

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

UNITED STATES OF AMERICA,)	
Plaintiffs,)	
)	
STATE OF NEW YORK, STATE OF NEW)	
JERSEY, STATE OF CONNECTICUT,)	
HOOSIER ENVIRONMENTAL COUNCIL,)	
and OHIO ENVIRONMENTAL COUNCIL,)	
Plaintiff-Intervenors,)	
)	
vs.)	Civil Action No. 1:99-cv-1693-LJM-JMS
)	
CINERGY CORP., PSI ENERGY, INC., and)	
THE CINCINNATI GAS & ELECTRIC)	
COMPANY,)	
Defendants.)	
)	

AFFIDAVIT OF JULIA BLACKWELL GELINAS

The undersigned, Julia Blackwell Gelinas, affirms the truth of the following statements:

1. I am over the age of eighteen, competent to make this Affidavit, and have personal knowledge of the matters set forth herein.

2. I am currently employed as an attorney by Frost Brown Todd LLC.

3. I have been retained by CINERGY Corporation, CINERGY Services, Inc., PSI Energy, Inc. and the Cincinnati Gas & Electric Company (hereinafter "CINERGY") to offer an opinion with regard to the Consulting Services Agreement entered into between Duke Energy and Robert Batdorf. More specifically, I have been asked to opine as to whether the agreement violates the Indiana Rules of Professional Conduct.

4. I served on the Indiana Supreme Court Disciplinary Commission from 1991 to 2001. A copy of my curriculum vitae, which includes a list of publications that I have authored within the preceding ten years, is attached as Exhibit A to this affidavit. I have not testified as an

expert at trial or by deposition within the preceding four years. I am being paid an hourly rate of \$350.00 for my study and testimony in this matter.

5. I have reviewed the following documents which were provided to me by counsel for CINERGY:

- (a) Memorandum in Support of Plaintiff's Motion for New Trial Due to Party Misconduct, or in the Alternative, for Expedited Discovery and an Evidentiary Hearing, with attachments;
- (b) CINERGY's Opposition to Plaintiff's Motion for New Trial Due to Party Misconduct, or in the Alternative, for Expedited Discovery and an Evidentiary Hearing, with attachments;
- (c) Plaintiff's Reply to CINERGY's Opposition to Plaintiff's Motion for New Trial Due to Party Misconduct, or in the Alternative, for Expedited Discovery and an Evidentiary Hearing;
- (d) Selected excerpts of deposition and trial testimony;
- (e) Order on Plaintiff's Motion for New Trial; and
- (f) Order to Show Cause.

6. Based on my review of the various documents with which I was provided, my opinion is as follows.

7. Rule 3.4 of the Indiana Rules of Professional Conduct states in part:

A lawyer shall not: . . . b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law; . . .

8. An ethics opinion issued by the American Bar Association interpreting the model rule that is identical to Indiana's current Rule 3.4(b) has stated that:

[a] lawyer, acting on her client's behalf, may compensate a non-expert witness for time spent in attending a deposition or trial or in meeting with the lawyer preparatory to such testimony, provided that the payment is not conditioned on the content of the testimony and provided further that the payment does not violate the law of the jurisdiction.

ABA Formal Opinion 96-402 (Aug. 2, 1996).

9. There does not appear to be a specific prohibition under Indiana law against compensating a fact witness for time lost spent in preparing for testimony and/or testifying at trial.

10. Absent such prohibition, the issue becomes one of reasonableness with regard to the payment to the witness.

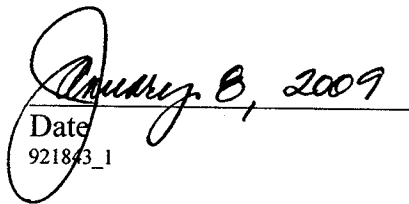
11. It is my understanding from the materials reviewed, that Mr. Batdorf was paid using an objective formula that was based on his previous earnings (which could also be considered the fair market value of his consulting services). An attorney could find that the use of such a formula constitutes a reasonable basis for payment.

12. The objective nature of the payment to Mr. Batdorf does not raise an inference that such compensation was for or because of the content of any testimony at trial.

13. Mr. Batdorf recorded the time he spent preparing and testifying at trial, thereby making claims for lost time as the time was expended, as opposed to receiving a lump sum payment at the end of the litigation.

14. It is my opinion that the Agreement between Duke Energy and Mr. Batdorf does not violate the Indiana Rules of Professional Conduct.

FURTHER AFFIANT SAYETH NOT.


Date
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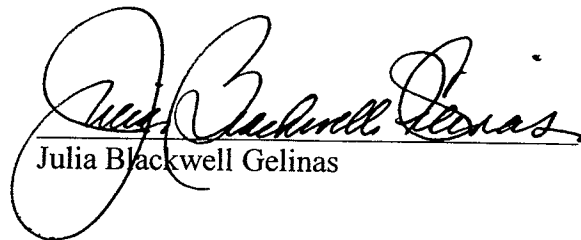

Julia Blackwell Gelinas

EXHIBIT A

Julia Blackwell Gelinás

Member

A member of Frost Brown Todd, Ms. Julia Blackwell Gelinás practices in construction, fidelity and surety, and other commercial matters. She also represents lawyers before the Indiana Supreme Court Disciplinary Commission. Ms. Gelinás served as chair of the management committee of the former Locke Reynolds law firm from 2000 to 2005, one of very few women to hold that title in Indianapolis. A well-respected national leader in the profession, she is a frequently requested speaker.



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PRACTICE AREAS

Litigation
Appellate
Construction Law

EDUCATION

Saint Mary's College
B.A., 1975
cum laude

Indiana University School of Law
J.D., 1978
cum laude

Professional Affiliations

American Bar Association

Torts and Insurance Practice Section

Fidelity and Surety Committee, Vice-Chair, 1990-1995 and 1997-2002
Professional Issues Committee

Forum on the Construction Industry Committee
Council of Appellate Lawyers

Indianapolis American Inns of Court

Founding Member, Master of the Bench

Indianapolis and Indiana State Bar Associations

Seventh Circuit Bar Association

Committee on Membership & Programs, Indiana Chair

Indiana State Supreme Court Disciplinary Commission

Former Chair, 1999-2001
Executive Committee Member, 1991-2001

Surety Claims Institute

The Lawyers Club

Fidelity Law Association

IU School of Law - Indianapolis

Board of Directors, President 1992-1994

Publications

"Commercial Surety Indemnity Agreement Issues"

Commercial Surety, Chapter 10, Co-Author, American Bar Association, 2007



Payment Bond Manual

Indiana Chapter, 2006

“Defenses Available to the Surety”

The Law of Suretyship (2d Ed.), American Bar Association, 2000

“Annotated Banker’s Blanket Bond”

American Bar Association

“Financial Institutions Bond – Annotated”

American Bar Association

Presentations

“Indiana Ethics: The Top 5”

ICLEF, 2007

Appellate Skills Institute

November 2006

“Ethics in Transactions”

Indianapolis Bar
Association, 2006

“Criminal and Civil Appellate Practice”

Lorman Education Services, 2006

Advanced Ethics

ICLEF, May 2006

“Outreach Back to Basics: Contract Surety Bond Claims”

Tort Trial and Insurance Practice, American Bar Association, 2004

“Human Resources”

Women in Law Conference, 2002

**“How do you Define a Final Judgment in Federal Appeals? When is
Enough Enough?”**

Advanced Federal Practice, 2002

Civic & Charitable Organizations

Indiana University School of Law, Indianapolis Alumni Association

Past President, 1992-1994

St. Elizabeth’s Home

■ PEOPLE

Board Member, 1990-1995

Cathedral Arts Midsummer Festival

Awards and Honors

The Best Lawyers in America®, 2007-2009

Indiana Super Lawyer® and Top 25 Female Super Lawyers, 2004-2008

"Women to Watch," *Indianapolis Business Journal* and *Indiana Lawyer*, 2000

Chambers USA®

Indianapolis Bar Foundation, Distinguished Fellow