IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, ex rel,

Plaintiffs,

v. **Case No. 4:05-CV-329-GKF-SAJ**

TYSON FOODS, INC., et al.,

Defendants.

TYSON DEFENDANTS' STATEMENT REGARDING CONFLICT QUESTION

On March 16, 2007, a status conference was conducted by the Court in the above-captioned case. At this conference, the Honorable Gregory K. Frizzell, presiding judge, advised the parties that he is currently represented in his official capacity as a former state court judge by the Oklahoma Attorney General's Office in various cases arising out of his prior state court service. The Court requested that the parties file statements regarding whether this representation creates any conflict or need for recusal.

Defendants Tyson Foods, Inc., Tyson Chicken, Inc., Tyson Poultry, Inc. and Cobb-Vantress, Inc. hereby notify the Court that they do not believe this situation creates any suggestion of a conflict in the current case and thus there is no cause for recusal. The representation of state court judges is an official function of the Attorney General's office that is automatically extended to all state court judges and is not based on a special or personal relationship. Since this representation is available to state court judges as a matter of law, it should not normally create a conflict in cases where a current or previous state court judge presides over a different case involving the Attorney General's office. *See, e.g., Washington*

Mut. Fin. Group v. Blackmon, 925 So.2d 780, 789-91 (Miss. 2004) (rejecting motion for recusal based on the fact that attorneys in the case represented the judges in their official capacities in another case, and noting "[a] distinction is made between an attorney's representation of a judge in personal matters on the one hand and in his official capacity on the other. 'Disqualification may not be required if the attorney before the judge has represented him on the basis of the judge's official acts.' . . . 'A direct relationship, where the judge is represented personally, is more indicative of a reasonable question regarding the judge's impartiality than a relationship that only involves the judge in some institutional or technical role.'") (quoting Jeffery M. Shaman, Steven Lubet & James J. Alfini, *Judicial Conduct and Ethics* 4.18, at 146 (3d ed.2000) & *Powell v. Anderson*, 660 N.W.2d 107, 118 (Minn.2003)). This is particularly true where, as here, the two matters bear no factual or legal relationship to each other and the parties before the court have no involvement in the other case. *See id.*

Although there is no legal basis for a suggestion of recusal, to clarify the record the Tyson Defendants hereby waive any potential conflict arising from the disclosed matters and consent to Judge Gregory K. Frizzell continuing as the presiding Judge in the instant case.

Respectfully submitted,

By: *__/s/ Robert W. George_____*

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CERTIFICATE OF SERVICE

I certify that on the 22nd day of March 2007, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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I also hereby certify that I served the attached documents by United States Postal Service, proper postage paid, on the following who are not registered participants of the ECF System:

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