EXHIBIT 1

Report of a Candidate's Qualifications

The Honorable F. P. "Charlie" Segars-Andrews
Family Court, Ninth Judicial Circuit, Seat 1

Date Draft Report Issued: December 16, 2009

Date and Time:

Final Report Issued: Noon, Friday, December 18, 2009

Judicial Merit Selection Commission

Post Office Box 142
Columbia, South Carolina 29202
(803) 212-6623

December 16, 2009

Dear Members of the General Assembly:

Enclosed is the Judicial Merit Selection Commission's Report of a Candidate's Qualifications for The Honorable F. P. "Charlie" Segars-Andrews.

The Commission is charged by law with ascertaining whether judicial candidates are qualified for service on the bench. In accordance with this mandate, the Commission has thoroughly investigated Judge Segars-Andrews for her suitability for continued judicial service.

The Commission, in a 7 to 3 vote, found Judge Segars-Andrews to be Not Qualified. The attached Report details this candidate's qualifications as they relate to the Commission's evaluative criteria.

If you have questions about this report, contact the Commission office at 212-6623.

Thank you for your attention to this matter.

Sincerely,

Glenn F. McConnell, Chairman
F. G. Delleney, Jr., Vice-Chairman

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INTRODUCTION

The Judicial Merit Selection Commission is charged by law to consider the qualifications of candidates for the judiciary. This report details the reasons for the Commission's findings, as well as each candidate's qualifications as they relate to the Commission's evaluative criteria. The Commission operates under the law that went into effect July 1, 1997, and which dramatically changed the powers and duties of the Commission. One component of this law is that the Commission's finding of "qualified" or "not qualified" is binding on the General Assembly. The Commission is also cognizant of the need for members of the General Assembly to be able to differentiate between candidates and, therefore, has attempted to provide as detailed a report as possible.

The Judicial Merit Selection Commission is composed of ten members, four of whom are non-legislators. The Commission has continued the more in-depth screening format started in 1997. The Commission has asked candidates their views on issues peculiar to service on the court to which they seek election. These questions were posed in an effort to provide members of the General Assembly with more information about candidates and the candidates' thought processes on issues relevant to their candidacies. The Commission has also engaged in a more probing inquiry into the depth of a candidate's experience in areas of practice that are germane to the office he or she is seeking. The Commission feels that candidates should have familiarity with the subject matter of the courts for which they offer, and feels that candidates' responses should indicate their familiarity with most major areas of the law with which they will be confronted.

The Commission also used the Citizens Committees on Judicial Qualifications as an adjunct of the Commission. Since the decisions of our judiciary play such an important role in people's personal and professional lives, the Commission believes that all South Carolinians should have a voice in the selection of the state's judges. It was this desire for broad-based grassroots participation that led the Commission to create the Citizens Committees on Judicial Qualifications. These committees, composed of people from a broad range of experiences (lawyers, teachers, businessmen, bankers, and advocates for

various organizations; members of these committees are also diverse in their racial and gender backgrounds), were asked to advise the Commission on the judicial candidates in their regions. Each regional committee interviewed the candidates from its assigned area and also interviewed other individuals in that region who were familiar with the candidate either personally or professionally. Based on those interviews and its own investigation, each committee provided the Commission with a report on their assigned candidates based on the Commission's evaluative criteria. The Commission then used these reports as a tool for further investigation of the candidate if the committee's report so warranted. Summaries of these reports have also been included in the Commission's report for your review.

The Commission conducts a thorough investigation of each candidate's professional, personal, and financial affairs, and holds public hearings during which each candidate is questioned on a wide variety of issues. The Commission's investigation focuses on the following evaluative criteria: constitutional qualifications, ethical fitness, professional and academic ability, character, reputation, physical health, mental health, and judicial temperament. The Commission's investigation includes the following:

(1) survey of the bench and bar;
(2) SLED and FBI investigation;
(3) credit investigation;
(4) grievance investigation;
(5) study of application materials;
(6) verification of ethics compliance;
(7) search of newspaper articles;
(8) conflict of interest investigation;
(9) court schedule study;
(10) study of appellate record;
(11) court observation; and
(12) investigation of complaints.

While the law provides that the Commission must make findings as to qualifications, the Commission views its role as also including an obligation to consider candidates in the context of the judiciary on which they would serve and, to some degree, govern. To that end, the Commission inquires as to the quality of justice delivered in the courtrooms of South Carolina and seeks to impart, through its

questioning, the view of the public as to matters of legal knowledge and ability, judicial temperament, and the absoluteness of the Judicial Canons of Conduct as to recusal for conflict of interest, prohibition of ex parte communication, and the disallowance of the acceptance of gifts. However, the Commission is not a forum for reviewing the individual decisions of the state's judicial system absent credible allegations of a candidate's violations of the Judicial Canons of Conduct, the Rules of Professional Conduct, or any of the Commission's nine evaluative criteria that would impact a candidate's fitness for judicial service.

The Commission expects each candidate to possess a basic level of legal knowledge and ability, to have experience that would be applicable to the office sought, and to exhibit a strong adherence to codes of ethical behavior. These expectations are all important, and excellence in one category does not make up for deficiencies in another.

Routine questions related to compliance with ethical Canons governing ethics and financial interests are now administered through a written questionnaire mailed to candidates and completed by them in advance of each candidate's staff interview. These issues were no longer automatically made a part of the public hearing process unless a concern or question was raised during the investigation of the candidate. The necessary public record of a candidate's pledge to uphold the Canons, etc. is his or her completed and sworn questionnaire.

Written examinations of the candidates' knowledge of judicial practice and procedure were given at the time of candidate interviews with staff and graded on a "blind" basis by a panel of four persons designated by the Chairman. In assessing each candidate's performance on these practice and procedure questions, the Commission has placed candidates in either the "failed to meet expectations" or "met expectations" category. The Commission feels that these categories should accurately impart the candidate's performance on the practice and procedure questions.

This report is the culmination of weeks of investigatory work and public hearings. The Commission takes its responsibilities seriously, as it believes that the quality of

justice delivered in South Carolina's courtrooms is directly affected by the thoroughness of its screening process.

This report conveys the Commission's findings as to the qualifications of one candidate, Judge F.P. "Charlie" Segars-Andrews, currently offering for re-election to the Family Court, Ninth Judicial Circuit, Seat 1.

F. P. "Charlie" Segars-Andrews
Family Court, Ninth Judicial Circuit, Seat 1

Commission's Findings: NOT QUALIFIED

(1) Constitutional Qualifications:

Based on the Commission's investigation, Judge Segars-Andrews meets the qualifications prescribed by law for judicial service as a Family Court judge.

Judge Segars-Andrews was born in 1957. She is 52 years old and a resident of Mt. Pleasant, South Carolina. Judge Segars-Andrews provided in her application that she has been a resident of South Carolina for at least the immediate past five years and has been a licensed attorney in South Carolina since 1984.

(2) Ethical Fitness:

The Commission's investigation revealed evidence that Judge Segar-Andrews' conduct caused an appearance of impropriety that led a litigant not only to question Judge Segars-Andrews' ability to render a fair and impartial decision, but also to lose faith in the integrity of this state's judicial system.

Judge Segars-Andrews had one complaint filed against her by Mr. William R. Simpson, Jr., who had been a litigant in her court.[1] Also testifying before the Commission concerning the complaint was Mr. Simpson's attorney Steven S. McKenzie, who appeared because he was subpoenaed by the Commission.

The complaint against Judge Segars-Andrews concerned proceedings she held involving Mr. William R. Simpson, Jr., who was the plaintiff. Specifically, she heard the remaining issues of equitable division, child support, attorneys fees, and costs in the matter of William R. Simpson, Jr. v Becky H. Simpson and Wade Ingle, Docket Nos. 2004-DR-14-315 and 2004-DR-14-243 (Order dated June 8, 2006) (Entered into the Record at the Commission's Public Hearing, Thursday, November 4, 2009, Vol. III - PM, p.8, lines 18-22, designated as Exhibit. 1A).

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[1] Upon receipt of Mr. Simpson's complaint, the Commission provided Judge Segars-Andrews with a copy of the complaint. At the time, she requested an application package for re-election; she was also furnished a copy of the Commission's Policies and Procedures Manual, which included the Commission's Rules related to the procedure for handling complaints against judicial candidates.

Judge Segars-Andrews heard the case on February 14 and 16, 2006, and was ready to make an order concerning the disposition of the marital property when she received a motion on March 28, 2006, from Mr. McKenzie asking that she recuse herself because an associate of her husband's law firm had testified concerning attorneys fees in a previous divorce case involving Mr. Simpson's parents. At a hearing in Sumter on April 14, 2006, Judge Segars-Andrews denied Mr. McKenzie's motion.

At the Commission's Public Hearing, Judge Segars-Andrews explained to staff counsel that Mr. McKenzie's motion was "just not enough for me to recuse myself." (Commission's Public Hearing, Thursday, November 4, 2009, Vol. III - PM, p.26, lines 6-7). In addition, when questioned by the Commissioners, Judge Segars-Andrews explained:

> "But when they immediately sent that motion for me to recuse myself and it was for, in my opinion, a very frivolous reason, I wanted out of this case. But I wasn't going to at that point, because it was frivolous.
>
> "But when I said something to my husband, he reminded me of this other business dealing, even though it was past, I felt like that was enough for me to get out." (Commission's Public Hearing, Thursday, November 4, 2009, Vol. III - PM, p.33, lines 13-21).

In her testimony before the Commission, Judge Segars-Andrews stated that she "mentioned" the motion to recuse herself to her husband and he said,

> "Well, you know, we've -- Lon has worked with him on other things. And he reminded me of a case that happened a year before. And so I went back on the record during this hearing. I said, 'Your motion is frivolous, but I need to recuse myself because my husband's law partner and Mr. McLaren had worked together on this other case, and I need to recuse myself.'" (Commission's Public Hearing, Thursday, November 4, 2009, Vol. III - PM, p.26, lines 9-16).

When asked by the Commissioners about the size of the fee that came to her husband's law firm, Judge Segars-Andrews responded, "I think it was probably around [$]300,000. That's my guess." (Commission's Public Hearing, Thursday, November 4, 2009, Vol. III - PM, p.36, lines 3-4). She was asked by Professor Freeman if that was her husband's share or if the fee were split. She replied, "I think that was probably my husband's share on that case." (Commission's Public Hearing, Thursday, November 4, 2009, Vol. III - PM, p.36, lines 5-8).

At a hearing on April 14, 2006, Judge Segars-Andrews told the parties about the relationship with her husband's law firm and said that she intended to recuse herself. A transcript of that hearing was included with

the complaint and also is available in the Record on Appeal, Volume I, in Simpson II, (the appeal of Simpson v. Simpson taken to the Court of Appeals on May 6, 2007).[2]

In that transcript, Judge Segars-Andrews insisted several times that she intended to recuse herself from the case and that the case would have to be retried. (Record on Appeal, Volume I, in Simpson II, p. 135, lines 6-14; Judge Segars-Andrews: "It should have been disclosed, I didn't think about it, so I didn't disclose it. I don't see how I can remedy that." p. 137, line 6-7; Judge Segars-Andrews: "I mean, if you all want to do some research on it, I'll be glad to look at some research, but, I just don't think -- I think it should have been disclosed; I didn't think about it, I didn't disclose it, and I don't see how I can remedy that." p. 137, lines 23-25 and p. 138, line 1).

At the hearing, Mr. McKenzie told Judge Segars-Andrews, ". . . Your Honor, had my client known about this -- We didn't know there was any association at all -- I didn't know your husband even practiced law, and didn't know Your Honor; and, you know, had we known that, any association with Mr. McLaren, we would have asked that you recuse yourself." Judge Segars-Andrews responded, "And, I think they have that right." (Record on Appeal, Volume I, in Simpson II, p. 138, lines 14-20.)

The Judge's rationale for recusal was that, if a disclosure of the relationship had been made to Mr. Simpson, he would have had the opportunity to ask her to recuse herself prior to the hearing and disposition of the case. By failing to make the disclosure, Mr. Simpson had no opportunity to ask for recusal. Even though the case almost had been concluded, Judge Segars-Andrews indicated that she knew of no way to remedy Mr. Simpson's ability to request her recusal other than to have a new trial. (Judge Segars-Andrews: ". . . Frankly, I think that I'm doing the wrong thing for both of your clients. I think it was an unbiased ruling, and it's going to end up costing both of your clients more. And, I feel -- you know, I feel bad about it, but I've got to follow the rules . . . ." Record on Appeal, Volume I, in Simpson II, p. 138, lines 2-6.)

Mr. McLaren asked to submit information to Judge Segars-Andrews on the subject and she agreed to receive briefing, but indicated that she had determined to recuse herself. (Judge Segars-Andrews: "I'll be glad to look at

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[2]The Simpson v. Simpson appeal was bifurcated and resulted in two Court of Appeals decisions, one concerning the merits, Simpson v. Simpson, 377 S.C. 527, 660 S.E. 2d 278 (Ct. App. 2008), and the other concerning the judge's recusal, Simpson v. Simpson, 377 S.C. 519, 660 S.E. 2d 274 (Ct. App. 2008). Mrs. Becky Simpson was represented by James McLaren and Jan Warner in the proceedings before Judge Segars-Andrews.

anything, but I'll tell you, I've been -- I have looked at the Rules over and over, because I feel like I really have done a disservice by not disclosing this and causing your clients to have to go through another trial." Record on Appeal, Volume I, in Simpson II, p. 139, lines 14-18.)

Following the hearing, opposing counsel submitted a memorandum along with an affidavit, dated April 24, 2006, from Professor Nathan Crystal of the University of South Carolina School of Law. The memorandum and affidavit indicated that, under the Judicial Canons, Judge Segars-Andrews was not required to disclose the relationship and was in fact under a duty to hear and decide the case.

The memorandum and affidavit were given to Mr. McKenzie, who sent a letter to Judge Segars-Andrews questioning the interpretation and pointing out that opposing counsel had prior knowledge of the relationship and could have disclosed it. (Letter dated April 25, 2006, from Steven S. McKenzie to Judge Segars-Andrews.)

Following receipt of those materials, Judge Segar-Andrews sent a fax on May 3, 2006, to the attorneys in the case stating:

> "After reviewing the memorandum provided from the defendant's counsel in this matter and the cannons [sic] this court determines that it has a duty to rule in this case and that there was no duty to disclose the working relationship between McLaren and Andrews and Andrews and Shull." (Fax dated May 3, 2006, and sent to Steven McKenzie, Scott Robinson, Jan Warner, Carrie Warner, Jim McLaren, and James Stoddard.)

She also requested opposing counsel, Mr. McLaren, to prepare the order and give Mr. McKenzie twenty-four hours to review it.

Mr. Simpson then brought a complaint against Judge Segars-Andrews to the Office of Judicial Conduct on September 20, 2006. Judge Segars-Andrews submitted a response on November 14, 2006. The complaint was summarily dismissed on November 22, 2006.

On appeal, the South Carolina Court of Appeals found that Judge Segars-Andrews had not abused her discretion in making the division of marital property and an award of almost $80,000 in costs and attorneys fees to Mr. Simpson's wife. Simpson v. Simpson, 377 S.C. 527, 660 S.E. 2d 278 (Ct. App. 2008).

In a separate opinion, the Court of Appeals held Mr. Simpson failed to present any evidence of prejudice and bias on Judge Segars-Andrew's

behalf, which would require her to recuse herself and was under a duty to hear and decide the case. Simpson v. Simpson, 377 S.C. 519, 660 S.E. 2d 274 (Ct. App. 2008).

At the Public Hearing on November 4, 2009, Mr. Simpson revealed, when questioned by the Commission, that he was a farmer in Manning and did not know Judge Segars-Andrews until she came to Family Court for the County of Clarendon to hear his case (Commission's Public Hearing, Thursday, November 4, 2009, Vol. III - AM, pp.102-103). He testified that had he known in advance about the six-figure amount the judge's spouse's law firm received from its connections with the opposing counsel's law firm, he would have asked that the Judge recuse herself (Mr. Simpson: "She said she had read over the Canons and realized it was her duty not to sit if it would have been disclosed. I would have had the option to have not had her hear my case, which I would not have. I was never given that option." Commission's Public Hearing, Thursday, November 4, 2009, Vol. III - AM, p.105, line 14-18) Because she remained on the case, he thought he did not receive a fair trial (Mr. Simpson: "I do not see where I was fairly judged." Commission's Public Hearing, Thursday, November 4, 2009, Vol. III - AM, p.108, line 25 and p. 109, line 1). He felt this money had hindered his case, along with the undisclosed relationship between the opposing counsel and the judge's spouse's law firm (Commission's Public Hearing, Thursday, November 4, 2009, Vol. III - AM, p.108). He testified that he came away from the experience with a whole different view of the justice system (Mr. Simpson: "But not only that, I have a whole different outlook of the court system. Once you find out the different connections and all, I thought the judicial system was fair and honest. I do not have that feeling today." Mr. Simpson: "I do not see where I was fairly judged." Commission's Public Hearing, Thursday, November 4, 2009, Vol. III - AM, p.109, lines 8-12). He testified that, instead of relying on things being fair, he now viewed the system as a good-old-boy network. (Mr. Simpson: "And once we called it out on the table in front of her, she recused herself. And then now it's another cover up of all the good old-boy-system, I feel like, and it's cost me a lot of money and a lot of things had taken place and this is not right. It don't smell good. It don't look good." Commission's Public Hearing, Thursday, November 4, 2009, Vol. III - AM, p.108, lines 11-16)

Under subpoena, Mr. McKenzie, Mr. Simpson's attorney, testified that Judge Segars-Andrews denied his motion to recuse, which was based on the fact that Mr. Shull, a law partner of Mr. Andrews (the Judge's husband) gave an affidavit concerning attorneys fees in Mr. Simpson's parents' case (Commission's Public Hearing, Thursday, November 4, 2009, Vol. III - AM, p. 132). Mr. Simpson was a party in his parents' divorce case due to his interest in the farming business he owned with his father. In addition, the

same attorneys who represented Mr. Simpson's mother in his parents' divorce also came to represent Mr. Simpson's wife in his divorce and equitable distribution proceeding.

Mr. McKenzie testified at the hearing where his motion for recusal was denied that Judge Segars-Andrews stated she needed to disclose something she had forgotten; that her husband's firm and Mr. McLaren had shared a large six-figure fee and the parties were going to have to try the case over. Mr. McKenzie explained that, as he is from a small town, when a judge tells him that on the record, he "takes it as the gospel." (Commission's Public Hearing, Thursday, November 4, 2009, Vol. III - AM, p. 132) He stated it never occurred to him she would reverse her recusal, even after he got Professor Crystal's affidavit (Commission's Public Hearing, Thursday, November 4, 2009, Vol. III - AM, p. 134). According to Mr. McKenzie, it is an almost impossible task to show actual prejudice, which is what the Court of Appeals opinion indicated must be shown (Commission's Public Hearing, Thursday, November 4, 2009, Vol. III - AM, p. 134).

In addition, Mr. McKenzie told the Commission that, within five weeks of submitting a complaint to the Office of Judicial Conduct, his client received a letter summarily dismissing "the complaint finding no merit and nothing the judge had done wrong." (Commission's Public Hearing, Thursday, November 4, 2009, Vol. III - PM, p. 13, lines 22-24.) Further, he testified, "I actually received a call from Henry Richardson who basically told me this case was not going to be investigated, they were not even going to open up the file, and it was going to be summarily dismissed." (Commission's Public Hearing, Thursday, November 4, 2009, Vol. III - PM, p. 15, lines 9-14)

When Judge Segars-Andrews was asked to respond to the complaint, she submitted her typewritten notes from the hearings held on February 14 and 16, 2006. The complaint had alleged that she had been involved in instant messaging on the day Mr. Simpson's case was presented. In addition, Mr. McKenzie reported seeing her sign a Valentine's Day card on the bench. Judge Segars-Andrews admitted that she probably signed a card, but "I paid very close attention and took very detailed notes." (Commission's Public Hearing, Thursday, November 4, 2009, Vol. III - PM, p. 23, lines 10-11.)

The Commissioners asked Judge Segars-Andrews whether her actions in so strongly indicating she would recuse herself and then reversing course to continue to hear the case gave the appearance of impropriety. Judge Segars-Andrews testified that she followed the law (Commission's Public Hearing, Thursday, November 4, 2009, Vol. III - PM, pp. 27-28), as evidenced by the Court of Appeals decision upholding her actions. She explained she wanted out of the case, but felt Crystal's affidavit and brief

showed she had a duty to sit (Commission's Public Hearing, Thursday, November 4, 2009, Vol. III - PM, p. 32). When asked, in light of hearing Mr. Simpson's complaint if her opinion about the matter had changed, she testified that she would have had a hearing to inform the parties she was continuing with the case. (Commission's Public Hearing, Thursday, November 4, 2009, Vol. III - PM, pp. 83-85.)

The Commission reconvened on December 2, 2009, at Judge Segars-Andrews' request to consider whether the Commission should reopen the hearing regarding Judge Segars-Andrews' qualifications. At that hearing, the Commission received testimony from Judge Segars-Andrews and considered, as well as thoroughly studied, the four affidavits she offered concerning the facts of the Simpson complaint.[3]

The four affidavits offered into the record by Judge Segars-Andrews included: 1) Nathan M. Crystal, who reaffirmed the opinion that he provided on behalf of Becky Simpson on the issue of recusal, that is, that Judge Segars-Andrews was not disqualified from deciding the case based on either Mr. Shull's having provided an affidavit in the case of Mr. Simpson's father or Mr. Shull's previous working relationship with Ms. Simpson's attorney, and also that Judge Segars-Andrews' impartiality cannot be questioned, as the decision in the Simpson case had no financial or personal impact on her; 2) James T. McLaren, attorney for Becky Simpson, who provided a timeline of the events that transpired regarding both Simpson trials as well as provided information regarding his former business relationship with Mr. Shull; 3) Judge William Howard, who was not involved in the cases but offered his opinion on the legal and ethical issues facing Judge Segars-Andrews and commented that she acted appropriately; 4) David Gravely, a Family Court lawyer, who reviewed Judge Segars-Andrews' order in the Simpson matter regarding the equitable apportionment and attorney fees and found that she acted appropriately.

A motion was made by Professor John P. Freeman to reopen the hearing on qualifications and failed for lack of a second. At the hearing on December 2, 2009, Ms. Amy Johnson McLester and Rep. David J. Mack, III, voted to find

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[3] Judge Segars-Andrews contended that she did not have the opportunity to present evidence on her behalf regarding the Simpson complaint at the November 3, 2009, Public Hearing. Rule 23 of the Procedural Rules for the Judicial Merit Selection Commission provides: "candidates and witnesses may be accompanied by counsel; however, counsel cannot participate in the hearings." While character witnesses are not permitted, witnesses who can respond to the allegations made against a judicial candidate are permitted. In an attempt to be overly fair to Judge Segars-Andrews, the Commission agreed to allow and carefully considered the four affidavits offered at the December 2, 2009, hearing by the Judge on her behalf regarding the Simpson matter.

Judge Segars-Andrews qualified. The vote of the Commission was seven to three to find Judge Segars-Andrews unqualified.

Commission's Finding

It is the Commission's finding that Judge Segars-Andrews demonstrated an understanding of how the Canons of Judicial Conduct have been interpreted; however, in abruptly reversing her decision about recusal, based upon a submission from opposing counsel who had a financial and continuing relationship with her husband's law firm, she raised suspicions about her impartiality that were compounded by connections between opposing counsel and her husband's law firm and by her service on the board of the Office of Judicial Conduct. At the Family Court hearing on April 14, 2006, where she revealed the six-figure financial connection between her husband's law firm and opposing counsel, Judge Segars-Andrews vehemently insisted that she could not set the situation right for Mr. Simpson and that her only alternative was to let him have a new trial. When she failed to provide him with that alternative and gave only a perfunctory explanation that she was relying on opposing counsel's submission, she created an atmosphere of distrust that made Mr. Simpson construe both her ruling and the system that authorized and sanctioned it as corruptible and capable of manipulation by persons with connections to a judge or a judge's spouse.

For this reason, the Commission must find Judge Segars-Andrews unqualified. Professor Freeman dissents from the Commission's finding, and Ms. McLester and Rep. Mack, now concur with Professor Freeman's dissent. Professor Freeman's vote justification is set forth below under "Commission Members Comments."

Ethical Fitness continued:

Judge Segars-Andrews reported that she has not made any campaign expenditures.

Judge Segars-Andrews testified she has not:

(a) sought or received the pledge of any legislator prior to screening;
(b) sought or been offered a conditional pledge of support by a legislator;
(c) asked third persons to contact members of the General Assembly prior to screening.

Judge Segars-Andrews testified that she is aware of the Commission's 48-hour rule regarding the formal and informal release of the Screening Report.

(3) Professional and Academic Ability:

The Commission found Judge Segars-Andrews to be intelligent and knowledgeable. Her performance on the Commission's practice and procedure questions met expectations.

Judge Segars-Andrews described her past continuing legal or judicial education during the past five years as follows:

	Conference/CLE Name	Date
(a)	Family Court Judges Conference	04/28/2004;
(b)	Family Law Section Meeting	01/23/2004;
(c)	Judicial Conference	08/19/2004;
(d)	Judicial Oath of Office	08/19/2004;
(e)	Family Law Section, SC Bar	1/21/2005;
(f)	2005 Family Court Judges	04/27/2005;
(g)	2005 Annual Judicial Conference	8/24/2005;
(h)	South Carolina Family Court Bench	12/02/2005;
(i)	Family Law Section, SC Bar	01/27/2006;
(j)	Family Court Judges' Conference	04/26/2006;
(k)	Mini Summit on Justice for Children	08/23/2006;
(l)	2006 Annual Judicial Conference	08/23/2006;
(m)	Family Court Bench/Bar	12/01/2006;
(n)	Family Court Judge's Conference	04/25/2007;
(o)	2007 Annual Judicial Conference	08/22/2007;
(p)	Family Court Bench/Bar	12/07/2007;
(q)	Family Law Section, SC Bar	01/25/2008;
(r)	2008 Family Court Judges Conference	04/23/2008;
(c)	Trial Lawyer's family court section	August 2008;
(s)	2008 Judicial Conference	08/20/2008;
(t)	Commission and Attorney to...	10/21/2008;
(u)	SC Bar Meeting	01/23/09;
(b)	Family Court Judged Conference	April 2009.

Judge Segars-Andrews reported that she has taught the following law-related courses:

(a) I have lectured at a recent pro-bono guardian ad litem program about what the judges expect from guardians;

(b) I have lectured many times in the past about running a juvenile drug court.

Judge Segars-Andrews reported that she has not published any books and/or articles.

(4) Character:
The Commission's investigation of Judge Segars-Andrews did not reveal evidence of any criminal allegations made against her. The Commission's investigation of Judge Segars-Andrews did not indicate any evidence of a troubled financial status. Judge Segars-Andrews has handled her financial affairs responsibly.

(5) Reputation:
Judge Segars-Andrews reported that she is not rated by Martindale-Hubbell.

(6) Physical Health:
Judge Segars-Andrews appears to be physically capable of performing the duties of the office she seeks.

(7) Mental Stability:
Judge Segars-Andrews appears to be mentally capable of performing the duties of the office she seeks.

(8) Experience:
Judge Segars-Andrews was admitted to the South Carolina Bar in 1984.

She gave the following account of her legal experience since graduation from law school:

(a) 1984-85 - I was employed at American Mutual Fire Insurance Company as a litigation advisor/negotiator in the claims department;
(b) 1985-87 - I was employed at Bell & McNeil, Attorneys at Law. During this period I was an associate of the law firm and handled general civil litigation. I began handling primarily Family Court matters in 1986;
(c) 1987-93 - I became a sole practitioner in 1987. I practiced almost exclusively in the Family Court;
(d) 1993-present - I was elected to the Family Court Bench of the Ninth Judicial Circuit seat #1, where I still remain.

Judge Segars-Andrews reported that she has held the following judicial office:

"I was elected to the Family Court bench of the Ninth Judicial Circuit, seat 1 in May 1993 and have continued in that position since that time."

Judge Segars-Andrews provided the following list of her most significant orders or opinions:

(a) IN THE INTEREST OF JERMAINE FULMORE 08-JU-10-0172 AND 08-JU-10-0258 The appeal in this case was abandoned;
(b) CHARLESTON COUNTY DEPARTMENT V CHRISTINA HOSKINS, DESHAWN POTTS. AND JOHN DOE, REPRESENTING THE UNKNOWN

BIOLOGICAL FATHER OF Maurice Hoskins and Javarius Brown 03-DR-10-1849 and 04-DR-10-2887
A notice of appeal was issued by defendants and the matter is pending;

(c) SEEGER V SEEGER 2002-DR-10-0317: A notice of appeal was filed in this case but it was dismissed;

(d) CHARLESTON COUNTY DEPARTMENT OF SOCIAL SERVICES & JOHN ROE AND MARY ROE VS PAMELA KING AND KENNETH KING, JR. IN RE: CODY KING, a child, D/O/B 03-24-97
This case was reversed by the Court of Appeals in unpublished Opinion No. 2005-UP-155. The Court of Appeals was then reversed in Opinion No. 26152;

(e) MARY SEABROOK VS. GUY SIMMONS 03-DR-10-1318. This order was affirmed by the Court of Appeals at Unpublished Opinion No. 2005-UP-459.

Judge Segars-Andrews reported the following regarding her employment while serving as a judge:

"I have been on the board of directors of Eastern Distribution, Inc., a family business. I am required to attend board meetings a few times a year.

"I was once asked to review grant applications for the U.S. Justice Department. These applications were for drug court grants. I earned $1,000."

(9) Judicial Temperament:
The Commission believes that based on the record, Judge Segars-Andrews' temperament appears appropriate.

(10) Miscellaneous:
Judge Segars-Andrews is married to Mark O. Andrews. She has two children.

Judge Segars-Andrews reported that she was a member of the following bar associations and professional associations:

(a) S.C. Bar;
(b) Charleston County Bar.

Judge Segars-Andrews provided that she was a member of the following civic, charitable, educational, social, or fraternal organizations:

(a) St. Andrews Church. I was on the vestry for 3 years;
(b) I received recognition from the S.C. House for my 10 years of volunteer service to the Charleston County Juvenile Drug Court.

The Lowcountry Citizen's Committee on Judicial Qualification found Judge

Segars-Andrews to be "Well-Qualified" for each of the nine evaluative criteria: constitutional qualifications, ethical fitness, professional and academic ability, character, reputation, physical health, mental stability, experience, and judicial temperament.

(11) Commission Members' Comments:
Based upon the Commission's finding under the discussion of Ethical Fitness, the Commission finds Judge Segars-Andrews unqualified.

Sen. Floyd Nicholson concurs with the Findings of the Commission under Ethical Fitness.

Chairman Glenn F. McConnell's Comments:
The entire basis of our judicial system is the oft repeated maxim "justice is blind." Nowhere is that maxim more relevant than in the family court system where the buffer of a jury of one's peers is absent. In family court, the integrity and impartiality of a judge are paramount. Not only must a judge referee the case, he or she must render a verdict. In order to do so and have the ruling respected, a judge must be above any reasonable question of impartiality and impropriety. It is that notion of impartiality that is the linchpin of the entire Canons of Judicial Conduct.

Canon 2 of the Code of Judicial Conduct, found in Rule 501 of the South Carolina Appellate Court Rules provides that, "A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All of the Judge's Activities." Canon 2A states, "A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." The commentary to Canon 2A indicates that the "test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality, and competence is impaired."

In the case of Simpson v. Simpson, the appearance of impartiality was shattered by the actions of Judge Segars-Andrews. The Judge rejected a motion made by Mr. Simpson's attorney that she recuse herself because of her husband's firm's involvement with opposing counsel. Then, she orally recused herself on her own motion after conferring with her husband about his dealings with opposing counsel. After receiving an expert affidavit from opposing counsel indicating a duty that she hear the case, she abruptly reversed course, continued with the case, and, although ordering an equitable distribution that seemed to favor the husband, actually saddled him with debts and responsibilities for child care that led him into bankruptcy.

While the Commission does not sit as an appellate body to review a judge's decisions, it is within the Commission's authority to determine if a judge meets the high standards of ethical fitness to dispense justice in this State. In light of the standard enunciated in Canon 2A and its commentary, Judge Segars-Andrews' conduct would create within a reasonable mind the perception that her ability to carry out judicial responsibilities with integrity, impartiality, and competence was impaired. A recitation of some aspects of the Simpson matter is necessary to understand why Mr. Simpson felt he did not receive a fair trial.

Initially, Mr. Simpson and his attorney, Mr. McKenzie, were unaware that there was a significant past financial dealing between the law firm of the judge's spouse and the opposing counsel. At the Commission's public hearing on November 4, 2009, they testified that the Judge received instant messages during the presentation of their case on February 14, 2006. Affidavits were presented with Mr. Simpson's complaint by his aunt and an assistant to Mr. McKenzie that they noticed the judge's computer "dinging" as if receiving messages while Mr. Simpson's case was being presented and that there was not a similar distraction two days later when the wife's case was presented in court. In addition, Mr. McKenzie testified that he noticed the Judge signing a large Valentine's Day card while on the bench during the presentation of Mr. Simpson's case.

The case had almost reached its conclusion when Mr. Simpson and his attorney discovered a connection between the opposing counsel and the law firm of the judge's spouse and asked the judge to recuse herself. The judge denied the motion, but asked her husband about the matter and was reminded of the significant financial dealing, a recent six-figure legal fee paid to the judge's spouse and his firm. Then, on her own motion, the judge orally recused herself.

In failing to disclose this relationship at the beginning of the trial, Judge Segars-Andrews denied the parties the opportunity to decide whether her impartiality was an issue. When she orally recused herself, she acknowledged, and Mr. Simpson and his attorney felt confirmation, that there was an appearance of impartiality. By subsequently reversing her course and ruling that she had a duty to hear the case based on a memorandum and affidavit submitted by opposing counsel's expert, Judge Segars-Andrews further clouded the question about her impartiality.

Despite the facts that the divorce was granted on the basis of the wife's adultery and that the husband had to assume the custody and care of the two minor children, the husband was forced to pay a higher debt from the marital assets and also to assume half of the wife's attorney's fees and

costs. Mrs. Simpson's attorneys' legal fees were over $160,000, while Mr. Simpson's legal fees were less than $9,000, more than 20 times Mr. Simpson's legal fees. Mr. Simpson complained that, even though the marital property was divided with him receiving 60 percent and his wife receiving 40 percent, the portion he received carried a heavy debt, thus reducing the amount he received to less than 60 percent. According to the Final Order of Equitable Distribution, dated June 22, 2006, Mr. Simpson was required to assume two loans of $133,500 and $101,000 (total of $234,500), while his wife was allocated a credit card debt of $8,000.

The following factors demonstrated to Mr. Simpson that Judge Segars-Andrews was not impartial to him or his attorney in the trial of this case: (1) Judge Segars-Andrews' acknowledgement of her husband's prior business relationship with the wife's attorney, which was not disclosed prior to the trial; (2) the manner of the property distribution; (3) the disproportionate amount of the wife's attorney fees he was ordered to pay in light of his own attorney fees; and (4) the inattentiveness of the Judge during the presentation of his case. While we cannot presume to decide whether the ruling in this case was legally correct, we cannot discount what Mr. Simpson reasonably believes, especially when the circumstantial evidence could readily justify that belief. I also believe that any reasonable person in the public in similar circumstances to Mr. Simpson could also believe that justice in this case was not administered fairly. This is the test enunciated in the commentary to Canon 2A. This appearance of impropriety leads to lack of faith in the system, and I believe the Commission must endeavor to ensure that the public believes that justice will be administered in an even manner without regard to who appears in the court or who represents them.

The Canons impose a burden on judges to keep informed of the personal and economic interests of the judge and the judge's spouse as well as requiring them to vigilantly monitor personal and professional affiliations in order to avoid conflicts of interest. Judge Segars-Andrews should have been very alert to this duty, given that her husband was a practicing attorney in a law firm, a matrimonial mediator in domestic relation cases in the family court, and might share fees with attorneys appearing before her. The reason for the rule requiring judges to keep informed of personal and economic interests seems clear: a judge must know whether there is an actual conflict of interest or whether there could be the appearance of a conflict that could reasonably cause a litigant to question the judge's impartiality. That decision is not solely for the judge, but is one for those people who appear in that judge's court. If a person reasonably believes that a judge has even the appearance of impropriety in a matter, then not only does that judge's ruling become suspect, but also the motives and operations of the entire judicial system are doubted. We cannot afford as a society to have people

reasonably question the rulings in cases because a judge is deemed partial to a particular side. It is the impartiality of the judiciary and not necessarily the rightness or wrongness of their orders that allows our society to be orderly. It is what allows our society to be ordered by the point of a pen rather than by the point of a gun barrel.

The opposing counsel's memorandum and affidavit that Judge Segars-Andrews relied upon cannot be construed as neutral. In responding to the opposing counsel's submission, Mr. Simpson's attorney pointed out that opposing counsel was aware of the relationship with the judge's spouse's law firm and did not disclose it. By continuing to hear the Simpson matter, Judge Segars-Andrews caused even more questions about the appearance of impartiality in this case.

Unfortunately, this issue may never have occurred if Judge Segars-Andrews kept informed of potential conflicts as required by the Canons and timely notified the parties. At the hearing, Judge Segars-Andrews stated that if this issue had been raised at the beginning of the trial and a motion made, she would have recused herself, but since the issue only came up after the trial was substantially concluded, she believed that her hands were tied by the duty to hear this case. The appearance of impropriety resulted from Judge Segars-Andrews' lapse in notifying the parties of opposing counsel's relationship with her spouse's law firm and in her determining not to recuse herself, after making her own motion to do so, based on an argument submitted by the opposing counsel. In light of these actions, it is sad, but easily understandable, that Mr. Simpson and his attorney should feel their case was tainted by a potential economic connection.

The South Carolina Court of Appeals concluded that Judge Segars-Andrews was correct in her interpretation of the law concerning the merits of the case and her recusal. Also, the Commission on Judicial Conduct, a body in which Judge Segars-Andrews serves as the vice-chairman, summarily dismissed the complaint filed against her. While we considered both actions, those actions are not the issue. Her ruling in this case, no matter how well-reasoned or correct, is under the pall of her ambiguous actions regarding her recusal. Mr. Simpson now reasonably questions both her verdict and his faith in the administration of justice in South Carolina. If the Commission has a seminal role, it is that the candidates we find qualified and nominated must be trusted implicitly to make their rulings without prejudice or bias. Unfortunately, because of Judge Segars-Andrews' actions, Mr. Simpson does not trust that the Judge acted impartially in his case. I believe each judge has a high responsibility to make sure the administration of justice not only is done right but also appears right.

The issue here is whether a single episode warrants my finding that Judge Segars-Andrews is unqualified for continued judicial service. We are all human and we all make mistakes. In this instance, a mistake handled in a contradictory manner resulted in a litigant who had only one chance in our judicial system to lose faith in it and reasonably so. Judges are trustees of the legal system, and their actions must always be above reproach. This is a very high standard, but that is because their decisions carry so much weight. My guiding directive, in keeping faith with those who elected me, is that people are able to rely on the quality and integrity of judges. Only if they do, can we have faith in the judgments of our courts. Judge Segars-Andrews fell short of the standards we must expect from those who are elected to pass judgment on our citizens; therefore, I must come to the conclusion and vote that she is unqualified for the reasons listed above.

Rep. F.G. Delleney, Jr., Senator John M. "Jake" Knotts, Jr., Rep. Alan Clemmons, and Mr. John Harrell concur with Senator McConnell's comments.

Mr. H. Donald Sellers Comments:

I readily acknowledge that everyone is human and makes mistakes. It is particularly disturbing to me, however, that Judge Segars-Andrews refused to even acknowledge her mistake in handling the conflict issue in the Simpson case until after the Commission's hearing was concluded and the vote on her qualifications cast. Judge Segars-Andrews was asked during the hearing on at least two occasions if she now thought that her refusal to recuse herself created, at the very least, the appearance of impropriety after she (1) had announced her discovery of her husband's prior dealings with Ms. Simpson's counsel, and (2) had announced repeatedly on the record that she would recuse herself because of that apparent conflict. Judge Segars-Andrews refused to acknowledge what appeared to me to be the obvious. I can only conclude that Judge Segars-Andrews still does not recognize the high ethical standards imposed upon judges to avoid even the appearance of impropriety.

Furthermore, it was also disturbing to me that Judge Segars-Andrews reversed her announced position regarding recusal on the basis of an affidavit from Professor Crystal, an "expert" retained by Ms. Simpson's attorneys to render such an opinion. Judge Segars-Andrews reversed herself on the basis of the opinion expressed in the Crystal affidavit and did so without giving Mr. Simpson's attorney a meaningful opportunity to challenge Crystal's opinions. Whether the opinion of Professor Crystal was right or wrong was immaterial at that point in the proceedings because Judge Segars-Andrews' reliance on it only added to the appearance of impropriety, which she had already recognized. From the perspective of Mr. Simpson, Judge Segars-Andrews announced her decision and then reversed herself at

the urging of the attorneys who themselves should have advised her and opposing counsel, before the trial began, of their prior relationships with her husband's firm.

In my view, Judge Segars-Andrews does not recognize her duty to strive in every case to render justice in an impartial manner in fact and in appearance. If litigants leave the courtroom feeling that their case has been decided by a biased judge, the system has failed. For that reason, and for the reasons outlined in Senator McConnell's comments, I cast my vote that Judge Segars-Andrews is not qualified to serve.

Professor John P. Freeman's Comments:

This matter grows out of two failed marriages in which the husbands, both farmers, were father and son. The husbands' farming operation was Simpson Farms, L.L.C., in which both husbands were members. The father, William Robert Simpson, was divorced from his wife, Daisy, in 2004. This divorce litigation will be called "Simpson I." The focal point for consideration of Judge Segars-Andrews' qualification is her rulings in the second divorce case involving Mr. Simpson, Jr., which will be called "Simpson II."

The lawyers in both Simpson divorce cases were the same, Jan Warner and James McLaren represented each wife, and Steven McKenzie and Scott Robinson represented each of the husbands. An additional factual overlap is that Mr. Simpson, Jr., was a party defendant in Simpson I due to his ownership interest as a member of Simpson Farms, L.L.C. Both he and his lawyers were thus involved in both Simpson divorce cases.

Judge Segars-Andrews had no involvement in Simpson I. The Final Decree of divorce in that case was handed down by Judge Wright Turbeville.

The Simpson II case is the main focal point for present purposes. Mr. Simpson, Jr., brought the case in Clarendon County Family Court. The style of the Simpson II case is *Simpson v. Simpson*, 2004-DR-14-243. It involved Mr. Simpson, Jr., and his wife Becky. Simpson II was instituted on July 30, 2004, as an action for "Separate Maintenance and Support and for Approval of an Agreement" filed by the Mr. Simpson, Jr. As originally planned by Mr. Simpson, Jr., Simpson II was not a true adversary proceeding. Mrs. Simpson had been induced to sign a "*Pro Se* Answer" at the time the complaint was filed. The answer she filed had been drafted by her husband's lawyer. Appellate Court R. 57, ¶ 2. [Hereinafter, cites to the Appellate Court Record in Simpson II, are cited R. __.] Under the Agreement, Mrs. Simpson gave up claims to substantial marital assets.

The Agreement was initially approved by the Family Court, but was later challenged by Mrs. Simpson for various reasons, including issues pertaining to her competence to enter into the Agreement in light of her "medical disorders and medications" (she had been diagnosed with bi-polar and panic disorders), nondisclosures by Mr. Simpson, Jr., and her contention that "there had been frauds perpetrated against both the Defendant and the

Court." Mrs. Simpson, who initially was *pro se*, retained counsel after the Agreement in Simpson II was approved by the Court. Judge McFadden, who had initially approved the Simpson II Agreement, subsequently set it aside in an order dated January 8, 2005. R. 57-61.

I call attention to the background concerning the Agreement between the parties in Simpson II because, in my opinion, had the Agreement not been executed and later challenged and then thrown out by Judge McFadden, Mr. Simpson, Jr.'s, attack on Judge Segars-Andrews qualifications matter would not have arisen. I say this because, in my opinion, absent that Agreement, the split between husband and wife in Simpson II would have been 60:40 in the husband's favor, with each side paying their own fees. Had this occurred, I doubt Mr. Simpson, Jr., would have raised any complaint about the judge's fairness. Why Judge Segars-Andrews assessed Mr. Simpson, Jr., $78,000 to cover half of his wife's legal fees was discussed by her at the hearing before the Commission. Judge Segars-Andrews testified:

> Then I go to the issue of attorneys' fees. What has not come out is that initially Mr. Simpson had his wife sign an agreement. That agreement gave her, I believe, and I don't remember exactly like, 35- or $40,000 all. And this was an estate worth [$]7- or $800,000. So she had to hire attorneys to have that agreement overturned, so she could get some assets.
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> That is -- if this case had come up without that fact, he probably would have not – I would have not ordered him to pay any attorneys' fees except a little bit for the experts because they gave me the information that I had to deal with. . . .
>
> If he had not had her sign that agreement, he would have prevailed on every issue, and I would not have ordered attorneys' fees. But [because of] having her sign the agreement where she had to hire attorneys to overturn it[,] [s]he did prevail because she did end up getting her 40 percent of the whole. And I, following the rules of Family Court, the statute and the case law, I had to order attorneys' fees. Commission Hearing Tr. 11/14/09 P.M., 24:14 to 25:19.

By the time Judge Segars-Andrews came on the scene, the Agreement, created on behalf of Mr. Simpson, Jr., to eliminate his wife's rights to substantial marital assets, had already been set aside.[4] The husband

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[4] The Agreement came up before Judge Segars-Andrews based on the husband's contention he should be given credit for money he paid his wife under the voided Agreement. As to this contention, Judge Segars-Andrews ruled: "The Court finds that the agreement was unconscionable

had already been granted a divorce based on the wife's adultery. The wife's adultery evidently occurred after she had been induced to enter into the Agreement mentioned in the preceding paragraph. The issues Judge Segars-Andrews ruled on concerned custody, child support, visitation, equitable division, and attorney's fees and costs.

The Family Court hearing in Simpson II covering those issues was held on February 14 and 16, 2006. A Consent Order dated March 7, 2006, resolved the issues of custody and visitation. On March 13, 2006, the Court issued detailed written instructions for a Final Order on all remaining issues and requested that Mrs. Simpson's counsel, Mr. Warner and Mr. McLaren, prepare and submit a proposed Order consistent with those instructions. R. 367-70.

The fee award approved by Judge Segars-Andrews following the trial in Simpson II in favor of the wife to be paid by the husband was approximately $78,000, plus $5,000 to pay for the wife's experts.[5] The factual representations in the wife's fee petition considered by Judge Segars-Andrews were never disputed by Mr. Simpson, Jr.'s, lawyers. Stated differently, no evidence was presented in Simpson II showing that the fees sought by counsel for Mrs. Simpson were unreasonable. Earlier, in the related Simpson I case, by an order dated February 17, 2005, Judge Turbeville had ordered Mr. Simpson, Jr.'s, father to pay $85,000 toward his wife's fees. This was in addition to $15,000 the husband in Simpson I was ordered to pay at hearing held in March 28, 2003. Thus, in Simpson I, Mr. Simpson, the father, had been ordered to pay $100,000 toward his wife's legal fees. I mention this to show that the fee approved by Judge Segars-Andrews in Simpson II was not just unchallenged, it also was in line with a fee award granted on behalf of Mrs. Simpson's lawyers in Simpson I. Simpson I, of course, was a somewhat related case by that had been decided earlier in Clarendon County Family Court by a different judge.

Subsequently, and prior to the court's issuance of a definitive Final Order, on April 12, 2006, the husband filed a Notice of Motion and Motion for a New Trial Based Upon the Failure of Defendants' Counsel to Disclose the Court's Conflict of Interest. That motion was based upon the contention that Judge Segars-Andrews was disqualified because her husband's law partner, Lon Shull of the Charleston Bar, had rendered an affidavit fourteen

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and that Plaintiff would have otherwise been supporting Wife during this period. This Court concludes that the Husband should be given no credit for this." R. 115.

[5] Mr. Simpson appeared to contend before the Commission that the award of $78,000 in fees was particularly improper because he had already been ordered to pay, by Judge Myers, $37,500 as an advance for attorneys fees. However, Judge Segars-Andrews ruled that the $37,500 would be treated as an advance of her equitable distribution proceeds, meaning that Mr. Simpson was given credit for the $37,500 payment in figuring the amount owed to Mrs. Simpson out of her 40 percent of marital assets.

months earlier in support of the fee petition submitted by Messrs. McLaren and Warner in the Simpson I litigation. Mr. Shull's Affidavit is attached as Exhibit 1. So nothing is lost in translation, the grounds asserted in Mr. Simpson, Jr.'s, New Trial Motion are reproduced in Exhibit 2 hereto.

In an affidavit he filed in support of his motion, Mr. Simpson, Jr., testified he had been a party to his parents' divorce case (Simpson I) in which the Shull affidavit was filed, and that he

> did not realize until after the close of this case, that Mr. Shull was in fact the partner of Mr. Mark O. Andrews, Esquire, who is the husband of the Honorable F. P. Segars-Andrews, the trial Judge who heard the above captioned matter. I believe that this is a conflict of interest for Judge Segars-Andrews to have heard this matter in light of the involvement of her husband's firm in the prior action to which I was a party. This matter was well-known to defense counsel in this case, Jan L. Warner, Esquire, and James T. McLaren, Esquire, as they represented my wife, Becky H. Simpson, in the above captioned matter as well as my mother, Daisy Simpson, in the prior divorce case to which I was a party and in which Mr. Shull submitted an Affidavit in support of their Affidavit for Attorney's Fees. This matter was not disclosed to myself or to my attorneys prior to trial and, quite frankly, was not brought to the Court's attention by defense counsel. I believe that this situation creates a conflict of interest, or at least the appearance of impropriety, which should have been brought not only to the Court's attention, but also to my attention or to that of my attorneys prior to the hearing in this matter so that we would have had full opportunity to have disclosure about that matter. Had I known this prior to this matter being filed, I would have filed a Motion asking Judge F. P. Segars-Andrews to recuse herself and ask that this case be reassigned to a different Judge. This information was not discovered until after the close of this case, and therefore I did not possess the requisite knowledge to waive this potential conflict at any time prior to or during the trial in this matter. For the reasons set forth hereinabove, I would request that Judge F. P. Segars-Andrews recuse herself from this matter and grant our Motion for a New Trial in front of another Judge.

R. 227-28.

I note in passing that Mr. Shull's affidavit (Exhibit 1 hereto) does more than simply opine on a reasonable fee number for Messrs. Warner and McLaren on the facts of Simpson I. It also excoriates Mr. Simpson's father for "deception, delay and obfuscation" ¶ 24, and refers to "the apparent conspiracy of a father and son." ¶ 26. In the affidavit Mr. Shull identifies himself as a partner in the firm of Andrews and Shull, and each page of the

affidavit in the court record has a fax header indicating it was sent from the Andrews & Shull firm. I further note there is no evidence that Judge Segars-Andrews was aware of Mr. Shull's involvement in the prior case until it was brought to her attention by Mr. Simpson, Jr.'s, lawyer after the Simpson II case was tried.

The following recital of what happened next is taken from pp. 9-10 of the husband's brief on the recusal issue before the Court of Appeals:

> A hearing was scheduled on April 14, 2006, in Sumter, South Carolina. (R. p. 133). At said hearing, the Court denied the Appellant's Motion for recusal; however, the Court *sua sponte* made her own motion regarding recusal. (R. p. 135, lines 6-16). The Court stated the following: "I denied that motion; however, once it was mentioned –I mentioned this to my husband, I was told something that I had forgotten-Mr. McLaren and my husband's law firm has also been involved in another matter together that does not-not involving a small amount of money, and it is something that if I had remembered that I would have disclosed and asked you initially if you wanted me to recuse myself. I did not [think about] that so I'm going to have to recuse myself. You all have to [r]etry the case." (R. p. 135, lines 6-14). The Court did not disclose the amount or the nature of the relationship. However, on page five (5) of the transcript the Court states: "....You know. and just-I mean, I just do not think in good conscience-I mean, that is not a small amount of money...." (R. p. 137, lines 1-2). The Court goes on to say: "I mean, if you all want to do some research on it, I'll be glad to look at some research, but just don't think-I think it should have been disclosed; I didn't think about it, I didn't disclose it, and I don't see how I can remedy that." (R. p. 135, lines 23-65 and R. p. 138, line 1). Also, the Court stated the following: I'll be glad to look at anything, but I'll tell you, I've been-I have looked at the Rules over and over." (R. p. 139, lines 14-18).
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> On April 26, 2006, the Respondent's attorney filed a Memorandum of Law with an affidavit attached from Nathan Crystal, Esquire (the Memo and affidavit were sent to the Court and opposing counsel on April 24, 2006) who offered his professional opinion regarding the Court's recusal. (R. p. 307). On April 25, 2006, the Appellant wrote the Court through his attorney and responded to the Memorandum and Affidavit. (R. p. 345). On May 3, 2006, the Court issued a two paragraph Memorandum to the parties. The Memorandum states as follows: "After reviewing the memorandum provided from the defendant's counsel in this matter and the Canons, this court determines that it has a duty to rule in this case and that there was no duty to disclose the working relationship between

McLaren and Andrews and Shull" (R. p. 132). On May 9, 2006, the Appellant's counsel informed the Court that the Appellant objected to the proposed Order and requested that the Court wait until the transcript arrived prior to signing the proposed recusal Order. (R. p. 350). On May 11, 2006, the Appellant wrote the Court and provided the Court with a copy of the April 14, 2006, transcript. The Appellant listed the objections to the Order and requested that the Court clarify and make changes to the Order. (R. p. 352). On May 22, 2006, the Court signed the Order denying recusal without any changes as requested by the Appellant. (R. p. 88). On June 12, 2006, the Appellant filed a Motion for the Court to Reconsider, Set Aside, Alter, and/or Amend or Clarify its Order. (R. p. 330). Said Motion was heard via telephone on July 26, 2006, with the Appellant present along with the attorneys for both the Appellant and Respondent. The Court denied the Motion, and the Order from said Motion hearing was filed in the Clerk of the Family Court for Clarendon County on August 23, 2006. (R. p. 128).

At the Commission's hearing into Judge Segars-Andrews' qualifications, the chief ground advance in opposition by Mr. Simpson, Jr., and his lawyer was her failure to recuse herself due to an alleged appearance of impropriety arising from the aforesaid facts.[6]

There is no dispute that Judge Segars-Andrews initially ruled that she needed to recuse herself based on the fact her husband had shared in a large fee earned through the efforts of her husband's then law partner, Mr. Shull, and Mrs. Simpson's lawyer, Jim McLaren in the recent past. At the Commission's hearing, Judge Segars-Andrews indicated that her husband's share of the Shull-McLaren fee split was around $300,000. The dollar

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[6] At the hearing other purported grounds for finding Judge Segars-Andrews unfit to sit as a judge were alleged, including that Judge Segars-Andrews had been inattentive to the husband's case at the hearing held on Valentine's Day, February 14, 2006. This alleged lack of judicial attention at the February 14 hearing was supposedly evidenced by her having a Valentine card with her on the bench, and by her allegedly receiving instant messages during the hearing held on that day. No complaint was lodged as to her behavior at the February 16, 2006 hearing. Judge Segars-Andrews admitted having a Valentine card on the bench on February 14, but denied instant messaging during court proceedings. An affidavit from the court reporter likewise supported the judge on the instant messages contention. Judge Segars-Andrews testified that when she tried the Simpson II case, "I probably did sign a Valentine card for my husband when I was there, but I paid very close attention and took very detailed notes." The Commission requested and received Judge Segars-Andrews' computer generated notes from the bench for those two days. My scrutiny of the notes shows no evidence of inattention to testimony or evidence by the Judge for either day. I reject the contention that Judge Segars-Andrews failed to accord Mr. Simpson a fair hearing based on being pre-occupied or having her attention distracted. In my judgment, the facts do not support the Valentine's Day charges.

amount had not been mentioned during the hearing in the Simpson II case, although, as recited above, Judge Segars-Andrews stated at the April 14, 2006, Simpson hearing, accurately, that the sum was "not a small amount of money." Following receipt of the wife's lawyers' brief and Professor Crystal's affidavit in support of non-recusal, Judge Segars-Andrews evidently concluded that legally she was not required to step aside. Accordingly, she reversed herself and proceeded to issue a final order in the Simpson matter. The Court of Appeals affirmed that order, finding that Mr. Simpson, Jr., failed to establish that he was prejudiced by any alleged unprofessional conduct on the part of Judge Segars-Andrews.

A grievance subsequently was filed by Mr. Simpson, Jr., charging Judge Segars-Andrews with ethical misconduct as a judge. The ethics charge was dismissed. The text of both the ethical grievance and the ruling by the Supreme Court's Office of Disciplinary Counsel were presented to the Commission for review. Mr. Simpson, Jr.'s, lawyer insinuated that the Commission simply rejected the grievance out of hand; the implication was that favoritism was shown by the disciplinary authorities in favor of Judge Segars-Andrews who was then serving as vice-chairman of the Commission on Judicial Discipline. There was no proof of this charge.

The facts in issue are based on the written record from the two Simpson divorce cases and testimony and other evidence adduced at the Commission's hearings. In other words, there is a detailed written record reflecting what happened and when. Thus, I do not believe there is really a dispute between me and my fellow members of the Commission about what happened concerning Judge Segars-Andrews' involvement in Simpson II. The difference between my vote and that of the other nine members of the Commission lies in our different conclusions drawn from those facts. My conclusions are as follows:

1. I believe Judge Segars-Andrews acted in good faith in her conduct of the Simpson II case, in her handling of the recusal issue, and in her dealings with the Judicial Selection Commission. I am unaware of any credible, competent evidence she had any actual bias or prejudice against Mr. Simpson, Jr., or that bias or prejudice influenced her decision.

2. In my mind the chief difference between me and my fellow Commissioners rests on our different evaluation of her conduct once she announced her decision that she needed to recuse herself based on her husband having shared in a large fee generated in a case handled and resolved some time earlier by Mr. Shull and Mr. McLaren.

3. I concur in the finding implicit in my fellow Commission members' votes that Judge Segars-Andrews erred in reversing course following

her announced position that recusal was necessary. Her post-recusal decision reversing her prior judgment was, I believe, made in good faith. It was based on the brief written by the wife's lawyers and Professor Crystal's accompanying affidavit. Nonetheless, I beg to differ with her conclusion. I think she was wrong in reversing course. I say this based on my belief that recusal is called for when there are facts that would lead a reasonable person to conclude that the independence of the judge might reasonably be questioned. Here, Judge Segars-Andrews, who knew the underlying facts better than anyone, independently concluded on her own that she needed to step aside. She announced her intent to recuse herself based on her belief there was "an appearance of impropriety." Commission Hearing Tr. 11/14/09 P.M., 84:6-10.

4. In my mind Judge Segars-Andrews made a mistake when, having decided independently that recusal was required, she failed to stick to her guns. In other words, having decided she needed to step aside, she should have followed through and maintained her recusal. This mistake was compounded when Judge Segars-Andrews reversed course without giving Mr. Simpson, Jr., and his lawyer a chance to be heard to rebut the position taken by Mrs. Simpson, *et al.* At the Commission hearing, Judge Segars-Andrews conceded that in hindsight she should have held a hearing to announce her decision that she was not going to recuse herself.[7] I note in passing that the procedure for Remittal of Disqualification under Canon 3 was not followed.

5. Despite my disagreement with decisions made by Judge Segars-Andrews in her handling of the Simpson II matter, I nonetheless have no hesitation in finding that she should be qualified and nominated for another term as Family Court Judge. I hold this view for the following reasons:

   - First, as stated above, I believe she acted in good faith throughout this matter. I do not believe that Mr. Simpson, Jr., is a victim of bias or prejudice. Judge Segars-Andrews testified, "I did what I thought was right," Commission Hearing Tr. 11/14/09 P.M., 86:16. I absolutely believe her.

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[7] (Commission Hearing Tr. 11/4/09, P.M., 84:2-5) "If I had to do it over again, sir, I would have called another hearing and let them know that I had reviewed things and that I had to change -- I was wrong."

- Second, I do not believe we have a right to expect judges to be perfect or never make mistakes. All judges are human, and they will make mistakes. The evidence is that Judge Segars-Andrews made a ruling that was upheld on appeal, and engaged in conduct which when challenged, was reviewed and found acceptable by Disciplinary Counsel. There has been no showing of a pattern of misconduct or that Judge Segars-Andrews is otherwise unfit to serve as a judge. In fact, putting aside the Simpson II flip-flop ruling, there is no credible evidence whatever casting doubt on her qualifications or overall performance in my estimation.

- Third, I recognize that Mr. Simpson, Jr., believes he was treated unfairly, has lost faith in the system, etc. This is regrettable. At the same time, in an adversary system, it is common for one litigant or the other, and sometimes both, to believe they got less than they deserved in court. Because judges are fallible, inevitably we will find well-meaning litigants who become the victims of an error of fact or law by a judge. I do not minimize or downplay this problem.

- Fourth, I am concerned about the precedential impact of a decision finding Judge Segars-Andrews unqualified. For one thing, I believe she absolutely is qualified to be a Family Court judge. Beyond that, I believe good judges need to be honest, competent, independent, and fearless. They do not need to be infallible, which is fortunate, because none of them are. The Commission in my judgment functions best in tandem with other credible institutions and procedures aimed at safeguarding the public, such as our appellate courts and our disciplinary systems for judges and lawyers. Without disparaging the good faith of any complainant, I worry that the Commission's credibility will suffer if it becomes a sort of appellate court of last resort for people still anxious to attack judges after having already lost before ODC or in our appellate courts. We live in a litigious society, particularly when it comes to family law matters. There never will be a shortage of frustrated litigants who want to retry lost cases, placing blame on others, including the judges who sat at their trials.

- Fifth, I call attention to an observation made by the United States Supreme Court in a case it decided. The Court said litigants are entitled to "a fair trial but not a perfect one, for there are no perfect trials." *McDonough Power Equipment, Inc. v. Greenwood*, 464 U.S. 548, 553 (1984). I take this observation to heart. In terms of outcome, I believe Mr. Simpson, Jr., got a fair trial in

Simpson II, though not a perfect one. I believe also that the case was decided by a fair judge, albeit not a judge who in my eyes ruled perfectly. I note that in determining whether a judicial candidate is qualified, it has never been necessary for a judge to establish that he or she is perfect 24/7 in every single respect. In line with the United States Supreme Court's comment about the dearth of perfect trials, I do not believe there are any perfect judges either. I am confident that Judge Segars-Andrews, though not perfect, is a good judge, well deserving of the public's trust. I note that a letter she sent to the Commission following our hearing reflects her sincere regret, and a capacity to learn from this very difficult situation. See Exhibit 3 hereto.

- Finally, I note that the Judicial Selection Commission has nine evaluative criteria, and I am convinced that the totality of the evidence as to each criterion weighs heavily in Judge Segars-Andrews' favor, even taking into account the accusations leveled by Mr. Simpson, Jr., and his counsel. I thus voted her qualified and believe she should be nominated for consideration by the General Assembly.

Ms. Amy Johnson McLester and Rep. David J. Mack, III, concur with Professor Freeman's findings.

(12) Conclusion:

The Commission, with a seven to three vote, found Judge Segars-Andrews not qualified for continued service as a Family Court judge based upon one of the nine evaluative criteria of ethical fitness. Her term on the bench will end June 30, 2010.

STATE OF SOUTH CAROLINA COUNTY OF CLARENDON DAISY W. SIMPSON, PLAINTIFF, VS. SIMPSON FARMS, LLC., DEFENDANT.	IN THE FAMILY COURT FOR THE THIRD JUDICIAL CIRCUIT DOCKET NO.: 2004-DR-14-128 AFFIDAVIT OF LON SHULL, III

PERSONALLY APPEARED BEFORE ME. Lon H. Shull, III, who, being duly sworn, says:

1. I am a member of the South Carolina Bar, having been admitted in November 1984. I have been a member of the Fee Resolution Committee of the Charleston County South Carolina Bar, and the Executive Committee of the Charleston County Bar.

2. Over the years, I have concentrated my practice in the matrimonial area and have presented various CLE topics for the South Carolina Bar, South Carolina Trial Lawyers Association, South Carolina Association of Certified Public Accountants and Charleston County Bar.

3. I am a partner in the firm of Andrews and Shull in Mt. Pleasant, South Carolina. I am a fellow of the American Academy of Matrimonial Lawyers.

4. At the request of Jan L. Warner and James T. McLaren, I have reviewed the court order of December 31, 2004 and the fee affidavit of Mr. McLaren and Mr. Warner (hereafter referred to as "Fee Affidavit").

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EXHIBIT 1

5. In most instances, I would require that attorneys provide me with their entire file for review; however, in this situation, I believe I have enough information on which to base an opinion about the value of legal services. The court's Decree and the offers of settlement in this case are most telling.

6. For example, Mr. Simpson, Sr.'s offer of paying $200,000.00 over ten years with no alimony was based upon his assertion that the marital estate was worth approximately $460,00.00 and that his income was much less than the Court ultimately determined.

7. The May 14, 2004 offer made by Mr. Warner and Mr. McLaren on behalf of their client was somewhat unusual due to the fact that, through the discovery process, neither was sure of the total value of the marital estate, or Mr. Simpson, Sr.'s income.

8. It almost seems that Mr. McLaren and Mr. Warner's letter of May 14, 2004 was prescient when it stated that coming up with the monetary values of the assets was difficult due to the way in which Mr. Simpson and his son did business and the failure of discovery responses. They cited a number of examples, including Simpson, Sr. running Simpson, Jr.'s farm income through Simpson, Sr.'s account; Simpson, Sr. not operating the LLC for the purposes stated for the formation of the LLC; Simpson transferring S&T property after the filing of the action, yet never being removed from the loan liability; and Simpson, Jr. earning a small income but acquiring substantial assets in paying down mortgages and managing a rather affluent lifestyle.

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9. According to the Fee Affidavit, the offer of May 14, 2004 goes further to state " we also believe Simpson, Jr.'s income is significantly greater than he has reported. . . . . We believed that funds have been siphoned off with the intent of hiding the same from our client and purchasing capital assets and real property in a secretive way to attempt to avoid detection . . . . Simpson, Jr. and Simpson, Sr. are in business together and are, with others, engaging in a concerted effort to reduce our client's share of the marital assets and interfere with the resolution of this case. Without wasting a lot of time, we believe that income figures reported by your clients of the income tax returns we have now seen are, at best, understated."

10. There was no substantive counteroffer; however, in July 2004, it appears that discussions took place during with Mr. Warner and Mr. McLaren offered to accept $750,000.00 in equitable division and $2,000.00 per month alimony with their client paying their fees. A few days later, they offered to accept $900,000.00 with no alimony and their client paying their fees.

11. Again, according to the Fee Affidavit, Mr. Simpson's lawyer never responded.

12. According to the Decree, this case was tried for the better part of seven days over a period of better than three months. During this trial, a significant number of exhibits were introduced by the Plaintiff (91) and the Defendant (30). As an attorney, I found this to be most confusing, and frankly did not understand how a successful farmer could not tell the Court what he owned and what he was was worth. The fact the Mr. Simpson transferred assets a week or so after the

action was commenced set the tone for him making her lawyers work for everything they got from him and about him.

13. The Offer of Compromise made on July 8, 2004 by Mr. Warner and Mr. McLaren was as follows:

1. Payment of $750,000.00 tax-free within thirty (30) days.
2. Payment of $2,000.00 per month as alimony until Mrs. Simpson's death, Mr. Simpson's death, or Mrs. Simpson's remarriage.
3. Both Simpsons would give tax indemnifications to Mrs. Simpson and hold her harmless from potential tax issues regarding prior joint tax returns.
4. All parties would retain personal property in possession except for the Kawasaki Mule that would go to Mrs. Simpson.
5. Mrs. Simpson would pay her own attorney's fees and her own expert's fees and there would be mutual releases.
6. This Offer was based upon a down payment of $400,000.00 to $600,000.00 with a balance over a relatively short period of time secured by a mortgage and life insurance.

14. At this point in time, Mrs. Simpson was willing to accept $750,000.00 tax-free and $2,000.00 per month alimony, and she would pay her own attorney's fees.

15. Because Mr. Simpson Sr. did not wish to pay taxable alimony, Mrs. Simpson offered to take $900,000.00 tax-free with $400,000.00 to $600,000.00 down and the balance of over seven to ten years at a reasonable interest rate

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with the same indemnifications, security, and life insurance. In that situation, she would also pay her own attorney's fees.

16. The Final Decree of December 31, 2004 awarded Mrs. Simpson $1,000.00 per month as permanent periodic alimony, required Mr. Simpson to pay $16,734.00 in past due medical obligations, required Mr. Simpson to transfer to Mrs. Simpson $839,151.00 in real estate and other accounts plus cash of $244,904.00. The equitable division awarded by the Court was $120,000.00 less than Mrs. Simpson had offered to take ($900,000.00) in July that included Mrs. Simpson's waiver of alimony and her payment of her own attorney's fees and costs. Therefore, it is obvious that the Court awarded quite a bit more than Mr. Simpson offered, and more than Mrs. Simpson has offered to settle considering the alimony and what further the Court is to award in attorney's fees to Mr. Warner and Mr. McLaren.

17. A large number of the Court's findings are consistent with the apparent problems that Plaintiff's attorneys had in securing discovery as an example, The Court's determination of Mr. Simpson, Sr.'s Financial Declaration was not accurate; that it had been difficult for the Court to determine the income, expenses and wealth of the parties; Mr Simpson, Sr. took inconsistent positions regarding his transfer to Simpson, Jr. of the property in the LLC; that Mr. Simpson told Ms. Amos that the LLC owned the farming operations and the farm equipment when in fact it did not; that Mr. Simpson could not explain sixty items of equipment listed on his general ledger that he stated he no longer owned; that Mr. Simpson did not report the sale of Timber (a certain Kershaw County

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property) in the year of 2000; that Simpson, Jr. and Simpson, Sr. basically divvied up income based on their respective needs without any corporate structure and/or explanation; that Simpson, Sr. testified on numerous occasions he didn't know what he owned and made very little effort to categorize or evaluate his assets, and the fact that Mr. Simpson's income and assets greatly exceed that which has been reported on his Financial Declarations.

18. The Court apparently suffered from the same difficulties as the Plaintiff's Counsel in not knowing what Simpson, Sr.'s true income and assets were.

19. Reviewing the Order and the lack of evidence from Simpson, it seems that the Court came very close to the figures determined by Ms. Lindhart as far as the real estate was concerned.

20. Of interest to me was that the Simpsons spent a lot of time and effort with regard to the value of the stock in Agent Owned Realty. On the face of a letter from Mr. Loadholt, it was obviously worth nothing to anyone other than to Mrs. Simpson and could not be sold. Despite this letter, the value of the stock continued to be contested by the Defendant. This caused Plaintiff to bring Mr. Loadholt to Court.

21. The fact that Simpson, Jr. never reported adjusted gross income of more than $78,000.00 per year yet, according to his testimony, acquired assets of in excess of $850,000.00, with no other explanation, tells me as a lawyer that there was a shifting of funds and/or assets in between his father and him.

22. Further, Mr. Simpson, Sr.'s testimony that he purchased property with cash so that sellers could avoid taxation and he didn't know the value of his assets made the consideration shown on the face of deeds unreliable.

23. The Court also found that the discovery process was significantly extended and obfuscated, which is exactly where Plaintiff's attorneys found themselves and complained about in their May 2004 letter.

24. From my review of the Order and Fee Affidavit, I believe that only stubbornly persistent representation resulted in the full disclosure of the Defendant's income and the marital assets. Less determined, or less experienced lawyers and experts would not have "gotten to the bottom" of Simpson's deception, delay and obfuscation. This is especially so, given the absence of contemporary compensation for their work. .

25. In reviewing the summary of time expended by the Plaintiff's counsel, it does not seem at all inordinate. This is especially so given the actions of Defendant, the lengths to which the lawyers were required to go and the preparation for, travel to, and participation in seven days of trial.

26. It further appears to me that as competent as Mr. Warner and Mr. McLaren are, the attempted deceptions of the Defendant; his use of two lawyers, the late production of discovery and the apparent conspiracy of a father and son required the efforts of two lawyers and their staff to acequately represent the Plaintiff.

27. Further, Simpson, Sr. claimed that the residence and acreage that he had received at his mother's death was non-marital property. As this Court

found, the clear preponderance of evidence was that the home and acreage were transmuted to marital property. In fact, given the evidence cited by the Court in its Order, the position taken and prosecuted by the Defendant was specious and not in good faith yet Plaintiff and her lawyers were required to disprove it.

28. In reviewing correspondence of Plaintiff's counsel, it was their opinion that the marital assets were worth somewhere in the neighborhood of $2,000,000.00 as of May of 2004. The Court found the total marital estate at $2,327,654.00, which is very close to the early assessment of Plaintiff's counsel which, given the lack of discovery response from Defendant, must have been based upon their experience.

29. The Offer made by Plaintiff's counsel to take $750,000.00 in cash or to take $900,000.00 and no alimony or attorney fees is very close to what the Court awarded ($760,000.00 in equitable division and $1,000 a month in alimony).

30. Given the fact that when fees are assessed and the payments are made to the experts, Mrs. Simpson's award, excluding alimony, should exceed $1,000,000.00. the May 13, 2004 offer to accept 50% of the assets and $75,000.00 in fees is probably something that Mr. Simpson should have thought about.

31. Given my review of the Court's Order and the Attorneys Fees Affidavit of Mr. McLaren and Mr. Warner, it appears that the total expense of the Plaintiff's legal team is substantial. It further is my opinion that all of the efforts expended on the Plaintiff's behalf were absolutely necessary and indeed were made

necessary by the conduct of the Defendant Simpson, Sr. and/or his legal team. Given the fact that the Court found that the Defendant Simpson:

a. transferred marital assets into what he claimed to be a non-marital corporation;

b. deliberately failed to list items of personal and real properties even to his own experts;

c. refused even at trial to testify as to his opinion of "what he owned" and its value;

d. completely misrepresented the value of the marital estate during discovery, the settlement process and through the trial in this matter;

e. failed to pay $16,734.00 in past due medical obligations;

f. wasted the Court's time in arguments of separate inherited property for the marital home and attempt to value the stock in Agent Owned Realty;

g. shifted assets and income to Mr. Simpson, Jr. in an effort to hide these assets and income from this Court, his wife and the Internal Revenue Service and engaged in other duplicitous and disingenuous acts and testimony

the Plaintiff should not have to pay for her own legal and trial expenses as they were caused by the above.

32. In my opinion, as a frequent litigator in the Family Courts of South Carolina, a frank disclosure of the assets and income, given the long marriage and contributions of the Wife, would have forced this case to an early settlement

with a combined legal cost of approximately 1/10 of the fees necessarily incurred by the Plaintiff. The Defendant caused her to incur these fees both in his conduct in hiding the marital estate and in the meritless positions taken by him at trial.

33. It further appears that to require the Plaintiff to be responsible for her own fees would decimate the equitable division received by her in this action. Given the length of this marriage and the resulting wealth of the Defendant, this would be a significant injustice. Even with the division ordered by the Court, the Defendant Simpson Sr., appears well able to afford to the penny, the fees set forth in Mr. McLaren and in Mr. Warner's affidavit.

34. The Court's findings at pages 23 and 24, with regard to the efforts required of Ms. Lindhart is absolutely incredible. Never has the below signed seen where the efforts of a real estate appraisal were required to this extent. Her efforts in discovering the existence of ownership interests are nothing short of amazing. That she was required to do so by the omission and representations of the Defendant Simpson Sr. is ludicrous. The Defendant, in my opinion, should be responsible for every penny of her fees and the fees of Mr. Hobbs.

35. The most amazing aspect of this claim is the effort, persistence, talent and experience that was required to discover what should have been disclosed in the Defendant's first financial declaration. It is admirable that this level of representation was rendered even though Ms. Simpson could not pay them for their work. Given the contingency of the compensation and the lengths to which they were required to use their not inconsequential talents and the fact that

requiring Ms. Simpson to pay these fees would decimate her share of the marital estate, it is below signed's opinion that a full measure of attorney fees and costs should be awarded.

36. I have worked extensively with both Mr. McLaren and Mr. Warner and believe them to be marital litigators of the highest caliber and quality. They are both known throughout the state and are "fellow Fellows" in the American Academy of Matrimonial Lawyers. The hourly rate set forth in their attorney's fees affidavit is reasonable for lawyers of this stature and is customary in cases of this nature.

Lon H. [illegible], III

SWORN to and subscribed before me
this day of January, 2006

Notary Public for South Carolina
My Commission expires: 4-7-2006

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STATE OF SOUTH CAROLINA COUNTY OF CLARENDON William R. Simpson, Jr., PLAINTIFF, VS. Becky H. Simpson, DEFENDANT	IN THE FAMILY COURT OF THE THIRD JUDICIAL CIRCUIT DOCKET NUMBER: 04-DR-14-115 **NOTICE OF MOTION AND MOTION FOR A NEW TRIAL BASED UPON FAILURE OF THE DEFENDANTS' COUNSEL TO DISCLOSE THE COURT'S CONFLICT OF INTERESTS.**

TO: **THE DEFENDANT ABOVE NAMED AND HER ATTORNEYS JAMES T. MCLAREN, ESQUIRE AND JAN L. WARNER, ESQUIRE:**

YOU WILL PLEASE TAKE NOTICE that the Defendants by and through their undersigned attorney will move before the Honorable F.P. Segars-Andrews, Judge for Family Court of the Ninth Judicial Circuit, at the Sumter County Courthouse on the tenth (10) day after service hereof at 2:00 p.m., or at such other time the Court deems appropriate pursuant to Rules 52, 59, and 60 of the South Carolina Rules of Civil Procedure for an Order setting aside, vacating, altering, amending, clarifying and for reconsidering the final Order in this matter. Said Motion is based upon the following:

1. The Plaintiff has discovered that in the matter of Daisy Wallace Simpson vs. William Robert Simpson, Sr., individually and as shareholder/member of Simpson Farms, LLC and William R. Simpson, Jr., as a shareholder/member of Simpson Farms, LLC Docket Number: 03-DR-14-128 and 2004-DR-14-138; (hereinafter "Simpson I") that Lori H. Shull, III, Esquire of the Charleston County Bar prepared an eleven page affidavit at the request of Jan L. Warner, Esquire and James T. McLaren, Esquire in support of their attorney's fees and costs petition in the aforementioned matter. That the Plaintiff was a party to that lawsuit involving his mother and father after being made a party by Mr.

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EXHIBIT 2

Warner and Mr. McLaren and because he was a member of Simpson Farms LLC. That Mr. Warner and Mr. McLaren knew or should have known that Mr. Shull was/is a partner in the law firm of Andrews and Shull, PC located at 755 Johnnie Dodds Blvd. Mt. Pleasant, South Carolina 29464.

2. The Plaintiff would show that Mr. Shull is a partner with the principal partner Mark O. Andrews, Esquire, in said law firm. That Mr. Shull's affidavit (attached hereto and marked as Exhibit "A") goes into great detail regarding the assets and liabilities of the Plaintiff. By way of illustration the following is contained in Mr. Shull's affidavit at paragraph 38 page 11 "I have worked with both Mr. McLaren and Mr. Warner." On page 1 of his affidavit, Mr. Shull states, At the request of Jan I. Warner and James T. McLaren, I have reviewed the court order of December 31, 2004 and the fee affidavit of Mr. McLaren and Mr. Warner (hereinafter referred to as "Fee Affidavit"). As a result, Mr. Shull was asked to give a professional opinion as to the reasonableness of the attorney's fees in Simpson I. In paragraph 21, page 6, Mr. Shull makes the following conclusion:" The fact that Simpson, Jr. never reported adjusted gross income of more than $18,000.00 per year yet, according to his testimony, acquired assets of in excess of $650,000.00 with no explanation, tells (sic) me as a lawyer that there was shifting funds and/or assets in between his father and him."

3. The Plaintiff would show that he was not aware that Mr. Shull's partner in his law firm, Mark O. Andrews, is the husband of the Honorable F.P. Segars-Andrews, (Trial Judge in Simpson II in which Simpson Farms LLC was divided by the Court). This fact was not known until after the trial of the matter by the Plaintiff or his trial counsel. The Plaintiff would show that this fact was well known to the attorney's for the Defendant. That they failed to notify opposing counsel that Mr. Shull was the law partner of the husband of the trial judge. The Defendant's attorneys also failed to inform the Court of Mr. Shull's involvement in Simpson I and had a duty to inform the Court that her husband's law partner had rendered a legal opinion against the Plaintiff in another lawsuit that dealt with many of the same properties in Simpson II; e.g. Simpson Farms, LLC.

4. The Plaintiff would ask for a new trial based upon a failure of the Defendant's Counsel to disclose to the Court Mr. Shull's work against the Plaintiff in the Simpson I matter and a failure of the Defendant's counsel to disclose that Mr. Shull was the law partner of the husband of the trial Court.

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JOHNSON, MCKENZIE & ROBINSON, LLC

By

Steven S. McKenzie
Scott L. Robinson
Attorneys for Defendant
18 North Brooks Street
Manning, SC 29102
(803) 435-0909

March 28, 2006

F. P. "Charlie" Segars-Andrews
100 Broad St.
Charleston, SC 29402

Phone: (843) 958-4416
Fax: (843) 958-4015

November 9, 2009

VIA EMAIL, FACSIMILE AND U.S. MAIL

Judicial Merit Selection Commission
104 Gressette Building
1101 Pendleton Street
P.O. Box 142
Columbia, SC 29202

RE: F. P. Segars-Andrews
Candidate for Family Court of the Ninth Judicial Circuit

Dear Chairman McConnell and Members of the Commission:

Please accept my sincere appreciation for the time that the Commission has given to the issue of my qualifications. The work of the Commission is valuable, important and challenging, particularly in circumstances such as those which arose last Wednesday during my hearing. I appreciate the time the Commission and your staff has invested in this situation to date, and, for the reasons detailed below, respectfully request the opportunity for additional time before the Commission in connection with this election.

I have felt honored and privileged to represent the State of South Carolina and the Judiciary for almost 17 years. At all times (including the particular situation involving Mr. Simpson investigated by the Commission), I have tried my best to follow the law, to maintain the standards expected of my position and to fairly administer justice to the citizens of our State. Last Wednesday, whether blinded by the emotions that stirred in me as I was confronted with Mr. Simpson's strong feelings of how unfairly he was treated, or whether it was simply prideful defense of my belief that I had followed the "law", I failed to see something that was obviously clear to the Commission, something that I now understand caused the Commission great concern.

While I have always tried to be sensitive to my responsibility, in every case, to avoid the appearance of impropriety, I obviously failed to fully appreciate, in the Simpson situation, the unique perspective of this litigant. Having already fully tried Mr. Simpson's case, and knowing (as only I could know) that I had given Mr. Simpson and his former wife a fair hearing, I was of the belief that it was my responsibility to finish the case at that point. Over the years, I have been conditioned and encouraged by litigants, lawyers and even Court Administration, to be responsible to notions of judicial economy and dispensing justice without unreasonable delay. Although my first thought was to recuse myself from the case, I was ultimately persuaded that the law required me to do otherwise. Unfortunately, in making this decision I did not fully

EXHIBIT 3

consider how this decision would impact the litigant, and his view of fairness in the Family Court.

The difficult and unfortunate situation has helped me understand that while it is essential for me to judge with integrity, to properly discharge my responsibilities I must do everything reasonable within my control to demonstrate to the litigants that they have in fact been afforded a fair trial, by an impartial and honest Judge. The issues that are before me in Family Court are almost always hotly contested and emotionally charged. More often than not, both parties leave the process relatively disappointed, receiving a result different than what they anticipated. I will always regret that Mr. Simpson will probably always think he did not receive the fair trial to which he was entitled. If I had understood then what I understand now, I would have recused myself, even though not legally required to do so. All I can do now is offer Mr. Simpson my apology, something I wish I had done last Wednesday.

When the hearing ended on Wednesday the record was left open for consideration of additional evidence. After the hearing I received some additional communication from your staff about what has or is to take place. By this letter, I respectfully request that I be allowed the opportunity to further respond to the matter before this Commission, to present evidence and testimony involving my candidacy, and that the Commission, to the extent action has been taken, reconsider its position with respect to my qualifications for retaining the position I currently hold in the Family Court for the Ninth Judicial Circuit.

Respectfully Submitted,

F. P. Segars-Andrews

Cc: Jane O. Shuler, Esq., Chief Counsel
Paula G. Benson, Esq.
Steven S. McKenzie, Esq.

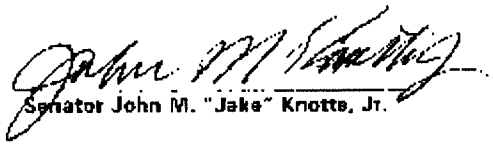
CONCLUSION

The Judicial Merit Selection Commission found Judge F.P. "Charlie" Segars-Andrews to be Not Qualified for re-election to Family Court, Ninth Judicial Circuit, Seat 1.

Respectfully submitted,

Senator Glenn F. McConnell

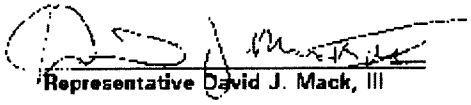
Representative F.G. Delleney, Jr.



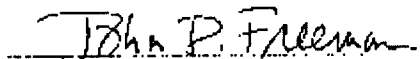
Senator John M. "Jake" Knotts, Jr.

Senator Floyd Nicholson

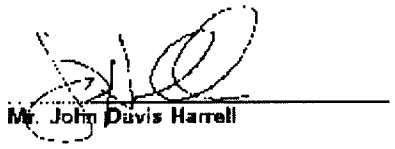
Representative Alan D. Clemmons



Representative David J. Mack, III

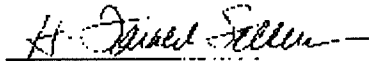


Mr. John P. Freeman



Mr. John Davis Harrell

Mrs. Ann Johnson McLester



Mr. H. Donald Sellers

EXHIBIT 2

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

William R. Simpson, Jr., Appellant,

v.

Becky H. Simpson and

Wade Ingle, Defendants, of whom Becky H. Simpson is Respondent.

Appeal From Clarendon County
Frances P. Segars-Andrews, Family Court Judge

Opinion No. 4341
Submitted November 1, 2007 – Filed February 8, 2008

AFFIRMED

Steven S. McKenzie, of Manning, for Appellant.

James McLaren, C. Dixon Lee, Jan L. Warner, all of Columbia, for Respondent.

PER CURIAM: In this domestic action, William Robert Simpson, Jr., (Husband) appeals the family court's order, arguing the family court erred in (1) its equitable distribution of marital property; (2) finding Simpson Farms, LLC, was marital property; (3) failing to correctly ascertain the inventory of the Buck and Bull store; (4) failing to give Husband credit for $16,000 in monies he paid to his former wife, Becky H. Simpson (Wife); (5) finding the parties' residence was transmuted into marital property; and (6) awarding Wife attorney's fees and costs. We affirm.

FACTS

Husband and Wife were married on September 3, 1989. At the time of the marriage, Husband was nineteen and Wife was seventeen years of age. During the marriage, Wife primarily stayed at home and took care of the parties' two children. She maintained

periodic outside employment, including a job at the children's private school, Clarendon Hall, for which the parties received reduced tuition.

Throughout the marriage, Husband worked as a farmer with his father, William Simpson, Sr. (Simpson, Sr.).**[1]** In exchange for Husband earning a nominal salary and working hard, Simpson, Sr. awarded him a fifty percent interest in Simpson Farms. Husband also bought other property that he farmed separately from his father. He financed the purchase of the additional land in various ways. At times, he farmed the land or cut timber in order to pay the purchase price. At other times, he borrowed money from banks.

At the beginning of the marriage, the parties purchased a mobile home, using $6,000 Wife inherited, which was located on Simpson, Sr.'s property. Over time, the parties cleared the land, and in 1995, they built the marital residence. On May 15, 1996, Simpson, Sr. formally deeded the property to Husband. At the time of the final hearing, the residence had $78,600 outstanding on the mortgage.

In late 2003, Wife began acting somewhat erratically and appeared depressed. Husband found Wife to be more irritable and believed she preferred to be alone without him or the children. To support Husband's claim that Wife was acting irrationally, he testified that when Wife returned from a trip to Florida in July 2004, she had three tattoos. Eventually, Wife was diagnosed as bipolar. Thereafter, Husband asked Wife for a divorce.

At this point, Wife was not represented by counsel. Husband took Wife, who was accompanied by her elderly grandfather, to his attorney's office to sign a separation agreement. Wife signed the separation agreement, which was later approved by the family court. When she signed the agreement, Wife claimed she was unaware of the parties' finances because Husband handled the financial aspects of their marriage. In the time frame between Husband asking Wife for a divorce and the signing of the separation agreement, Wife began dating Wade Ingle.

A few months later, Wife retained counsel and moved to have the separation agreement set aside, claiming she was undergoing psychotherapy and taking medication at the time she signed the separation agreement. She also argued Husband had not made a full financial disclosure. The family court, noting it would not have approved the separation agreement had it known Wife's mental condition, set aside the agreement.

After the family court set aside the separation agreement, Husband instituted this action seeking a divorce based upon Wife's adultery. While the divorce proceedings were pending, Husband closed the Buck and Bull store he operated and attempted to auction off the inventory. The family court halted the sale in order to determine the inventory's value.

The family court subsequently issued a bifurcated decree of divorce, granting Husband a divorce based upon Wife's adultery, which occurred after the parties separated. The family court left open all other issues, noting, "This [o]rder shall not be construed as making any finding relative to the issues of fault of either party . . . as may affect equitable division, custody, counsel fees, [and] suit money."

After a two-day hearing on the remaining issues, the family court issued its final order.**[2]** The order provided Wife was barred from alimony because of her adultery. The family

court awarded Husband sixty percent of the marital property, totaling $320,655, and awarded Wife forty percent of the marital estate, totaling $213,876, pursuant to the family court's consideration of the equitable distribution statute. Additionally, the family court ordered Husband to pay half of Wife's attorney's fees and costs.

Accordingly, Husband filed a Rule 59(e), SCRCP, motion to reconsider, which the family court denied. This appeal follows.

STANDARD OF REVIEW

On appeal from the family court, this Court has the authority to find facts in accordance with its own view of the preponderance of the evidence. Rutherford v. Rutherford, 307 S.C. 199, 204, 414 S.E.2d 157, 160 (1992). This broad scope of review does not require us to disregard the family court's findings, and we remain mindful that the family court, who saw and heard the witnesses, is in a better position to evaluate their credibility and assign weight to their testimony. Cherry v. Thomasson, 276 S.C. 524, 525, 280 S.E.2d 541, 541 (1981).

LAW/ANALYSIS

I. Equitable Distribution

Husband argues the family court erred in its equitable distribution of the marital property. Specifically, Husband contends the family court's equitable division attempted to compensate Wife for her failure to receive alimony. We disagree.

The division of marital property is within the sound discretion of the family court, and on appeal, it will not be disturbed absent an abuse of discretion. Greene v. Greene, 351 S.C. 329, 340, 569 S.E.2d 393, 399 (Ct. App. 2002). Section 20-7-472 of the South Carolina Code (Supp. 2006) imparts the family court with fifteen factors to consider in equitably apportioning marital property. The statute vests the family court with the discretion to decide the weight to assign various factors. See id. ("In making apportionment, the court must give weight in such proportion as it finds appropriate . . . ."). On appeal, "this [C]ourt looks to the overall fairness of the apportionment, and it is irrelevant that this [C]ourt might have weighed specific factors differently than the family court." Doe v. Doe, 370 S.C. 206, 213-14, 634 S.E.2d 51, 55 (Ct. App. 2006).

In Berry v. Berry, 294 S.C. 334, 335, 364 S.E.2d 463, 464 (1988), the family court's order, which awarded an adulterous spouse an equal share of the marital property, provided,

> Although it was . . . adultery that precipitated this divorce action, no deduction has been made from her share by reason of her fault. . . . Were it not for the length of this marriage and the fact that [she] is barred from alimony, I would have awarded her a substantially lower percentage of the marital property.

In affirming this Court's reversal of the family court's order, the Supreme Court noted, "[T]he preclusion of an alimony award to a spouse cannot be used to increase an equitable distribution award." Id.

In the present case, Husband alleges the family court attempted to compensate Wife

through equitable distribution because she was statutorily barred from receiving alimony. He points to what he believes is the family court's "skewed" factual findings in favor of Wife to award her forty percent of the marital estate.

We find the record fails to support Husband's contention. In its order, the family court granted Husband a divorce based upon Wife's adultery that took place after the parties separated. Further, the order provided, "There is no evidence of marital misconduct from either party that would rise to the level to [a]ffect the division of property. The wife's adultery took place only after the parties' separation." Unlike the situation presented in Berry, the family court specifically stated Wife's marital misconduct did not affect the equitable distribution.

In this case, the family court awarded Husband twenty percent more than Wife, dividing the property in a sixtv-forty split. The court took into consideration the direct and indirect contributions of both parties and the substantial "sweat equity" of Husband. The award considered the appropriate statutory factors and this State's public policy that a party's marital misconduct does not justify a severe penalty for equitable apportionment purposes. See Doe, 370 S.C. at 216, 634 S.E.2d at 57 (finding South Carolina law "expressly disallow[s] fault as a penalty" in determining equitable apportionment between a husband and wife). Therefore, we agree with the family court that a forty percent award of the marital property to Wife is proper.

II. Marital Property

Husband argues the family court erred in finding Simpson Farms was marital property. Husband maintains his fifty percent interest in Simpson Farms was a gift from Simpson, Sr. and, as such, is a nonmarital asset. We disagree.

Marital property is defined as "all real and personal property which has been acquired by the parties during the marriage and which is owned as of the date of filing or commencement of marital litigation . . . regardless of how legal title is held." S.C. Code Ann. § 20-7-473 (Supp. 2006). However, property may be considered nonmarital if it is acquired by gift or inheritance. S.C. Code Ann. § 20-7-473(1). Because of the general presumption that property acquired during the marriage is an asset of the marriage, "[t]he burden to show an exemption under S.C. Code Ann. Section 20-7-473 is upon the one claiming that property acquired during the marriage is not marital." Brandi v. Brandi, 302 S.C. 353, 356, 396 S.E.2d 124, 126 (Ct. App. 1990) (citations omitted).

Husband points to the testimony of Wife's expert, Mark Hobbs, a certified public accountant, to show Simpson Farms was a gift from his father. During Simpson, Sr.'s divorce proceedings, Hobbs testified the only way Husband could have amassed all of his property was through gift or inheritance because the income shown on Husband's tax returns could not support Husband's vast land holdings. During this trial, Hobbs testified he still believed his earlier conclusions to be true.

After reviewing the record, we find Husband mischaracterizes and omits much of Hobbs' testimony. Although Hobbs stated he believed Husband's interest in Simpson Farms was a gift, he did so to highlight his belief that Husband could not have amassed his land holdings with the little amount of income he reported on his tax returns. In fact, the very

substance of Hobbs' testimony indicated Husband's financial records were inaccurate and incomplete. Hobbs noted Husband's personal expenses "greatly exceeded" the amount of money he reported as income. Further, Hobbs testified he did not see any gift tax returns filed by Husband or Simpson, Sr. to verify Simpson Farms was a gift rather than something Husband acquired through his hard work during the marriage. In addition, the agreement between Husband and Simpson, Sr. provides, "[A]ll farm equipment and farm land of Simpson Farms will become shared equally for invested interest for work on [the] farm . . . ." Husband's own testimony at the hearing was that he worked for his interest in Simpson Farms: "I earned it all, I worked for it, and he gave it to me."

The evidence in this case establishes Simpson Farms was marital property, and Husband has failed to carry his burden to show otherwise. During the marriage, Husband farmed and received a nominal salary of $120 a week in exchange for an interest in Simpson Farms. Husband's fifty percent interest in Simpson Farms was payment for labor expended during the marriage, and therefore, the family court properly concluded it was an asset of the marriage.

III. Inventory of Buck and Bull

Husband avers the family court failed to properly determine what the inventory of the Buck and Bull store included at the time this action was commenced. We disagree.

Although the sale of the store's inventory was halted pursuant to a court order, Husband offered no figure during the hearing as to the inventory's value at the time he instituted this action. Therefore, we cannot determine how much this value depleted between the filing of the action and the final hearing. See Honea v. Honea, 292 S.C. 456, 458, 357 S.E.2d 191, 192 (Ct. App. 1987) ("We have stated before, and we reiterate here, that a party cannot sit back at trial without offering proof, then come to this Court complaining of the insufficiency of the evidence to support the family court's findings."). Further, even if the family court's valuation was too low, as Husband alleges, because the family court awarded him the inventory, we can discern no prejudice to Husband if the inventory should be worth more than what the family court found. See McCall v. Finley, 294 S.C. 1, 4, 362 S.E.2d 26, 28 (Ct. App. 1987) ("Appellate courts recognize . . . an overriding rule of civil procedure which says: whatever doesn't make any difference, doesn't matter.").

IV. Credit

Husband argues the family court erred in failing to reimburse him for the $16,000 he paid to Wife under the August 2004 separation agreement, which was later overturned by the family court. In Husband's view, the $16,000 should be treated as an advance on the equitable distribution Wife received. We disagree.

In support of his contention that he is entitled to a $16,000 credit, Husband submitted a document that listed his purported payments to Wife from August 2004 until January 2005. However, Husband failed to include any checks, bills, or receipts that actually showed the amount he paid. Wife also testified that at most, she received two payments from Husband under the agreement. Considering the family court found "Husband's financial declaration and financial disclosures [were not] accurate depictions of his actual income and assets," we find no credible evidence Husband actually paid Wife $16,000. Further, the family court considered whether Husband was entitled to a $16,000 credit and

specifically declined to give Husband any credit. However, Husband did receive twenty percent more of the marital estate, a factor the family court most certainly considered when declining to give Husband a credit. Therefore, because we affirm the overall apportionment of the marital property, we find no error in the family court's failure to give Husband a credit. See Deidun v. Deidun, 362 S.C. 47, 58, 606 S.E.2d 489, 495 (Ct. App. 2004) (holding on appeal, we look to the overall fairness of the apportionment, and if the end result is equitable, it is irrelevant if we would have arrived at a different apportionment).

V. Transmutation

Husband argues the family court erred in concluding the residence where the parties lived during the marriage was transmuted into marital property. Husband contends the land on which the marital residence was built was a gift from Simpson, Sr. and, therefore, his separate property. We disagree.

In South Carolina, property acquired by either party during the marriage by gift from an individual other than the spouse is nonmarital property. S.C. Code Ann. § 20-7-473(1). Nonmarital property may be transmuted into marital property if: "(1) it becomes so commingled with marital property as to be untraceable; (2) it is jointly titled; or (3) it is utilized by the parties in support of the marriage . . . so as to evidence an intent by the parties to make it marital property." Jenkins v. Jenkins, 345 S.C. 88, 98, 545 S.E.2d 531, 537 (Ct. App. 2001) (citing Pool v. Pool, 321 S.C. 84, 86, 467 S.E.2d 753, 756 (Ct. App. 1996)). Whether transmutation of separate property into marital property has occurred "is a matter of intent to be gleaned from the facts of each case." Johnson v. Johnson, 296 S.C. 289, 295, 372 S.E.2d 107, 110 (Ct. App. 1988).

Although the evidence shows Husband acquired the land by gift from Simpson, Sr. during the marriage, the parties, using funds earned during the marriage, built the marital home. Together, they cleared the land where the house was built. The residence was occupied by both the parties from the time it was built in 1995 until this action was commenced in 2004. Clearly, the parties utilized the home and land in support of the marriage. See Cooper v. Cooper, 289 S.C. 377, 380, 346 S.E.2d 326, 328 (Ct. App. 1986) ("Although the evidence shows that the husband acquired the land by gift from his father during the marriage, it also shows, and we so find, that the property lost its nonmarital character and therefore became subject to equitable distribution when the husband, nine years before the parties separated, erected the marital home thereon and thereby used the 1.4 acre tract in support of the marriage."). Accordingly, we find the family court properly concluded the house was transmuted into marital property.

VI. Attorney's Fees

Lastly, Husband argues the family court erred in awarding Wife attorney's fees and costs. He maintains he will be unable to pay the fees because he has less acreage to farm as a result of the equitable distribution. He also claims Wife did not receive a beneficial result in the litigation. We disagree.

Section 20-7-420(38) of the South Carolina Code (Supp. 2006) provides, "Suit money, including attorney's fees, may be assessed for or against a party to an action brought in or subject to the jurisdiction of the family court." The award of attorney's fees is within the

sound discretion of the family court and absent an abuse of discretion, will not be disturbed on appeal. Patel v. Patel, 359 S.C. 515, 533, 599 S.E.2d 114, 123 (2004). In determining whether to award attorney's fees, the family court should consider "each party's ability to pay his or her own fee; the beneficial results obtained by the attorney; the parties' respective financial conditions; and the effect of the fee on each party's standard of living." Id. (citing E.D.M. v. T.A.M, 307 S.C. 471, 476-77, 415 S.E.2d 812, 816 (1992)).

At the outset, we note Husband does not appeal the reasonableness of the fees and costs, but simply that he was ordered to pay half the fees. Accordingly, we need not decide whether the fee amount was proper. See State v. Hiott, 276 S.C. 72, 86, 276 S.E.2d 163, 170 (1981); Rule 208(b)(1)(B), (D), SCACR (stating an issue not argued in the brief is deemed abandoned and precludes consideration on appeal).

In the final order, the family court ordered Husband to pay half of Wife's attorney's fees and the cost of the certified public accountant for a total of $83,0391.91. In his brief, Husband argues his acreage has been reduced, and he is responsible for the debt on the land the family court awarded Wife. Therefore, he maintains he does not have a greater ability than Wife to pay fees. However, Husband submitted no documentation to prove the land Wife received through equitable distribution is mortgaged. The family court determined Wife was unlikely to be able to earn more than $25,000 a year, while Husband, a successful farmer, had the proven ability to earn $100,000 a year.**[3]** In addition, Husband received twenty percent more of the marital estate. We agree with the family court that because Husband was awarded substantially more assets, he will be able to pay the debts with less impact on his standard of living.

Further, the fact that Wife received a greater share of the marital estate after the separation agreement was set aside is evidence of Wife's beneficial results. Additionally, Husband's lack of candor with the family court and failure to fully cooperate throughout the litigation process support an award of attorney's fees. See Donahue v. Donahue, 299 S.C. 353, 365, 384 S.E.2d 741, 748 (1989) (finding the wife was entitled to attorney's fees and costs because "the wife's attorney faced difficulty and lack of cooperation from the husband, which serve[d] as an additional basis for the award of attorneys' fees"). Therefore, because the family court fully examined the necessary factors in determining Wife was entitled to fees and costs, we can discern no abuse of discretion in the award.

CONCLUSION

For the reasons stated above, the order of the family court is

AFFIRMED.[4]

ANDERSON, SHORT, and WILLIAMS, JJ., concur.

[1] Husband was also a named party in Simpson, Sr.'s divorce. See Simpson v. Simpson, Op. No. 2007-UP-147 (S.C. Ct. App. filed April, 4, 2007) (unpublished opinion).

[2] At the hearing, both parties agreed Husband was to have custody of the two children.

[3] Husband's first financial declaration disclosed an income of $1,730.76 per month while his last disclosure to the court provided his income was $8,350 per month. In concluding Husband had the ability to earn $100,000 in any given year, the family court also acknowledged Husband's inconsistent declarations created difficulty in ascertaining Husband's actual income.

[4] We decide this case without oral argument pursuant to Rule 215, SCACR.

EXHIBIT 3

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

William R. Simpson, Jr., Appellant,

v.

Becky H. Simpson and Wade Ingle,
Defendants, of whom Becky H. Simpson is
Respondent.

Appeal From Clarendon County
Frances P. Segars-Andrews, Family Court Judge

Opinion No. 4340
Heard November 6, 2007 – Filed February 8, 2008

AFFIRMED

Steven S. McKenzie, of Manning, for
Appellant.

James McLaren, C. Dixon Lee, and Jan L.
Warner, all of Columbia, for Respondent.

PER CURIAM: William Robert Simpson, Jr., (Husband) appeals the family court's denial of Husband's motion for the family court's recusal based on its finding that there are no conflicts of interests or other reasons why it should disqualify itself or grant a new trial. We affirm.

FACTS

Husband is the son of Daisy Wallace Simpson (Mother) and William Robert Simpson, Sr. (Father). In December 2004, Judge R. Wright Turbeville granted Mother and Father a divorce. As a shareholder/member of W.R. Simpson Farms, L.L.C., Husband was named a party to Mother and Father's divorce action.

Husband and Becky H. Simpson (Wife) were granted a divorce in March 2005 through a bifurcated Decree of Divorce. In March 2006, Judge Frances P. Segars-Andrews heard

the remaining issues pursuant to the bifurcated Divorce Decree. Husband and Wife entered into a Consent Order on the issues of child custody and visitation, and Judge Segars-Andrews issued written instructions for a Final Order on all remaining issues.

Lon Shull (Shull), a partner in the law firm of Andrews and Shull in Mt. Pleasant, South Carolina, was a witness, via affidavit, at the request of Mother's attorneys, in Mother and Father's divorce action regarding the issue of attorneys' fees. Shull's law partner is Mark O. Andrews, the husband of Judge Segars-Andrews.

Subsequent to Judge Segars-Andrews' issuance of instructions for the Final Order, Husband filed a motion for a new trial which asserted a conflict of interest had not been disclosed. Husband alleged a conflict due to Shull's involvement in Mother and Father's case and his connection to Judge Segars-Andrews' husband. Husband's motion did not allege any prejudice or bias as a result of this conflict, and after a hearing on this motion, Judge Segars-Andrews denied the motion.

At this same hearing, however, Judge Segars-Andrews, acting sua sponte, orally stated she would recuse herself. Judge Segars-Andrews raised the question of whether she should disqualify herself because James McLaren, Wife's counsel in the present divorce action, and Shull had been co-counsel in a personal injury case. This unrelated case ended in late 2004 or early 2005 and resulted in a substantial fee to Shull's firm, which in turn benefited his law partner, Judge Segars-Andrews' husband.

After receiving memos from both parties on this question, Judge Segars-Andrews found the situation did not require her to disqualify herself, and therefore, she had a duty to hear the case. This appeal follows.

STANDARD OF REVIEW

"Under South Carolina law, if there is no evidence of judicial prejudice, a judge's failure to disqualify [herself] will not be reversed on appeal." Patel v. Patel, 359 S.C. 515, 524, 599 S.E.2d 114, 118 (2004).

LAW/ANALYSIS

We begin by addressing Wife's argument, which was made for the first time at oral argument, that this Court is procedurally barred from hearing this appeal. Wife argues a denial of a motion for disqualification of a judge is an interlocutory order, and therefore, it may only be reviewed by this Court on an appeal from a final order. See Rogers v. Wilkins, 275 S.C. 28, 29-30, 267 S.E.2d 86, 87 (1980) (finding the denial of a motion for disqualification is interlocutory and reviewable only after an appeal from final judgment); see Townsend v. Townsend, 323 S.C. 309, 312, 474 S.E.2d 424, 427 (1996) ("A denial of a motion for disqualification of a judge is an interlocutory order not affecting the merits and, thus, is reviewable only on appeal from a final order.").

Wife is correct in her statement of the law; however, the case before us is distinguishable from the cases Wife references to support her argument. In the current case, although two separate appeals**[1]** have been filed, each follows a final order from the family court. Neither party moved to consolidate the two appeals, so they have proceeded separately. Because this appeal of Judge Segars-Andrews' denial of a motion for disqualification

follows a final order, it is not an interlocutory appeal and is, therefore, properly before this Court.

Husband argues the family court erred in overturning its sua sponte recusal. We disagree.

South Carolina's Code of Judicial Conduct states, "A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities." Canon 2 of the Code of Judicial Conduct, Rule 501, SCACR. The Code requires a judge to "disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned . . . ." Canon 2 of the Code of Judicial Conduct, Rule 501, SCACR. When disqualification is not required, however, the Code states, "A judge shall hear and decide matters assigned to the judge . . . ." Canon 3B(1) of the Code of Judicial Conduct, Rule 501, SCACR. "A judge's impartiality might reasonably be questioned when his [or her] factual findings are not supported by the record." Patel, 359 S.C. at 524, 599 S.E.2d at 118.

In the current case, Judge Segars-Andrews' findings are supported by the record. Judge Segars-Andrews provided a detailed list of findings in support of her decision on how to equitably divide the assets of Husband and Wife. Judge Segars-Andrews made these findings and included them in her "Instructions for Order" before she remembered the previous relationship between her husband's law partner and Wife's counsel. Facts in the record support Judge Segars-Andrews' findings. We see no evidence showing bias or prejudice.

The party seeking disqualification must do more than merely allege bias on the judge's behalf; the party must present some evidence of judicial prejudice or bias. Id. at 524, 599 S.E.2d at 118. "In applying Canon 3[(E)](1), the South Carolina Supreme Court has stated that the movant or petitioner must show some evidence of the bias or prejudice of the judge." Lyvers v. Lyvers, 280 S.C. 361, 367, 312 S.E.2d 590, 594 (Ct. App. 1984) (internal quotations and citations omitted). When an appellant offers no evidence to support his claim of partiality, the trial judge is correct to deny a Motion for Recusal. See Christensen v. Mikell, 324 S.C. 70, 74, 476 S.E.2d 692, 694 (1996) ("Appellant offered no evidence to support his claim of partiality. Accordingly, the trial judge properly denied the Motion to Recuse.").

Husband has not shown any evidence of bias or prejudice on behalf of Judge Segars-Andrews. Husband argues Judge Segars-Andrews' own statements about the need to disclose the previous working relationship between her husband's law partner and Wife's counsel might reasonably question her impartiality. Husband fails, however, to provide any evidence of how the former relationship actually resulted in some prejudice or bias in Judge Segars-Andrews' ruling. Thus, Judge Segars-Andrews was correct to deny Husband's request for recusal.

In Doe v. Howe, the trial judge chose to make disclosures to both sides about his contacts with Howe and his law clerk's contacts with the law firm representing Howe. 367 S.C. 432, 439, 626 S.E.2d 25, 28 (Ct. App. 2005). The trial judge did not then recuse himself; Doe, therefore, alleged judicial prejudice. Id. This Court held,

> Because Doe made no showing here of actual prejudice, we find no abuse of discretion in the trial judge's refusal to disqualify himself. If anything, the trial

> judge demonstrated sensitivity toward any concerns Doe might have had regarding his impartiality by voluntarily making full disclosure of his and his law clerk's contacts with Howe and Howe's counsel.

Id. at 441, 626 S.E.2d at 29.

Just as in Doe, we find Husband has made no showing of actual prejudice on behalf of Judge Segars-Andrews. We find Judge Segars-Andrews' remarks about her concern for not disclosing the information at the beginning of the hearing do not show any bias or prejudice but instead show her sensitivity to any apprehension each side might have in her ability to make a fair and impartial ruling in the case.

Husband also argues Judge Segars-Andrews' written order denying his request for recusal is a reversal of her earlier oral disqualification, but we find this argument without merit. Judge Segars-Andrews' oral ruling regarding recusal did not constitute a final order by the Judge, and therefore, her final order denying Husband's request for recusal was not a reversal of a previous order. South Carolina law is clear that "[n]o order is final until it is written and entered." Corbin v. Kohler Co., 351 S.C. 613, 620, 571 S.E.2d 92, 96 (Ct. App. 2002). "Until written and entered, the trial judge retains discretion to change his [or her] mind and amend his [or her] oral ruling accordingly." Id. at 621, 571 S.E.2d at 96. A written order may be issued which is inconsistent with a prior oral ruling, and to the extent the two conflict, the written order controls. Id. at 621, 571 S.E.2d at 97. "The written order . . . constitutes the final judgment of the court." Id.

Judge Segars-Andrews made an initial oral ruling deciding she would recuse herself from this matter but also agreed to accept memoranda on the issue. After reviewing the memoranda and affidavits from each side, however, she found she had no reason to recuse herself and, therefore, had a duty to adjudicate the case. Judge Segars-Andrews' final, written order denied Husband's request for recusal. The written order controls.

Having found no evidence that could question the impartiality of Judge Segars-Andrews, or any other reason requiring her recusal, we find Canon 3B(1) to be controlling, which imposes a "duty to sit." When disqualification is not required, the South Carolina Code of Judicial Conduct holds, "A judge *shall* hear and decide matters assigned to the judge . . . ." Canon 3B(1) of the Code of Judicial Conduct, Rule 501, SCACR (emphasis added). This duty has been recognized and imposed in both state and federal courts. See McBeth v. Nissan Motor Corp. U.S.A., 921 F.Supp. 1473, 1477 (D.S.C. 1996) ("No judge, of course, has a duty to sit where his impartiality might be reasonably questioned."); Barritt v. State, No. CACR06-1261, 2007 WL 2713593, at *6 (Ark. Ct. App. Sept. 19, 2007) ("When recusal is in issue, this court has held that a judge has a duty to sit on a case unless there is a valid reason to disqualify . . . .") (internal citations omitted); In re Turney, 533 A.2d 916, 920 (Md. 1987) ("Moreover, a judge's duty to sit where not disqualified is equally as strong as the duty not to sit where disqualified."); Adair v. State, 709 N.W.2d 567, 579 (Mich. 2006) ("[W]here the standards governing disqualification have not been met, disqualification is not optional; rather, it is prohibited.")(internal quotations and citations omitted); Millen v. Eighth Judicial Dist. *ex rel.* County of Clark, 148 P.3d 694, 700 (Nev. 2006) ("Thus, a judge has a general duty to sit, unless a judicial canon, statute, or rule requires the judge's disqualification."); Tennant v. Marion Health Care Found., Inc., 459 S.E.2d 374, 385 (W. Va. 1995) ("Also important, however, is the rule that a judge has

an equally strong duty to sit where there is no valid reason for recusal.").

CONCLUSION

Husband has failed to present any evidence of prejudice or bias on Judge Segars-Andrews' behalf which would require her to recuse herself, and thus, Judge Segars-Andrews had the duty to sit for this matter.

Accordingly, the family court's decision is

AFFIRMED.

ANDERSON, SHORT, and WILLIAMS, JJ., concur.

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[1] This appeal concerns Judge Segars-Andrews' denial of Husband's motion for disqualification. Husband also appeals Judge Segars-Andrews' Final Order for Equitable Division, Child Support, Attorney's Fees and Costs.

EXHIBIT 4

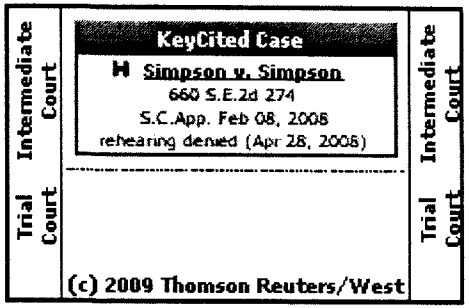
Intermediate Court
Trial Court
KeyCited Case
Simpson v. Simpson
660 S.E.2d 274
S.C.App. Feb 08, 2008
rehearing denied (Apr 28, 2008)
Intermediate Court
Trial Court
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EXHIBIT 5

The Supreme Court of South Carolina

OFFICE OF THE DISCIPLINARY COUNSEL

HENRY B. RICHARDSON, JR.
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November 22, 2006

PERSONAL AND CONFIDENTIAL

Mr. William R. Simpson, Jr.
2052 Billy Road
Manning, South Carolina 29102

Re: Judge: Family Court Judge Frances P. Segars-Andrews
Case No.: 06-DE-J-0249

Dear Mr. Simpson:

This office has conducted a preliminary investigation concerning the allegations of misconduct set out in your complaint against the above named judge. This investigation focused solely on those grounds for misconduct set out in the *Rules for Judicial Disciplinary Enforcement (*RJDE*)* - Rule 502, SCACR, promulgated by The Supreme Court of South Carolina.

These rules do not apply to legal matters related to whether or not the outcome of a case before a judge was fair nor to errors of law a judge might have made in a case. These are legal matters which must be addressed by you at trial or on appeal using appropriate appellate procedures. Many of the issues you raise in your letter concern your dissatisfaction with rulings made by the judge in your domestic action. Such issues are legal in nature and are outside the jurisdiction of the Commission on Judicial Conduct and this office. These issues must be addressed in the appropriate legal forum by motion for reconsideration, appeal to a higher court, or other appropriate and timely legal process.

The crux of your complaint against Judge Segars-Andrews is your belief that she should have recused herself from your case and re-assigned the case to another family court judge. The record indicates that no motion for recusal was made until after the judge had heard the entire case and rendered a decision. Your attorney first made a motion that Judge Segars-Andrews disqualify herself because her husband's law partner had provided an affidavit for Mr. McLaren (opposing counsel) on the issue of attorney's fees in your father's divorce action. The judge denied this motion and, in my judgment, the

Code of Judicial Conduct would not have required her to recuse herself based upon the grounds set out in that motion.

After receiving your attorney's motion for recusal, the judge advises she mentioned the issue to her husband who then told the judge that his law partner had worked with Mr. McLaren on a personal injury case the prior year in which a large fee was involved. The judge further states that, while she had not recalled this prior working relationship between Mr. McLaren and her husband's law partner during the prior proceedings in your case, she then recalled some prior information in that regard which had not come to mind until that conversation with her husband. In an abundance of caution, she disclosed the prior relationship to the parties involved in your case. The judge claims she did not recall the matter at the time she made her decision in your case, and that the prior relationship had absolutely no effect on her decision in your case.

While, according to the transcript, the judge seemed to be leaning towards recusal, she ultimately allowed the attorneys to brief the issue before she made her final decision regarding recusal. After receiving a memorandum, she ultimately decided that she had no duty to recuse herself. Under the circumstances present in this case, I do not believe that Judge Segars-Andrews' decision not to recuse herself rises to the level of judicial misconduct. First of all, there is no evidence that the judge recalled the relationship until after the case was concluded. In my judgment, even if she had recalled the relationship, she was not ethically required to disclose that information to the parties in your case under the circumstances of her husband's partner having such a prior working relationship. There is no evidence that the judge recalled the prior relationship at the time she made her decision in your case, or that the prior relationship affected her decision in your case. My decision that the judge has not committed any ethical violation does not address any legal aspects of the matter (should any there be) and does not prevent you from raising this issue before an appellate court. If an appellate court finds (from a legal perspective) that the judge should have recused herself, then the matter would be remanded back to the family court for a new trial.

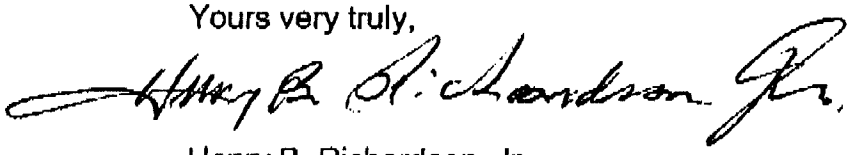
In your letter, you state that "[s]ince this matter involves the Vice Chairman of the Commission on Judicial Conduct ... I do not expect to get any relief from your agency." I take this opportunity to advise you that Judge Segars-Andrews' position with the Commission on Judicial Conduct had no effect on my decision that this matter should be dismissed. I have enclosed a copy of a disciplinary opinion issued by the South Carolina Supreme Court on November 20, 2006, involving Magistrate Joe C. Cantrell. Magistrate Cantrell received a one year definite suspension and, at the time the disciplinary file was opened by the Office of Disciplinary Counsel, Magistrate Cantrell himself was a member of the Commission on Judicial Conduct. This demonstrates that

members of the Commission on Judicial Conduct are not given any special treatment by this office or the Supreme Court in disciplinary matters.

Based on the foregoing, I have determined that there is no evidence supporting allegations of any misconduct as defined in these rules on the part of the above named judge arising out of the events mentioned in your complaint. Instead, I find that the events mentioned in your complaint involve such legal matters that are outside the jurisdiction of this office and are also outside the jurisdiction of the Commission on Judicial Conduct.

Accordingly, your complaint is dismissed pursuant to the provisions of Rule (19)(b)(2) of RJDE. As required by this rule, the above named judge is, by copy of this letter, being notified of the action herewith taken concerning your complaint. Your interest in judicial conduct is appreciated.

Yours very truly,



Henry B. Richardson, Jr.

HBRjr:dsm

cc: The Honorable Frances P. Segars-Andrews