STATE OF SOUTH CAROLINA	)	JUDICIAL MERIT SELECTION COMMITTEE
	)	
COUNTY OF CHARLESTON	)	
IN RE:	)	
	)	
THE HONORABLE	)	
FRANCES P. SEGARS-ANDREWS	)	**AFFIDAVIT OF**
	)	**WILLIAM L. HOWARD, SR.**
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PERSONALLY APPEARED BEFORE ME the undersigned Affiant, who, having been duly sworn, deposes and says as follows:

INTRODUCTION

1. I am over eighteen (18) years of age and of sound mind.

2. I am a citizen and resident of Charleston County, South Carolina.

3. I am Special Counsel to the law firm of Young Clement Rivers, LLP, located at 28 Broad Street, Charleston, South Carolina. I am also a retired South Carolina judge, having sat on the State's Circuit Court and Court of Appeals.

4. This affidavit is submitted to the Judicial Merit Selection Committee to provide my opinions with regard to the legal and ethical issues that confronted the Honorable Francis P. Segars-Andrews in the case of *Simpson v. Simpson*. Specifically, my opinions concern the propriety and reasonableness of Judge Segars-Andrews' response to Mr. Simpson's motion to recuse, the unbiased nature of the underlying rulings in the case, and whether or not Judge Segars-Andrews' decision not to recuse herself was proper and appropriate under the circumstances confronting her. I also provide my observations as to Judge Segars-Andrews' qualifications to continue as a Family Court Judge, her work ethic, her demeaner, her

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temperament, her dedication to the people of South Carolina, and her contribution to our Judiciary.

5. As detailed in the following paragraphs, it is my conclusion that Judge Segars-Andrews acted appropriately under the circumstances. It is also my strong opinion that Judge Segars-Andrews is well qualified to continue on the Family Court bench.

BACKGROUND OF THE AFFIANT

6. I received my Bachelor of Arts Degree in May of 1970 from Dickinson College in Carlisle, Pennsylvania. I received my Juris Doctorate from the University of South Carolina School of Law in May of 1973. In November of 1973, I was admitted to practice law in the State of South Carolina. Thereafter, I was admitted to practice in the Federal District Court for the District of South Carolina, the United States Court of Appeals for the Fourth Circuit, and the United States Supreme Court.

7. I began private practice in the Law Firm of Robinson, Paul and Belk and, thereafter, formed the firm of Belk and Howard in 1977, which later evolved into Belk, Howard, Cobb & Chandler. I practiced in that law firm until July of 1988, at which time I was appointed by the Legislature to the position of Resident Circuit Judge for the Ninth Judicial Circuit. As a partner in Belk, Howard, Cobb & Chandler, I was General Counsel for the Town of Mt. Pleasant, South Carolina; Chairman of the Ninth Judicial Circuit Fee Dispute Resolution Committee; a member of the South Carolina Bar Ethics Advisory Committee; and was appointed by Governor Riley to the Governor's Committee on Consumer Affairs. During that time, I was also a member of the South Carolina Trial Lawyers Association, the Association of Trial Lawyers of America, and the American Society of Law and Medicine. I enjoyed a general practice of law, in which I handled litigation as both a plaintiff's attorney and a defense attorney, including an extensive

practice in the Family Court. I am currently a member of the South Carolina Defense Trial Attorneys Association.

8. As stated above, in July of 1988, I was appointed to the Circuit Court bench as Resident Circuit Judge for the Ninth Judicial Circuit. In 1994, I was temporarily appointed to the Court of Appeals by Chief Justice Chandler to fill the seat of Justice-elect Randall Bell. I served in that capacity until 1995, at which time I rejoined the Circuit Court. Thereafter, in 1996, after eight years on the trial bench, I was elected to the South Carolina Court of Appeals, where I served until my retirement in July of 2004.

9. During my time on the bench, I served as the Treasurer of the South Carolina Circuit Court Judges Association and also served on various judicial committees, including the Judicial Grievance Committee as a Hearing Officer. I currently serve as Chairman of the South Carolina Supreme Court Alternative Dispute Resolution Commission. I have also taught more than 75 legal education courses, providing continuing legal and judicial education to attorneys and judges in South Carolina and in the United States, including the National Judicial College and as guest lecturer at the Alabama, California, Colorado, Oregon, Tennessee, and Louisiana annual judicial conferences. The subject of the course material has covered all aspects of the judicial system, including many seminars on judicial ethics. I have also authored the following articles: "Appellate Court Trials: Can the Government Market Electronic Access?" 49 S.C. Law Rev. 55 (1997); "Cameras in the Courtroom: We Pursue Different Objectives", Quill October, 1997. I am also the Co-Editor of the South Carolina Civil and Criminal Practice Manual.

10. I have known Judge Segars-Andrews since she was elected to the Family Court in 1993. As long as I have known Judge Segars-Andrews, I have heard nothing but praise about her from members of the South Carolina Bar. She has always displayed a dedicated work ethic,

and she has a reputation for being fair and impartial in her decisions. Judge Segars-Andrews has assumed additional duties to enhance the judicial system throughout her career, including the successful initiation of a juvenile drug court, requiring many hours of personal work on her part, and most recently, the initiation of a pilot program involving mediation of DSS cases. I have worked with Judge Segars-Andrews in this new program, first begun by Judge Lisa Kinon in Horry County. Judge Segars-Andrews brought this initiative to Charleston County, where it has received accolades for providing a better procedure to solve the problems involving broken homes in a way that maximizes the protection of the children involved, at the same time reducing the court's backlog.

ANALYSIS OF *SIMPSON V. SIMPSON*

11. As a former member of the judiciary, I can attest that the situation faced by Judge Segars-Andrews in the *Simpson* case is not unusual, though nonetheless difficult. I have personally had cases in which a litigant has requested that I recuse myself *after* substantive rulings have been made by me. A judge can *always* protect himself/herself by immediately recusing, a course that is highly criticized by legal authorities because it penalizes the party who legitimately won their case, and forces the party to incur further legal expense and suffer delay in having the issues adjudicated.

12. Quite naturally, this motion to recuse often arises by a litigant when they first realize they are not winning, as happened in the *Simpson* case. This case is a prime example – when the motion to recuse was made, it is my understanding that Judge Segars-Andrews had already announced her final decision in a written memorandum to both parties on all of the issues.

13. In that circumstance, it is the duty of the judge to evaluate whether or not recusal is mandated. In making that decision, a paramount concern has to be what prejudice will be suffered by the other litigant.

14. In the *Simpson* case, Judge Segars-Andrews had no connection to the parents' litigation in which the Shull affidavit was filed, and she was not aware of it at the time she made her decision. Under any circumstances, there is no nexus between the Shull affidavit and Judge Segars-Andrews' judicial role that would provide an incentive to rule the way that she did. Certainly, there is no basis for concluding there was bias when she was not even aware of the affidavit until the motion to recuse was made.

15. As to the prior professional relationship between Mr. Shull and Mrs. Simpson's attorney, that was concluded before Judge Segars-Andrews heard the *Simpson* case, and again, could not have been a basis for recusal. As a judge, I had many prior dealings with members of the community in which I was asked to preside. If a party was known to me, I would advise counsel and the parties if there had been any significant relationship. However, I did not automatically recuse myself just because I had a previous relationship with the party or the attorney, nor did I do so if I had enjoyed a previous professional relationship in which I, as an attorney, or one of my partners, had profited by sharing work and fees. Instead, if a motion was made for recusal, I considered: a) is that prior connection of such magnitude, duration or significance that a reasonable, neutral observer, knowing all of the current circumstances, would believe I was partial; b) if not, then knowing what I know and feeling as I do, can I be impartial, or would that prior relationship affect my judgment. In arriving at a decision as to what to do, absent a conflict, I would consider the prejudice caused by my failure to rule in the case. This

includes not only the prejudice to either party from delay and additional litigation expense, but also the burden placed upon fellow judges caused by inappropriate recusal.

16. Judge Segars-Andrews had no knowledge of the Shull affidavit prior to the motion to recuse (which was filed *after* she faxed both counsel her ruling on all issues), so clearly that could not have had any effect upon her ruling. It is my understanding that Judge Segars-Andrews mentioned the motion to her husband because it seemed so tenuous, and he reminded her about the prior case in which Shull and Mrs. Simpson's attorney worked together to produce a lucrative fee. Based upon that, Judge Segars-Andrews did precisely what the ethical rules required her to do – *she disclosed* this prior, tangential matter. In this regard, it is important to note the following:

a. this was not a relationship Judge Segars-Andrews had with Mrs. Simpson's counsel;

b. she had no relationship with Mrs. Simpson's counsel;

c. Mrs. Simpson's counsel was not a partner in Judge Segars-Andrews' husband's law practice and the work Mrs. Simpson's counsel did with Mr. Shull was on a case-specific basis;

d. the case involving the prior fee-splitting relationship between her husband's partner (Mr. Shull) and Mrs. Simpson's attorney had already been concluded; and

e. Judge Segars-Andrews brought the fact of this prior case to counsel's attention as soon as she was reminded of it by her husband, which again, was after she had communicated her ruling in the Simpson case.

17. Under the circumstances, in my opinion, the question Judge Segars-Andrews faced was whether the Shull affidavit or the previous professional relationship between Mrs.

Simpson's attorney and Judge Segars-Andrews Husband's law partner, Mr. Shull, would provide a reasonable belief of partiality by a disinterested neutral person, knowing all of the circumstances. *See Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 843 (1988). Clearly, there was no actual conflict. Judge Segars-Andrews did not stand to gain or lose anything of value. Therefore, Judge Segars Andrews had to weigh the request for recusal as one based upon the appearance of impropriety. In doing so, she also had to consider the prejudice to Mrs. Simpson that would occur if the case had to be retried by another judge – a two day trial at considerable expense.

18. In my opinion, Judge Segars-Andrews handled the request appropriately. I do not believe any neutral, reasonable person, knowing all of the circumstances, could conclude Judge Segars-Andrews was partial because her husband's law partner had previously provided an affidavit in unrelated litigation to support the basis for an attorney fee award. There simply is no connection, and to rule otherwise would be to assume the judiciary has no ability to be fair and impartial, an assumption which in the particular case of Judge Segars-Andrews is belied by her exemplary 16-year career on the bench.

19. Once Judge Segars-Andrews notified the attorneys and parties of the prior fee-splitting case, she initially stated she would recuse herself. This is not at all an unusual response by the trial court. During my tenure on the bench, I did the same thing. I disclosed a prior relationship and announced I would recuse myself if either side wanted me to – only to discover, to my chagrin, that one side did, in fact, ask me to do so. I then discovered that the other side asked me to reconsider, claiming prejudice – I would note that the concept of judicial reconsideration is one that is recognized under our Rules and is looked upon favorably by our Supreme Court. *See* Rule 59(e), SCRCP; *Elam v. S.C. DOT*, 361 S.C. 9, 21-22, 602 S.E.2d 772,

778-79 (2004) ("[I]t is proper to view a Rule 59(e) motion not only as a vehicle to request the trial court 'alter or amend the judgment,' but also as a vehicle to seek 'reconsideration' of issues and arguments. A motion under Rule 59(e) long has been viewed as 'motion for reconsideration' despite the absence of those words from the rule. Consequently, a party usually is allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented. There is nothing inherently unfair in allowing a party one final chance not only to call the court's attention to a possible misapprehension of an earlier argument, but also to revisit a previously raised argument. It is inherently unfair to disallow such an opportunity.") (internal citations omitted). In this case, Judge Segars-Andrews' initial oral ruling to recuse herself was not final, and she considered that ruling in more detail based upon the additional response. She then made a final ruling not to recuse, reduced to a written order, based upon her careful review of the judicial canons. Notwithstanding this final ruling, she again entertained the arguments promulgated by Mr. Simpson's counsel in a formal Rule 59 motion. Thus, she gave Mr. Simpson full opportunity to be heard and to ask for reconsideration of the recusal decision.

In my experience on the bench, once I considered the opposing views of the parties, I then had to make a hard decision – as did Judge Segars-Andrews. If I recused myself, all of what had been accomplished in trying the case, and the substantitve decisions I had wrestled over – would have to be retried on other days, in front of other judges, at considerable expense. More importantly, there was a danger of undermining the integrity of the judicial system by automatically recusing myself upon request by a litigant who wanted the advantage of a more favorable judge (commonly referred to as "Judge Shopping"), rather than one who was fair and impartial. On the other hand, if there was a valid basis for recusal because a neutral, impartial person, knowing *all* of the circumstances, would believe I was partial, then those doubts would

undermine the integrity of the judicial system. *See Hook v. McDade*, 89 F.3d 350, 354 (7th Cir. 1996) ("An objective standard is essential when the question is how things appear to the well-informed, thoughtful observer rather than to a hyper-sensitive or unduly suspicious person. . . . Trivial risks are endemic, and if they were enough to require disqualification we would have a system of preemptory strikes and judge-shopping, which itself would imperil the perceived ability of the judicial system to decide cases without regard to persons.") (quoting *In re Mason*, 916 F.2d 384, 385-86 (7th Cir. 1990)). Ultimately, it is easy to decide to recuse, because by doing so the judge stays out of harms' way, even though it is to the detriment of the litigant who has legitimately won his or her case and to the judicial system. But many times I felt my ethical obligation was to say no, that is not called for in this case. There is no relationship that affects my decision. As I understand it, Mrs. Simpson's argument, supported by the opinion of Professor Nathan M. Crystal, supported that conclusion by Judge Segars-Andrews in this case.

CONCLUSION

20. These are difficult decisions that are fact driven. Thus, other cases rarely provide a basis for a black and white decision. It is quite clear, however, that Judge Segars-Andrews considered the issues carefully and made a thoughtful, well-informed decision, motivated not by partisan bias, or her own self interest, but a commitment to her professional responsibilities.

21. Judge Segars-Andrews has had a distinguished career, with a very solid reputation as an honest, fair, and impartial jurist, and it is now threatened by a single disgruntled litigant. She is among the most hardworking members of the bench, and she has consistently rendered well-reasoned rulings. Reviewing the Court of Appeals' decision regarding the merits of the divorce proceeding in *Simpson v. Simpson,* (Court of Appeals Opinion number 4341, dated February 8, 2008), in my professional opinion, she ruled appropriately. Based upon the facts of

the case, there is no part of her ruling that is out of the ordinary. A large part of my practice is mediating cases, including family court cases. A part of being a mediator is helping litigants and attorneys determine what risks they face going forward into the courtroom, as opposed to compromising during mediation. All of Judge Segars-Andrews rulings, in my opinion, are within the purview of what a well-informed attorney would have advised his/her client could reasonably have been expected as a possible outcome in court.

22. I implore this committee to rethink its position. Judge Segars-Andrews' actions in *Simpson v. Simpson* were, at least in part, motivated and sanctioned by the opinion of a noted South Carolina legal ethics scholar, and have withstood review by both our Court of Appeals and the Commission on Judicial Conduct.

23. Our State has a strong judicial branch because our judges are insulated from the emotional whim of unhappy litigants. In fact, our Code of Judicial Conduct expressly notes that its "purpose . . . would be subverted if the Code were invoked by lawyers for mere tactical advantage in a proceeding." Preamble, CJC, Rule 501, SCACR. Judges must have the ability to remain independent so that they can do their job without fear of reprisal from disgruntled litigants. Cannon 1, CJC, cmt., Rule 501, SCACR ("The integrity and independence of judges depends in turn upon their acting without fear or favor."). This is especially critical in the Family Court arena, because the judge has to make the decision in each case, with one winner and one loser in each case, and those decisions are always emotionally charged. Without question, Family Court Judges face the most difficult decisions litigated in any court in this country. Judge Segars Andrews has done so with great dedication for 16 years.

24. Under the circumstances presented here, I join the Court of Appeals and the Commission on Judicial Conduct, in finding no fault with Judge Segars-Andrews' actions. I

believe she acted appropriately and in keeping with the duties of her office, and I believe I would have reached the same conclusion regarding recusal were I placed in the same position as Judge Segars-Andrews.

25. I have no doubt about Judge Segars-Andrews' judicial qualifications, and I would urge this Committee to allow her to continue to serve the State of South Carolina. She is a credit to our Judiciary, not a detriment.

FURTHERMORE, AFFIANT SAYETH NAUGHT.

William L. Howard, Sr.

SWORN TO BEFORE ME, a Notary Public, this 25th day of November, 2009.

(Signed)
Notary Public for South Carolina,
My Commission Expires: 3-27-19