided November 3, 2004.)

APPEAL from the Court of Appeals for Cuyahoga County, No. 83961.

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**Per Curiam.**

{¶1} On December 18, 2003, appellant, Jeffrey C. Keith, an inmate at Lorain Correctional Institution, filed a petition in the Court of Appeals for Cuyahoga County for a writ of mandamus to compel appellee, Cuyahoga County Common Pleas Court Judge Richard McMonagle, to rule on certain motions filed by Keith. Judge McMonagle moved for summary judgment on the basis that the underlying common pleas court cases had been assigned to Judge Daniel Gaul and Judge Joseph Cirigliano instead of him.

{¶2} On May 18, 2004, the court of appeals issued an entry finding that Judge McMonagle was not the assigned judge in the underlying cases and that Judge Gaul and Judge Cirigliano were the properly assigned judges. The court of appeals sua sponte added Judge Gaul and Judge Cirigliano as respondents and "invited [the prosecuting attorney] to submit another motion for summary judgment, demonstrating that the subject motions have been resolved by the proper judges."

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INSTRUCTIONS FROM THE SUPREME COURT TO CURE. DECISION NEVER CARRIED OUT BY 8th DISTRICT

{¶3} On appeal, we must determine whether we have jurisdiction to address the merits. Appeals as a matter of right may be taken to the Supreme Court in cases originating in courts of appeals, including actions involving extraordinary writs. Section 2(B)(2)(a)(i), Article IV, Ohio Constitution. R.C. 2505.03 restricts the appellate jurisdiction of this court to the review of final orders, judgments, or decrees. *State ex rel. Wright v. Ohio Adult Parole Auth.* (1996), 75 Ohio St.3d 82, 84, 661 N.E.2d 728. R.C. 2505.02 defines a final order for purposes of appeal.

{¶4} The May 18, 2004 entry appealed by Keith is not a final, appealable order. This entry does not determine Keith's mandamus claim or prevent a judgment. R.C. 2505.02(B)(1). "A judgment that leaves issues unresolved and contemplates that further action must be taken is not a final appealable order." *Bell v. Horton* (2001), 142 Ohio App.3d 694, 696, 756 N.E.2d 1241; *Chef Italiano Corp. v. Kent State Univ.* (1989), 44 Ohio St.3d 86, 89, 541 N.E.2d 64 ("since the September 4 order did not determine Chef Italiano's claim and prevent it from obtaining a judgment against Testa, it is not a final, appealable order pursuant to R.C. 2505.02 regardless of the presence of Civ.R. 54[B] language").

{¶5} Moreover, the court of appeals' May 18 order was not made in a special proceeding, because mandamus claims were recognized at common law. *State ex rel. White v. Cuyahoga Metro. Hous. Auth.* (1997), 79 Ohio St.3d 543, 545, 684 N.E.2d 72; R.C. 2505.02(B)(2).

{¶6} Finally, although in its May 18 entry, the court of appeals agreed that Judge McMonagle was not a proper respondent, it did not dismiss him from the case and make an express determination that there was no just reason for delay under Civ.R. 54(B). Cf. *State ex rel. A & D Ltd. Partnership v. Keefe* (1996), 77 Ohio St.3d 50, 56, 671 N.E.2d 13 ("An order adjudicating one or more but fewer than all the claims or the rights and liabilities of fewer than all the parties must

meet the requirements of R.C. 2505.02 and Civ.R. 54[B] in order to be final and appealable").

{¶7} Therefore, we lack jurisdiction to consider the merits of Keith's appeal because the court of appeals' entry sua sponte adding two judges as respondents is not a final appealable order. Accordingly, we dismiss this appeal. By so holding, we need not consider the merits of Keith's motion for default judgment.

Appeal dismissed.

MOYER, C.J., RESNICK, F.E. SWEENEY, PFEIFER, LUNDBERG STRATTON and O'CONNOR, JJ., concur.

O'DONNELL, J., not participating.

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Jeffrey C. Keith, pro se.

William D. Mason, Cuyahoga County Prosecuting Attorney, and Kerry A. Sowul, Assistant Prosecuting Attorney, for appellee.

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(19)

THE COURT OF COMMON PLEAS
COUNTY OF CUYAHOGA
JUSTICE CENTER
1200 ONTARIO STREET
CLEVELAND, OHIO 44113

NANCY R. McDONNELL
Presiding Judge
443-8756

ADMINISTRATIVE JUDGE
GENERAL DIVISION

March 8, 2006

MOTIONS PENDING IN CR 316724, CR 333972 + CR 350831 SINCE 2002 TO ASSIGN A JUDGE

Mr. Brian Farrington
Judicial Court Services
Supreme Court of Ohio
65 South Front St.
Columbus, OH 43215-3431

In re: Cuyahoga County Case Nos. CR-316724, CR-333972, CR-350831

Dear Mr. Farrington:

Enclosed please find a copy of a letter I received from Jeffrey C. Keith, the defendant in the above-referenced criminal cases which originated in Cuyahoga County.

If the Supreme Court should decide to assign a visiting judge to this case, please inform me of such decision. If you need any assistance from me, I would be glad to oblige.

Thank you for your attention to this matter.

Very truly yours,

Nancy R. McDonnell
Presiding/Administrative Judge

NRM:tmk

cc: Jeffrey C. Keith

Enclosure

(29)

STATE OF OHIO, CUYAHOGA COUNTY } SS. IN THE COURT OF COMMON PLEAS

SEPTEMBER TERM, 19 96

TO-WIT: OCTOBER 28, 19 96

NO. CR 316724

STATE OF OHIO PLAINTIFF

VS.

JEFFREY KEITH DEFENDANT

INDICTMENT ARSON, GRAND THEFT M/V

JOURNAL ENTRY

THE ABOVE CASE CR 316724 WAS HEARD AND DISPOSED OF BY JUDGE DANIEL GAUL. THIS CASE SHOULD NOT HAVE BEEN ASSIGNED TO JUDGE JOSEPH E. CIRIGLIANO.

JUDGE CIRIGLIANO SAT OVER PROCEEDINGS IN CR 316724 FROM FROM APRIL 26, 1996 TO DEC. OF 2002. THIS ENTRY WAS IGNORED BY BOTH JUDGES AS BEING INVALID - SEE APPX. 1 PAR 4.

FILED
NOV 01 1996
GERALD E. FUERST
CLERK OF COURTS
CUYAHOGA COUNTY, OHIO

10-28-96

LMG 10/30/96 11:25

JUDGE JAMES J SWEENEY

COPIES SENT TO: VOL 1535 PG 0717

☐ Sheriff ☐ Other

☐ Defendant

THE STATE OF OHIO, Cuyahoga County } SS. I, GERALD E. FUERST, CLERK OF THE COURT OF COMMON PLEAS WITHIN AND FOR SAID COUNTY HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS TRULY TAKEN AND COPIED FROM THE ORIGINAL Criminal Journal Entry CR 316724 NOW ON FILE IN MY OFFICE.

WITNESS MY HAND AND SEAL OF SAID COURT THIS 1 DAY OF Nov A.D. 2002

GERALD E. FUERST, Clerk

By Cheryl A Kent Deputy

the case and that therefore the court's decision is void. The railroad does not argue that the common pleas court itself lacked jurisdiction over the case; rather, it argues that because these two judges have been appointed repeatedly to the asbestos docket, "the appointment of Judges Hanna and Spellacy as Cuyahoga County trial judges has become permanent in nature in violation of the Ohio Constitution."

{¶ 8} The only law the railroad cites to support this alleged constitutional violation does not address the constitutionality of the Chief Justice's actions at all. First, the railroad cites *State ex rel. Kline v. Carroll* (2002), 96 Ohio St.3d 404, 775 N.E.2d 517. Although the court in *Kline* held that the verdict of the Lakewood court was void because the case was not properly reassigned pursuant to R.C. 2937.20, and that "challenging improper assignment and transfer of a case is an attack on the subject-matter jurisdiction of the transferee court," the case in *Kline* had been transferred by an administrative judge from one municipal court to another. *Kline* at ¶ 27. The *Kline* court also held that "[b]ecause former R.C. 2937.20 is inapplicable to a municipal court judge who disqualifies himself without an affidavit having been filed against the judge, the Chief Justice of the Ohio Supreme Court possesses the exclusive authority to appoint another judge in these circumstances." Id. at ¶ 23. In the case at bar, the Chief Justice appointed the judge the railroad objects to. *Kline*, therefore, is not applicable.

{¶ 9} The railroad also relies on *State v. Keith*, Cuyahoga App. No. 81125, 2002-Ohio-7250, 2002 WL 31875968. In *Keith*, however, the court's ruling was held to be void because "[w]hile the Ohio Constitution and the Rules of Superintendence allow for the temporary assignment of visiting judges, no such assignment is evident from the record in this case. [The allegedly assigned judge] was, therefore, without authority to enter the order granting the state's motion to dismiss." (Footnote omitted.) *Keith* at ¶ 6. Again, the railroad does not claim that the Chief Justice did not assign the judges in this case or that the record fails to reflect that appointment. The focus of the railroad's argument is that the Chief Justice lacked the authority to make what the railroad deems to be permanent appointments instead of temporary ones. This issue was not the issue addressed in *Keith*. *Keith*, therefore, is not applicable.

{¶ 10} Finally, the railroad argues that the Chief Justice improperly had made a permanent appointment of a visiting judge. In support, the railroad cites *Silverman v. Am. Income Life Ins. Co.* (Dec. 18, 2001), Franklin App. Nos. 01AP-338 and 01AP-339, 2001 WL 1607635, in which the court held:

> The record does not substantiate plaintiffs' claim that the visiting judge was appointed as a permanent visiting judge. Certificates of assignment reflect that on at least fourteen occasions between October 1997 and March 2001, the Chief Justice of the Ohio Supreme Court appointed that particular visiting judge, a retired judge of a different county's common pleas court, to preside in the Franklin County Court of Common Pleas. However, each of the assignments was for specific cases or for specified, limited time periods, with any proceedings in which he participated to be concluded, if necessary, after the specified period ended. The assignments, although numerous, were for limited time periods and were therefore temporary in nature, not permanent.

Id. at * 16. The railroad argues that the judge's appointment in the case at bar is not limited in the way the appointment

ALL PANELS OF THE 8th DISTRICT UNDERSTAND THE PROBLEM WITH ALLEGED ASSIGNMENT.

# Judges dispute prosecutor's role in bench races

By ERIC STRINGFELLOW
PLAIN DEALER REPORTER

Michael J. Corrigan and Donald C. Nugent, Patricia A. Gaughan and Patricia A. Cleary

To some, they are known as the John T. Corrigan School of Judges.

At least one former prosecutor has been voted onto the bench in each judicial election in the 1980s. Currently, nine former prosecutors, including Corrigan's son, serve as judges, and two sit on the Ohio Court of Appeals (8th District).

These jurists will likely mean that the county prosecutor's impact will be felt in Cuyahoga County's legal system even if Corrigan, who has been prosecutor here for 34 years, decides to step down in mid-term.

When two incumbent Common Pleas Court judges were challenged for re-election in November by assistant county prosecutors, some jurists saw it as a continuation of what they term Corrigan's attempts to intimidate the bench.

But Corrigan denies he recruits candidates for races.

Common Pleas Judge John L. Angelotta, the court's senior judge, and Judge Carl J. Character both beat back challenges by prosecutors in last year's elections.

Angelotta was among a trio of judges who questioned Corrigan's budget in 1987 after the prosecutor submitted only a total figure for his budget and not line-item expenses. Since then, some judges have charged that the prosecutor's budget has not been approved as outlined by law because it was circulated individually to a majority of judges likely to sign it.

A number of judges and defense lawyers who practice in Common Pleas Court say privately that Corrigan taps his assistants to run against certain judges, but Angelotta is one of the few willing to say it publicly.

As an example, Angelotta cited the 1988 contest between Character and Assistant County Prosecutor Patricia Cleary, which Cleary won in a landslide.

Waving a stack of newspaper clippings about Cleary, Angelotta said, "This is the broad that three weeks before the election took on the Lombardozzi case. Now how did she get that case? John T. Corrigan. He assigned the numbers.

"I don't have the newspaper articles or the television clips, but every day she was out there, and she beat Carl Character. She used you guys. That's the rottenest thing I've seen done," said Angelotta, who

PD

**JUDGE MICHAEL J. CORRIGAN:** A graduate of the so-called John T. Corrigan School of Judges.

re-election by Assistant County Prosecutor William Day.

Donato Lombardozzi made headlines in 1983 after his indictment in the kidnapping and murder of a 16-year-old suburban schoolgirl. Lombardozzi pleaded guilty last year and was sentenced to life in prison.

"I saw (Cleary) on television at Lombardozzi's arraignment asking for $200,000 bond," said Angelotta, who, like Cleary, is a Republican. "She stood in for Fred Hilow. She came specifically for this case because the cameras were there."

"That's a ... lie," Cleary said. "Carmen Marino asked me to assist him with the trial. They wanted to search (Lombardozzi's) car and house, and Carmen was tied up in a murder trial. I did the search warrant. Then because I was so involved in the case initially, Carmen asked me to help him. Mr. Corrigan didn't even know that I was

"He called me a broad. How ignorant. What a pig."

Angelotta also pointed out an incident in which Cleary, after her election as a judge, taped a defendant's mouth shut during sentencing.

"I know there was a Friday sentencing kicked until Monday, and I know that cameras were there on Monday," he said. "I understand (Cleary) asked (the defendant) did she have anything to say and the woman said no. After the sentencing, she asked if she had anything to say. She was playing to the cameras. But the worst thing she ever did was what they did to character."

Replied Cleary: "The woman called me names under her breath. I was playing to the cameras. I would have repeated the vulgarity so that everyone could have

was already on the bench. I don't have to run for six years."

Character had sparred frequently with Corrigan's office since his appointment to the bench by Gov. Richard F. Celeste in 1987 to fill an unexpired term.

Celeste reappointed Character last year, but the judge drew opposition from Assistant County Prosecutor Michael Pokorny in the Democratic primary, a contest that Character barely won.

In the 1988 race, Character and Corrigan butted heads when the judge cited Assistant County Prosecutor John Tremsyn for contempt for disobeying his instructions about when to appear in court. Corrigan immediately appealed that ruling and ordered that no plea agreements would be accepted in Character's courtroom, which meant that the judge's docket would become jammed.

Judge Burt W. Griffin is another veteran of battles with Corrigan's office but has fared better than Character.

In 1980, Griffin trounced Assistant County Prosecutor Edward M. Walsh by a 2-1 margin. Three years later, Griffin slapped Assistant County Prosecutor Michael S. Nolan with a contempt citation and a $750 fine for concealing evidence from defense lawyers.

Griffin also cited Assistant County Prosecutor William E. Gerstenslager for contempt and fined him $500 for disobeying an order to turn over hospital records of a rape victim to defense lawyers. In the fall of 1985, Corrigan stopped authorizing plea-bargain agreements in Griffin's courtroom.

In 1986, Griffin again trounced Walsh in the Democratic primary but only squeaked by Cleary in the general election.

"When I ran against Burt Griffin, I went to Mr. Corrigan to tell him as a courtesy — he didn't even know what political party I was. To say that he put me up to this is really ridiculous," Cleary said.

Judge James F. Kilcoyne has been another frequent target of candidates from Corrigan's office.

Kilcoyne, whose 18-year tenure has been laced with controversy, was challenged unsuccessfully by Assistant County Prosecutor Thomas Sammon in 1982 and by Assistant County Prosecutor Jack H. Hudson in 1988.

In confirming a few days before the 1988 election that Kilcoyne was being investigated about possible involvement in an alleged bribery scheme, Corrigan fueled a major controversy.

to be on the bench," Corrigan said then. "He's despicable, and he's hurting a lot of people. If I ever get the evidence on him, you can bet I'm going to use it."

Kilcoyne is under indictment for perjury, tampering with evidence, aggravated grand theft and falsification. The charges stem from a $1.3 million arbitration award he received for injuries in a 1987 car accident.

But like Griffin and Character, Kilcoyne declined to comment on his problems with Corrigan.

"You can call it fear, you can call it intimidation, because in a sense, that's what it really is. But you can't fight this guy in the newspapers and win," said one judge.

Assistant County Prosecutor Michael J. Corrigan, the prosecutor's son, was elected to the bench in 1982, even though some lawyers questioned whether he could preside over criminal cases because his father is prosecutor.

Since then, Ohio Supreme Court Chief Justice Thomas J. Moyer has ruled that Michael Corrigan could hear criminal cases as long as his father didn't appear personally.

"I'm my own man. My father's aware of his job and I'm aware of my job," Judge Corrigan said. "They don't always agree, but I don't see any conflict. It would be different if he was actually personally appearing in cases. I'm not that naive."

Prosecutor Corrigan was campaign manager for Assistant County Prosecutor Donald C. Nugent, who defeated incumbent Judge James J. McGettrick in 1984 while McGettrick was being investigated on charges of taking a $5,000 bribe. Corrigan ignored calls from defense lawyers for a special prosecutor to handle the McGettrick case. The judge was eventually convicted and died after four months in prison.

"I was a candidate two weeks before he knew I was running," Nugent said. "I asked him (if) would he be willing to participate in the campaign. The canons say it's all right. The Office of Disciplinary Counsel says it's all right, and the Supreme Court says it's all right. The objections comes from those who Mr. Corrigan won't support or those who are afraid to go and ask him for support."

Corrigan denies that he attempts to intimidate judges by recruiting judicial candidates, even though he was Nugent's campaign manager in 1984.

"I have never talked an assistant, including my son, into running for the bench or elsewhere," Corrigan

because I felt they couldn't win or didn't have the character necessary. On one occasion, two of my assistants wanted to run for the same spot. I told them they should flip a coin, because they should not run against each other. Al Liphold ran and he lost. Robert Feighan ran and he won."

Corrigan acknowledged that he sent a letter soliciting funds for Day, who narrowly lost to Angelotta.

"He asked me to sign my name. I permitted Bill Day to use the letter. Have I contributed to the campaigns of my assistants? On occasion, yes. I have no way (of) knowing what perception it may create. Presumably, some people would say, 'There he goes again,' and that I should (not) do this. I haven't heard anywhere that I've been disenfranchised from exercising my First Amendment rights."

Corrigan's budget is subject to approval by Common Pleas Court judges in a joint meeting, according to Ohio law. But after Character and Judges Paul R. Matia and Daniel O. Corrigan questioned the budget in 1987, Administrative and Presiding Judge Leo M. Spellacy, a former prosecutor, has circulated the budget only to certain judges, other jurists have charged.

"It created an uproar, that someone questioned the budget," Matia said. "It was like, gee, you don't take my word for it? You must think I'm dishonest. That's not the point. I probably wouldn't have found anything wrong, but I think we have a responsibility to find out what we are voting for."

Spellacy said his decision to circulate the journal entry was a practical matter.

"It made it easier," Spellacy said. "I don't think that anything is improper about it at all. It was circulated to all judges."

Angelotta disputed that.

"In 1989, his budget was $7,155,142, and was $6 million plus in 1988," Angelotta said. "Three judges asked for an itemization. He refused to itemize the budget and he has more than enough votes to get the thing passed. In 1989, he didn't submit a budget to all the judges, in anticipation of the same thing that happened the previous year.

"The law requires that the budget be passed in open court. People like me were never asked. It was simply circulated to the Corrigan School of Judges.

"If I'm going to spend $7 million, I want to know how it's going to be spent, especially if I've got to

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# Corrigan

FROM/1-A

Timothy F. Hagan, who received Prosecutor Corrigan's endorsement during last year's mayoral campaign, said that although neither Corrigan had contacted him, he would not stand in Michael Corrigan's path.

Brooklyn Mayor John M. Coyne, chairman of the county Democratic Party, said Michael Corrigan had called him, but Coyne would not say whether he had offered his support.

If Corrigan, a Democrat, decides to retire in midterm, his successor would be named by the county Democratic Party.

When the man who is often referred to as "John T" steps down, it will end one of the longest tenures of any county prosecutor in the country. He was last opposed in 1976. It also will end the colorful saga of a county prosecutor who generally had only loyal followers or bitter adversaries.

In August 1987, Gov. Richard F. Celeste commuted the life sentence of former Euclid Municipal Judge Robert Steele, and Corrigan was outraged that a judge convicted of having his wife murdered while their two children slept upstairs could be freed.

He waved his arms and spoke in measured tones with curled lips while vowing to do everything possible to keep Steele in prison: "You see, I don't think there is anything wrong with being vindictive, as long as it for the right reasons," Corrigan said during an interview shortly after Steele's commutation.

Steele remains in prison, but Corrigan's reaction to Celeste's decision offers a good explanation of why John T is someone who you either love or despise.

To his worshipers, Corrigan has largely made all the right moves for all the rightreasons in 34 colorful years as the county's top law enforcement official, treating the rich and powerful the same as the poor and powerless. He has gone after judges, lawyers and politicians as well as common criminals, regardless of race or ethnic persuasion. His integrity and honesty are impeccable, supporters say.

"He is the most honest elected official in this state," said Joseph F. Donahue, one of Corrigan's charges from 1960 until he retired in 1985 as chief assistant. "If you do something wrong and it comes to his attention, it doesn't matter if it's you, me, or whoever, he's going to pursue it."

Newly elected Administrative and Presiding Judge Frank Gorman agreed.

"He's honest, he's fearless and he's humane," Gorman said. "Of all the people in public office, I can't think of anyone else who'd be better. He's not God, yet, but he does a good job."

But in the sunset of Corrigan's tenure, others say that watching the prosecutor's office in action is like watching black and white television.

Corrigan's vindictiveness is not only out of control, detractors say, he is no longer running his office. His staff and policies are mismatched for today's high-tech criminal.

Critics say Corrigan has become an illusion of a powerful wizard when he's really just an old man hiding behind a curtain. They say Corrigan bullied Common Pleas judges, manipulated the grand jury process and failed to deliver convictions on high-profile indictments.

Corrigan is generally praised by the legal community for not politicizing his office — except when hisassistants run for judge (even when they challenge incumbents.) A good portion of his legacy will be the impact he will leave on the bench through judges who once were his assistants.

"The thing about Mr. Corrigan is that he may very well be a good man; he is just no longer a good wizard," said Jay Milano, past president of the Cuyahoga Criminal Defense Lawyers Association and founding president of the Ohio Association of Criminal Defense Lawyers. "His office is out of control. The power is unchecked and people are getting hurt. The unwritten code of ethics is that prosecutors have to exercise restraint. The prosecutor has to understand that an indictment is a devastating thing. Our prosecutor has lost that perspective."

Cuyahoga County Common Pleas Judge John L. Angelotta is more blunt.

"He's a cynic, a bigot and the only man in the courthouse who's wearing a white hat. He's the only honest man in the building and he's got the court packed with ex-prosecutors.

"And I don't mean to relate his bigotry to just blacks. To him, it's all Irish Catholic Democrat. The rest of us are nothing," said Angelotta, a Republican who was challenged unsuccessfully for reelection by Assistant County Prosecutor William Day.

Of the nearly 140 assistant county prosecutors, only nine are black.

Corrigan vehemently disputed that he was a bigot, saying his record on whom he has prosecuted speaks for itself. He did acknowledge, however, that he could improve in hiring and retaining minorities.

"Have I made mistakes in some instances? Yes," Corrigan said. "More specifically, with reference to blacks, too many of them have left and left for reasons that they go home in the evening and associate with their friends, who would belittle them because they are prosecutors and I'm the bad guy.

"That's the burden that some young black lawyers have. I can't hit them over the head and make them stay longer. I would rehire most of them. I would not hire anyone just on the basis of their color or sex or ability to sing songs or whatever else is left," Corrigan said.

JUDGE ANGELOTTA'S COMMENTS AGAINST PROSECUTOR'S OFFICE

**O-Jur3d:** Cts & Jud §§ 30, 32, 33

**Am-Jur2d:** Judges §§ 9, 12, 13

## § 2503.04 Presiding judge; assignments to crowded common pleas courts.

The chief justice of the supreme court shall preside at all terms and sessions of the supreme court. When an unusual number of cases have accumulated in the court of common pleas of any county, the chief justice may, without request, assign judges from other counties to aid in the disposition of such business. When the number of cases pending in the court of common pleas of any county exceeds seventy-five per cent of the number of cases filed during the preceding year, the chief justice, without request, shall assign judges from other counties to aid in the disposition of such business, and the chief justice shall, at such times as he may desire, and not less than once each year, ascertain the number of cases pending in the court of common pleas in each county.

The expenses incurred by the chief justice, or the judge serving in his stead, in performing all his administrative duties shall be paid from the state treasury upon the warrant of the state auditor.

**HISTORY:** RS § 411; S&C 377; 50 v 67, § 2; 89 v 318; 98 v 269; 99 v 135; GC § 1469; 103 v 405; 111 v 90; Bureau of Code Revision, 10-1-53; 127 v 26. Eff 9-9-57.

### Cross-References to Related Sections

Compensation and expenses of assigned judges, RC § 141.07.

### Ohio Constitution

Assignment of judges, OConst art IV, § 5(A)(3).

Common pleas court, OConst art IV, § 4(A).

### Ohio Rules

Reports and information, SupR 37.

### Comparative Legislation

Appointment of special judges:

CA—Civ Proc Code § 259

FL—Stat Ann § 38.01 et seq

IL—SCt Rule 39

IN—Code §§ 36-9-36-16

KY—Rev Stat Ann § 21A.110

MI—Comp Laws Ann § 600.225

NY—Const Art 6 § 26

PA—CSA tit 42 § 3132

### Research Aids

Assignment of justices:

**O-Jur3d:** Cts & Jud §§ 50, 51

**Am-Jur2d:** Judges § 26

### CASE NOTES AND OAG INDEX

Authority to assign judges
Expenses of assigned judge
Jurisdiction

### Authority to assign judges

Only the Chief Justice or Acting Chief Justice of the Supreme Court of Ohio has any authority to assign a judge from one court to another, or from one division of the same court to another: Schucker v. Metcalf, 22 Ohio St. 3d 33, 22 Ohio B. 27, 488 N.E.2d 210 (1986).

### Expenses of assigned judge

A common pleas judge, assigned by the chief justice by virtue of GC § 1469 (RC § 2503.04), to aid in disposing of the business of some county other than that in which he resides, and who goes back and forth from his residence to the county of assignment, is authorized by RC § 141.07, upon the approval of the county commissioners, to receive "his actual transportation expenses," and "his actual and necessary expenses incurred in holding court under such assignment" not in excess of $10.00 per day. Such judge is also entitled to receive $20.00 per day for each day he engages in judicial business: 1951 OAG No. 1024 (1951).

Revised Code § 2503.04 does not authorize the payment of expenses, other than transportation expenses, for a judge who finds it necessary to leave his place of residence on the day preceding his assignment to another county. Expenses provided by RC § 2503.04 cover only the days of holding court under the assignment: 1950 OAG No. 2142 (1950).

### Jurisdiction

A judge assigned to another county under RC § 2503.04 has authority to act in the county of assignment: State ex rel. Bartlett v. Baynes, 20 Ohio St. 2d 129, 49 Ohio Op. 2d 447, 253 N.E.2d 748 (1969).

A common pleas judge is vested with authority to preside in each and every county in the state; and neither RC § 2503.04 nor any other section makes the assignment by the chief justice a prerequisite to a judge presiding in a county other than the one in which he resides: State v. Powers, 98 Ohio App. 365, 57 Ohio Op. 412, 129 N.E.2d 653 (1954).

[COURT APPOINTEES]

## § 2503.05 Appointees of court; compensation.

The supreme court may appoint the clerk of the supreme court, the reporter of the supreme court, the administrative



director of the supreme co
the marshal of the court, the
justice, and assistants, deput
employees who are neces
discharge of the duties of th
the administrative director,
the administrative assistant.
the pleasure of the court.

The supreme court shall f
clerk, the reporter, the admin
the marshal, the administr
deputies, clerks, stenograp
compensation shall be paid f
installments upon the app
director. Every appropriatio
bly for the payment of such
and paid among these appo

**HISTORY:** GC § 1480-1; 1
Revision, 10-1-53; 126 v 44 (E

### Research Aids

Appointees:

**O-Jur3d:** Cts & Jud §§

**Am-Jur2d:** Judges § 27

[C

## § 2503.06 Bond of cle

Before entering upon the d
the clerk of the supreme co
in the sum of twenty thousan
approved by the court, cond
of the duties of his office. S
court and the oath of office r
of the Revised Code indorse
the secretary of state.

**HISTORY:** RS § 415; S&S 7
of Code Revision. Eff 10-1-53.

### Cross-References to Rel

Vacancy in office of clerk, I

### Research Aids

Official bonds:

**O-Jur3d:** Cts & Jud §§ 1

**Am-Jur2d:** Clk Ct § 3

### ALR

Public officer's bond as subj
in office. 4 ALR2d 1348.

nal cases to notify the court of that fact. Notification in civil cases is accomplished by designation of the trial attorney on all pleadings. In criminal cases, immediately upon being retained or appointed, the trial attorney is required to file a written notification of the attorney's retention or appointment with the clerk of court.

Rule 36(B)(1) Individual assignment. The individual assignment system is defined by the rule as a system whereby, upon the filing or transfer of a civil case, or upon arraignment in a criminal case, the case is immediately assigned to a judge of the court. The rule sets forth three purposes of the individual assignment system. All multi-judge divisions of the court of common pleas and all multi-judge municipal and county courts, except as provided in division (C)(2) of the rule, are required to adopt the individual assignment system. Courts or divisions are permitted to deviate from the individual assignment system only if the modifications satisfy the three stated purposes of the system and are adopted by local rule of court pursuant to Rule 5. Permissible modifications include the assignment and consideration of cases involving the same criminal defendant, parties, family members, or subject-matter.

The distinguishing feature of the individual assignment system is that it places responsibility upon one judge for the disposition of cases. Once a case is assigned to a judge under this system, all matters pertaining to the case are to be submitted to that judge for determination. An exception is made where that judge is unavailable. In that instance, the administrative judge may act in the assigned judge's absence.

Under Rule 36(B), the administrative judge is responsible for the assignment of cases to the individual judges of the court. Assignment may be made by the administrative judge personally or by court personnel at the administrative judge's direction. All assignments of cases to individual judges must be made by lot.

The purpose of the random assignment, by lot, of cases is to avoid judge- shopping on the part of counsel and to distribute the cases equitably among the judges. "Lot" mandates an assignment arbitrated by chance; the determination must be fortuitous, wholly uncontrolled.

Assignment to the judges of the division in an established order of rotation does not comply with the rule, even if the order of rotation is altered periodically.

An acceptable method of assignment is a form of drawing from a pool of the names of the judges, using paper, balls, or other objects as lots or counter. The pea pool system or the bingo cage are examples. To be an assignment by lot, the entire base of the number of judges in the division must be utilized in each assignment.

A computer may be used for lot selection as long as random assignment is maintained.

Assignment by lot can be systematized. Judges can be identified by number. Those numbers can then be arranged in random order by chance over any given range of numbers. The greater the range, the greater the validity of the arrangement. The range of numbers might well represent the total of three years or so of filings. Slips of paper are then printed with serial control numbers on the front and a line for writing in a case number upon assignment. The judges' numbers are printed in the order of their lot determination on the back of the serially arranged slips. The slips are then padded so that the judges' numbers may not be seen. The evidence of the selection or printing list shall not be revealed. When a case is to be assigned, a slip is removed, the case number written on it, the code number of an individual judge is revealed, and a control sheet maintained.

The practice of making no assignment until "X" number of cases have accumulated when there are "X" number of judges, merely provides for assignment by lot within a very small control and the operation of chance is minimized. That method is only a modified form of rotation and is not assignment by lot.

Once a case is assigned to an individual judge, by lot, it may be reassigned or transferred to another judge by order of the administrative judge. See the Instructions for Preparation concerning the proper use and reporting of transfers.

Although many ancillary matters, and in fact the entire case, frequently may be handled by a magistrate, the assignment system mandates responsibility for every case be affixed to a judge. The assigned judge's report form will reflect action taken by the magistrate.

See Rule 43(E) and its commentary concerning how the numbering system is geared to the record keeping requirements of the individual assignment system.

Rule 36(C) Assignment system. In multi-judge municipal and county courts, Rule 36(C) establishes a dual system for the assignment of cases. Under this system, certain types of cases are processed in a court session, designated particular session, presided over by a judge or magistrate for a specified period of time. Other types of cases are assigned to an individual judge pursuant to the individual assignment system.

Rule 36(C)(1) and (2) Particular session; assignment. The types of cases designated in division (C)(1) for disposition in particular sessions of court are high volume cases that may be processed by a judge or magistrate at a single session. The rule does not preclude the processing of types of cases, other than those listed, that are susceptible to disposition in particular sessions.

Cases that may not be processed by particular session are civil cases where an answer is filed or a motion, other than one for default judgment, is filed and criminal cases in which a plea of not guilty is entered. These cases are to be assigned pursuant to the individual assignment system at the time the answer, motion, or plea is filed or made.

Rule 36(C)(3) Duration of assignment to particular session. Assignments to particular session are to be equally divided among the judges of the court and are to be limited to two-week periods. The two week limitation accommodates the individual assignment system, and allows each judge adequate time to work on the cases individually assigned to the judge. Judges should not be assigned to a particular session or a series of particular sessions for more than two consecutive weeks.

Rule 36(D) Assignment of refiled cases. To promote judicial economy and discourage judge-shopping, this division mandates that all dismissed and subsequently refiled cases be reassigned to the originally assigned judge. An exception exists for circumstances in which the original judge is barred from hearing the refiled case.

Rule 36(E) Assignment-new judicial positions. This provision governs the reassignment of pending cases where a new judicial position is added to the court or division. Reassignment of cases must be random, equitable, and accomplished in a manner consistent with the principles set forth in division (B)(1) of the rule. In effect, a random selection system must be used, rather than culling cases from pending dockets. Certain dockets or portions of dockets may be created through the individual assignment system. This method may be particularly useful in assigning criminal cases. The process set forth in division (E) should facilitate the creation of a balanced docket with a minimum disruption of the pending caseload of the court or division.

Judge Shopping
PROS. GASPE
KNOWINGLY
VIOLATED
36(B)

26.

STATE OF OHIO, CUYAHOGA COUNTY } SS. IN THE COURT OF COMMON PLEAS

MAY TERM, 19 9

TO-WIT: APRIL 26, 19 9

NO. CR-316724

STATE OF OHIO PLAINTIFF

VS.

JEFFREY KEITH DEFENDANT

INDICTMENT ARSON, GRAND THEFT M/V

JOURNAL ENTRY

CR 316724, CR 332934, CR 333972. ATTORNEY JAY MILANO. PROSECUTOR FRANK JASPER. THE SUPREME COURT HAS ASSIGNED JUDGE JOSEPH CIRIGLIANO TO HANDLE THE ABOVE CASES.

JUDGE SWEENEY HEARD TWO CASES AND TOOK A MONTH TO DELIBERATE - SEE APPX. 10-11 MAY 22, 1996. JUDGE GAUL REMOVED FROM ANOTHER CASE -

FILED
MAY 20 1996
GERALD E. FUERST
CLERK OF COURTS
CUYAHOGA COUNTY, OHIO

JUDGE JAMES G. SWEENEY

CLF 05/14/96 09:18

COPIES SENT TO:

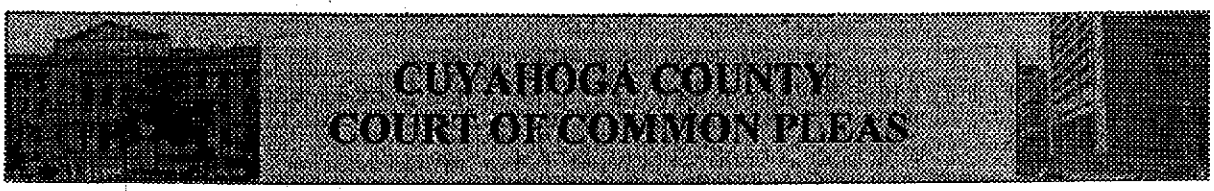
☐ Sheriff ☐ Other

☐ Defendant

THE STATE OF OHIO } SS. I, GERALD E. FUERST, CLERK OF THE COURT OF COMMON PLEAS WITHIN AND FOR SAID COUNTY.
Cuyahoga County

HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS TRULY TAKEN AND COPIED FROM THE ORIGINAL Criminal

27




# Case Note

**Case: 333972 DEF#: 0141173 Name: JEFFREY KEITH**

**JUDGE: TIMOTHY MCCORMICK**
**DATE: 1996/02/13 TIME: 08:59:14**
**DESCRIPTION: ARRAIGNMENT JE FILE DATE: 0000/00/00**

DEFENDANT FULLY ADVISED IN OPEN COURT OF HIS/HER CONSTITUTIONAL RIGHTS.
READING OF INDICTMENT WAIVED.
TWENTY-FOUR HOUR SERVICE WAIVED.
DEFENDANT PRESENT WITH COUNSEL.
DEFN RETAINED JAY MILANO AS COUNSEL.
DEFN PLEAD NOT GUILTY TO INDICTMENT.
JUDGE JOHN L ANGELOTTA ASSIGNED TO CASE.
BOND SET AT 20,000 DOLLARS. BOND TYPE: CASH/SURETY/PROP.
ADDITIONAL AMOUNT OF BAIL AS SET FORTH IN ORC. 2743.70 AND ORC. 2949.091
..DXR 02/13/96 08:59

JUDGE ANGELOTTA PROPERLY ASSIGNED

**JUDGE: JOHN L ANGELOTTA**
**DATE: 1996/02/27 TIME: 08:57:33**
**DESCRIPTION: MOTION DISPOSED JE FILE DATE: 0000/00/00**
MFD/BOP MAILED AND FILED-MW
..MXV 02/27/96 08:57

**JUDGE: JOHN L ANGELOTTA**
**DATE: 1996/02/29 TIME: 14:38:54**
**DESCRIPTION: MOTION FILED JE FILE DATE: 0000/00/00**
MOTION FOR DISCOVERY, MOTION FOR BILL OF PARTICULARS, REQUEST FOR EVIDENC
E, DONNELLY HAS FILE-MW
..MXV 03/01/96 14:38

JUDGE ANGELOTTA CALLS FOR OUT-OF COUNTY JUDGE BY AGREEMENT OF COUNSEL

**JUDGE: JOHN L ANGELOTTA**
**DATE: 1996/03/07 TIME: 15:38:51**
**DESCRIPTION: MOTION JE FILE DATE: 0000/00/00**
DEFENDANT'S MOTION FOR BILL OF PARTICULARS IS GRANTED.
..EDB 03/20/96 15:38

**JUDGE: JOHN L ANGELOTTA**
**DATE: 1996/03/20 TIME: 15:54:28**
**DESCRIPTION: TRANSFERRED JE FILE DATE: 0000/00/00**
BY AGREEMENT OF COUNSEL FOR PARTIES, CASE TRANSFERRED TO JUDGE

28.

JAMES J. SWEENEY FOR RE-ASSIGNMENT TO VISITING OUT OF COUNTY JUDGE.
..EDB 03/21/96 15:54

**JUDGE: JAMES J SWEENEY**
**DATE: 1996/04/26 TIME: 09:18:53**
**DESCRIPTION: JE FILE DATE: 0000/00/00**
CR 316724, CR 332934, CR 333972. ATTORNEY JAY MILANO. PROSECUTOR FRANK JASPER. THE SUPREME COURT HAS ASSIGNED JUDGE JOSEPH CIRIGLIANO TO HANDLE THE ABOVE CASES.
HEARD BY JUDGE J.J. SWEENEY
..CLF 05/14/96 09:18

FORMER ASST. PROS. FRANK GASPER SELECTS JUDGE CIRIGLIANO

**JUDGE: JOSEPH E CIRIGLIANO**
**DATE: 1996/05/08 TIME: 09:14:44**
**DESCRIPTION: JE FILE DATE: 0000/00/00**
ATTORNEY JAY MILANO. PROSECUTOR FRANK GASPER. PRE-TRIAL HELD AND RESET FOR MAY 14, 1996 AT 1:30 P.M.
HEARD BY JUDGE CIRIGLIANO

NEVER AN ASSIGNMENT

CORRECTED ENTRY NOTES 8/15/96 CLF: JUDGE # CHANGE *****
..CLF 08/15/96 15:23

**JUDGE: JOSEPH E CIRIGLIANO**
**DATE: 1996/05/14 TIME: 13:51:22**
**DESCRIPTION: SCHEDULE JE FILE DATE: 0000/00/00**
PRETRIAL HELD.
TRIAL SET FOR AUGUST 13, 1996 AT 9:00 A.M.
HEARD BY JUDGE CIRIGLIANO.
CORRECTED ENTRY NOTES 5/17/96 JEB: JUDGE # CHANGE *****
..CLF 08/15/96 15:22

**JUDGE: JOHN L ANGELOTTA**
**DATE: 1996/06/13 TIME: 11:16:19**
**DESCRIPTION: MOTION DISPOSED JE FILE DATE: 0000/00/00**
MOTION TO SUBPOENA FOR PRODUCTION OF DOCUMENTARY EVIDENCE; PATTON NO FILE -MW
..DXP 06/13/96 11:16

**JUDGE: JANET R BURNSIDE**
**DATE: 1996/06/17 TIME: 11:05:11**
**DESCRIPTION: MOTION DISPOSED JE FILE DATE: 0000/00/00**
MOTION TO SUBPEONA FOR PRODUCTION OF DOCUMENTARY EVIDENCE; DONNELLY HAS FILE- TK
..DXP 06/18/96 11:05

**JUDGE: JOHN L ANGELOTTA**
**DATE: 1996/06/28 TIME: 10:01:52**
**DESCRIPTION: MOTION DISPOSED JE FILE DATE: 0000/00/00**
MOTION TO TERMINATE RESTRIVE VISITATION PROCEDURES, PATTON HAS ALL FILES, DP
..DXP 07/01/96 10:01

**JUDGE: JOSEPH E CIRIGLIANO**
**DATE: 1996/07/19 TIME: 11:19:01**
**DESCRIPTION: SCHEDULE JE FILE DATE: 0000/00/00**

JUDGE SWEENEY ALREADY KNEW THE OUTCOME OF THIS PARTICULAR CASE - HE HEARD THIS CASE ON APRIL 26, 1996 SEE APPX. - 26

29.

# Court of Appeals of Ohio, Eighth District

County of Cuyahoga
Gerald E. Fuerst, Clerk of Courts

STATE OF OHIO

Appellee

COA NO. 81125 / LOWER COURT NO.

CR 316224 ON APPEAL NEW TRIAL MOTIONS

THIS IS DEC. 26, 200 CASE AT. THE 8th DIST See APPX. 1

COMMON PLEAS COURT

-vs-

JEFFREY C. KEITH

Appellant

MOTION NO. 343243

Date 11/25/2002

Journal Entry

MOTION BY APPELLANT, PRO SE, TO DISQUALIFY JUDGE JAMES J. SWEENEY IS DENIED AS MOOT: JUDGE JAMES J. SWEENEY HAS RECUSED HIMSELF FROM THIS CASE. MOTION BY APPELLANT TO BE CONVEYED TO PROCEEDINGS OR, IN THE ALTERNATIVE, TO HAVE COUNSEL BE APPOINTED FOR HIM FOR PURPOSES OF ORAL ARGUMENT IS DENIED.

RECEIVED FOR FILING

NOV 25 2002

GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
BY _____ DEP.

Judge MICHAEL J. CORRIGAN, Concurs

Judge DIANE KARPINSKI, Concurs

Administrative Judge
TIMOTHY E. MCMONAGLE

# Affidavit of David E. Zamos Sr.

I, David E. Zamos Sr., under penalty of perjury hereby swear that the following facts are true:

1. I am acquainted with Jeffrey Carl Keith
2. On January 20, 2006, I traveled to the offices of the Cuyahoga County Clerk of Courts in Cleveland, Ohio for the purpose of searching the public records relating to the convictions of Jeffrey Carl Keith as referenced by cases CR 316724, CR 333972 and CR 350831, to determine if, within any of the public records associated with these convictions, there is any evidence that the Chief Justice of the Ohio Supreme Court had ever assigned visiting judge, Joseph Cirigliano, to hear any of the cases and/or charges brought against Jeffery Carl Keith.
3. My search of all records relating to cases CR 316724, CR 333972 and CR 350831 documenting Jeffery Carl Keith's convictions was extensive and consumed several hours. It is my opinion that sufficient energy was invested in this research to complete the research properly and completely.
4. I was assisted in my search by Mr. George Thomey who is an employee of the office of the Cuyahoga County Clerk of Courts. I found Mr. Thomey to have broad knowledge of how records are maintained in the Cuyahoga County Clerk of Courts. Additionally, Mr. Thomey was quite generous with his time and considerable expertise in assisting me in my search.
5. Despite an extensive efforts by me as well as Mr. George Thomey, neither of us was able to find any documentary evidence in any of the records related to the convictions of Jeffrey Carl Keith that would indicate to me or Mr. Thomey that there is any record or records maintained by the offices of the Cuyahoga County Clerk of Courts indicating to me that any proper appointment had ever been made permitting visiting judge, Joseph Cirigliano, to hear and/or, in any way, be involved with any of the criminal cases against Jeffery Carl Keith.
6. As a result of my investigation which was assisted by Mr. George Thomey, it is my opinion that there is no evidence and/or records of any appointment by the Chief Justice of the Ohio Supreme Court of visiting judge, Joseph Cirigliano to hear and/or be involved with the criminal cases against Jeffery Carl Keith which is maintained in any of the public records of his convictions maintained within the offices of the Cuyahoga County Clerk of Courts, Cleveland, Ohio.
7. Affiant further sayeth naught.

David E Zamos SR

David E. Zamos Sr.

I David E. Zamos did personally appear before a notary public on April 4th, 2006 and do swear that the foregoing is true under the penalty of perjury.

David E Zamos SR

David E. Zamos Sr.

Subscribed and sworn to before me the 4th day of April, 2006

Bonnie L Panovich

BONNIE L. PANOVICH
Notary Public, State of Ohio
My Commission Expires Dec. 12, 2007

(31)

STATE OF OHIO )
) ss. AFFIDAVIT
COUNTY OF CUYAHOGA )

JOHN TAMBURELLO, being first duly sworn according to law deposes and states as follows:

1. I had a charge against me of Criminal Non-Support that was obtained by the case worker from CESA by not telling the Grand Jury that my oldest daughter was over 18 and lived with me and that there was a signed agreement between the parties concerning alimony and my other daughter Christina.

2. That the prosecutor, FRANK GASPAR promised me and my attorneys, Todd Arminini and Stanley Tolliver, to dismiss the case at many, many pre-trials because of the above facts but on every occasion he changed his mind.

3. However, that when FRANK GASPAR found out that I was an Officer of C.A.M.E.O., He coerced a statement out of me concerning the JEFFERY KEITH case, promising to drop the case against me.

4. I never read the statement because they had already kept me there for over 4 1/2 hours so I just signed it and got out of there because I was late for an appointment which I ended up losing a lot of money on because I missed it. It was recently brought to my attention that things I said for my statement were twisted and things that they said were put down as if I had said them. This would be consistent with the lying that the prosecutors office did in my case. I made a statement and FRANK GASPAR lied and still did not dismiss. I was told that He just didn't like me. I went to trial and was found NOT GUILTY. His arrogance and dishonesty cost me thousands of dollars I do not have, pain and suffering by me, my children, my friends and family and the tax payers of Cuyahoga County lost thousands of dollars.

5. That I had nothing to do with JEFFERY KEITH or His case except as fellow members and Officers of C.A.M.E.O. I do not know Jeff Keith on a personal level so I have no negative comments to say about Him. Maybe that is why MR. GASPAR did not like me and prosecuted me anyway.

6. I therefore respectfully recant that statement because most of what is in it, I did not say and it was coerced under duress and false pretenses in the first place. The prosecutors office abuses its power by lying, twisting, cheating and stealing in order to convict someone whether they are innocent or not. I will not be a part of their dishonesty.

**FURTHER AFFIANT SAYETH NAUGHT**

John A. Tamburello

Sworn to before me, and subscribed in my presence this 27th day of August, 1998.

Notary Public

VALERIE A. BARRETT
Notary Public for the State of Ohio
My Commission Expires March 22, 1998

(32)

THIS IS THE SWORN STATEMENT ANDREW HAINES

I, ANDREW HAINES, SWEAR THAT THE FOLLOWING STATEMENT IS TRUE:

1. That I was involved in a conspiracy to falsify evidence against, fabricate crimes by and deprive Jeff Keith of witnesses in his defense that began in 1995 and continues to this day.

2. This situation was sponsored by Assistant Cuyahoga County Prosecutors Carmen Marino, Steven Dever, Steven Canfil, Frank Gasper, Michael Nolan, Sean Gallagher, Lt. Dan Kovocic, Joe Sadie, an Arab policemen and the Organized Crime Unit of the Cleveland Police Department and its members Lt. Votipka and Detectives Henderson, Brady, Fryer and Fortenbaugh.

3. I talked directly to county prosecutors Marino, Canfil, Gasper and had dealings with prosecutor's Nolan and Gallagher to remain silent as to the conspiracy and its members in return for probation on August 27, 1996 and May 23, 1997 in Judge Kathleen Sutula's courtroom.

4. The prosecutors who were involved were all prosecutors against Jeff Keith in his cases: Frank Gasper was the prosecutor in the attempted murder hoax with Steven Dever, Joe Sadie and Dan Kovocic. Steven Canfil was the prosecutor against Keith in the Fuchs case where I was to be a witness for Keith. Michael Nolan was the prosecutor against Keith in his last case involving his son's estate where I also was to be a witness. Each of these prosecutors bribed me to appear before grand juries , fabricate evidence or not to testify against them or not to be a witness for Keith.

5. Instead of doing 35 years in prison Frank Gasper got me probation. Instead of doing a lot of time Michael Nolan dropped cases against me with the thought that I would testify against Keith, his daughter and a TAB investigator Chris Lawerence in obstruction of justice charges in 1999 and not testify for Keith in cases where Nolan was the prosecutor against Keith. The obstruction of justice cases were dropped and the prosecutors and police went back on their deal.

6. I had appeared at phony grand jury proceedings in March of 1997 with fellow conspirators and fabricated evidence against Keith, his daughter and Chris Lawerence. I was told to deny my own handwritten statements that I had written to Keith's attorney Jay Milano and Cuyahoga County Prosecutor Stephanie Tubbs Jones describing the conspiracy and the activities of its members. I wrote these letters in 1996 and 1997 and prosecutors and police were willing to do anything to get me to say that Keith forged the statements. It was totally impossible because my handwriting is that distinctive, besides Stephanie Tubbs Jones was aware of the situation because a black minister named Otis Newton had gone to her after I confessed the entire thing to him. Jones appointed an assistant county prosecutor named Ron James to investigate but he never came to see me, so he couldn't have had much of an investigation.

7. When an exact duplicate of the statements, in my own handwriting, I had written to Stephanie Tubbs Jones surfaced as the result of a search of Keith's house, I was indicted by

SWORN AND SUBSCRIBED BEFORE ME A NOTARY PUBLIC ON DAY OF APRIL 2001.

Andrew Haines

Andrew Haines

(33)

Steven Canfil but assured that as soon as I testified against Keith everything would be taken care of.

8. The charges were dropped against Keith and his daughter but continue against Lawrence to this day, just to keep the truth from surfacing. I recently read an article from the Cleveland Plain Dealer that shows the police and prosecutors are still at it.

9. I had offered to be a witness for Keith in the Fuchs case and the case involving his son's estate. Both the prosecutors involved gave me deals not to testify after I appeared on Keith's witness lists. I am sure that they never told Keith or his attorneys about this because it is witness tampering as part of their efforts in fixing cases against Keith.

10. I was originally brought into the conspiracy by a government agent named Robert Winlock while we were both in county jail. Winlock offered to put me in contact with assistant county prosecutor Frank Gasper, which he did by a 3 way phone call, from jail. Gasper told me to "listen to what Robert said." Winlock then told me to back up his story that a "nigger", his cousin was hired by Keith to burn the cars of Michelle Kolman and that Keith had been in a power struggle with Joe Sadie in an Arab group that they had both belonged to and that Kovocic had been interested in the same girls as Keith so Keith wanted them out of the way. On March 1, 1996 I fabricated the report. By March 13, 1996 I had already written a letter to Keith's attorney Jay Milano recanting my statement and coming clean with the truth. Frank Gasper then found out about it and threatened me and offered me the deal to shut up and to accuse TAB investigator Chris Lawrence, Keith's daughter and Keith of bribing me for the statement. This was impossible because I only met Chris Lawrence after I had already written the statement to Milano and his private investigator had come to see me in county jail.

11. I have been threatened by the Organized Crime Unit and investigators from the prosecutor's office to have my probation pulled and had visits from both of them and taken to the Cuyahoga County Prosecutor's Office to see Carmen Marino, and also talked to assistant county prosecutors Canfil and Gasper over the phone to facilitate this conspiracy.

12. I have taped an audio tape with TV investigators recently as part of a program exposing these police and prosecutors for what they have done.

13. I was brought into this conspiracy by Robert Winlock, a government agent, who booked himself in the county jail as part of his ploy as a cop. He was taken out of the POD every day to visit the Organized Crime Unit and returned with cigarettes. Winlock promised me deals and they all came true even after I was indicted for denying my own handwriting. I was assured that after I testified in 1999 everything would be taken care of as it had for 3 years. I had every reason to assume that it would. My experience with the prosecutors in Keith's cases is that they are prepared to give you anything you want if you are prepared to help them fix cases.

14. There are numerous court records indicating the deals

SWORN AND SUBSCRIBED TO BEFORE ME A NOTARY PUBLIC ON THIS 12th DAY OF APRIL 2001.

C. THOMAS HARDY
NOTARY PUBLIC, STATE OF OHIO
COMMISSION PERMANENT ORDER

Andrew Haines

ANDREW HAINES

I got that are available, I certainly could not have given these deals to myself. Judge Sutula was aware of all this, she was made aware of it at the time of sentencing by prosecutor Sean Gallagher in my first cases in August of 1996.

I am prepared to testify to the above facts and others should I be requested to do so.

Andrew Haines

Andrew Haines

SWORN TO AND SUBSCRIBED IN MY PRESENCE A NOTARY PUBLIC ON THIS 12th DAY APRIL IN 2001.

C. Thomas Hardy

NOTARY PUBLIC

C. THOMAS HARDY
NOTARY PUBLIC, STATE OF OHIO
COMMISSION PERMANENT OF

Milano

Attorneys at Law

Jerry Milano

Jay Milano

600 Standard Building
Cleveland, Ohio 44113
(216) 241-5050
Fax: (216) 621-3231

(35)

September 13, 1996

VIA HAND-DELIVERY

Frank G. Gasper
Asst. Cuyahoga County Prosecutor
Cuyahoga County Prosecutor's Office
Courts Tower-Justice Center
Ninth Floor
1200 Ontario Street
Cleveland, Ohio 44113

Dear Mr. Gasper:

Based upon what I have heard from others and from you, and based upon what happened, I believe you are wrong about my actions in Mr. Keith's case. Since this came to my attention, I have attempted five (5) separate times (once through David Doughten, three [3] times by phone and once in person) to set up a meeting to discuss this issue.

You will not find a single person in the Justice Center who will say that I have ever lied to them, took a cheap shot at them, or even ever took an unreasonable position. That is until you have now accused me of lying without ever having talked to me about it.

I do not lie. I am not lying about when I say that I did not give the witness statements to Chris Lawrence/Barb Loeser. I did give them to the client, something I would do again. I did not work in concert with Ms. Lawrence/Loeser or the *Tab*. In fact, I made a point of doing everything I could to keep our case separate. I have done nothing in Mr. Keith's case which could be regarded as either illegal or unethical.

GASPER ACCUSED OF WRONG DOINGS

Frank, you seem to have forgotten that you were accused of wrongdoing in this case. You seem to have forgotten that you made sure that Judge Cirigliano, David Doughten and I all heard your version of what happened. You seem to have forgotten that at that time you removed yourself from the decision making process in Mr. Keith's case. You seem to have forgotten that inherent in your explanation and in your complaints about how you were being unfairly investigated was a request that we rely on your credibility. You seem to have forgotten that I have the right to be heard and that I have a right to rely on my credibility.

The defense has been saying all along that people have taken Mr. Keith and his case too personally. You are still taking this case too personally. You know that I have already spoken at length about this issue with Mr. Marino. Nevertheless, and for the last time, I am requesting that we meet to discuss this matter. I am doing so because I have labored for fifteen (15) years to build a reputation for credibility. Whether you are being reasonable or not, I will not allow the attack to go unanswered.

Very truly yours,

JAY MILANO

JM:dmn

cc: Judge Joseph C. Cirigliano
via ordinary U.S. Mail
Stephanie Tubbs Jones, Esq.
Carmen Marino, Esq.
David Doughten, Esq.
all via hand-delivery

GASPER INVESTIGATED AND FIRED BY HIS OWN OFFICE

37.

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STATE OF OHIO, CUYAHOGA COUNTY } SS. IN THE COURT OF COMMON PLEAS

JANUARY TERM, 2002

STATE OF OHIO PLAINTIFF TO-WIT: APRIL 17 2002

VS. NO. CR 316724

DEFENDANT } INDICTMENT ARSON, GRAND THEFT M/V

JEFFREY KEITH

JOURNAL ENTRY

MOTION FOR LEAVE TO FILE A DELAYED MOTION FOR NEW TRIAL IS DENIED.

JUDGE GAUL DECISION NOT ON THE RECORD IN DEC. 26, 2002 8th DISTRICT - SEE APPX. 2 pg. 7.

THE STATE OF OHIO Cuyahoga County } SS. I, GERALD E. FUERST, CLERK OF THE COURT OF COMMON PLEAS WITHIN AND FOR SAID COUNTY. HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS TRULY TAKEN AND COPIED FROM THE ORIGINAL Criminal Journal Entry CR 316724 NOW ON FILE IN MY OFFICE. WITNESS MY HAND AND SEAL OF SAID COURT THIS 1 DAY OF Nov A.D. 20 02

GERALD E. FUERST, Clerk

By Cheryl A Kuk Deputy

FILED APR 30 2002 GERALD E. FUERST CLERK OF COURTS CUYAHOGA COUNTY, OHIO

04-17-2002

MTN MAB 04/19/02 09:57

JUDGE DANIEL GAUL

COPIES SENT TO:

☐ Sheriff

☐ Defendant

☐ Other LORCI #334054 M 5-3-02

{ Judge Cirigliano's decision on the record - See appx. 2 par. 7. }

38.

IN THE COURT OF COMMON PLEAS
CRIMINAL DIVISION
CUYAHOGA COUNTY, OHIO

| | | |
|---|---|---|
| STATE OF OHIO | ) | CASE NO. CR 316724 |
| Plaintiff | ) | |
| -vs- | ) | |
| JEFFREY C. KEITH<br>Defendant | ) | |

FILED
MAR 13 2002
GERALD E. FUERST
CLERK OF COURTS
CUYAHOGA COUNTY, OHIO

## Judgment Entry

The Court finds that the defendant, Jeffrey C. Keith, filed a Motion for Leave to File Motion for New Trial on January 15, 2002, to which the State of Ohio responded with a Motion to Dismiss. The State's motion is hereby granted.

March 12, 2002
DATE

Joseph E Cirigliano
JOSEPH CIRIGLIANO JUDGE

The Court orders the that the Office of the Cuyahoga County Clerk of Courts provide a copy of this Judgment Entry to the following parties:

Jeffrey C. Keith, #334-054, Lorain Correctional Institution, 2075 South Avon Belden Rd., Grafton, OH 44044.

Lisa R. Williamson, Asst. Prosecuting Attorney, 1200 Ontario Street, 8th Floor, Cleveland, OH 44113.

J Keith, Deft.
LORCI # 334054
Lisa Williamson, Prosecutor's Office
M 3-13-02