

P20

IN RE:	§	IN THE COUNTY CRIMINAL
MOTION TO RECUSE	§	
HON. REAGAN C. HELM	§	COURT AT LAW NO. 1
FROM PRESIDING OVER	§	
PENDING INTIMATE PARTNER	§	HARRIS COUNTY, TEXAS
FAMILY VIOLENCE ASSAULT	§	
CASES	§	

**STATE'S MOTION TO RECUSE HON. REAGAN C. HELM FROM
PRESIDING OVER PENDING INTIMATE PARTNER
FAMILY VIOLENCE ASSAULT CASES**

COMES NOW THE STATE OF TEXAS, by and through her undersigned Assistant District Attorney and submits this motion to recuse Judge Reagan Cartwright Helm from hearing any and all present cases involving intimate partner family violence assault cases.

**I.
RELEVANT FACTS**

Judge Helm is the presiding judge of Harris County Criminal Court at Law No. 1. In this position, Judge Helm's docket includes criminal cases in which it is alleged that the defendant committed an act of family violence or violated a magistrate's order for emergency protection. *See, e.g.,* TEX. PENAL CODE §§ 22.01 (assault) & 25.07 (violation of protective order).

There are presently 64 defendants with intimate partner family violence assault cases pending before Judge Helm. *See* Attachment No. 1. Nine of these defendants have additional charges pending in County Criminal Court at Law No.1. To avoid confusion, and consistent with Harris County District Clerk procedure, the State asks that Judge Helm be recused from these cases as well. In

total, the State asks that Judge Helm be recused from 74 pending cases involving 64 defendants.

The following cases illustrate Judge Helm's systemic bias and prejudice against family violence cases pending in his Court:

A. *State of Texas vs. Kenneth Stone, Cause No. 1496211*

On December 9, 2007, Kenneth Stone was charged with assault-family member. Stone's girlfriend alleged that he punched her in the eye, causing visible injuries. In self-defense, Stone's girlfriend grabbed a pocket knife. When Stone saw the pocket knife, he slammed his girlfriend to the ground. Stone admitted to police that he "fucked her up." On December 11, 2007, Stone's victim recanted to Assistant District Attorney Scott Pope.

On April 11, 2008, Assistant District Attorney Shreya Shukla and Stone's defense counsel approached Judge Helm to enter a plea agreement without an agreed recommendation on punishment. Stone was about to be deployed to Iraq in several weeks and was prepared to plead guilty.

Stone pled guilty, at which point Judge Helm inquired about the facts of the case. After making this inquiry, Judge Helm told Shukla that a man would have to be a "pussy" to let a woman attack him and that a man had a right to defend himself. Judge Helm called Shukla a "sissy" for indicating that the right to self-defense ceases at a certain point. Judge Helm indicated that the country needed men like Stone to fight for their country and asked Shukla if she wanted Stone here attacking women or fighting the enemy abroad.

Judge Helm then ruled that Stone's offense was a Class C misdemeanor. Shukla told Judge Helm that he could not do that because Stone had already pled guilty to a Class A misdemeanor. Judge Helm responded by making no recommendation as to punishment and setting the case for trial on December 27, 2012.

B. *State of Texas vs. Todd Gunnels, Cause No. 1574769*

On January 20, 2009, Gunnels was charged with committing the misdemeanor offense of deadly conduct against his wife. His wife was also previously the victim in Cause No. 1233987, an assault-family member case brought against the same defendant. In both cases, Mrs. Gunnels ultimately refused to cooperate with the State's prosecution.

On February 27, 2009, Assistant District Attorney Aaron White asked Judge Helm to enter a Magistrate's Order For Emergency Protection (MOEP). Mrs. Gunnels told White and Assistant District Attorney Nathan Hennigan that she wanted the MOEP entered.

Upon being handed the MOEP, Judge Helm rolled his eyes in a dismissive manner and called Mrs. Gunnels in open court from the telephone at the bench. He proceeded to ask Mrs. Gunnels the following questions:

- Are you certain you want this thing?
- How are you going to pay for groceries without him around?
- How are you going to take care of your children without him around?

He also stated in a sarcastic tone, "He looks like a real killer to me. You're telling me you are afraid of him?"

After the phone call, Judge Helm said that he was tired of MOEPs because "these women have the guys by the balls."

C. *State of Texas vs. Mouhamed Makhtar Dia, Cause No. 1602488*

On May 25, 2009 Dia was charged with committing the misdemeanor offense of terroristic threat for threatening his estranged wife, Perrie Knight, telling her: "I am going to kill you. I know where you live." Dia previously had been charged in Cause No. 1557417 with a terroristic threat against this same victim on October 21, 2008, for sending threatening text messages indicating that he would murder her. Knight did not participate in the prosecution of the latter case.

On May 26, 2009 Assistant District Attorney Joshua Reiss asked Judge Helm to set a \$20,000 bond given the ongoing risk Dia posed to the victim. During the bond hearing Judge Helm asked Reiss how long he had been in "this particular torture job?" He then inquired if Reiss had ever considered treating the matter as if it were marriage counseling, asking: "Have you ever – have you ever brought these two people together, like let's call her and have her get up here and have them talk to us."

At the conclusion of the hearing, Judge Helm told Dia, "It's a disaster, you married a disaster."

D. *State of Texas vs. Stanley Mark Kartes, Cause No. 1623490*

On August 26, 2009, Kartes was charged with misdemeanor assault-family member for throwing his girlfriend, Kathryn Roloff, against a door causing her head to cut and bruise. Roloff was treated for injuries at a local hospital and told police she wished to pursue charges. Police filed a non-arrest warrant.

On October 1, 2009, the State and Kartes's defense counsel approached Judge Helm to set Kartes's bond and have a MOEP entered. Defense counsel indicated to Judge Helm that the victim was in the courtroom, was recanting her prior statement to police, and did not want a MOEP. Judge Helm responded, "So,

this is one of those deals where they had their fight; she stupidly called the cops, and everyone wants out? Is it one of those deals?”

Judge Helm entered a \$1,000 bond, signed the MOEP, and told Defense counsel, “They need to straighten out – stop bothering us.”

E. *State of Texas vs. Kelvin D. Watkins, Cause No. 1633627*

On October 8, 2009, Watkins was charged with assault on a family member for pushing his wife, Tinisha Watkins, into a bathtub and then slapping her on the face.

On October 14, 2009, Assistant District Attorney Daphne Newaz asked Judge Helm to enter a MOEP in the case. During a hearing on the MOEP, Judge Helm referred to Mrs. Watkins as “wifey-poo” and indicated that when women want MOEPs removed “it irritates the hell out of me.” Newaz responded that the purpose of a MOEP is to provide for a cooling off period and to help create a safe environment for the victim. Judge Helm responded, “That’s bullshit.”

F. **Warnings to Defendants When They Sign MOEPS**

On multiple instances during 2008 and 2009, Assistant District Attorneys Jackie Stewart and Thuy Le observed Judge Helm admonish male defendants charged with family violence offenses that the female victim had them “by the balls” and that if they saw the victim at a supermarket they should “get on their knees and bow.”

II. PERTINENT LAW

At least ten days before the date set for trial or other hearing in any court other than the Supreme Court, the Court of Criminal Appeals or the court of appeals, any party may file with the clerk of the court a motion stating grounds why the judge before whom the case is pending should not sit in the case. TEX. R. CIV. P. 18a.

A judge shall recuse himself from a case when his impartiality might reasonably be questioned. TEX. R. CIV. P. 18b(2)(a). In addition, a judge shall recuse himself from a case when he has a personal bias or prejudice concerning the subject matter. TEX. R. CIV. P. 18b(2)(b).

“Bias” and “prejudice” have been construed to “connote a favorable or unfavorable disposition or opinion that is somehow *wrongful* or *inappropriate*, either because it is undeserved . . . or because it is excessive in degree.” *Lietky v. United States*, 510 U.S. 540, 550 (1994) (emphasis in text). A pattern of behavior that “demonstrates an ongoing, continuous bias or prejudice” is grounds for a recusal. *Abdygapparova v. State*, 243 S.W.3d 191, 210 (Tex. App.—San Antonio 2008, pet. ref’d).

For bias to rise to the level of a recusal, the movant must provide “sufficient evidence to establish that a reasonable person, knowing all the facts involved, would harbor doubts as to the impartiality of the judge.” *Abdygapparova*, 243 S.W.3d at 198.

Movant need not prove that a Judge is actually biased for recusal to be required. Rather, due process requires recusal when “there is a serious risk of actual bias – based on *objective and reasonable perceptions*.” *Caperton v. A.T. Massey Coal Co.*, 129 S.Ct. 2252, 2263 (2009)(emphasis added).

When a party challenges a denial of a recusal motion based on alleged bias or impartiality, a party must show that this bias arose from an extrajudicial source and not from actions during the pendency of the trial court proceedings, unless these actions during proceedings indicate a high degree of favoritism or antagonism that renders fair judgment impossible. *Sommers v. Concepcion*, 20 S.W.3d 27, 41 (Tex. App.–Houston [14th Dist.] 2000, pet. denied).

III. MOTION TO RECUSE

The recurring nature of Judge Helm’s commentary regarding family violence cases and MOEPs establishes that Judge Helm is not expressing a bias or prejudice arising from each of the various trial court proceedings themselves, but instead is expressing a deep-seated bias and prejudice external to the court proceedings based on his *personal* extrajudicial beliefs. The various cases simply give him a vehicle for expressing that extrajudicial belief to the prejudice of the State and the victims of family violence.

Objective and reasonable perceptions of actual bias exist when Judge Helm: tells male defendants that a female victim has them “by the balls,” berates victims from the bench, refers to victims as “wifey-poo,” and dismisses as “bullshit” court orders designed to protect victims of intimate partner family violence.

Even assuming, *arguendo*, that Judge Helm’s expressions constitute his judicial opinion unique to each particular case, the expressions themselves meet the *Sommers* standard of a “high degree of favoritism or antagonism that renders fair judgment impossible” in each of those cases and similar pending intimate partner family violence cases.

In short, neither the State nor the victims of family violence nor the community at large have any reason to believe that Judge Helm takes cases involving family violence seriously. His frivolous comments about the power of a family violence complainant trivialize the seriousness of the proceedings and communicate to the defendant an undue and injudicious sympathy for their situation. These comments also signal to the victims and the community that Judge Helm believes that family violence cases are simply escalated domestic disputes, “stupidly” initiated and wasting his time.

IV. PRAYER

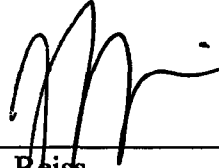
Judge Reagan C. Helm has demonstrated an ongoing and excessive prejudice against victims of domestic violence. His personal biases do not take into account the societal, religious, physical and financial pressures often felt by victims of domestic violence to recant or minimize their abuse after they have had the courage to call the police.

Judge Reagan C. Helm has created an environment of hostility towards victims of domestic violence that would cause a reasonable person to question his impartiality. He also has demonstrated a bias that he does not wish to be bothered with cases in which a domestic violence victim recants or minimizes abuse. This bias should not be allowed to interfere with the State’s due process rights in a manner that infects “the integrity of the trial process.” *Abdygapparova*, 243 S.W.3d at 210.

FOR THESE REASONS, the State of Texas asks Judge Reagan C. Helm to voluntarily recuse himself from all intimate partner family violence assault cases currently pending before him as referenced in Attachment #1 or refer this motion to the presiding judge of this administrative district for a hearing on this motion.

Respectfully submitted,

PATRICIA R. LYKOS
District Attorney
Harris County, Texas



Joshua A. Reiss
Assistant District Attorney
Harris County District Attorney
1201 Franklin Street
Houston TX 77002
713-755-5892
713-755-1052 (Fax)
Texas Bar Card #24053738

By _____
Time: _____
Harris County, Texas
Deputy

FILLED
Loren Jackson
District Clerk
NOV 10 2009

**IN RE:
MOTION TO RECUSE
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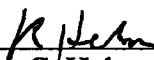
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**IN THE COUNTY CRIMINAL
COURT AT LAW NO. 1
HARRIS COUNTY, TEXAS**

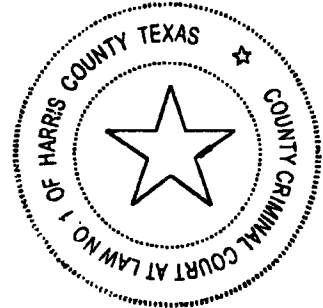
ORDER

On this the 11 day of Nov., 2009, the Court having considered the Motion to Recuse Hon. Reagan C. Helm filed by the State of Texas, has hereby ordered that the motion be (GRANTED) or (DENIED).

Signed and entered on this the 11 day of Nov., 2009.

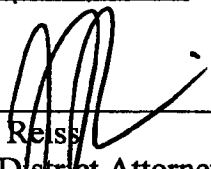


Judge Reagan C. Helm
County Criminal Court at Law No.1
Harris County, Texas



CERTIFICATE OF SERVICE

I, Joshua A. Reiss, the undersigned Assistant District Attorney, do hereby certify that a true and correct copy of the foregoing document was served on the attorney for the Defendant by certified mail on 11/10/09.



Joshua A. Reiss
Assistant District Attorney
Harris County District Attorney
1201 Franklin Street
Houston TX 77002
713-755-5892
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Texas Bar Card #24053738

ATTACHMENT No. 1 (N13)

Bloomfield, Paul	1604918	999	
Donaldson, Etheridge	1606339	996	
Jammas, Rene	1632892	996	
Kufreabasi, Enyong	995 1612023	2 additional charges	#1620529, #1618601
Martin, Jonah	999 1597901	1 additional charge	#1597900 999
Schellhorn, Paul Dean	1625721	999	
Southern, Ronnie	1625448	998	
Chavez, Alvaro	1479876	998	
Fuller, Russell	1626305	999	
Pitre, Byron	1575517	995	
Vazquez, Juan	1569114	998	
West, Justin	1615917	999	
Woods, Christopher	996 1632118	1 additional charge	#1632117 999
Abularach, Erick	1614046	999	
Acho, Ngozi	996 1613653	1 additional charge	#1613654 998
Attaway, Joe	1605978	999	
Bradford, Richard	996 1612946	1 additional charge	#1626657 998
Carter, Jeffery	1616924	998	
Dehuma, Javier	1637206	996 996	
Delacruz, Humberto	1634349	999	
Evans, Leroy	1569228	997	
Flores, Jose	1609954	998	
Gaona, Mario	1613682	998	
Garcia, David	1635799	999	
Gonzales, Juan	1637282	999	
Henderson, Charles	1471302	996	
Hernandez, Jose	1619225	998	
Holmes, Crystal	1633218	999	
Horton, Maurice	1627560	998	
Houston, Robert	1621518	999	
Jones, Austin	1610454	996	
Kartes, Stanley	1623490	997	
Kelley, Troy	1621262	997	
Lawrence, Ade	1600047	999	
Leal, Ovido	1633914	999	
Lewis, Nicholas	1639765	998	
Mars, Ron	1621289	998	
Martin, Billy	1637193	998	
Martinez, Ana	1636733	999	
Maxwell, Kenya	1569351	995	
Mendoza, Ignacio	999 1612055	1 additional charge	#1612056 999

Montano-Andalon, Francisco 1631918⁹⁹⁶
Morfin, Ricardo Jr. ⁹⁹⁷ 1588709 1 additional charge #1622683 ⁹⁹⁷
Noyola, Misael 1617647⁹⁹⁷
Ochoa, Nancy 1639510⁹⁹⁷
Owens, David 1623950⁹⁹⁷
Palos, Derli 1613777⁹⁹⁷
Ramirez, Andrew 1637779⁹⁹⁷
Reyes, Carlos 1359598⁹⁹⁹
Reyes, Henry 1625735⁹⁹⁹
Rivero, Candido 1615552⁹⁹⁸
Romero, Jeremy 1604083⁹⁹⁷
Sanchez, Ruben ⁹⁹⁸1624128 1 additional charge #1634029 ⁹⁹⁹
Sanchez, Shelton 1639799⁹⁹⁹
St. Hill, Dayne 1583666⁹⁹⁸
Smith, Alfred 1609222⁹⁹⁹
Swimmer, Alex 1590345⁹⁹⁸
Thomas, Donald 1638916⁹⁹⁷
Vanness, Cash ⁹⁹⁶1628794 1 additional charge #1628795 ⁹⁹⁸
Warner, Michael 1616787⁹⁹⁶
Watkins, Kelvin 1633627⁹⁹⁶
White, Ura 1636002⁹⁹⁸
Wildman, Mark 1617224⁹⁹⁹
Williams, Deborah 1632843⁹⁹⁷

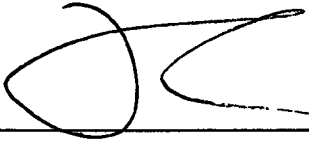
THE STATE OF TEXAS

AFFIDAVIT

COUNTY OF HARRIS

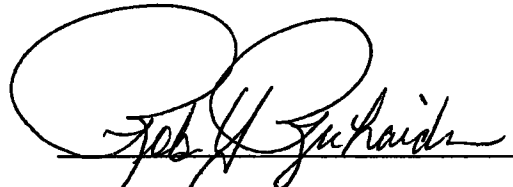
My name is THUY LE. I am presently employed as an Assistant District Attorney by Harris County District Attorney Patricia R. Lykos. I am over twenty-one years of age and am of sound mind and am legally competent to make this verification, which is true and correct and within my personal knowledge.

I have reviewed the Motion to Recuse filed in this case. The statements and observations attributed to me in the Motion to Recuse are true and correct.

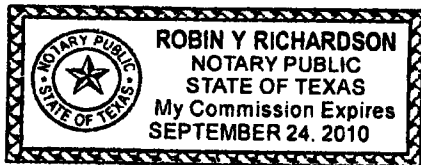


SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned Notary Public on the

29 day of October, 2009.



NOTARY PUBLIC IN AND FOR
HARRIS COUNTY, TEXAS



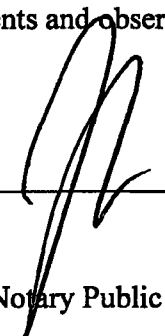
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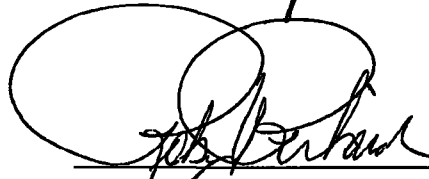
COUNTY OF HARRIS

My name is JOSHUA REISS. I am presently employed as an Assistant District Attorney by Harris County District Attorney Patricia R. Lykos. I am over twenty-one years of age and am of sound mind and am legally competent to make this verification, which is true and correct and within my personal knowledge.

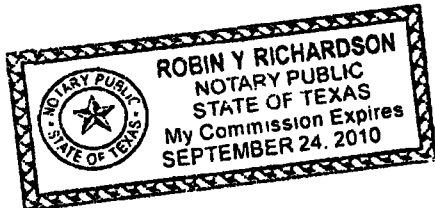
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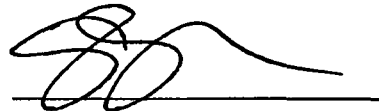
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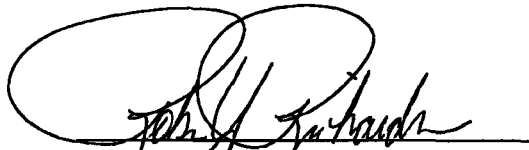
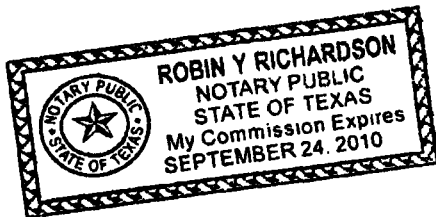
My name is SHREYA SHUKLA. I am presently employed as an Assistant District Attorney by Harris County District Attorney Patricia R. Lykos. I am over twenty-one years of age and am of sound mind and am legally competent to make this verification, which is true and correct and within my personal knowledge.

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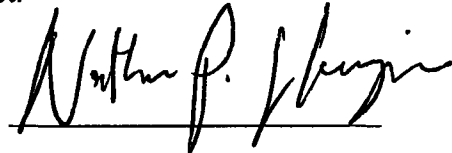
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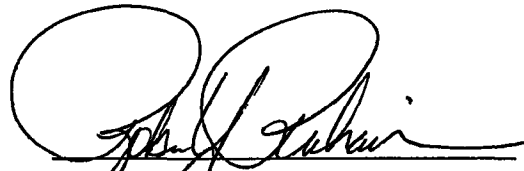
COUNTY OF HARRIS

My name is NATHAN HENNIGAN. I am presently employed as an Assistant District Attorney by Harris County District Attorney Patricia R. Lykos. I am over twenty-one years of age and am of sound mind and am legally competent to make this verification, which is true and correct and within my personal knowledge.

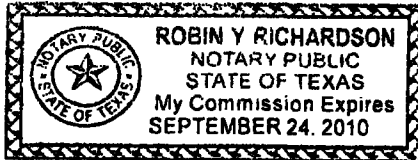
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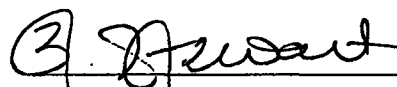
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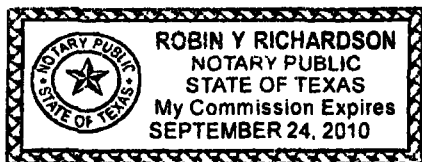
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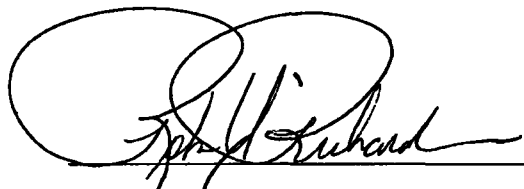
My name is JACKIE STEWART. I am presently employed as an Assistant District Attorney by Harris County District Attorney Patricia R. Lykos. I am over twenty-one years of age and am of sound mind and am legally competent to make this verification, which is true and correct and within my personal knowledge.

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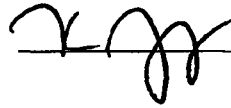
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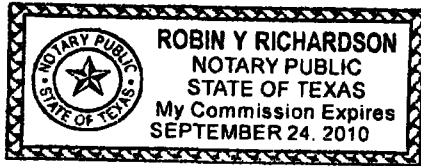
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My name is KATE SKAGERBERG. I am presently employed as an Assistant District Attorney by Harris County District Attorney Patricia R. Lykos. I am over twenty-one years of age and am of sound mind and am legally competent to make this verification, which is true and correct and within my personal knowledge.

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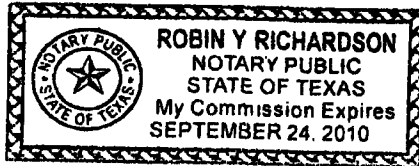
COUNTY OF HARRIS

My name is DAPHNE NEWAZ. I am presently employed as an Assistant District Attorney by Harris County District Attorney Patricia R. Lykos. I am over twenty-one years of age and am of sound mind and am legally competent to make this verification, which is true and correct and within my personal knowledge.

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